



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1293

Case No. 1375

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Mr. Kevin Haugh;
Mr. Goh Joon Seng;

Whereas, on 4 March 2004, a former staff member of the United Nations filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas at the request of the Applicant, the President of the Tribunal extended to 30 September 2004 the time limit for the filing of an application with the Tribunal;

Whereas, on 13 August 2004, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal, inter alia:

“A. ...

1. ... [T]o order the Respondent to provide the [Applicant] and the Tribunal with a study - together with the complete documentary evidence in support attached thereto - on the complete genesis of the definition of the term ‘Organization in the United Nations family’, i.e. from the first version [of the] Statutes and Internal Rules [of the United Nations Staff Mutual Insurance Society against Sickness and Accident (... the Society)] mentioning that term up to the most recent and currently in force version, by indicating the ‘*raison d’etre*’ of the term,

and any changes in that definition which might have been made over the years and giving the reasons for, and the intentions behind, any such changes.

2. ... [T]o order the Respondent 'to produce evidence' (...) on: a) how many requests for affiliation of spouses to the Society ... have been *submitted* to the Society ... concerning spouses having been affiliated beforehand to a sickness insurance scheme of a specialized agency having its headquarters located in Geneva ...; b) how many of such requests have been *denied* or *rejected*; and c) how many of such requests have been *accepted* or *granted*.

...

C. ...

1. ... [T]o order the Respondent to instruct the Society to accept his wife's affiliation in accordance with paragraph 4 of Rule IV of its Internal Rules retroactively, as from 1 June 2001.

2. Should the Tribunal not grant his request ... to order the Respondent to instruct the Society to make an *exception* to Rule IV, paragraph 4 of its Internal Rules and to accept the affiliation of his wife to the Society retroactively, as from 1 June 2001, because of the *unfair financial burden* that his wife's voluntary affiliation to the International Labour Organization's [(ILO)] Staff Health Insurance Fund (... SHIF) constitutes for him.

D. ...

... [T]o order the Respondent to instruct the Society to reimburse him for the material loss he has suffered, as from 1 June 2001, and will incur until his wife's affiliation to the Society, over and above such costs as would have been charged by the Society, had she been affiliated to the latter instead of the SHIF.

E. ...

1. ... [T]o order the Respondent to pay him moral damages for the procedural violations that have occurred in connection with the handling of his case by the Respondent, in particular by the Society. The Applicant leaves it entirely in the Tribunal's discretion to decide on the amount, after having duly evaluated his case.

2. ... [T]o order the Respondent to pay him an adequate amount, to be determined by the Tribunal, as reimbursement for legal costs for legal advice and research incurred by him during all the proceedings in the present case."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 10 March 2005 and twice thereafter until 13 May;

Whereas the Respondent filed his Answer on 29 April 2005;

Whereas the Applicant filed Written Observations on 1 June 2005;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

“[The Applicant’s] Professional Record

... The [Applicant] entered the service of the United Nations on 22 August 1971, as Human Rights Officer, Studies and Conventions Section, Division of Human Rights, United Nations, New York, at the P-3 level. [On 1 February 1974, his appointment was converted to permanent and on 1 September, he was transferred to the Division of Human Rights, Geneva. On 1 April 1994, the Applicant became Acting Chief, Communications Branch, Centre for Human Rights, United Nations Office at Geneva (UNOG), at the P-5 level. He separated from service on 31 October 1996.]

...

Summary of Facts

... On 7 November 2000 ... ILO informed the [Applicant’s] wife that as a result of termination by mutual agreement between the ILO Director-General and herself, her appointment with the ILO would come to an end on 31 March 2001 ...

...

... By letter dated 21 November 2000, the [Applicant] requested the Executive Secretary of the ... Society ... to arrange ‘for [his] wife to be covered by the sickness insurance scheme of the Society as from the cessation of her services with the ILO’ on 31 March 2001.

... On 6 December 2000, the Executive Secretary of the Society answered that according to paragraph 4, Rule IV, and the definitions - Rule II - of the Society’s Statutes and Internal Rules, [the Applicant’s] wife was not entitled to ‘be covered by the ... Society’.

... By letter of 18 December 2000, the [Applicant] expressed his surprise concerning the reasons brought to the fore by the Executive Secretary of the Society for the impossibility to affiliate his wife to the Society. He considered the explanation unacceptable ... He finally requested a meeting with him.

