



Administrative Tribunal

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31 May 2008

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1372

Case No. 1155

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, Vice-President; Ms. Brigitte Stern;

Whereas, on 12 December 2005, 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 granted an extension of the time limit for filing an application with the Tribunal until 31 May 2006, and periodically thereafter until 28 February 2007;

Whereas, on 12 February 2007, the Applicant filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, revision of Judgement No. 1077, rendered by the Tribunal on 26 July 2002;

Whereas the Application contains pleas which read, inter alia, as follows:

“7. The Applicant ... applies for review on account of a mistake of facts or erroneous conclusions by the [Tribunal] ... in Judgement No. 1077, which failed to make accurate findings of fact in relation to his substantive claim ...

8. A number of substantive issues were not addressed in ... Judgement No. 1077 ...

...

10. The Applicant ... applies for review in relation to the consequent erroneous conclusion that [he] is not entitled to any further compensation.”

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 6 August 2007, and once thereafter until 6 September;

Whereas the Respondent filed his Answer on 6 September 2007;

Whereas the facts in the case were set forth in Judgement No. 1077.

Whereas the Applicant's principal contentions are:

1. The Tribunal failed to recognize that his agreed separation was brokered under terms of extreme duress.
2. The Tribunal failed to recognize that the characterization of his illness as a condition which would not enable him to work again was not properly taken.
3. He was never properly compensated for his termination, which occurred when he was granted a disability pension.

Whereas the Respondent's principal contention is:

The Applicant failed to introduce any fact of a decisive nature which was unknown to the Tribunal and to the Applicant at the time Judgement No. 1077 was rendered and, accordingly, his request for revision of Judgement is without merit.

The Tribunal, having deliberated from 22 April to 2 May 2008, now pronounces the following Judgement:

- I. This matter comes before the Tribunal in the form of the Applicant's request that the Tribunal "review" its previous decision, Judgement No. 1077, in which the Tribunal rejected his initial Application.
- II. While the history of this case is long-winded, it is not complicated. The Applicant joined the service of the Organization in 1969. Some 23 years later, the Applicant separated from service on health grounds, pursuant to article 33 of the Regulations of the United Nations Joint Staff Pension Fund, based on a finding by the United Nations Joint Staff Pension Committee that the Applicant was 100% disabled and, therefore, incapacitated for further service. The Applicant was granted a disability benefit and his permanent appointment was terminated in accordance with staff rule 109.3. The Applicant disputed the Organization's decision to terminate him on the basis of disability and sought administrative review of that decision to the Secretary-General. The Secretary-General did not respond to the merits of his claim for review and the Applicant appealed to the Joint Appeals Board (JAB).
- III. The majority of the JAB determined that the Applicant's appeal was time-barred, as he had not filed his request for review by the Secretary-General in a timely fashion, i.e., within two months of the date upon which the decision to terminate his service was communicated to him, in accordance with staff rule 111.2 (a). In addition, the majority found no exceptional circumstances that would allow a waiver of the time limits. When the matter came to

the Tribunal, the Tribunal rendered its Judgement No. 868, disagreeing with the majority JAB's findings and noting the presence of some exceptional circumstances that justified a waiver of the time limits. The Tribunal decided to remand the case to the JAB for its consideration on the merits. Upon remand, in October 1999, the JAB made "no recommendation" in favour of the appeal. Based upon that, the Respondent took no further action with respect to his decision to terminate the Applicant for disability.

Thereafter, on 2 October 2000, the Applicant sought review by the Tribunal of the Respondent's decision to terminate him for disability. Based on the record, the Tribunal found that the decision to terminate was justified, and, in its Judgement No. 1077 dated 26 July 2002, rejected the Applicant's pleas for relief.

IV. On 12 December 2005, over three years from the date of the Tribunal's decision rejecting his pleas on the merits of his case, the Applicant again filed an Application before the Tribunal, seeking review by it of the decision to terminate his services. Specifically, the Applicant asks the Tribunal to review its "erroneous conclusion that [the Applicant] is not entitled to compensation for his illegal termination and a determination of its value". In essence, the Applicant alleges that the Tribunal made conclusions of law that were erroneous and that the Tribunal characterized facts erroneously, such that its decision to reject his claims was wrong.

V. According to the Statute of the Tribunal, subject to the provisions of article 12, the judgements of the Tribunal shall be final and without appeal. Article 12 provides the only basis upon which a request for revision of a judgement can be made. Article 12 specifically provides, in relevant part:

"The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence."

This ability to seek revision, however, is subject to time limits - "the application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement". In the present case, the Applicant waited more than three years from the date of Judgement No. 1077 to seek revision. As such, his case is time-barred.

VI. The Tribunal, therefore, rejects the Applicant's claim, in its entirety.

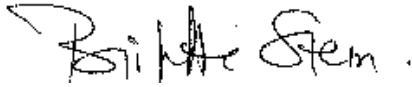
(Signatures)

A handwritten signature in black ink, appearing to read "Spyridon Flogaitis". The signature is written in a cursive, somewhat stylized script.

Spyridon Flogaitis
President

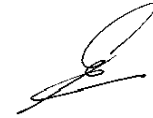


Jacqueline R. **Scott**
Vice-President



Brigitte **Stern**
Member

New York, 2 May 2008



Maritza **Struyvenberg**
Executive Secretary