



Administrative Tribunal

Distr. Limited  
28 September 2007

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1339

Case No. 1421

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Mr. Julio Barboza; Mr. Goh Joon Seng.

Whereas, on 5 May 2005, a former staff member of the United Nations Development Fund (hereinafter referred to as UNDP), filed an Application requesting the Tribunal:

- “(a) To order that the resignation which was taken from the Applicant under coercion be declared illegal and void and the Applicant be reinstated in his post with full pay for the entire period from 1 October 2001 until the Applicant resumes his duties with UNDP/[World Food Programme (WFP)] Nepal and [is] compensated, or failing that;
- (b) To provide compensation of full salary for at least five years, from October 2001 to October 2006 as settlement of the case, including legal fees and administrative costs of US \$ 1,000.00, or failing that;
- (c) To allow the Applicant to take the case to National and International courts.”

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 31 October 2005;

Whereas the Respondent filed his Answer on 30 September 2005;

Whereas the Applicant filed Written Observations on 27 December 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:

*“Employment History*

... [The Applicant] joined the ... WFP on 1 July 1981 as a Secretary at the GS-4 level. In 1986, he was promoted to Shipping Assistant at the GS-5 level, and [he] was promoted to the GS-6 level in 1989. In 1995, his post was upgraded to the GS-7 level and he was made Head of the Logistics and Procurement Unit. [The Applicant] tendered his resignation effective 1 October 2001.

***Summary of the facts***

... On 1 October 2001, the WFP Country Director (CD), met with [the Applicant]. The CD informed the [Applicant] that he had received complaints regarding the conduct of the [Applicant]. The CD stated that he intended to launch a full investigation into the matter, and offered, in the alternative, to accept [the Applicant]'s resignation. At that meeting, [the Applicant submitted a letter of resignation to the CD] ... 'due to personal circumstances', requesting a waiver of the one-month notice period ... and [requesting that] his [resignation be accepted] with immediate effect. Later in the evening of the same date, an email [was] sent at 10:54 p.m. to the CD ... [listing] allegations of misuse of office and misconduct against [the Applicant] from at least two sources.

... Also on 1 October 2001, the CD sent a letter to the Deputy Resident Representative informing her that [the Applicant]'s resignation had been accepted.

... On 3 October 2001, [the Applicant] wrote to [the] UNDP Resident Representative requesting that his resignation be converted to sick leave or that he be granted retirement on medical grounds.

... On 19 November 2001, [the Applicant]'s Personnel Action for separation on resignation was implemented.

... On 26 November 2001, [the Applicant] wrote to [the] Chief, Staff Relations at WFP Headquarters, requesting a withdrawal of his resignation.

... On 27 March 2002, [the Applicant] sent an email to [the] Director, OHR, seeking UNDP's intervention in the matter. [The] Respondent replied that the request was time-barred under staff rule 111.2 (a) (i).

... In July 2002, [having received] several additional letters and emails to senior management, the Respondent advised [the Applicant] to make an application to the JAB.

The Applicant lodged an appeal with the JAB in New York on 10 October 2002. The JAB adopted its report on 27 September 2004. Its considerations, conclusions and recommendation read, in part, as follows:

***“Considerations***

15. The Panel ... limited its deliberation to the adequacy of the resignation letter and the issues of duress ...

16. The Panel ... considered whether the resignation was effective under the circumstances. ... [The] Appellant submitted a resignation to WFP, requesting a waiver of the one-month notice period and requesting the CD's acceptance with immediate effect. The CD subsequently accepted. Barring any showing of misconduct by Respondent, [the] Appellant's resignation would therefore be effective.

17. The Panel also noted that the burden of proving that his resignation was coerced is on [the] Appellant. ... Here, the Panel did not consider that the choice given to [the] Appellant by the CD at their 1 October 2001 meeting - resignation or investigation - in itself constituted duress. A choice of that kind in and of itself does not foreclose a staff member's exercise of free will or the voluntary nature of the ultimate decision: without admission of guilt, the alternatives allow him to defend himself against the allegations

made against him if he so desires, or ... to avoid the painful process involved should further action against him be pursued.