... On 12 January 2001, the Executive Secretary transmitted to him a copy of the Statutes and Internal Rules of the Society, and while referring to a discussion with the [United Nations] Legal Adviser in Geneva, confirmed the content of his previous letter.

... In response, by letter dated 22 January 2001, the [Applicant] underlined that the Executive Secretary had forgotten a crucial word in the quote of Rule II, paragraph 1 of the Society’s Internal Rules, namely the term ‘primarily’. He specified *inter alia*:

‘At any rate, it must be clear that the listing of organizations in the rule in question as belonging to the [United Nations] family is not intended to be exhaustive. The rule must mean that other organizations, which normally are considered as belonging to the [United Nations] family, such as indeed the ILO, are not automatically excluded’.

After having stressed again the unreasonable character of the decision, he requested a meeting with the Executive Secretary of the Society to discuss the matter.

... On 13 March 2001, the Executive Secretary of the Society notified the [Applicant] that his request had been transmitted to the Society's Executive Committee which confirmed the substance of the letter dated 6 December 2000 and considered that the issue did not come within the remit of the Society, but of the ILO.

... By letter dated 12 June 2001, the [Applicant's] wife was informed that her request for voluntarily affiliation with the ... SHIF had been accepted for the period from 1 June ... to 30 November 2001, and that she would have to pay in advance the total amount of her contributions, that is to say CHF 2,892.60.

... On 26 June 2001, the [Applicant] submitted a complaint 'against a Decision of the Executive Committee of the [United Nations] Staff Mutual Insurance Society against Sickness and Accident' to the Director-General, UNOG, in compliance with paragraph 7 of Internal Rule IX of the Society.

... On 18 July 2001, the Director-General appointed an Arbitration Committee to examine the complaint submitted by the [Applicant], and to make a recommendation for his decision.

...

... By letter dated 31 October 2001, the Senior Legal Officer, UNOG, informed the [Applicant] that the Director-General had decided to follow the recommendation of the Arbitration Committee ...

... On 4 December 2001, the [Applicant's] wife was informed by the SHIF that her request for voluntarily affiliation with the SHIF had been accepted for the period from 1 June 2001 to 30 September 2007, corresponding to her special leave without pay.

... By letter dated 19 December 2001, the [Applicant] notified ... UNOG that he intended 'to challenge this state of affairs through the recourse procedures available to [him]'. ...

... On 31 December 2001, the [Applicant] wrote to the Secretary-General, requesting him to reconsider the administrative decision dated 31 October 2001 ... He also requested the direct submission of his case to the United Nations Administrative Tribunal ..."

On 5 April 2002, the Applicant was informed that, since his appeal did not appear to be limited to questions of law, a Joint Appeals Board was required to establish the facts of the case. Thus, the Secretary-General did not consent to direct submission. The Applicant lodged an appeal with the JAB in Geneva on 4 May 2002.

The JAB adopted its report on 30 October 2003. Its considerations, conclusions and recommendations read, in part, as follows:

"Considerations

...

Applicable law

41. Regarding rules applying to the case, the Panel referred to the Statutes and Internal Rules of the ... Society ... in particular to Rule IV ('*Conditions of admission*') and to Rule II ('*Definitions*'), and to administrative instruction ST/AI/394 dated 19 May 1994.

42. *Merits*

...

44. The Panel agreed that as spouse of a former staff member, the Appellant's wife cannot be considered as a 'specially protected person' in the sense of paragraph 2(d) of Rule IV of the Statutes and Internal Rules of the Society. It therefore turned to examine paragraph 4 of the same Rule which deals specifically with conditions of admission of former officials' spouses, bearing in mind that the French text is the authentic one.

45. According to this paragraph,

« peuvent bénéficier de l'assurance maladie le conjoint et les enfants à charge d'un ancien fonctionnaire qui étaient affiliés à l'Assurance ou a un système d'assurance maladie d'un organisme du système des Nations Unies à la date où ledit fonctionnaire a cessé son service, pour autant que l'ancien fonctionnaire demeure affilié ou s'affilie à l'Assurance »¹.

The Panel noted that the Appellant's wife was affiliated to the ILO insurance scheme at the date when the Appellant retired.

