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ADMINISTRATIVE TRIBUNAL

Judgement No. 856

Case No. 954: CHOWANIEC

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Samar Sen, Vice-President, presiding;  
Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas at the request of Jan Chowaniec, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended until 31 October 1996 and 31 January 1997, the time-limit for the filing of an application with the Tribunal;

Whereas, on 27 November 1996, the Applicant filed an application containing pleas which read, in part, as follows:

"[i] ... that the Tribunal order a live hearing of the Applicant's testimony before it proceeds to consider the issues presented.

[ii] ... that the Tribunal rescind the decision of the Joint Appeals Board ..., dated April 25, 1996 (...), that the Applicant's claim for compensation 'was time-barred [due to the limits established in staff rule 111.2] and therefore not receivable.' [iii] ... that the Tribunal direct either the Secretary-General or the Joint Appeals Board to evaluate the merits of the Applicant's compensation claim, ...

...

d. The Applicant's compensation claim arises from the verbal instruction he received from his United Nations superiors on December 10, 1979, to report to the United

States Federal Bureau of Investigation. Although the highest levels of the United Nations administrative apparatus were aware of, participated in, and approved of this instruction, the instruction itself:

was not a formal 'administrative decision' such as would trigger review under the procedures set forth in rule 111.2;

was never memorialized in a written administrative decision; and

subjected the Applicant to extraordinary circumstances beyond his control, precluding any formal appeals process under the circumstances.

- e. Contrary to the conclusion of the Joint Appeals Board in paragraph 30 of its Report (...), 'the non-extension of the Appellant's contract beyond 31 July 1980' emphatically was not 'the administrative decision' for which the Applicant sought compensation.

...

... Should the Tribunal elect to consider the merits of the Applicant's compensation claim, rather than directing the Joint Appeals Board or the Secretary-General to do so, the Applicant respectfully requests that the Tribunal award him \$150,000, along with such other and further relief as the Tribunal deems just and reasonable, on account of the extraordinary events that began on December 10, 1979, and the subsequent damage to the Applicant's professional career.

- 5. ... The Applicant respectfully requests that the Tribunal award him the amount of the expenses and attorneys fees reasonably incurred in prosecuting this appeal."

Whereas the Respondent filed his answer on 16 May 1997;

Whereas, on 29 September 1997, the Applicant filed written observations;

Whereas the facts in the case are as follows:

On 1 May 1975, the Applicant entered the service of the Organization on secondment from the Polish Government, as an Economic Affairs Officer in the Department of Economic and Social Affairs, at the P-4, step VI level, on a two-year fixed-term appointment. On 1 May 1977, his appointment was extended for three years, after the Office of Personnel Services had requested and obtained the consent of the Polish Government to this extension. On 1 May 1980, his appointment was extended for three months, again after the consent of the Polish Government had been requested and obtained. His appointment was allowed to expire on 31 July 1980.

On 2 May 1994, the Applicant wrote to the Secretary-General, stating that he "was forced to quit [the United Nations] due to external circumstances beyond [his] control, despite an initial effort by [his] UN chiefs to extend [his] contract for two more years." He also outlined the circumstances "beyond [his] control" elaborating that, on 10 December 1979, he received a telephone call from the Permanent Mission of Poland to the United Nations ordering him to go to the Mission and report to the Permanent Representative.

He declined to comply with the request, stating that under the provisions of the United Nations Charter he could not receive instructions from any authority external to the Organization. The Applicant related that he reported the incident to his direct supervisor and to the Legal Counsel, who advised him "to stay away from the Polish Mission." Then he met his direct supervisor outside the United Nations building with "[the Applicant's] personal files under his arm." The Applicant mentioned that upon his return, his supervisor handed him a telephone number and urged him "to call them as soon as possible", a request that was allegedly reiterated the next day.

The Applicant further stated that by not acceding to his

supervisor's request, he ruined his professional career. The Applicant requested the Secretary-General to compensate him for the damage sustained to his career and suggested that a fair solution would be to pay him for two years of his prospective UN service, or approximately \$150,000.

On 26 September 1994, the Under-Secretary-General for Administration and Management (A&M) advised the Applicant that "[p]rior to the expiration date of your last appointment, the then Office of Personnel Services received a recommendation from your department that your appointment be allowed to expire. There is no indication that your United Nations Chiefs had offered to extend your appointment for two years." Moreover, he advised the Applicant that, under staff rule 111.2, his appeal was not receivable as it was time-barred.

In a reply dated 6 October 1994, the Applicant asked for the reconsideration of his case on its merits. He noted that he was bringing his appeal at that time "because only now political conditions in the world and within the United Nations enable me to do so." (emphasis in original)

On 22 February 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 25 April 1996. Its considerations and conclusion read, in part, as follows:

"Considerations

30. ... the Panel concluded that the non-extension of the Appellant's contract beyond 31 July 1980 was the administrative decision against which the appeal was directed.

31. The Panel then considered the question of whether the appeal was time-barred. It observed that pursuant to the Staff Rules, an appeal was not receivable unless the time-limits specified therein had been met or had been waived, in exceptional circumstances, by the panel considering the appeal, and that a staff member wishing to appeal an administrative decision should, as a first step, address a

letter to the Secretary-General, requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing. The Panel further observed that the Appellant had not raised the question of the expiration of his contract until 2 May 1994, fourteen years after it came to an end.

