



ADMINISTRATIVE TRIBUNAL

Judgement No. 1307

Cases No. 1125  
No. 1253

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Mr. Kevin Haugh; Mr. Goh Joon Seng;

Whereas, on 29 February 2000, a former staff member of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), filed an Application in case No. 1125, requesting the Tribunal, inter alia, to find that the Advisory Board on Compensation Claims (ABCC) erred as a matter of law and equity in finding that she did not qualify for disability compensation for loss of earning capacity under article 11 of Appendix D; to award appropriate compensation for 50 per cent permanent loss of function; to award annual compensation for total disability in the amount equal to two thirds of her final pensionable remuneration for the duration of her disability; and, to award additional and appropriate compensation for the violation of her rights and the stress caused by the unreasonable delays of the Respondent in processing her claims for reimbursement of medical expenses. Whereas, on 16 March 2002, the Applicant filed an Application in case No. 1253, requesting the Tribunal, inter alia, to rescind the decisions of the Respondent refusing the reimbursement of her medical bills; to order that her disputed medical bills be reimbursed and that bills for future medical treatments be covered under Appendix D and reimbursed promptly; to order, in the event the Respondent refused to certify her outstanding medical and dental bills, that a Medical Board be constituted immediately to decide on her present and future long-term care; and, to award compensation for the actual, consequential and moral damages suffered by her as a result of the Respondent's actions or lack thereof. On 23 July 2004, the Tribunal rendered Judgement No. 1197 in respect of both Applications, finding in favour of the Applicant on several counts and ordering that she be awarded an annual pension equal to 50 per cent of two thirds of her final pensionable remuneration; that a Medical Board be convened within three months from the date on which the Administration was

notified of the Judgement to review the question of the outstanding invoices; and, that she be compensated US\$ 10,000 for the anxiety caused by the unreasonable delays in the handling of her case.

Whereas, on 15 April 2005, the Applicant filed another Application, requesting “the execution of [Judgement No. 1197]”.

Whereas the Application contained pleas which read, in part, as follows:

**“II. Pleas**

*Request for Discovery and Witnesses*

...

2. The Applicant respectfully requests the Tribunal to order the Administration to produce ... information, items, documents, or records ...

*Redress Sought*

3. The Applicant has suffered serious humanitarian, financial, professional, moral, and psychological harm as a result of the Administration’s refusal to abide by the Administrative Tribunal’s Judgement [No.] 1197, and the unreasonably long delays preceding it. In light of the foregoing, the Applicant requests the following redress:

- Immediate payment of the annual pension equal to 50% of 2/3 of the Applicant’s final pensionable remuneration owed to the Applicant, pursuant to Appendix D, article 11.2 (d), as awarded by the ... Tribunal, dating from 1 August 1997 to the present date, on an annual basis for life, or, as [the] Applicant agreed, for a lump sum of her future lifetime pension as specified by article 11.5 of Appendix D;
- Interest at the compounded rate of ten percent per annum on the above amount;
- Punitive damages in the amount of US\$ 50,000;
- Moral damages in the amount of US\$ 50,000 and;
- Such other relief as the Tribunal deems just, fair and equitable under the foregoing circumstances.”

Whereas the President of the Tribunal granted an extension of the time limit for filing a Respondent’s answer until 21 October 2005;

Whereas the Respondent filed his Answer on 21 October 2005;

Whereas, on 11 January 2006, the Applicant filed Written Observations amending her pleas as follows;

“The Tribunal is respectfully requested to order the Respondent:

- (a) To pay the Applicant US[\$] 25,863.40, representing the underpayment of her disability pension plus interest at 10% per annum from 1 August 1997, until the date of payment.

- (b) To pay the Applicant interest at 10% per annum on each monthly payment due since 1 August 1997, until 1 August 2005, compounded since the date of notification of Judgement No. 1197 until the date of the interest's payment.
- (c) To reimburse to the Applicant all outstanding medical expenses from 1998 to date ... plus interest from their date until the date of their reimbursement, considering that the Respondent has denied the Applicant her right to a duly constituted Medical Board; subsidiarily, to pay the Applicant moral damages for the disdainful manner in which the Respondent has treated her medical condition, and monthly penalties, from the date of notification of the present Judgement until the report of the new medical board.
- (d) To pay the Applicant an equitable amount to offset her legal fees and expenses.”