46. However, it also noted that according to paragraph 1 of Rule II of the same document, and *for the purpose of the rules only*, an Organization in the United Nations family means '*principalement le Siège de l'Organisation des Nations Unies, l'Office des Nations Unies à Vienne, les Commissions économiques et sociales et les institutions spécialisées dont le siège ne se trouve pas à Genève*'². The Panel found this definition clear enough to avoid any misunderstanding.

47. In view of the controversy created by the definition on part of the Appellant, the Panel insisted on specifying that apparently, as the Respondent wrote, the list seems not to be exhaustive, as would indicate the word '*principalement*' at the beginning of the listing. Nevertheless, the definite article '*les*' before the group '*institutions spécialisées dont le siège ne se trouve pas à Genève*', allows the Panel to maintain without any ambiguity that *a contrario* a specialized agency whose headquarters **is** located in Geneva cannot be added to the list. In that sense, it might be that the list is not exhaustive, but given the wording of the paragraph, any adding would necessary [sic] consist of a new category.

¹ The English text reads: "The spouse and dependent children of a former official who were affiliated to the Society or to a sickness insurance scheme of an organization in the United Nations family on the dated of cessation of service of the staff member may be covered by the sickness insurance scheme provided that the former staff member remains or becomes a member of the Society".

² The English text reads: "[P]rimarily United Nations Headquarters, the United Nations Office in Vienna, the Economic and Social Commissions and the specialized agencies whose headquarters are not located in Geneva".

48. Consequently, the Panel found that the Appellant's spouse does not enter into any category, as defined in the Statutes and Internal Rules of the Society, allowing her to become a member of the Society.

49. Moreover, the Panel referred to administrative instruction ST/AI/394 dated 19 May 1994[, entitled 'After-Service Health insurance'] in which it is stated concerning application for after-service health insurance benefits, that 'the application documents relating to enrolment in the after-service health insurance programme must be submitted to the office administering the after-service health insurance plan within 31 days following the date of separation [...]'. The Executive Secretary of the Society also confirmed that in practice after retirement no staff member can request any new affiliation.

Conclusions and Recommendations

50. In view of the foregoing, the Panel **concludes** that the Appellant has no grounds for contesting the decision taken by the Director-General, UNOG, not to allow him to have his wife admitted as a spouse in the Society.

51. Accordingly the Panel makes **no recommendation** in support of the present appeal.

..."

On 27 July 2004, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him that the Secretary-General accepted the JAB's findings and conclusions and had accordingly decided to take no further action on his appeal.

On 13 August 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant has been the victim of various violations of due process by the Respondent, in particular when his case was considered by the "Arbitration Committee".
2. The Applicant considers that the contested decision of the Director-General, UNOG, was legally incorrect and thus not tenable.

Whereas the Respondent's principal contentions are:

1. The Applicant's spouse is not eligible to participate in the Society
2. The Applicant's due process rights were fully protected

The Tribunal, having deliberated from 26 June to 28 July 2006, now pronounces the following Judgement:

I. The Applicant appeals a decision by the Secretary-General rejecting his claim that his wife be covered by the sickness insurance scheme of the United Nations Staff Mutual Insurance Society Against Sickness and Accident.

II. The Applicant was a member of the Society when he retired on 31 October 1996. At the time of his retirement, his wife was employed in the service of the ILO in Geneva. On 7 November 2000, the Applicant's wife was notified that, pursuant to a mutual agreement, her service would be terminated on 31 March 2001. This termination date was subsequently extended until 31 May. By letter dated 21 November 2000, the Applicant requested that his wife be covered under the Society's insurance scheme. This request was rejected by the Executive Secretary of the Society, on the basis that the Applicant's wife did not fit into any of the categories of persons who could become either members or protected persons covered by the Society's insurance scheme. According to the Executive Secretary, "while the spouse of a former official who was affiliated to the Society or to a sickness insurance scheme of an organization in the United Nations family on the date of cessation of service of the staff member [could] be covered"; the Applicant's wife did not qualify, as she was not affiliated to a sickness insurance scheme of an "organization in the United Nations family".

The Applicant sought administrative review of the issue, alleging that the ILO could be included in the definition of "an organization in the United Nations family", because the definition used the word "primarily", in English, or "principalement", in French, and this allowed for an expansive reading of the definition. The Secretary-General rejected the Applicant's interpretation of the statutory and regulatory language and concluded that the Applicant's wife had no standing to be covered by the Society's insurance scheme. The Applicant now brings this issue to the Tribunal.

