



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1401

Case No. 1469

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Mr. Dayendra Sena Wijewardane, Vice-President; Sir Bob Hepple;

Whereas, on 15 November 2005, a former staff member of the World Food Programme (hereinafter referred to as WFP)/United Nations Development Programme (hereinafter referred to as UNDP), filed an Application, requesting the Tribunal, inter alia:

“[To order:]

- a) [that] the Administrator’s decision ... be rescinded ... [as it] was ‘procedurally flawed’.
- b) [that the Applicant] be reinstated in the Organization and allowed to ‘retire honourably’ so as to gain entitlement to his pension based on 27 years of service
...

...

[That the] Applicant [be awarded] appropriate compensation for moral, social and emotional damages suffered as a consequence of Respondent’s actions or lack thereof.

...”

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 13 August 2006, and periodically thereafter until 31 July 2007;

Whereas the Respondent filed his Answer on 31 July 2007;

Whereas the Applicant filed Written Observations on 22 September 2007 and, on 29 May 2008, the Respondent commented thereon;

Whereas the statement of facts, including the employment record, contained in the report of the (UNDP)/United Nations Population Fund/United Nations Office for Project Services Disciplinary Committee (DC) reads, in part, as follows:

“EMPLOYMENT HISTORY

... [The Applicant] was first appointed to the ... Organization on 26 March 1973 at the GS-4 level. He was assigned to WFP in Islamabad, Pakistan, and was promoted to GS-5 as a Senior Secretary ... on 1 January 1976. ... [H]e was granted ... a permanent appointment at the GS-6 level on 7 January, 1980. ... He was hospitalized after he incurred an automobile accident on 6 September 1996 and remained on sick leave for a period of 24 weeks. As a result of a physical infirmity brought on by the accident, [the Applicant] was offered an early separation agreement ... [on] 19 February 1999. This offer was later withdrawn by WFP following the events that gave rise to the present case.

EVENTS LEADING TO DISCIPLINARY CHARGES

... In October 1998, after [the Applicant] submitted ‘3 receipts in support of a reimbursement claim for physiotherapy treatment’ allegedly done by [two doctors, Dr. H. and Dr. S.,] at the ‘Musa Clinic’, WFP suspected fraudulent activity on [the Applicant]’s part and decided to investigate the matter. ... [The investigators came to the conclusion that it was impossible to determine the facts. It was unclear who had actually administered the physiotherapy treatments the Applicant received at the Clinic or to whom he made payments for the medical fees thus incurred. Moreover, despite ‘numerous and varied attempts by management’, neither doctor could be located for an interview. In addition, blank letterheads, including one for a doctor, were found in the Applicant’s office. As a result,] UNDP concluded that, ‘the inconsistencies in the personalities and statements of all the characters involved point to a fraudulent set-up’ and that the Applicant failed to ‘offer concrete evidence to rebut’ the findings of the report of the investigation. Therefore, UNDP averred that, ‘[the Applicant]’s fraudulent behaviour constitutes a violation of the standard of conduct required of an international civil servant’. On 9 September 1999, the UNDP Administrator informed the Applicant that he would be summarily dismissed for serious misconduct.]

...

... In a letter dated 22 November 1999, [the Applicant] sought to clarify the issues that had given rise to UNDP’s dismissal letter ...

... [On 23 October 2001,] ... UNDP referred the matter to the [DC] ... Prior to that, [the Applicant] had made a detour in his quest for justice by directly appealing to the Joint Appeals Board [(JAB)] for redress. ... This foray to the [JAB] unduly delayed the resolution of [the Applicant]’s case. His initial delay was compounded by [the Applicant]’s own missteps in his confused search for counsel as well by an unfortunate automobile accident that sidelined him for

an extended period of time. The case was eventually restored to the [DC]'s docket when [the Applicant] eventually responded to the entreaties of the Secretary to contact the [DC].”