Whereas, on 12 September 2006, the Applicant submitted an amendment to her Written Observations, further amending her pleas as follows:

“8. Since the Administrative Tribunal’s intention in calling for another medical board was to resolve such matters as outstanding bills and future treatments, the Applicant asks that the Medical Board Report be respected and implemented without further delay.

...

10. The Tribunal is requested to award the Applicant compensation for the anxiety caused by the continued delays to reimburse her medical bills, notwithstanding the third Medical Board Report on this, and the Tribunal’s own conclusion than ‘it is unacceptable that the consequences of an accident which occurred in 1992 should not have been resolved 12 years later’.

11. The Tribunal is requested to prevent continued unwarranted delays and ensure that all recommendations of the third Medical Board are implemented so that the impasse existing since 1993 can be finally resolved.”

Whereas, on 20 October 2006, the Respondent commented on the Applicant’s Written Observations and the amendment thereto;

Whereas, on 26 October 2006, the Applicant submitted additional documents;

Whereas the facts in the case were set forth in Judgement No. 1197.

Whereas the Applicant’s principal contentions are:

1. The Applicant’s request for execution of judgement is receivable in accordance with article 7, paragraph 2 (c) of the Statute of the Tribunal as well as the jurisprudence of the Administrative Tribunal of the International Labour Organization.
2. The Secretary-General “failed or refused” to execute Judgement No. 1197, in violation of the Staff Regulations and Rules, and the order of the Tribunal.
3. The Secretary-General abused his authority and discretion.
4. The Respondent erred in calculating the amounts due to the Applicant under the heading of “annual pension equal to 50 per cent of two thirds of her final pensionable remuneration” and in failing

to apply interest. Moreover, the Applicant is entitled to additional interest for the Respondent's delay in executing this aspect of Judgement No. 1197.

6. The Applicant is entitled to damages for the Respondent's delays, first, in convening a Medical Board and, then, in implementing its recommendations.

Whereas the Respondent's principal contentions are:

1. The Application for implementation of judgement is irreceivable as the Applicant has not complied with the prerequisites for such an Application.
2. The issues in the Application are moot as the Judgement has been implemented.
3. There is no basis for the claim for interest and damages.

The Tribunal, having deliberated from 1 to 22 November 2006, now pronounces the following Judgement:

I. This Application is a request for implementation by the Respondent of a portion of the Tribunal's award in Judgement No. 1197, directing that the Applicant be paid an annual pension equal to 50 per cent of two thirds of her final pensionable remuneration and other consequential reliefs.

II. In Judgement No. 1197, the Administrative Tribunal ordered:

- "1. ... that the Applicant be awarded an annual pension equal to 50 per cent of two thirds of her final pensionable remuneration [(hereinafter, Order 1)];
2. ... that a Medical Board be convened within three months from the date on which the Administration is notified of this Judgement to review the question of the outstanding invoices [(hereinafter, Order 2)]; [and]
3. [awarded] a sum of \$10,000 as compensation for the anxiety caused by the unreasonable delays in the handling of the Applicant's case [(hereinafter, Order 3)]".

On 22 December 2004, the Applicant was paid US\$ 10,000 pursuant to the Tribunal's Order 3.

With respect to Order 2, on 17 March 2005, the Applicant and the Respondent agreed on the membership of the Medical Board ordered by the Tribunal in Judgement No. 1197, and the Medical Board was accordingly convened on 17 March 2006 and submitted its report in May. Thereafter, the ABCC considered the report on 22 June, at its 429<sup>th</sup> meeting, and recommended to the Secretary-General "that the United Nations Office at Geneva be authorized to effect payment of the claimant's past and future medical expenses in accordance with the recommendations of the Medical Board". This recommendation was accepted on behalf of the Secretary-General on 29 June.

