



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1335

Case No. 1416

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Mr. Dayendra Sena Wijewardane
Second Vice-President; Mr. Goh Joon Seng;

Whereas, on 7 October 2004 and on 15 January 2005, a former staff member of the United Nations, filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 22 April 2005, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal, inter alia, to find:

“On [the] merits ...

- (a) That the Administration failed to carry on proper procedure of inquiry by ignoring to record statements of two most appropriate persons (star witnesses), Dr. [B.] and [the] spouse of the Applicant;
- (b) That the Respondent further denied due process of law when ... [Mr. I., the] Finance Assistant, on 10 June 2002, obtained the certificate of Dr. [B.], acting solely by himself, and, [on the] next day, he informed his boss to initiate action against the Applicant;
- (c) That the Respondent also failed to take notice that [the] Applicant was the only woman, working in [the] Finance Department under Mr. [I.], [and that, because] she had [a] personal clash with him ... he solely visited Dr. [B.’s] clinic without bringing the incident into knowledge of the Officer-in-Charge [(OiC)]....;
- (d) That the Respondent has completely ignored the concurrent findings of two independent committees, [the] Investigation Committee and the [Joint Disciplinary Committee (JDC)], whereby separating the Applicant from her job was not at all recommended; [and,]

- (e) That the action of separation from job cannot be sustained under the circumstances of the case.

On issues of suffering and expenditures ...

- (a) That [the] Applicant was the only qualified woman in the Finance Department and [that] she suffered [...] gender discrimination and harassment in [a] strict Muslim society;
- (b) That keeping in view the high rate of unemployment in Pakistan, the Applicant [should] be reinstated on her job;
- (c) That, in case she is not reinstated, she should be recruited [to] any other family mission in the world; [and,]
- (d) That the Applicant has suffered great anxiety and tension and numerous other problems due to the prolonged legal process and she was to spend three thousand US Dollars as legal costs.”

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 3 October 2005;

Whereas the Respondent filed his Answer on 30 September 2005;

Whereas the Applicant filed Written Observations on 3 November 2005;

Whereas the statement of facts, including the employment record, contained in the report of the JDC reads, in part, as follows:

“The [Applicant’s] Professional Record

... The [Applicant] entered the service of the United Nations on 14 February 2000, as [a] Finance Assistant, United Nations Military Observer Group in India and Pakistan (UNMOGIP), in Rawalpindi, Pakistan, at the GS-4 level. [She received fixed-term appointments of various duration until April 2004, when she was separated from service for misconduct.]

...

Summary of Facts

... On 6 May 2002, the [Applicant] submitted her MIP (Medical Insurance Plan) claim to the Finance Section.

... By memorandum of 11 June 2002, the Finance Assistant ... informed the [OiC], Finance Section ..., that he found a discrepancy between the MIP claim of [Pakistani Rupees (PKR)] 2,000.00 (N° 2002-05-028) for professional charges submitted by the [Applicant] for her dependent spouse, and the amount of PKR 50.00 really paid to the doctor.

... On 13 June 2002, the [OiC] ... requested the [Applicant] to confirm the exact amount she had paid to the doctor on 18 February ... regarding the MIP claim N° 2002-05-028 in favour of [her] spouse (...).

... The [Applicant] confirmed on 17 June 2002, that she had paid PKR 2,000.00 to him for various visits.

... On 20 June 2002, the OiC ...formed the Chief Administrative Officer, UNMOGIP, that there was 'a reason to believe that [the Applicant] claimed to have paid for Professional services in [favour] of her dependent spouse [...] the amount of PKR 2,000.00, although the examining physician [...], claims to have received only PKR 50.00'.

... On 24 June 2002, the Chief Administrative Officer ... transmitted the latter memorandum to the Under-Secretary-General[, Office] for Internal Oversight Services [(OIOS)], New York, and to the ... Controller ... He also informed them that he had requested the [Applicant] to further explain the circumstances, and informed her that an investigation could be held.

... The same day, the Chief Administrative Officer ... asked the [Applicant] to provide him with a more precise explanation concerning the payments to her family doctor. Precisely, he mentioned the discrepancy between the amount of [PKR] 2,000.00 ... claimed by her and the amount of the corresponding invoice from the doctor of [PKR] 50.00 ...

