



ADMINISTRATIVE TRIBUNAL

Judgement No. 1343

Case No. 1426

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Jacqueline R. Scott, First Vice-President; Mr. Dayendra Sena Wijewardane, Second Vice-President; Mr. Julio Barboza; Ms. Brigitte Stern; Mr. Goh Joon Seng:

Whereas, on 18 August 2003, a staff member of the United Nations Development Program (hereinafter UNDP), filed an Application requesting the Tribunal, inter alia, to find that he had suffered from obstruction and harassment in the discharge of his official duties, and that a post to which he had applied had been filled in an irregular manner. Whereas on 24 November 2004, the Tribunal rendered Judgement No. 1217 finding that the recruitment in question was carried out in violation of applicable procedures and, in addition, was vitiated by discriminatory factors. Consequently, it ordered the Respondent to pay the Applicant 12 months' net base salary as compensation.

Whereas, on 18 May 2004, the Applicant filed another Application, requesting the Tribunal, inter alia, to find that: the decision by the UNDP Administrator not to investigate the allegations of interference, obstruction and manipulation of the internal justice system violated articles X and XI of the Staff Regulations and constituted procedural irregularity and a conflict of interest; the harassment and obstruction experienced by the Applicant in the performance of his duties between 1998 and 2001 violated his terms of employment; and, the decision of the Secretary of the Joint Appeals Board (JAB) "imposing a joinder of cases, which led to a confusion of the evidence and procedures of one appeal with two other separate appeals of the Applicant" constituted procedural irregularity. Whereas, on 23 November 2005, the Tribunal rendered Judgement No. 1271 (2005). With respect to the Applicant's plea concerning UNDP's refusal to conduct an investigation into allegations of interference in the internal justice system, the Tribunal found that it was "obviously not an application alleging non-observance of his

contract of employment or a violation of his terms of appointment, since it [was] not based on an administrative decision involving him”. Moreover, the Tribunal found that “the decision to conduct such an investigation is the privilege of the Organization itself” and that, in any event, such an investigation was then underway. Accordingly, it concluded that the plea was inadmissible and, even if it had been admissible, it was no longer applicable. The Tribunal also rejected the Applicant’s pleas regarding his allegations of harassment and intimidation, finding that the pleas were inadmissible as the subject matter was *res judicata*, having been rejected by the Tribunal in Judgement No. 1217. On the issue of due process, the Tribunal found that the joinder of several of the Applicant’s appeals by the JAB did not violate his rights. Accordingly, the Application was rejected in its entirety.

Whereas, on 28 May 2005, the Applicant filed another application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 7 July 2005, the Applicant, after making the necessary corrections, filed an Application containing pleas, which read, in part, as follows:

**“Part II. Pleas**

2.1 ...

***THE APPLICANT RESPECTFULLY REQUESTS THE TRIBUNAL:***

...

**TO TAKE NOTE** of the Respondent’s admission, in his decision of 12 January 2005, of fault and liability with respect to the procedural errors and violations of the Applicant’s conditions of service;

...

**TO ORDER** the restoration of the Applicant’s right to payment of the salary increment and post adjustment corresponding to his step increase, which became payable on 1 July 2000, up to April 2003, with payment of interest at the rate of 5 per cent per annum from July 2000 to the present and with the related adjustments to his pension;

...

**TO ORDER** the payment to the Applicant, on account of the Respondent’s manifest bad faith in this case, of compensation of two years’ net base salary for the professional, moral and material injury caused by the Respondent’s procedural errors, his systematic abuse of administrative procedures, his judicial harassment [of the Applicant], his belated acknowledgement of fault and his refusal to complete the [Performance Appraisal Review (PAR)] procedures, as recommended by the JAB, as well as for the stress, humiliation, pain, suffering and delays endured by the Applicant as a result of the lack of annual PAR reports, which deprived him of the means to defend his professional integrity and competence;

**TO ORDER** the issuance by the Administrator of a public letter attesting to the Applicant’s satisfactory service during his years at UNDP and the removal from his personnel file of all documents relating to the rating of 4 and to his 1998 PAR;

**TO ORDER** an additional payment to the Applicant, by way of exceptional compensation, in an amount equivalent to one year’s net base salary, should the Respondent fail to carry out the above measures within 30 days of the judgement by the Tribunal.

2.2 ...

