



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1419

Case No. 1491

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Ms. Brigitte Stern; Sir Bob
Hepple;

Whereas, on 31 July 2006, a former staff member of the United Nations, filed an Application
requesting the Tribunal, inter alia:

“8. ... *[T]o find:*

(a) that the Administration failed to carry out properly the Staff Rules governing
payment of unused annual leave and payment of repatriation grant.

(b) that [the] Applicant should have received US\$ 37,957 ... for his 59.5 days of
unused annual leave, instead of US\$ 32,139 ...

(c) that [the] Applicant should have received US\$ 638 ... for his travel day at
separation, instead of US\$ 540 ...

(d) that [the] Applicant should have received US\$ 19,672 ... as his pre-1979
repatriation grant, instead of US\$ 14,701 ...

9. ... *[And] to order:*

(a) that [the] Applicant should be awarded an amount of US\$ 5,916 ... to reimburse
him for the error in computing the value of the travel day and the unused annual leave.

(b) that [the] Applicant should be awarded an additional amount of no less than US\$ 3,000 ... to compensate him for the time and efforts he spent and the frustrations he encountered in having to fight to see his rights recognized.

(c) that the Secretary-General should issue appropriate instructions so that computation of the elements of final pay will be done correctly for all staff in the future.”

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 23 January 2007, and once thereafter until 23 February;

Whereas the Respondent filed his Answer on 23 February 2007;

Whereas the Applicant filed Written Observations on 4 March 2007;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

“Employment history

... [The Applicant] joined the Organization on 2 November 1975 on a fixed-term appointment at the P-3 level. ... He retired on 30 June 2004.

Summary of Facts

... On 10 September 2004, [the Applicant] received his final pay, and thereafter received a statement on 16 September ... detailing the items on which payment was made: unused annual leave, travel day and pre-July 1979 repatriation grant.

... By a letter dated 22 September 2004, [the Applicant] informed the Director, Accounts Division, Department of Management, of his disagreement with the computation done for the three items.

... By a letter from [the] Chief, Payroll Section, ... dated 20 October 2004, [the Applicant] was notified that that office was in receipt of his letter and would review it presently.

... By a letter dated 21 October 2004, [the Applicant] informed the Secretary-General of his disagreement with the computation of his final pay. Given the absence of a response to his letter of 22 September, he requested the Secretary-General ‘to order the Director, Accounts Division, to make the appropriate corrections to the computation of my final pay, and to send me the missing amount, which I computed to be [US]\$ 11,134.99’.

...”

On 17 February 2005, the Applicant lodged an appeal with the JAB in New York. The JAB adopted its report on 20 April 2006. Its considerations, conclusions and recommendation read, in part, as follows:

“Considerations

17. [The] Appellant does not contend that his annual leave was either calculated or paid to him differently than to other staff members, or that [the] Respondent failed to observe staff rule 109.8. Rather, he challenges the assumptions making up the calculation of the worth of one work-day for the purposes of determining the amount owed to him for accumulated annual leave. The monetary value of one annual leave day is calculated by dividing the statutory annual salary by the number of work days. He argues that the United Nations is 'open for regular work on only 251 days in a year (365 days, minus the 104 week-end days and minus the 10 official holidays).' From this, unlike the ... practice of the Organization, he subtracts the 30 days of annual leave allowed for under the Staff Rules, on the rationale that, during those 30 days, staff members do no work. These 221 days, rather than the 251 days currently assumed by the Organization, provides the correct computation by which the annual salary should be divided. Under [the] Appellant's assumption, the real value of one day of work in his own case is not US\$ 540.16, as [the] Respondent contends, but US\$ 637.93.

18. [The] Respondent contends that the computation is based not on work days, but on days paid, which include paid holidays and annual leave days. [The] Appellant charges that Respondent fails to state the logic for doing it that way.

19. The Panel observes that, although the resulting windfall from the adoption of Appellant's base assumption would indeed be more lucrative for staff members at large (including the members of the present Panel), the Panel cannot say that the JAB is the appropriate venue to vindicate his argument. The Panel recalls that its function is to determine whether [the] Respondent has failed to observe [the] Appellant's terms of employment. [The] Appellant cites and the Panel finds no rule violated in this case: there is no evidence that [the] Respondent diverged from Rule 109.8 or any of its established procedures, or that it acted arbitrarily, through prejudice or other ill-motivation. [The] Appellant had the right to six weeks per year of accrued annual leave while in full pay status under staff rule 105.1. Under rule 109.8, [the] Appellant, upon separation from service, had a right to be paid a sum of money in commutation of the period of any accrued leave up to a maximum of sixty working days. This payment, effected on 10 September 2004, was calculated in [the] Appellant's case in accordance with rule 109.8 (i) on the basis of his net base salary plus post adjustment.