The DC adopted its report on 4 April 2005. Its conclusion and recommendations read as follows:

“CONCLUSION

31. It would appear from the facts that eventually came to light that UNDP may have been precipitate in judging the actions of [the Applicant] and may have unfairly put them down to acts of serious misconduct. For subsequent events convincingly showed that the account he gave of the financial cost of the course of treatment he underwent at the Musa Clinic was truthful insofar as the critical points of the case were concerned. It later became clear that the findings of the reports of the investigations conducted at the behest of WFP were unreliable as a foundation for UNDP's case against him. Thus UNDP's case was fatally weakened when its *raison d'être* was thereby eroded. Nor was UNDP's position helped by the glaring violation of [the Applicant]'s due process rights when it skirted the safeguards contained in UNDP/ADM/97/17[, dated 12 March 1997, entitled 'Accountability, Disciplinary Measures and Procedures']. The [DC] strongly believes that it is imperative to preserve the protections and privileges guaranteed to staff members in that document so that they are not weakened in the course of time by inadvertent violations.

RECOMMENDATIONS

32. (a) The [DC] recommends that the *summary dismissal* of [the Applicant] should be reversed for not being supported by the requisite level of evidence to sustain a *prima facie* case.
- (b) The Committee further recommends that [the Applicant]'s entitlements as they would otherwise have accrued up to the last day of his employment as a regular staff member should be restored to him.
- (c) The Committee finally recommends that monies properly due and owed to [the Applicant] by the Organization should be paid to him in one lump sum.”

On 9 May 2005, the UNDP Administrator transmitted a copy of the report to the Applicant and informed him as follows:

“I am pleased to inform you that I am in agreement with the Committee's recommendations.

You are therefore cleared of the fraudulent misconduct with which you were charged. Your full entitlements as they would have been up to your last day of employment under the previously approved early separation package will be restored. In addition you will receive reimbursement for the invoices that formed the basis of the allegations against you. [WFP] will be advised of this decision and requested to implement the recommendations accordingly.”

On 17 September 2005, WFP paid to the Applicant: (a) the lump-sum amount of US\$ 22,081.52, consisting of (i) eighteen months' salary as termination indemnity payable under the early separation package (US\$ 18,728.57), (ii) three months' salary in lieu of notice (US\$ 3,264.75), and (iii) reimbursement of medical invoices (US\$ 88.20); and (b) on an exceptional basis, the amount of US\$

368.03, representing two months' interest at the rate of 10 per cent per annum on the lump-sum amount specified in (a).

On 15 November 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. He suffered moral, social and emotional damage as a result of procedural irregularities, administrative delays and damage to his reputation.
2. He has not been adequately compensated for the damage suffered.

Whereas the Respondent's principal contentions are:

1. The Applicant has been adequately and sufficiently compensated.
2. The Applicant is not entitled to be awarded the payment of alleged moral, social and emotional damages as a result of procedural irregularities, alleged administrative delays or alleged damage to his reputation.

The Tribunal, having deliberated from 1 to 25 July 2008, now pronounces the following Judgement:

I. The Applicant joined WFP on 26 March 1973, at the GS-4 level, on a UNDP fixed-term contract, and was assigned to Islamabad, Pakistan. At the time of the events that gave rise to the Application, the Applicant was serving as a Senior Secretary, at the GS-6 level.

The Applicant was hospitalized after a car accident on 6 September 1996. Following the accident, he required continuing medical treatment and, in October 1998, submitted for reimbursement invoices for physiotherapy. As a result of a physical infirmity brought on by the accident, the Applicant was offered an early separation agreement on 19 February 1999. This offer was later withdrawn by WFP, in view of suspected fraudulent activity on the part of the Applicant with regard to reimbursement claims for physiotherapy treatment.

On 9 September 1999, on the basis of a report compiled by the Representative of WFP in Pakistan, the UNDP Administrator informed the Applicant of his summary dismissal, citing serious misconduct in connection with allegedly fraudulent claims for reimbursement of certain invoices, which had been submitted for payment in October 1998. The Applicant appealed this decision on 22 November 1999. The matter was referred to the DC on 23 October 2001.

