



ADMINISTRATIVE TRIBUNAL

Judgement No. 1383

Case No. 1458

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; Ms. Brigitte Stern;

Whereas at the request of a staff member of the United Nations, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 31 December 2005;

Whereas, on 16 December 2005, the Applicant filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 25 January 2006, the Applicant, after making the necessary corrections, filed an Application containing pleas which read, in part, as follows:

“II: **PLEAS**

The Applicant respectfully requests the United Nations Administrative Tribunal:

1. To rescind the conclusion of the [Joint Appeals Board (JAB)] and declare the Applicant’s appeal admissible ...;
2. To rescind the implied administrative decision not to consider the Applicant’s [request to defend himself against accusations, as set out in his] memorandum dated 5 November 2002 ...;
3. To recommend to the Secretary-General that he ensures that the Applicant is able to exercise his right to respond to the allegations made against him ...;
4. To recommend to the Secretary-General that an investigation be undertaken into management practices in the Publishing Services and Sales Section at [the United Nations Office

at Geneva (UNOG)] and into the possible influence of former staff members on decision-making and working relations among staff members in the Publishing Service;

5. To recommend to the Secretary-General that he protects the Applicant and all other staff members from any future harassment situation by drawing up an effective policy on the prevention of harassment ... and that he take prompt and effective action to put an end to such situations if they ever arise again ...;

6. Bearing in mind that the relatives of a victim of harassment also suffer from the situation, to order adequate compensation for the harm done to the Applicant's person and dignity as a result of the psychological pain and suffering to which he has been subjected since 1997, in particular between 2001 and 2004, owing to the Administration's refusal to consider his harassment case, on the one hand, and the delay on the part of the JAB in considering his appeal, on the other: that is, compensation equivalent to two years' salary;

...

8. If such is within its competence, to order the Advisory Board on Compensation Claims [(ABCC)] to examine as a matter of priority the Applicant's claim under appendix D ..."

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 26 June 2006, and once thereafter until 26 July;

Whereas the Respondent filed his Answer on 19 July 2006;

Whereas the Applicant filed Written Observations on 4 September 2006.

Whereas the facts of the case are as follows:

The Applicant entered the service of the Organization on 18 February 1974, on a short-term contract as a Distribution Clerk at UNOG. His contract was renewed and he subsequently served under several fixed-term contracts until 1 January 1979, when he was granted a permanent appointment. With effect from November 1997, the Applicant was placed in charge of the E.19 shop, which is responsible for the storage and shipping of United Nations publications and, on 1 May 2001, following the reclassification of his post, he was promoted to the G-6 level, as a Documents Assistant.

From 1997 onwards, correspondence exchanged between the Applicant, his supervisors and his subordinates indicates that the employment climate in the E.19 shop was antagonistic. On 12 June 2002, the Applicant advised the Chief of the Human Resources Management Service (HRMS) and the Director of the Administration Division of the increasingly tense working relations. Some days later, on 17 June, a female supervisee of the Applicant's wrote to the Chief of the Publication Distribution/Service Section, alleging that the Applicant "ha[d] been threatening [her], obstructing [her] work, discriminating against women and constantly harassing [her]". As a result, a meeting was held with, inter alia, the Chief of the Publication Distribution/Service Section, the Applicant and the female staff member on 19 June. The situation was not resolved, however, and, on 21 June, the female staff member wrote to the Director of the Administration Division requesting "a full and independent investigation".

On 5 November 2002, the Applicant wrote to the Director of the Administration Division, "request[ing] the right to respond and to defend himself, in person, in the presence of [his] counsel, [his]

accuser and [his] supervisors, who seem to be taking her side in the matter”. On 8 November, a meeting was convened to “clarify the issues relating to [the Applicant and the female staff member’s] working relations and their continual written and verbal exchanges, which affected the smooth discharge of [their] work”. The Chief of the Publishing Service invited both parties to reconsider their working relationship. He handed them two circulars, ST/SGB/1998/19, of 1 January 1999, on the “Status, Basic Rights and Duties of United Nations Staff Members” and ST/IC/2002/25, of 19 April 2002, entitled “Practice of the Secretary-General in disciplinary matters, 2000-2002”, as well as a memorandum in which he called for “immediate resumption of harmonious working relations” and indicated they “had a responsibility to carefully read the provisions related to the standards of conduct for the international civil service”.

