



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1381

Case No. 1358 (b)

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;

Whereas, on 15 July 2006, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), filed an application for execution and interpretation of Judgement No. 1275, rendered by the Tribunal on 23 November 2005, that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 20 November 2006, the Applicant, after making the necessary corrections, filed again his request for execution and interpretation of Judgement No. 1275;

Whereas in his Application, the Applicant requests the Tribunal, inter alia:

“2. to declare that the Respondent erred in basing the payment recommended by the Joint Appeals Board [(JAB)] of three months’ net base salary on the salary scale put in effect in March 2000; to order the Respondent to recalculate the award on the basis of the scale that was in force at the time of acceptance of the JAB’s recommendation (i.e. July 2004); and, to order the Respondent to pay the difference;

3. to interpret the order to mean ‘at the rate lawfully in effect on the date of this Judgement’; consequently to declare that the Respondent erred in basing the payment of nine months’ net base salary on the salary scale put in effect in July 2004; and,

- (a) either to order the Respondent to recalculate the award on the basis of the scale that could reasonably be assumed to have been applicable at the date of the Judgement; and, order the Respondent to pay the difference;

(b) or to make itself a determination of the difference and to order the Respondent to pay it;

4. to order the Respondent to pay interest on both differences at the rate of 8 per cent per annum as from the date when the Applicant's request for correction was turned down (19 May 2006); [and,]

[to order the Respondent to pay US\$ 1,000 in costs].”

Whereas the Respondent filed his Answer on 16 February 2007;

Whereas the Applicant filed Written Observations on 22 March 2007;

Whereas the facts in the case were set forth in Judgement No. 1275.

Whereas the Applicant's principal contentions are:

1. Incorrect salary scales were used to calculate his compensation.
2. The delay in the payment of the compensation awarded to him by the JAB was inordinate.

Whereas the Respondent's principal contentions are:

1. An application for execution of judgement is not provided for in the Statute of the Tribunal or its jurisprudence.

2. The calculation of the three months' net base salary paid to the Applicant as compensation pursuant to the JAB recommendation, on the basis of the salary scale in effect on the date of his separation from service, was proper and in accordance with the established practice of the Organization. There was no delay in the payment of this compensation.

3. The additional compensation of nine months' net base salary was paid to the Applicant in accordance with the Tribunal's order in Judgement No. 1275.

4. The claim for the award of costs is without merit.

The Tribunal, having deliberated from 21 April to 2 May 2008, now pronounces the following Judgement:

I. On 23 November 2005, the Tribunal rendered Judgement No. 1275. In that Judgement, the Tribunal agreed with the findings of the JAB that the decision of UNDP not to renew the Applicant's contract was vitiated by prejudice and extraneous motivation, constituting an abuse of discretion; that “despite the Respondent's assertions to the contrary, the non-renewal [of the Applicant's contract] was not the result of a staff reduction, but, indeed, was the result of political pressure on UNDP by [a national] Government”; that the “staff reduction did not occur until October, while the Applicant was notified in August that his contract would not be renewed”; and, that the “UNDP Administrator ... failed to address the matter appropriately ... [and] had the obligation to make a good faith effort to find the [Applicant] a suitable position”. The Tribunal, however, believed that “the amount of compensation awarded [by the JAB, that is, three months' net base salary, was] inadequate, given the gravity of the improper interference and the consequent harm done to the Applicant” and awarded “additional compensation equivalent to nine months' net base salary at the rate in effect on the date of ... Judgement”.

II. On 20 November 2006, the Applicant filed an Application for execution and interpretation of judgement. He argues that the Respondent paid him the three months' salary recommended by the JAB on the basis of the 2000 salary scale rather than the 2004 one; and, that the compensation awarded by the Tribunal was paid at the 2004 rate, instead of at the rate in effect in November 2005. He requests that he be paid the difference in both instances and that the Tribunal order payment of interest at eight per cent per annum as from 19 May 2006.

The Respondent argues that, in accordance with his usual practice, the three months' compensation was paid at the rate in effect on the date of the Applicant's separation from service, that is, October 2000; and that, with respect to the nine months' compensation, that amount was correctly calculated on the basis of the salary scale in effect on the date of the Judgement, that is, 23 November 2005, which was the scale that went into effect in July 2004.

III. The judgements of the Tribunal are final and without appeal, subject to the provisions of article 12 of its Statute, which reads as follows:

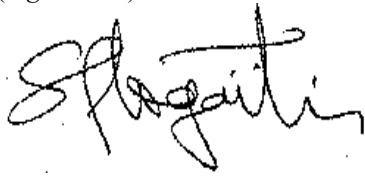
“The Secretary-General or the Applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical 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.”

In addition, although the Statute of the Administrative Tribunal does not contain an express provision relating to the interpretation of judgements, in Judgement No. 61, *Crawford et al.* (1955) the Tribunal found that the competence of national and international courts to interpret their own judgements is generally recognized. Thus, the Tribunal will consider applications for interpretation of judgement, where there is dispute as to the meaning or scope of the judgement.

IV. The Tribunal is of the opinion that Judgement No. 1275 needs no interpretation of the type requested by the Applicant. With respect to the compensation paid by the Secretary-General pursuant to the recommendation of the JAB, the Tribunal made no order impacting such payment. The Judgement clearly states that the compensation ordered by the Tribunal is additional to any other the Applicant had already received. Moreover, the additional compensation was paid to the Applicant in accordance with the precise terms of the Judgement, at the rate in effect at the time the Judgement was rendered, that is, on the basis of the 2004 salary scale.

V. In light of the above, the Tribunal decides to reject the Application in its entirety.

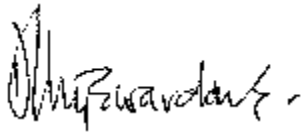
(Signatures)



Spyridon **Flogaitis**  
President

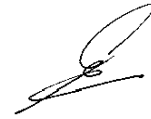


Jacqueline R. **Scott**  
First Vice-President



Dayendra Sena **Wijewardane**  
Second Vice-President

New York, 2 May 2008



Maritza **Struyvenberg**  
Executive Secretary