18. The Panel found that [the] Appellant had not adduced sufficient evidence to show duress, insofar as most of his contentions remained unsubstantiated. There were, nevertheless, several aspects of that meeting that appeared in the submissions of both parties that troubled the Panel. The Panel noted that the conduct of that meeting was just as crucial as ensuring that the choice given to [the] Appellant was bereft of all trace of duress, lest that conduct and the atmosphere created at that meeting themselves give rise to such implications. Holding the meeting at the end of the day, in the absence of any neutral witness or third party, with a pre-prepared resignation letter at the ready, were factors that, given more substantiated evidence, would have contributed to the insinuation that the CD had coerced the resignation. More significantly, the Panel considered that, even if at that meeting [the] Appellant did not request time to consult with his family, the CD should certainly have offered it. The Panel disagreed with Respondent's contention on this point: the silence within the Staff Rules and Regulations on the question of duress does not vitiate the prohibition on coerced resignations; similarly, the absence of a 'legal requirement that a staff member must have the opportunity to consult somebody ... before making the decision to resign' is almost equally immaterial. The need to avoid even the appearance that the CD had attempted to shut down [the] Appellant's consent dictates that he would offer and grant [the] Appellant the breathing-space in which to make the decision. However, the Panel did not consider that these factors, standing by themselves, were sufficient to show duress.

***Conclusions and recommendation***

19. In light of the foregoing, the Panel concluded that [the] Appellant had not shown sufficient evidence of duress. Thus, his letter of resignation was effective and valid.

20. Therefore, the Panel agreed to make no recommendation.”

On 7 February 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB's findings and conclusions and had decided to accept the JAB's unanimous recommendation and to take no further action on his appeal.

On 5 May 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Respondent used duress to obtain his resignation.
2. The JAB failed to address the question of duress properly.
3. The Secretary-General failed to address the question of duress properly.

Whereas the Respondent's principal contentions are:

1. The Applicant resignation was an act of free will.
2. The Applicant's resignation was valid.
3. The Applicant's request for legal fees and administrative costs is without merit.

The Tribunal, having deliberated from 19 July to 27 July 2007, now pronounces the following Judgement:

I. The present case revolves around the validity of a resignation tendered by a staff member to the Head of his Office.

II. A resignation, in the United Nations internal legal system, has the following effect: the Administration may accept the resignation in question, but require of the resigning staff member to postpone his effective separation from the Organization for a period of up to three months. See staff rule 109.2 (b):

“Unless otherwise specified in their letters of appointment, three months’ written notice of resignation shall be given by staff members having permanent appointments and thirty days’ written notice of resignation by those having temporary appointments. The Secretary-General, however, may accept resignations on shorter notice.”

The Organization may reject the resignation, in order to permit a certain condition previous to separation to occur, for example, the imposition on the resigning staff member of a sanction, see Judgement No. 1249 (2005). Of course, under normal circumstances, a resignation tendered cannot be rejected, compelling the resigning staff member to continue working for the Organization. See Judgement No. 874, *Abbas* (1998), in which the Tribunal held that:

“a resignation becomes effective when submitted and does not require the Respondent’s approval to become effective. Any other finding would make a staff member’s desire to discontinue his or her service subject to the Respondent’s control - a result clearly not contemplated by the staff rules related to resignation.”

Once a staff member has presented his resignation, he cannot withdraw it, unless the Organization permits him/her to do so, and the Organization is invested, by virtue of such resignation, with certain powers as described above. As held in Judgement No. 1236 (2005): “In the specific circumstances of the instant case, however, the Tribunal finds that [the International Maritime Organization] proceeded in such a manner as to give the Applicant a legitimate expectation that he could withdraw his request for early retirement and that it failed to act in good faith towards him”.

III. Duress exercised on a staff member in order to force him/her to resign may, however, nullify the resignation. In such a case, the Tribunal, according to its Statute, would be in the position of ordering the reinstatement of the staff member or the payment, instead, by the Administration of an indemnity in the way of compensation.