In its report, dated 4 April 2005, the DC recommended that the Applicant's summary dismissal should be reversed as it was not supported by the requisite level of evidence to sustain a *prima facie* case; that the Applicant's entitlements as they would otherwise have accrued up to the last day of his employment as a regular staff member should be restored to him; and, that monies properly due and owed to him by the Organization should be paid to him in one lump sum.

On 9 May 2005, the Applicant was advised of the Administration’s acceptance of the DC’s recommendation, as well as the decision to provide the early separation package he had previously sought and been approved for. On 17 September, the Administration paid to the Applicant a lump sum, consisting of 18 months’ salary as termination indemnity payable under the early separation package; three months’ salary in lieu of notice; reimbursement of medical invoices; and, two months’ interest at the rate of 10 per cent on the lump sum amount.

On 15 November 2005, the Applicant submitted this Application to the Tribunal, requesting to be awarded appropriate compensation for moral, social and emotional damage, suffered as a result of procedural irregularities, administrative delays and damage to his reputation.

II. The only issue in this case is whether the Applicant has been adequately compensated in respect of his wrongful summary dismissal, or is also entitled to additional compensation for alleged moral, social and emotional damage. He makes this claim under two headings: (1) injury suffered by being maligned and degraded in the eyes of family members, relatives, friends and acquaintances at large and being lowered in honour and prestige in society; and (2) anxiety and suffering caused by persistent, undue and excessive delays on the part of the Respondent.

III. The Tribunal notes first that the Applicant has been fully compensated so far as his economic losses are concerned. On 9 May 2005, the UNDP Administrator accepted the DC’s recommendations “that [the Applicant’s] entitlements as they would otherwise have accrued up to the last day of his employment as a regular staff member should be restored to him”, and that “monies properly due and owed to [the Applicant] by the Organization should be paid to him in one lump sum”. The Administration paid to him the sum of US\$ 22,081.52 plus interest, made up as follows:

• 18 months’ salary as termination indemnity under the early separation package	18,728.57
• Three months’ salary in lieu of notice	3,264.75
• Reimbursement of medical invoices	88.20
Total	22,081.52
Two months’ interest on the sum at 10% per annum	368.03

IV. The Applicant contends that, since he was due to retire on 31 May 2001, and so was already retired at the date of the payment, he was not entitled under staff rule 109.4 (c) to receive any termination indemnity. Accordingly, he submits that payments of 18 months’ indemnity and 3 months’ in lieu of notice are *ultra vires*. He says that according to the DC’s recommendation he should have been paid salary from 9 September 1999 to 31 May 2001, 20 months and 22 days plus commutation of 50 days earned leave accumulated during this period. The Tribunal observes that there really is no difference whether the payment is described as a “termination indemnity” plus payment in lieu of notice, or salary for 21 months as a lump sum plus interest on an exceptional basis. In monetary terms, the amounts are identical, so this is

an unnecessary quibble over how the payment is described. The Applicant is now seeking payment of two years' salary plus an additional six months for delays in the proceedings. He wrongly describes two years' salary as being "mandated" by article 10 of the Tribunal's Statute. In fact, article 10.1 provides that compensation shall not exceed two years' net base salary, save in exceptional cases. The payment made was fully in accordance with the DC's recommendation.

V. The first heading under which the Applicant claims additional compensation is damage to reputation. He has provided no material evidence to substantiate his claim in this respect. On occasion, the Tribunal has awarded compensation for loss of reputation following wrongful summary dismissal. However, these have generally been cases where there is some aggravating feature. For example, in Judgement No. 1095, *Plasa* para. XVIII (2002), the Applicant was awarded one year's salary for breach of due process and the attacks on his reputation occasioned by the publicity given, particularly in the press, by the Administration to his summary dismissal. In the present case, there is no evidence of similar publicity. More usually, reputational damages are considered as a consequence of inordinate delays. For instance, in Judgement No. 1268 para. IV (2005), the Applicant was awarded US\$ 10,000 for the damage objectively caused to his scientific and professional reputation by undue delays in dealing with his case. The Tribunal will consider below, whether there were, in fact, inordinate delays in this case, with consequent reputational damage.