... In response, the [Applicant] indicated on 5 July 2002, that the invoice corresponded to a consolidated bill pertaining to various visits. She also specified that their driver was made responsible for bringing the money to the doctor and requesting the corresponding invoice, but allegedly kept the money and wrote himself the handwritten mention 'received PKR 2,000.00 for consultation and medication'.

... By memorandum dated 10 July 2002, the Chief Administrative Officer ... requested the three members of the Investigation Committee to lead an investigation on a case of presumptive or actual fraud on the part of the [Applicant].

... The same day, the [Applicant] provided the Chief Administrative Officer ... with some clarifications about her MIP claim. She particularly stressed that the amount of PKR 2,000.00 did not correspond only to the particular bill, but that she 'reissued all his previous bills on current dates'.

...

... On 2 August 2002, the Investigation Committee [submitted its report to the Chief Administrative Officer who transmitted a copy of the report to OIOS, on 12 August.] ... [The Chief Administrative Officer] specified that he did concur with the findings of the Committee, and that he did not believe that 'there was any intention to defraud the organization on the part of the [Applicant], as it would seem that the figure of 2000.00 rupees was not written by her and the claim was not directly for herself, but her husband, so it can be deduced that she only submitted the claim, but was not a party to the transaction'. He however considered that the [Applicant] was responsible for gross negligence, to the extent that she did not verify the amount ... claimed.

... [On] 2 October 2002, the ... Controller ... requested 'clarifications on a number of points', such as the contradiction existing between two versions provided by the [Applicant]: the part played by the driver, and the existence of a consolidated bill.

...

... The members of the Investigation Committee specified on 29 October 2002 in response to the above-mentioned memorandum of 2 October ... that the 'line with the driver was not pursued due to the fact that she claims the driver cannot be located'. They also mentioned their visit to the doctor during which the latter confirmed that members of the [Applicant]'s family visited him on several occasions to ask him to consolidate the receipt 'to reflect the amount of PKR 2,000.00'. He allegedly refused, to avoid damaging his reputation.

[The Committee reconsidered its findings and concluded that 'Actual Fraud' was committed by the Applicant].

... In a memorandum dated 1 November 2002, ... the Chief Administrative Officer [advised the Controller] that ... the mission did not protect the [Applicant]. He specified that ‘though the findings may have been incorrectly deducted, they were based on the same information as was given to all concerned in New York and any wrong conclusion was probably based on the inexperience of UNMOGIP staff’. ...

...

... By memorandum dated 26 November 2002, ... the [Applicant] ... [was] charged with failing to comply with the highest standard of integrity expected of international civil servants ... [and] requested ... to provide ... any written statements or explanations she might wish to give in response to these allegations.

...

... The [Applicant] transmitted her written reply ... by memorandum of 30 December 2002.

... On 17 June 2003, ... [her case was] referred ... to the JDC [in Geneva] for advice. ...”

The JDC adopted its report on 26 March 2004. Its conclusion and recommendation read as follows:

“Conclusion and Recommendation

57. ... [T]he Panel considers ... that the [Applicant] did indeed submit a medical insurance claim for her spouse, for medical services rendered on 18 February 2002 and amounting to 2,000.00 rupees, which were not paid to the doctor.

58. However, the Panel deems that insufficient evidence [has] been put forward to prove that she was aware that the document had been fraudulently altered, and to prove that she put pressure on the doctor to have him make a false statement, designed to cover up for her fraud.

59. The Panel concludes that the [Applicant] is responsible for having submitted a claim on the basis of a fraudulent ‘invoice’, without having checked the accuracy of what she was submitting, and without joining as required the relevant supporting documents. However the Panel judges, in the absence of conclusive evidence, that the [Applicant] cannot be accused of having submitted it with the intention to defraud the Organization. She is nevertheless guilty, as a trusted, responsible Finance Assistant, of gross negligence.

60. The Panel therefore recommends to the Secretary-General that a written reprimand be addressed to the [Applicant] by her supervisor and that the money owed to the Organization be recovered from the [Applicant] as recommended by the investigation committee in its report of 2 August 2002.

...”