Insofar as Order 1 is concerned, on 12 May 2005, at its 423<sup>rd</sup> meeting, the ABCC considered the appropriate way of implementing the order that the Applicant be awarded an annual pension equal to 50 per

cent of two thirds of her final pensionable remuneration. It recommended that this order be implemented by making a retroactive lump-sum payment from 1 September 1997 to 31 May 2005, and thereafter by an ongoing monthly instalment effective from 1 June 2005. On 21 June 2005, the Controller accepted the advice of the ABCC, except that the lump-sum payment was to be made to cover the period up to 31 July, with the ongoing monthly benefit to commence on 1 August.

III. On 15 April 2005, the Applicant filed the present Application. At that time, only Order 3 had been fully implemented but, by the time the case was ready for consideration by the Tribunal, Order 2 had also been complied with, albeit not within the timeframe originally mandated by the Tribunal.

In respect of Order 1, the Tribunal notes that the Applicant now disputes the method by which it was implemented. According to the Applicant, the ABCC’s recommendation that it be implemented by a retroactive lump-sum payment from 1 September 1997 to 31 May 2005 and thereafter on an ongoing monthly instalment basis effective 1 June 2005 translates into the following calculations:

“CALCULATION OF DISABILITY PENSION IN US DOLLARS  
INCLUDING [UNITED STATES] COST OF LIVING INCREASES

...

Final Pensionable Remuneration in August 1997	US\$ 6,512.50
50% of 2/3 thereof	US\$ 2,170.83
from August 1997 to March 1999	US\$ 43,416.60
from April 1999 + cost of living increase of 3.3% (\$2,242.47)	US\$ 53,819.22
from April 2001 + cost of living increase of 6.1% (\$2,379.26)	US\$ 57,102.19
from April 2003 + cost of living increase of 4.0% (\$2,474.43)	US\$ 59,386.28
from April 2005 + cost of living increase of 5.2% (\$2,603.10)	US\$ 13,015.50
Total disability pension in US Dollars	US\$226,739.78
Continuous monthly pension in US\$ as calculated by the ABCC	US\$ 2,603.10”

The ABCC’s recommendation was accepted by the Respondent and implemented on 21 June 2005 and, on 26 July, the basis of the calculation was explained to the Applicant by the Secretary of the ABCC in the following terms:

“It is not the policy of this office to provide claimants with the detailed calculation of the Appendix D benefit. The calculation is done in US\$ -- that explains the slight difference between our calculation and [the Applicant’s], which is based on Swiss francs. The Appendix D death and disability benefits are calculated in US\$ and the cost-of-living increases that apply are those affecting the US\$. [Her] monthly benefit will be converted into Swiss francs, depending on the exchange rate that is in effect each month when the Accounts Division makes the payment.

Even though we do not release the detailed calculation, the following information will be very helpful to you:

The final annual pensionable remuneration that I was given by the Pension Fund is \$78,150.00 ([effective] July 1997 when [the Applicant] received her [United Nations Joint Staff Pension Fund] pension). Two-thirds of that amount is \$52,100 [per annum (p.a.)], divided by one-half, as per the Tribunal Judgement = \$26,050.00 p.a. = \$2,170.83 per month. The figure of \$2,170.83 per month is the starting point, to which were added the successive cost-of-living increases for the US\$ from that point until the present, i.e. 3.3% (April 1999); 6.1% (April 2000); 4% (April 2003); and 5.2% (April 2005). These ... increased the monthly App. D benefit to \$2,603.00 per month.”

IV. The Respondent’s implementation of Order 1 and his payment in accordance therewith is an administrative act. So also would be the alleged delay in implementing Order 2. The appropriate procedure to challenge the same is by way of request for administrative review. If the request is denied, the appeal must proceed to the Joint Appeals Board and thence the Tribunal. (See Judgements No. 1229 (2005) and No. 1283 (2006).) This procedure has not been followed. Thus, the Application is not receivable.

V. In view of the foregoing, the Application is rejected in its entirety as not receivable.

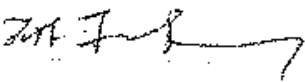
*(Signatures)*



**Spyridon Flogaitis**  
President

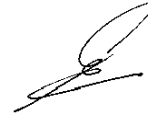


**Kevin Haugh**  
Member



**Goh Joon Seng**  
Member

New York, 22 November 2006



Maritza **Struyvenberg**  
Executive Secretary