VI. What is clear from the decision of the DC, is that the investigation into the Applicant's alleged fraud was prompted by the Applicant's own actions. Notably, he submitted three receipts in support of a reimbursement claim for physiotherapy treatment allegedly done by Dr. H. at the Musa Clinic. One receipt was signed by both Dr. S. and Dr. H., and was typed by the Applicant on a WFP office typewriter. The other two were typed on Musa Clinic letterheads and signed by Dr. S. The Applicant failed to produce Dr. S. (on request) to verify the receipts. Nor could Dr. H. be located despite numerous attempts. It was thus suspected that he did not exist. Blank letterheads (including one for a doctor) were found in the Applicant's office. The Applicant at first could not give any valid explanation for these suspicious circumstances and he then gave contradictory accounts. Although the DC ultimately found that the Administration had acted precipitately in summarily dismissing him, the Administration obviously did not investigate the matter without foundation. There was reasonable suspicion as a result of the Applicant's own actions, and it would, therefore, be inappropriate to award compensation for loss of reputation since he himself contributed to the action that was taken by the Administration.

VII. The Tribunal then turns to the Applicant's claim of alleged delays. The Applicant cites the time periods that elapsed in resolving his case, from 22 September 1999 to 9 May 2005, and in implementing the UNDP Administrator's decision of 9 May 2005, i.e., from 9 May to 17 September 2005. The Tribunal has awarded compensation in cases of "inordinate delays" (Judgement No. 561, *Edussuriya* para. V (1992)),

“long and unconscionable delays” (see Judgement No. 353, *El-Bokany* para. X (1988)) or “excessive delays” (see Judgement No. 1275 (2005)). However, as stated in Judgement No. 1370 para. VII (2007):

“the Tribunal cannot but regret that such delays are, unfortunately, the rule and not the exception at the United Nations. Whilst the Tribunal has sanctioned cases of inordinate delay, which may be attributed to negligence in some particular instances ... this is not the case here; the delays were not imputable to any person or persons in particular, and were not specifically directed at the Applicant. Rather, they are the consequence of an over-burdened, under-resourced system. The United Nations is currently in the process of revising its system of administrative justice and, the Tribunal hopes, such delays as that suffered by the Applicant will not occur in the future. In the meantime, however, as these delays are not considered abnormal, the Tribunal will not award compensation under this heading. (See Judgements No. 1323 (2007) and No. 1344 (2007).)”

VIII. In the present case, the Tribunal is not satisfied that the delays were “inordinate” or “unconscionable” or “excessive”, given the conduct of the Applicant and other unavoidable circumstances. The DC’s decision makes it clear that the Applicant caused a delay by appealing directly to the JAB, by which the complaint was not receivable, instead of to the DC which had jurisdiction; there were delays in the appointment of his counsel; and his automobile accident unfortunately sidelined him for an extended period of time. Moreover, the Applicant produced certain exonerating evidence only after the UNDP Administrator’s decision to dismiss him. His legitimate request for an oral hearing involved the DC in logistical hurdles in arranging a telephonic link-up between New York and Islamabad and this inevitably also caused delays.

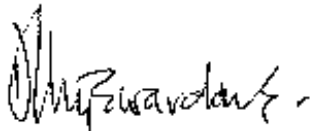
Finally, the Tribunal considers that the delay in payment was adequately compensated by the payment of two months’ interest at 10 per cent per annum.

IX. Accordingly, the Applicant’s claim for additional compensation is rejected in its entirety.

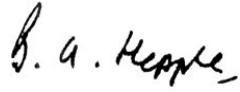
(Signatures)



Spyridon **Flogaitis**
President

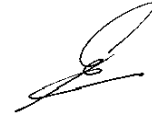


Dayendra Sena **Wijewardane**
Vice-President



Bob Hepple
Member

Geneva, 25 July 2008



Maritza Struyvenberg
Executive Secretary