III. The Society is governed by its "Statutes and Internal Rules", the authentic text of which is the French version. The Statutes and Internal Rules have been amended on several occasions, including in 1999, which amended version was in effect on the date on which the Applicant first requested admission to the Society for his wife.

Generally, the Statutes and Internal Rules provide coverage to certain persons, either as members in their own right or by virtue of their relationship to a member of the Society. his case arises as a result of a dispute over whether the Applicant's wife could properly be insured under the Society's insurance scheme, by virtue of her marital relationship with a member. Paragraph 4 of Internal Rule IV sets out the conditions for coverage by the Society's insurance scheme in such circumstances:

"[t]he spouse ... of a former official who [was] affiliated to the Society or to a sickness insurance scheme of an organization in the United Nations family on the date of

cessation of service of the staff member may be covered by the sickness insurance scheme provided that the former staff member remains or becomes a member of the Society”.

Internal Rule II defines an “organization in the United Nations family” to mean “primarily United Nations headquarters, the United Nations Office in Vienna, the Economic and Social Commissions and the specialized agencies whose headquarters are not located in Geneva”.

IV. The Tribunal turns to the issue of whether the Applicant’s wife can be admitted to the Society by virtue of her husband’s membership in the Society. The Applicant argues that his wife is entitled to coverage on the basis that the ILO is an “organization in the United Nations family”. As noted earlier, the Applicant argues that the use of the word “principalement”, in the French version, and “primarily”, in the English version, of Rule II means that the drafters of this regulatory language intended not to make the list contained in the definition exhaustive. In other words, the Applicant asserts, the list of organizations identified as “organizations in the United Nations family” is merely meant to be a partial list of organizations that are considered “in the United Nations family”, but does not exclude other organizations that are not specifically listed. Thus, the Applicant asserts further, the definition could be expanded to include agencies whose headquarters *are* in Geneva.

The Tribunal cannot agree. While the Tribunal agrees that the use of the word “principalement” or “primarily” does lead to the conclusion that the list was not meant to be exhaustive, it cannot be interpreted to include specialized agencies whose headquarters are located in Geneva, because this would make the provision internally inconsistent. It would make no sense for the drafters of this provision to have specifically excluded specialized agencies headquartered in Geneva, if it envisioned that those agencies could be included by use of the word “principalement” or “primarily”. Based on the record before it, the Tribunal is satisfied that the use of the word “principalement” or “primarily” was designed to permit the inclusion of organizations not specifically listed. This was undoubtedly intended to protect against inadvertent omission or to allow for inclusion of such organizations that might come into being in the future. It is clear, though, that by using exclusionary language, specialized agencies whose headquarters are located in Geneva were not intended to be covered. As the ILO is headquartered in Geneva, the Applicant’s wife clearly cannot participate in the Society’s insurance scheme pursuant to Rule IV, paragraph 4.

V. Finally, the Tribunal notes that a staff member of an agency headquartered in Geneva is free to become a member in his or her own right, providing that agency enters into an agreement with the United Nations, pursuant to chapter III, Article 6, paragraph. 5:

“Staff members of the specialized agencies at Geneva may join the Society on the conditions laid down in the Statutes and Internal Rules. The affiliation of these agencies shall become effective upon the signing of an agreement between the agency submitting the application and the Director-General of the United Nations Office at Geneva, after the consideration and approval of such agreement by the Executive Committee of the Society.”

Thus, staff members of such agencies do not need Rule IV, paragraph 4, or the definition of Rule II to qualify for membership.

In the instant case, however, the Applicant’s wife could not qualify for membership under Article 6, paragraph. 5, as the ILO has not entered into an affiliation agreement with the Director-General of UNOG. While the Tribunal recognizes the lacuna which exists for those staff members of Geneva-headquartered agencies which have not entered into an agreement with the Director-General of UNOG and is sympathetic to those who are denied participation in the Society, such matters are beyond its jurisdiction.

VI. For the foregoing reasons, the Tribunal agrees with the Administration’s interpretation of the Statutes and Internal Rules and rejects the Application in its entirety.

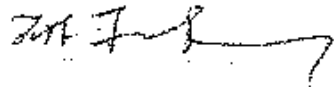
(Signatures)



Jacqueline R. **Scott**
Vice-President, presiding



Kevin **Haugh**
Member



Goh Joon Seng
Member

Geneva, 28 July 2006



Maritza **Struyvenberg**
Executive Secretary