2.3 *Preliminary and/or provisional measures*

***THE APPLICANT RESPECTFULLY REQUESTS THE TRIBUNAL:***

...

[To decide to hold an oral hearing.]”

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 12 December 2005 and once thereafter, until 31 January 2006;

Whereas the Respondent filed his Answer on 13 January 2006;

Whereas the Applicant filed Written Observations on 28 February 2006;

Whereas, on 18 May 2007, the Applicant submitted an additional communication;

Whereas, on 5 July 2007, the panel constituted to hear the Application decided to refer the case for consideration by the whole Tribunal, in accordance with article 8 of the Statute;

Whereas, on 17 July 2007, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts additional to those contained in Judgements No. 1217 and No. 1271, as contained in the report of the JAB, are as follows:

***“Summary of the facts***

... In the summer of 1998, there was a dispute between the [Applicant] and his supervisors ... The dispute began when the [Applicant] expressed his reservations regarding the recruitment of the Deputy Chief of the Legal Section. Differing accounts of the dispute are in the [Applicant]’s and the Respondent’s submissions. What is relevant here is that the [Applicant] identifies it as the beginning of ‘a pattern of hostility, threat and retribution’ against him.

... On 28 September 1998, [the Assistant Administrator] addressed a personal and confidential letter to [the Applicant] concluding as follows: ‘you have exercised poor judgement and disrespect for process despite repeated instructions, requests, and admonitions by your immediate supervisors and ... management ... These actions, regrettably, have been unsatisfactory and have undermined our confidence in you.’

... [In his replies] ... of 2 and 8 October 1998[, the Applicant] ... [complained that the Assistant Administrator] had made judgements without having heard [his] replies to the accusations, and ... [rebutted] ... the 28 September ... assertions.

... On 20 October 1998, [the Assistant Administrator] replied [that he had] ‘... decided to maintain [his] overall conclusions ...’

... In his [PAR] for 1998, the [Applicant] received a performance rating of ‘4’ (‘Meets some of the expectations of the performance plan but performance needs improvement’). According to the Respondent, this rating was justified by the [Applicant]’s supervisor by reference to a number of important performance issues which had been raised and documented ... during 1998. The Management Review Group (MRG) ... ‘shared the assessment of the staff member’s performance made by the supervisor... including the areas identified for further improvement, and endorsed the supervisor’s rating’. ...

...

... On 19 May 1999, the [Applicant] wrote a memorandum to [the Assistant Administrator] (in the latter's capacity as Chair of the MRG) ... in which he alleged 'that the whole PAR exercise ought to be declared null and void as a result of the lack of objectivity in the way it was conducted ... in breach of due process' and ... proposed ... special arrangements for the preparation of his PAR, or the referral of 'the whole PAR process to an ad hoc MRG'. In his reply of 28 May ..., [the Assistant Administrator] said that he did 'not see the necessity to alter the MRG process'.

...

... On 23 September 1999, the [Applicant] wrote to [the] ... Administrator, UNDP, concerning the backlog of internal justice cases and his complaints of mistreatment ... [and requesting, inter alia,] '... that an *independent* review body be constituted ... to investigate [a number of issues.]' ...

... [The Administrator, UNDP,] replied on 7 October 1999[, indicating that a review of the internal justice and recruitment matters was under way, but that he would need to submit a formal rebuttal in order for his personal problems to be examined]

...

... On 4 November 1999, the [Applicant] addressed a confidential note to [the Administrator, UNDP,] ... [elaborating] on his complaints. In [his] reply of 6 December 1999, [the Administrator] reiterated that ... 'the appropriate review body [for the Applicant's complaints was] the PAR Panel of Reference'.

... On 22 November 1999, the [Applicant] submitted his rebuttal to the PAR Panel of Reference.

... On 13 June 2000, the [Applicant] sought from the Panel's Chairperson confirmation of his mandate and appointment by the UNDP's Consultative Group on Staff Matters (CGSM), in accordance with staff regulation 8 and internal procedures. The next day, on 14 June ..., the Chairperson asked the [Applicant] to 'postpone' the PAR rebuttal proceedings stating that he would revert to him 'soon'. According to the [Applicant, the Chairperson] had never been officially appointed ... He had simply been informally invited to preside [over] the PAR Panel of Reference by the [Applicant]'s supervisor.