On 22 April 2004, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed her as follows:

“The Secretary-General ... agrees with the JDC’s conclusion regarding the first charge against you, namely, that whereas the doctor was paid only 50 rupees, your submitted a claim for 2,000 rupees and he also agrees with its recommendation to recover from you the amount that was overpaid. However, he does not share the JDC’s conclusions with respect to the other two charges against you and he regrets that he also cannot agree with the JDC’s assessment of the evidence against you. Without any substantiating evidence, you had explained in your defense, inter alia, that the 2,000 rupees represented a consolidated amount for many visits to the doctor; that your driver was entrusted with obtaining from the doctor a

consolidated receipt for those visits and he, instead, pocketed the money and falsified the receipt; ... that you no longer have copies of the receipts for medication and lab tests for which you claimed 2,000 rupees; and, that you never pressured the doctor to make false statements. The Secretary-General considers your explanations as not plausible or persuasive. He further considers that your argument of 'negligence' in submitting the claim, if anything, is an aggravating, rather than a mitigating, circumstance - by virtue of your position as a Finance Assistant and knowledge of the procedure for submitting claims.

As a result, the Secretary-General considers that your conduct amounted to a serious violation of the standards of conduct and integrity expected of staff members of the Organization, and that this misconduct is incompatible with your continued service with the Organization. In view of the seriousness of your misconduct, the Secretary-General has decided not to accept the JDC's recommendation that you should be reprimanded but, pursuant to his discretionary authority to impose appropriate disciplinary measures, to separate you from service with compensation in lieu of notice pursuant to staff rule 110.3 (a) (vii), with effect from close of business on the day you receive this letter. ...”

On 22 April 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. She is the victim of a personal clash as the only female working in her section.
2. The Investigation Committee did not record the statement of Dr. B., who was the prime source of information. Thus, the information produced by the Investigation Committee in this regard was hearsay.
3. The Investigation Committee determined that she had not committed fraud.
4. The medical insurance claim was wrongly considered as an invoice from the doctor, dated 18 February, on which he had indicated in hand-writing an amount of PKR 50.
5. She was not aware that the invoice had been fraudulently altered.
6. There is no convincing evidence that the Applicant put pressure on the doctor to have him make a false statement.

Whereas the Respondent's principal contention is:

The Application is time-barred and thus not receivable.

The Tribunal, having deliberated from 3 to 27 July 2007, now pronounces the following Judgement:

I. The Applicant seeks review of the decision of the Secretary-General separating her from service with compensation in lieu of notice pursuant to staff rule 110.3. The Applicant was determined by the Secretary-General to have submitted a fraudulent claim for medical reimbursement. The Applicant asks the Tribunal to order that the separation from service be rescinded. In support of her claim, she alleges failure of the Administration to follow its own procedures relating to inquiries of witnesses in matters of alleged misconduct and that the allegations of misconduct arose as a result of a personal clash she had with the Finance Assistant. In addition, she alleges that the Secretary-General erred in refusing to accept the recommendation of the JDC, which found her guilty of gross negligence, but not fraud, and that, therefore, the Secretary-General acted disproportionately in separating her from service, rather than imposing the sanction of reprimand recommended by the JAB.

II. The Respondent does not address the substance of the Applicant's claims, but instead, defends its position on the basis that the Application is time-barred and, therefore, not receivable by the Tribunal.

III. The Tribunal turns its attention to the threshold question of whether the Application is time-barred. If it is, the Tribunal shall end its analysis of the matter. If it is not, the Tribunal will consider the merits of the case.

IV. Article 7, paragraphs 2 and 4, of the Statute of the Tribunal, governs the time frame in which applications are to be timely filed. In the case where the Secretary-General rejects the recommendations of the joint review body, an applicant has 90 days from the date of the Secretary-General's letter rejecting said recommendations, to file his or her application. In any particular case, however, the Tribunal may suspend or waive such time limits pursuant to its statutory powers under article 7, paragraph 5. Generally, though, the Tribunal, which recognizes the importance of complying with procedural rules, finding them to be "of the utmost importance for the well functioning of the Organization" (see Judgement No. 1106, *Iqbal* (2003)), will not waive or suspend such time limits unless there are extraordinary circumstances, including "serious reasons which prevented the Applicant from acting". (See Judgement No. 359, *Gbikpi* (1985).)