On 19 December 2002, the Applicant wrote to the Secretary-General, requesting administrative review of the decision “formalized in part in the memorandum ... of 8 November 2002 by the Chief of the Publishing Service ... and in part in the minutes of the meeting ... [of] 8 November”. On 3 June 2003, the Applicant lodged an appeal with the JAB in Geneva.

Effective 24 September 2004, the Applicant was assigned to the Distribution Service, with responsibility for the distribution of documents in the Palais Wilson. On 11 October, his functional title changed to Meeting Services Assistant.

The JAB adopted its report on 20 May 2005. Its considerations and recommendation read, in part, as follows:

*“Receivability*

30. With regard to receivability *ratione materiae*, the Panel considered the object of the appeal and recalled that an appeal is receivable only when it is made against an administrative decision within the meaning of staff regulation 11.1.

31. In order to more clearly define the notion of administrative decision, the Panel [recalled that] ... an administrative decision is ‘a unilateral decision taken by the administration in a precise individual case (individual administrative act) which produces direct legal consequences to the legal order’. (... Judgement No. 1157, *Andronov*, paragraph V, (2004); Judgement No. 1213, *Wjss*, paragraph II, (2004).)

32. The Panel also took account of the doctrine according to which unilateral acts that are not intended to produce legal consequences may not be subject to appeal: the same is true of opinions, recommendations or expressions of intent by the administration whose object is, for example, to define the standard of conduct that staff members should observe in the exercise of their functions or to settle a conflict.

33. The Panel noted that the memorandum of 8 November 2002 by the Chief of the Publishing Service limits itself to transmitting two circulars to the [staff members] and to inviting them to ‘carefully read the provisions related to the standards of conduct for the international civil service and the potential consequences’. The Panel concluded that the memorandum therefore did not have any legal consequences and thus did not affect the legal order of the Appellant.

34. The Panel also considered the question of whether the minutes of the meeting of 8 November 2002 contained elements that constituted an administrative decision, as defined by [the Tribunal]: the Panel noted that the minutes merely summarized the contents of the meeting of 8

November, the purpose of which was to ‘clarify questions concerning the working relations between the two staff members’ and to invite them ‘to reconsider their working relations and to arrive at a basis of understanding by mutual agreement in order to avoid recourse to the appropriate measures, which should not be employed except as a last resort’ and to which the Chief of the Publishing Service ‘will not hesitate to have recourse if the current situation persisted’. The Panel considered that the minutes produced no legal consequences and therefore did not affect the legal order of the Appellant.

35. The Panel therefore concluded that neither the memorandum nor the minutes of the meeting of 8 November 2002 contained elements that constituted an administrative decision and that the appeal was therefore inadmissible, *ratione materiae*.

36. In addition, the Panel noted that not only the Appellant but also his colleague ... had been invited to the meeting of 8 November 2002, and that the Chief of the Publishing Service had addressed the memorandum that had been prepared that day both to the Appellant and to his colleague. The Panel therefore considered that the actions of the administration were not discriminatory.

*Conclusions and recommendations*

37. In view of the foregoing, the Panel *concludes* that the appeal is inadmissible, *ratione materiae*, and therefore *recommends* to the Secretary-General that the present appeal should be *rejected* in its entirety.”

On 6 September 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 its unanimous recommendation and to take no further action on his appeal.

On 25 January 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The decision not to consider his memorandum is an implied decision with legal consequences.
2. He was refused the right to respond to allegations made against him.
3. He suffered from harassment and discrimination.

Whereas the Respondent’s principal contention is:

The Application is not receivable because of the absence of an administrative decision.