... On 16 November 2000, the [Applicant] wrote to [the Administrator, UNDP,] complaining that the 'independent review' ... had still not been held ...

... In his reply of 4 January 2001, [the Administrator, UNDP,] stated 'that the delay in having your 1998 PAR rebuttal reviewed by the PAR Panel of Reference was caused by the delay introduced by you'.

...

... [In the same letter,] ... the UNDP Administrator informed the [Applicant] that a new Chairperson had finally been officially appointed by the CGSM to head a new Panel of Reference, which meant that the [Applicant] would have to re-start the whole PAR rebuttal proceedings with new Panel members and a regularly appointed Chairperson.

... On 14 June 2001, the [Applicant] wrote a memorandum to [the Assistant Administrator] requesting him to review the particular claim for retroactive payment of his step increase. ...

... On 7 August 2002, the [Applicant] was informed of ... UNDP's decision to award him his in-grade increment for the period 2000-2002."

On 29 June 2001, the Applicant requested administrative review of the evaluation and rebuttal process. On 28 August, he lodged an appeal with the JAB in New York. The JAB adopted its report on 4 June 2004. Its considerations, conclusion and recommendation read, in part, as follows:

***“Considerations***

...

32. The Panel ... considered the contention of the Appellant that he [had] been deprived of his net base salary increase due to him in July 2000 for the period 1998-2000. ... The Panel noted that on 7 August 2002 the Appellant was informed of the UNDP’s decision to award him his in-grade increment (step VIII) for the period 2000-2002.

33. The Panel noted that, despite the dispute which occurred in the summer of 1998 and the circumstances that occurred between the Appellant and his supervisors, the Organization made considerable efforts to accommodate the Appellant’s demands in respect of his particular situation. ...

34. ... The Panel ... found two procedural errors. First, UNDP Administration failed to follow its own procedures set forth in the Personnel Manual Section 30401/4.0, as the Appellant never received the statutory two-month prior notice about the withholding of his within-grade salary increment. ...

35. The second procedural error was the fact that the Organization failed to regularly appoint a Chairperson to the PAR Reference Panel when the Appellant submitted his 1998 PAR rebuttal statement in November 1999. The Panel noted that it was only on 4 January 2001 that a Chairperson was finally officially appointed by the CGSM to head the new PAR Panel of Reference. Bearing in mind these procedural errors, the Panel was of the view that the Appellant merited compensation.

36. The Panel found disturbing the statement made by the Respondent that the PAR Rebuttal procedure has to date never been completed. It also noted that both parties alleged that the delay has been caused by the other party. The Panel urged both the Appellant and the Respondent to act in good faith and complete the PAR Rebuttal procedure at an earliest date.

37. The Panel considered the remaining contentions of the Appellant but found that they had already been addressed, considered and reported by the JAB ...

***Conclusion and recommendation***

38. In light of the foregoing, the Panel *unanimously concludes* that the Appellant has not suffered any irreparable harm as there was adequate evidence proving that the Organization assisted the Appellant taking into account his particular situation. However, as there were two procedural errors, the Appellant is entitled to some compensation.

39. Accordingly, the Panel *unanimously recommends* that, in view of the fact that the procedural errors committed cannot be corrected otherwise, the Appellant be awarded US\$ 2,000 as compensation for the damage he sustained.

...”

On 12 January 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General had decided to accept the JAB’s recommendation for monetary compensation.

On 7 July 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The total lack of any in-depth consideration of the substance of the appeal by the JAB, which simply referred to the findings in an earlier report, without drawing any conclusions therefrom, was contrary to the principles of due process.
2. The Respondent's implicit decision not to follow up on the JAB's recommendation that the PAR rebuttal procedure initiated by the Applicant in November 1999 should be completed, violated his rights.
3. Given the broader context of harassment and the systematic obstruction of the Applicant, which constitute aggravating factors, the compensation of \$2,000 paid by the Respondent does not represent just reparation for the material and moral injury sustained by the Applicant.

Whereas the Respondent's principal contentions are:

1. The Applicant cannot ask the Tribunal to reconsider allegations that were examined and ruled on in Judgement No. 1217 and are thus *res judicata*.
2. The Applicant has been adequately compensated for any irregularities in the rebuttal procedure in respect of his 1998 PAR. Furthermore, he has produced no evidence to justify the awarding of additional compensation.