V. In the instant case, the JDC issued its report on 26 March 2004, wherein it concluded that the Applicant was not guilty of fraud, but rather gross negligence in the submission by her of an inaccurate medical claim. The JDC recommended to the Secretary-General that the Applicant receive a written reprimand and that the monies she owed to the Organization by virtue of her faulty submission be repaid by her. On 22 April, the Under-Secretary-General for Management issued a letter to the Applicant conveying the Secretary-General's decision to reject the JDC's recommendations. Instead, the Secretary-General determined that the Applicant was guilty of fraud, not merely gross negligence, and concluded that her conduct was a "serious violation of the standards of conduct and integrity expected of staff members of the Organization, and that this misconduct [was] incompatible with [her] continued service with the Organization". In light of his conclusions, he decided to separate the Applicant from service with compensation in lieu of notice. In accordance with its usual format, the letter concluded with the statement that: "[i]n accordance with staff rule 110.4 (d), any appeal [she] might wish to file in respect to this decision should be submitted directly to the Administrative Tribunal".

VI. The Tribunal notes that, while the Secretary-General's standard language directing staff members to pursue their claims with the Administrative Tribunal, if they choose, provides adequate notice of their rights, such notice could be enhanced in a way that would better inform staff members of the specific details of pursuing their remedies with the Administrative Tribunal. Such enhancement easily could be accomplished by the Administration with the addition of language indicating the time frame in which such remedies need be pursued and the contact information of the Tribunal.

VII. On 28 June 2004, in response to the Secretary-General's decision, the Applicant wrote to the Secretary-General, requesting a reconsideration of her plight. On 12 July, she received an e-mail from the Administration referencing her 28 June request for reconsideration and advising her that, if she wished to pursue her claim, her only recourse was to appeal to the Tribunal. She was also specifically directed to contact the Executive Secretary of the Tribunal, if she wished to appeal.

VIII. On 13 August 2004, one month after she received the e-mail directing her to contact the Tribunal's Executive Secretary in order to file her appeal, the Applicant e-mailed the Executive Secretary inquiring about the time frame in which to file her appeal. On 23 August, the Executive Secretary informed the Applicant that "the time limit for filing an application is 90 days following the letter of the Secretary-General communicating his decision on the recommendation[s] made by the JAB". The Executive Secretary also informed the Applicant that, if she needed more time to file, she could request an extension of the time limit in an official, written communication signed by her and addressed directly to the Executive Secretary, either by regular mail, fax or e-mail. On 7 October, the Applicant filed an application with the Tribunal which did not meet statutory requirements.


IX. According to article 7 of the Statute of the Tribunal, the Applicant was required to file her Application with the Tribunal within 90 days of the Secretary-General's rejection of the JDC's recommendations. She did not, nor did she request an extension of time in which to file. Although she was informed by the Administration of her right to appeal to the Tribunal on 12 July 2004, which was within the 90-day period, she failed to act quickly to contact the Tribunal and determine the time limits for filing. Even after she learned from the Tribunal's Executive Secretary, on 23 August, that the 90 days ran from the date of the Secretary-General's letter rejecting the joint review body's recommendations, the Applicant did not act. Instead, she waited an additional 6 weeks before first filing her application. At no time did she ever request an extension of time, nor was one ever granted, and she never alleged any exceptional circumstances that would warrant a waiver of the time limits by the Tribunal. Given the circumstances and the absence of any serious reasons, the Tribunal is compelled to hold the Applicant to the time frame set forth in the Statute. Accordingly, the Tribunal finds that the Application is not receivable as it is time-barred.

X. The Application is rejected in its entirety.


(Signatures)

A handwritten signature in black ink, appearing to read 'J.R. Scott', with a stylized flourish at the end.

Jacqueline R. **Scott**
First Vice-President

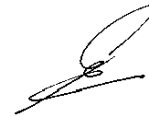


Dayendra Sena **Wijewardane**
Second Vice-President



Goh Joon Seng
Member

Geneva, 27 July 2007



Maritza **Struyvenberg**
Executive Secretary