The Tribunal, having deliberated from 24 April to 2 May 2008, now pronounces the following Judgement:

- I. The Applicant seeks review by the Tribunal of a decision of the Secretary-General, pursuant to a recommendation from the JAB, not to take any action on his appeal, which arose from the Applicant’s

claim that an implied administrative decision was taken against him. He also asks the Tribunal to order the ABCC to expedite his outstanding Appendix D claim.

II. The Applicant entered the service of UNOG on 18 February 1974 as a Distribution Clerk. At the time of the events which gave rise to his Application, he held a G-6 level position as Documents Assistant in charge of the E.19 shop, which is responsible for the storage and shipping of United Nations publications.

Starting in 1997, the Applicant, his staff and supervisors repeatedly communicated over the apparently tense working conditions in the E.19 shop. On 12 June 2002, the Applicant wrote to HRMS, expressing his concern at the conflict in his Division. On 17 June, a female supervisee of his alleged that the Applicant “ha[d] been threatening [her], obstructing [her] work, discriminating against women and constantly harassing [her]”. A 19 June meeting, attended by all relevant parties, apparently did little to resolve the issues and, on 21 June, the female staff member wrote to the Director of the Administration Division about the “harassment and discrimination” in which the Applicant engaged, requesting “a full and independent investigation into what was going on at E.19”. On 5 November, the Applicant “formally request[e]d the right to respond and to defend himself, in person, in the presence of [his] counsel, [his] accuser and [his] supervisors, who seem to be taking her side in the matter”. Thereafter, on 8 November, another meeting was held, the minutes of which indicate it was intended to “clarify the issues relating to ... working relations and [the] continual written and verbal exchanges, which affected the smooth discharge of the two staff members’ work”. During the meeting, the Applicant and the female staff member were provided with two circulars as well as a memorandum from the Chief of the Publishing Service which stated that “[they] had a responsibility to carefully read the provisions related to the standards of conduct for the international civil service and the potential consequences” arising therefrom, as well as expressing his hope that there would be an “immediate resumption of harmonious working relations”.

On 19 December 2002, the Applicant requested administrative review of the decision “formalized in part in the memorandum ... and in part in the minutes of the meeting ... [of] ... 8 November”. On 3 June 2003, he lodged an appeal with the JAB in Geneva. In its report, the JAB “concluded that neither the memorandum nor the minutes of the meeting of 8 November 2002 contained elements that constituted an administrative decision and that the appeal was therefore inadmissible *ratione materiae*”. On 6 September, the Applicant was advised that the Secretary-General agreed with this conclusion.

It is this decision the Applicant appeals to the Tribunal. In essence, he challenges the fact that the Administration did not respond adequately to his 5 November 2002 request that he be given an opportunity to defend himself. He considers the 8 November meeting to amount to an implied administrative decision preventing him from formally clearing his name.

III. As the JAB determined that the appeal was inadmissible, *ratione materiae*, it is now for the Tribunal to decide whether the JAB was correct in its assessment. If it was, then the Tribunal need only

affirm the JAB's conclusion. If the JAB were incorrect, however, the Tribunal must determine whether to remand the case for consideration on the merits or to address the substance of the case.

In reaching its conclusion, the JAB noted that "an appeal is receivable only when it is made against an administrative decision within the meaning of staff regulation 11.1". Staff regulation 11.1 provides: "[t]he Secretary-General shall establish administrative machinery with staff participation to advise him or her in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules".

The JAB examined both the memorandum and the minutes of 8 November 2002 in the context of the definition of an administrative decision. The JAB found that the memorandum merely transmitted two circulars to the Applicant and the female staff member, inviting both to "carefully read the provisions related to the standards of conduct for the international civil service and the potential consequences". In addition, the JAB reviewed the minutes of the 8 November meeting, noting that the minutes merely summarized what transpired at the meeting and that the purpose of the meeting was to "clarify questions concerning the working relations and to arrive at a basis of understanding by mutual agreement in order to avoid recourse to the appropriate measures, which should not be employed except as a last resort" but to which the Chief of Publishing Service would "not hesitate to have recourse if the current situation persisted". The JAB concluded that neither the memorandum nor the minutes directly affected the legal rights of the Applicant.