The Tribunal, having deliberated from 5 to 27 July 2007, now pronounces the following Judgement:

- I. The Panel constituted to hear the instant Application decided, in accordance with the provisions of article 8 of the Tribunal's Statute, to refer the case for consideration by the whole Tribunal. The Tribunal will thus render judgement *en banc*.
- II. In the summer of 1998, a dispute commenced between the Applicant and his supervisors, which, according to the Applicant, marked the beginning of "a pattern of hostility, threat and retribution" against him. In particular, the Applicant complains that he was unfairly accused of "poor judgement and disrespect for process". For the year 1998, the Applicant received a PAR with a performance rating of "4" ("Meets some of the expectations of the performance plan but performance needs improvement"), justified by his supervisor by reference to a number of important performance issues which had been raised and documented by OHR management during 1998.
- III. On 23 September 1999, the Applicant wrote to the Administrator, UNDP, complaining of a paralysis in the internal justice system; of recruitment problems in the Legal Section, and, that he was being hampered in his work by certain officials. He requested, inter alia, that "an *independent* review body be constituted" to investigate his complaints. In his reply of 7 October, the Administrator advised the Applicant that the internal justice and recruitment matters were under review and that his personal problems should be examined in the context of the PAR rebuttal process.

In October 1999, the MRG endorsed the supervisor's PAR rating of the Applicant. The Applicant contested his performance assessment and challenged the MRG process. He was again advised to submit the performance issues to the PAR Panel of Reference, which he did, on 22 November. In June 2000, the Applicant complained that the Chairperson of the Rebuttal Panel had not been appointed in accordance with staff regulation 8 and internal procedures. On 16 November, he again requested the Administrator that an "independent review" be conducted, to investigate "the paralysis of [the] UNDP internal justice system" and "interferences and manipulation by some ... officials of the internal justice system" amongst other things. In his reply of 4 January 2001, the Administrator stated that the delay in review of the Applicant's 1998 PAR rebuttal was "caused by the delay introduced by [the Applicant himself]", and again declined to order the requested review. On the same date, a new PAR Panel of Reference was established.

On 14 June 2001, the Applicant wrote to the Assistant Administrator, requesting him to review his claim for retroactive payment of his step increase "from 2000". On 7 August 2002, he was informed of UNDP's decision to award him his within-grade increment for the period 2000-2002.

In its report of 4 June 2004, the JAB unanimously concluded that the Applicant had not suffered any irreparable harm as there was adequate evidence proving that the Organization assisted him, taking into account his particular situation. However, it recommended that he be awarded US\$ 2,000 for two procedural errors committed by the Administration - namely its failure to provide the Applicant with the statutory two-month prior notice about the withholding of his within-grade salary increment and its failure to regularly appoint a Chairperson to the PAR Reference Panel established to review his 1998 PAR rebuttal - that "[could not] be corrected otherwise". It found that the remaining contentions of the Applicant had already been addressed, considered and reported upon in an earlier JAB report that gave rise to Judgement No. 1271. On 12 January 2005, the Secretary-General accepted the JAB's recommendation.

IV. The Tribunal notes that the Applicant presents two claims: (1) that the compensation of US\$ 2,000 paid by the Secretary-General for the procedural errors, as recommended by the JAB, is not sufficient and (2) that he should be paid compensation for various other professional, moral and material injuries caused by the Respondent.

V. The Tribunal, while concurring with the JAB and the Secretary-General on the first issue, namely that the Applicant has received sufficient satisfaction, notes that the other relief sought in this Application is, in the main, similar to that sought by the Applicant in his earlier cases (see Judgements No. 1217 (*ibid.*), No. 1271 (*ibid.*), No. 1308 (2006) and No. 1309 (2006)) where he made the same complaints of harassment. It is, thus, of the view that such complaints are *res judicata*. In so holding, the Tribunal recalls its rationale in Judgement No. 1158, *Araim* (2003). In that Judgement, the Tribunal noted that the

"contested decision is related to and stems from procedures that followed the Administration's decisions taken between 1990-1992, not to promote the Applicant to a D-1 post, which lead to the Tribunal's Judgements, No. 622, *Araim* (1993); No. 657, *Araim* (1994); and, No. 658, *Araim* (1994). In these Judgements, the Tribunal, inter alia, rejected the Applicant's claims that his non-selection was motivated by discrimination based on his national origin or ethnic background."