32. The Panel examined the question of whether there existed exceptional circumstances which would excuse the Appellant's tardiness. It noted that the Appellant alleged that the political environment in the UN during the Cold War prevented him from filing his appeal at an earlier stage. It further noted, however, the Respondent's assertion, supported by a number of UNAT judgements, that throughout the 1970s, 1980s and early 1990s, numerous staff members from countries formerly part of/or associated with the then eastern bloc, who challenged administrative decisions on the ground that such decisions were improperly motivated by cold war/political considerations, met, or substantially met, the time-limit requirements for submission of requests for administrative review specified by the Staff Rules. In view of the above, the Panel concluded that no exceptional circumstances existed that would justify granting a waiver of the time-limits in the present case, and that the appeal was therefore time-barred.

#### Conclusion

33. The Panel unanimously concluded that the above appeal was time-barred and therefore not receivable".

On 26 April 1996, the Under-Secretary-General for A&M transmitted a copy of the JAB report to the Applicant and informed him as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has noted the Panel's conclusion that the non-extension of your contract beyond 31 July 1980 was the administrative decision against which your appeal is directed. He has further noted the Panel's observation that you did not raise the question of the expiration of your contract until 2 May 1994, fourteen years after it came to an end.

The Secretary-General has also taken note of the Panel's

conclusion that there were no exceptional circumstances which would warrant a waiver of the time-limits under staff rule 111.2(f) and that your appeal was time-barred and accordingly not receivable. The Secretary-General has therefore decided to take no further action on your appeal".

On 27 November 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Organization should compensate the Applicant in the amount of \$150,000.00 for damage to his professional career resulting from outside events.

Whereas the Respondent's principal contentions are:

1. The appeal is time-barred.
2. If, as the Applicant argues, his appeal "is not an appeal from an administrative decision", then the application is not receivable because, in addition to being time-barred, it fails to meet an essential condition for a valid appeal.

The Tribunal, having deliberated from 30 October to 25 November 1997, now pronounces the following judgement:

I. The Applicant has requested that the Tribunal rescind the decision of the Secretary-General accepting the recommendation of the Joint Appeals Board (JAB) that the Applicant's claim for compensation was time-barred and therefore not receivable. The basis for this recommendation was that the administrative decision against which the Applicant's appeal was directed was the non-extension of his contract beyond 31 July 1980 and that he had not raised the issue until 2 May 1994. The Applicant requests the Tribunal to remand the case to the JAB for consideration on the

merits. The Applicant asserts that his claim for compensation made on 2 May 1994 is not an appeal from any written administrative decision and is therefore not subject to the time limits stipulated by staff rule 111.2. Alternatively, he contends that if there ever was a decision on the merits of the compensation claim made in May 1994, that decision was made sometime between 11 November 1994 and 9 January 1995. Hence, his request for administrative review, made in a letter to the Secretary-General, dated 16 January 1995, was timely. The Secretary-General did not reply within one month of the Applicant's letter and, consequently, the Applicant appealed to the JAB on 22 February 1995. The Applicant's claim arises from events that took place in mid-December 1979, which the Applicant alleges violated the terms of his employment contract with the Organization. Specifically, the Applicant contends that his supervisor violated Article 100 of the Charter by contacting the U.S. Federal Bureau of Investigation and instructing the Applicant to do the same.

II. The JAB reviewed the evidence and the conditions of staff rule 111.2(a), which provides that:

"A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing."

In applying staff rule 111.2, the JAB concluded that the administrative decision was the non-extension of the Applicant's contract beyond 31 July 1980. In finding that the Applicant's claim was time-barred, the JAB relied heavily upon his 14-year delay in contacting the Secretary-General regarding the events of December 1979 and the compensation claim resulting therefrom.

III. The Tribunal notes that the JAB considered whether "exceptional circumstances" existed that would allow the JAB to waive the time-bar and to deal with the merits of the underlying claim. The JAB concluded that no such exceptional circumstances existed for waiving time-bar. In so holding, the JAB considered the Applicant's allegation that the "political environment in the UN during the Cold War prevented him from filing his appeal at an earlier stage." In rejecting the Applicant's argument, the JAB pointed out that numerous staff members from eastern bloc countries had, in fact, met time-limit requirements in submitting various claims.

IV. The Applicant asserts that the JAB erred in relying on the July 1980 non-extension of his contract as the relevant "administrative decision", since his claim is not related to the non-extension of his contract but to the verbal exchange with his supervisor that took place on 10 December 1979. By the Applicant's own admission, however, it was the events in December 1979 that were "the cause of the subsequent career injury that [the Applicant] suffered and the entire reason that [the Applicant] could not in good conscience consent to a two-year renewal of his employment contract the following year."

V. Whether the JAB erred in basing its conclusion on the time-limits related to the non-extension of the contract is not relevant, as the JAB did consider all of the facts, including the details of the 10 December meeting and subsequent actions. It found that no "exceptional circumstances" existed so as to waive the time-bar. The Tribunal concurs with the JAB.

VI. The Tribunal has previously considered claims brought long after the events at issue occurred and consistently has held that a



claimant must come forward as soon as he or she knew, or had reason to know, that a claim could be made. The Applicant did not come forward until 14 years after the alleged injury occurred. He argues that he could not bring a claim due to adverse conditions at the UN "during the Cold War." Even if the Applicant's concern about coming forward was well founded at some point in time, a 14-year delay is inexcusable, even taking the Cold War into consideration. (Cf. Judgement No. 818, Paukert (1997)).

VII. The Applicant requested an oral hearing. The Tribunal considered that the documentation presented was sufficient to allow a definite conclusion and hence did not deem an oral hearing necessary.

VIII. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Samar SEN  
Vice-President, presiding

Mayer GABAY  
Member

Deborah Taylor ASHFORD  
Member

New York, 25 November 1997

R. Maria VICIEN-MILBURN  
Executive Secretary