IV. The Tribunal agrees with the analysis of, and the conclusions reached by, the JAB. In this regard, the Tribunal notes that the Applicant's assertion that an implied administrative decision was taken against him is misplaced. An administrative decision is a unilateral decision taken by the Administration in an individual case, affecting the legal rights of the staff member. The Tribunal is well aware, however, that, in certain circumstances, the failure to act on the part of the Administration amounts to an administrative decision (see *Andronov (ibid.)*), as might be the case where the staff member involved has claimed to be the victim of harassment or mobbing, for example, and the failure of the Administration to intervene is adverse to the staff member. (See Judgement No. 1385, issued by the Tribunal at this session.) In this matter, while throughout his Application the Applicant alludes to some unidentified harassment that happened in the past, he specifically states that he "does not seek the Tribunal's intervention in that matter". Rather, he seeks the opportunity to clear his name against allegations which may have been presented against him by another staff member.

As the JAB noted, the meeting of 8 November 2002 was convened by the Chief of the Publishing Service in order to try to encourage the Applicant and the female staff member involved to find some way to work together amicably. The Chief did not ask each party to tell his or her side of the story, nor did he take sides. Instead, he provided both staff members with circulars that set out the standards of behaviour to which they would be held as international civil servants and advised them that if they could not work together, he would, as a measure of last resort, impose appropriate sanctions. Such a meeting was nothing

more than good personnel management, carrying no negative implications for the staff members involved. The Applicant obviously feels very strongly that the Chief failed to comply with his professional obligations as a manager, and the Applicant made strenuous efforts to outline the Chief's various shortcomings. In fact, it is this lack of effort that he contests. However, unless a staff member can demonstrate that his supervisor's behaviour has negatively impacted his legal rights, the conduct of a supervisor - and the latter's compliance or otherwise with his professional obligations - is for the supervisor's superior in the administrative hierarchy to evaluate.

V. The Tribunal notes that the Administration has not put any adverse material relating to this meeting into the Applicant's personnel file. Moreover, no findings of fault were made against him - or any other staff member - in this regard. While the Tribunal sympathises with a staff member who feels he is being unfairly discussed by his colleagues, he had the opportunity to pursue an official complaint of mobbing or harassment, for example. However, he did not take such action, choosing, instead, to allege managerial deficiencies on the part of his supervisors.

Under these circumstances, the Tribunal finds that no administrative decision that directly impacted the legal rights of the Applicant was ever taken, implied or otherwise. As such, the Tribunal affirms the findings and conclusions of the JAB and agrees that the Applicant's appeal was non-receivable, *ratione materiae*.

VI. Finally, the Applicant's claims relating to Appendix D and the ABCC are also non-receivable, as the Applicant has never sought administrative review of the alleged delays on the part of the ABCC and/or the Administration in reviewing his medical claims. While the Tribunal is concerned at the delays staff members encounter in the administration of justice system and, in particular, at the ABCC, it is not open to the Applicant to "piggyback" these claims onto his existing case. This matter was not addressed in the Applicant's request for administrative review.

Staff rule 111.2 (a) provides that:

"A staff member wishing to appeal an administrative decision ... shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing".

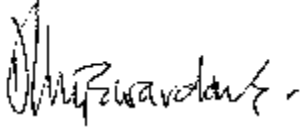
In Judgement No. 571, *Noble* (1992), the Tribunal held "the failure by the Applicant to follow the procedure required by staff rule 111.2 after the administrative decision ... renders any further consideration of that decision by the Tribunal beyond its competence". For this reason, the Applicant's Appendix D claim is not properly before the Tribunal. The Tribunal will, however, take this opportunity to exhort the ABCC and the Administration to act promptly in all Appendix D cases.

VII. For the reasons set forth above, the Tribunal rejects the Application in its entirety.

*(Signatures)*



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

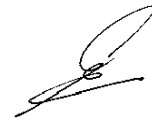


Dayendra Sena **Wijewardane**  
Second Vice-President



Brigitte **Stern**  
Member

New York, 2 May 2008



Maritza **Struyvenberg**  
Executive Secretary