As a consequence of such legal requirements and effects, the Applicant has to prove that duress was, in fact, exercised upon him in order to obtain his resignation. See Judgement No. 948, *Zhou* (2000), in which the Tribunal held that “the burden of proving that his resignation was coerced was on the Applicant”. In the instant case, the Applicant appears to argue that *his poor and fragile health conditions* induced such pressure on him as to amount to duress in vitiating his will.

The Tribunal must examine, first, if duress was exercised upon the Applicant, and, in the event it finds that no such circumstance intervened, whether or not there was pressure upon the Applicant to which, due to his state of health, he succumbed.

IV. The Tribunal is satisfied that duress did not exist in the present case. Undoubtedly, the interview in which the Applicant was notified of his alternative of resigning or facing investigation must have been tense and somehow dramatic for both parties. Nonetheless, the alternative offered to the Applicant was valid: he could have rejected the opportunity to resign, and there was nothing compelling him to elect resignation. As held by the International Labour Organization Administrative Tribunal in Judgements No. 89, in re *Barakat* (1965) and No. 150, in re *Deko* (1970), giving a choice to a staff member between resignation and disciplinary proceedings against him is not duress. The tension dominating the interview, somewhat enhanced - according to the Applicant - by the absence of witnesses and its taking place after working hours, did not amount to duress. Indeed, the Tribunal could, on the contrary, ask itself whether the presence of witnesses would not have created a worse situation for the Applicant, and increased the tension and drama of the whole matter.

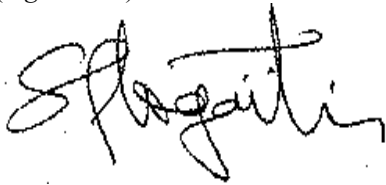
V. A different situation would have existed had the Applicant considered that, in the Organization, investigations were manipulated by the authorities or that he could not exercise his rights relating to due process of law. That was not, and is not, fortunately, the case. An investigation may be an unpleasant experience to anyone, but the Organization offers staff members sufficient guaranties of due process. Where separation is the proposed alternative, it seems quite obvious that a staff member would have more than one incentive to prefer investigation unless, of course, he had reason to believe that his impugned conduct was faulty and would lead to irreparable condemnation and the sanction of dismissal following disciplinary proceedings.

VI. The Tribunal is satisfied that the Applicant did not prove his statement that he was intimidated, blackmailed, coerced and threatened, or that he was to be reported of suspected involvements with terrorist activities to the Nepalese Government. Neither did he prove that he was not given time to consult with his family, although had such circumstance existed, it would hardly have made any difference: nowhere is it said or written that resignations must be the result of a collective family act, since presumably all staff members of the Organization or of its agencies are persons of age and of full legal capacity, not minors or otherwise incapacitated.

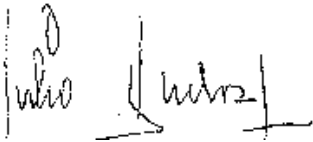
VII. The Tribunal is, then, satisfied that duress did not intervene in the present case. The Applicant, however, alleged in a letter of 3 October 2001 that he was suffering from various ailments “such as blood pressure, diabetes, fatty liver and swelling heart” although he never mentioned any such ailments prior to his resignation and had taken no sick leave. The Tribunal, however, is satisfied that his general conduct, both before and after his resignation, was far from being that of a person hardly able to really make up his mind when the alternatives of resignation or investigation were posed to him.

VIII. In view of the foregoing reasons, the Tribunal rejects the Application in its entirety.

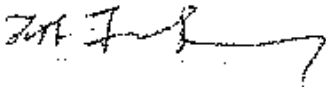
*(Signatures)*



**Spyridon Flogaitis**  
President



**Julio Barboza**  
Member



**Goh Joon Seng**  
Member

Geneva, 27 July 2007



**Maritza Struyvenberg**  
Executive Secretary