In two of these Judgements (Nos. 622 and 657) and in an earlier Judgement (533, (1991)) the Tribunal had awarded the Applicant Araim a total of US\$ 9,000 for the Administration's failure to give his candidature for D-1 posts meaningful consideration, but rejected his allegations of discrimination. In Judgement No. 1158, the Tribunal stated:

“In deciding the case, the Tribunal concluded that, ‘in the circumstances of this case, the Tribunal, like the JAB, is unable to find that the Applicant was the victim of discrimination based on ethnic or national origin’. Consequently, the Tribunal finds that the underlying contention of the present Application is covered by the *res judicata* of the Tribunal's decision in its Judgement No. 622”,

and that, “even if [the Applicant claimed that the Investigation Panel had not been properly constituted] it too would be subject to *res judicata*, as the Tribunal in its previous Judgements, with the same Applicant, dealt with the same issues”.

VI. Additionally or alternatively, the Tribunal is of the view that it is an abuse of process and of the internal justice system of the United Nations for the Applicant to ground his claims for relief in multiple Applications when the issues raised in these Applications are the same and could be dealt with in one application. It recalls, in this connection, its jurisprudence on this issue, noting in particular Judgement No. 1200, *Fayache* (2004), wherein it stated,

“The Tribunal finds that the Applicant has demonstrably abused the process of administration of justice. As it has no power to fine the Applicant, or otherwise hold him in contempt, it wishes to state for the record that it can and will impose costs against the Applicant should further frivolous or abusive Applications be filed with the Tribunal”.

In the circumstances, the Tribunal finds that the Applicant has been sufficiently compensated for the procedural errors in relation to his PAR for 1998 and that his other issues are *res judicata*. Therefore, both his claims must fail.

VII. There is, however, one additional issue that the Tribunal has been asked to consider. In a letter dated 18 May 2007, the Applicant requested that the Tribunal, “before [it] addresses [his] Application No. 1426 ... ‘by its own motion’ and without any further delay and proceedings ... rectifies [(sic)] what may appear as a ‘slip’ of language” and that it “replace the word ‘against’ by the word ‘for’ or ... simply strike out the whole paragraph [IV] from [Judgement No. 1309 (*ibid.*)]”. The paragraph in question reads as follows:

“IV. We are constrained to note that the Applicant is a familiar figure in the corridors of the Tribunal, be it as counsel for Applicants; proposed intervener; or, Applicant in his own numerous cases. The pleadings and elaborate arguments he tenders in those proceedings *in his crusade against the Organization* belie his claim for loss of earning capacity as an attorney.” (Emphasis added by the Applicant.)



VIII. The Tribunal presumes that this request was made under article 12 of the Statute, the relevant part of which reads as follows: “[c]lerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties”.

As the request of the Applicant does not satisfy the requirements of article 12 of the Statute, either procedurally or substantively, it is rejected.

IX. The Tribunal notes that the Applicant has also requested “confirmation that this rectification will be made before the Tribunal addresses Application 1426” and that, “[i]f no such rectification takes place ... the judges involved in earlier judgements (1217-1308-1309) excuse [sic] themselves from the consideration of Application 1426”. The Tribunal finds no basis for recusal.

X. In view of the foregoing, the Application is rejected in its entirety.

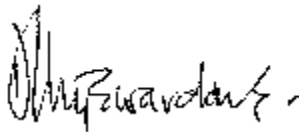
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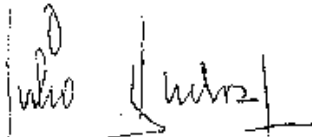
Spyridon **Flogaitis**  
President



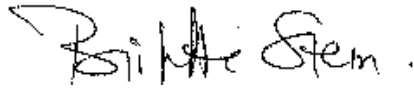
Ms. Jacqueline R. **Scott**  
First Vice-President



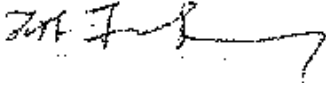
Dayendra Sena **Wijewardane**  
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Julio **Barboza**  
Member

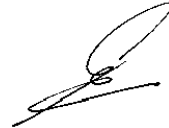


**Brigitte Stern**  
Member



**Goh Joon Seng**  
Member

Geneva, 27 July 2007



**Maritza Struyvenberg**  
Executive Secretary