20. Even assuming that [the] Appellant's view is more logical, currently, there is no statutory definition of a 'work day.' Under staff regulation 1.3, staff members are required to put all of their time at the disposal of the Secretary-General for the performance of official functions. However, that Regulation gives the Secretary-General the discretion to establish a normal working week, as well as official holidays for each duty station. There is no designation of a work day for calculating an annual leave day or any other purpose. There are no statutory grounds to show that Respondent abused its discretion in taking a view different from [the] Appellant's over the past thirty years.

21. The Panel finds it unnecessary to determine which of the two views is the 'most' logical. Whatever the merits of [the] Appellant's view, the Panel notes that reasonable minds could differ ...

22. [The] Appellant argues that [the] Respondent's computation is wrong as a matter of policy. Although [the] Appellant has the right to voice that contention, the JAB is not the proper forum to do so. Ultimately, the administration has the discretion to decide what the practice will be, and the JAB cannot substitute its view for that of the Secretary-General.

23. As regards [the] Appellant's claims on his repatriation grant, [the] Respondent contends that payments for repatriation grant corresponded to his entitlements based on Annex IV of the Staff Regulations and Rules. [The] Appellant acknowledges receipt of the balance owed to him and no longer seeks reimbursement; rather, he seeks recognition that the Accounts Division 'does not respect the Staff Rules in its computation of repatriation grants [including Annex IV], resulting in payments to staff members smaller than what they are entitled to.' [The] Appellant adduces no

evidence either that the Division violated the Rules in his case or that it violates the Rules in all cases as a matter of practice. Given that [the] Appellant no longer seeks reimbursement, the Panel assumes that the amount [the] Appellant had claimed was outstanding was the amount he was given to him, and that that amount corresponded to his entitlements under the Rules. In that light, and in the absence of any further evidence for the Panel to base its review (including review of whether it has competence over the issue at all), the Panel finds that the issue is moot.

Conclusions and recommendation

24. In light of the foregoing, the Panel *unanimously concludes* that:

- a. with regard to [the] Appellant's contentions as to accumulated annual leave, there was no evidence that [the] Appellant's terms of appointment were violated in the decision; and
- b. with regard to his claims as to repatriation grant, the issue is moot.

25. It therefore *unanimously decides* to make no recommendation in the case."

On 12 June 2006, 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 31 July 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contention is :

1. The Administration failed to carry out properly the staff rules governing payment of unused annual leave and payment of repatriation grant.

Whereas the Respondent's principal contentions are:

1. The Applicant's rights were not violated by the method with which the Administration calculated compensation to be provided to the Applicant for unused annual leave and a travel day.
2. The Applicant's claim that the Accounts Division did not respect Annex IV of the Staff Rules is moot.

The Tribunal, having deliberated from 10 to 26 November 2008, now pronounces the following Judgement:

- I. The Applicant comes to the Tribunal seeking its judgement that the calculation of the amount owed to him, calculated on a daily basis, for his unused annual leave and one travel day is erroneous. Originally, he also requested the Tribunal to determine that his repatriation grant had been erroneously calculated. Since the time of his appeal, however, the repatriation grant has been paid to him by the Respondent, and he concedes that his claim is moot. However, he asks the Tribunal, to decide *in abstracto*,

for the benefit of all staff members, that the calculation methodology of the repatriation grant is erroneous. Finally, the Applicant seeks compensation for the time and effort he has spent and the frustrations he has endured in having to fight for his rights.

II. The Applicant was employed in the service of the Organization from 1975 until he retired on 30 June 2004. Upon his retirement, he sought payment for 59.5 days of unused annual leave and one day of travel at separation. Specifically, the Applicant alleges that he was entitled to be paid for said unused annual leave and one day of travel at a rate of US\$ 637.93 per day. Instead, he was paid at a rate of US\$ 540.16. The difference is due, as both the Applicant and the Respondent agree, to the assumptions made in calculating the daily rate.

III. The Applicant alleges that the correct methodology for calculating the daily rate is to divide his annual salary of US\$ 140,981.63 by 221 days. 221 days is the number of days that the Applicant alleges equals the number of days he worked in the calendar year. According to the Applicant, he calculates his daily rate by starting with 365 days in a year, subtracting the 104 weekend days on which he did not work and then also subtracting the 10 paid holidays and 30 days of annual leave upon which he also did not work. Based on this number, he asserts that each day of his unused annual leave is worth US\$ 637.93.

The Respondent, on the other hand, has calculated the daily rate using 261 days as its denominator, claiming that the proper methodology is one that calculates the amount of compensation to which the Applicant is entitled for each day of unused annual leave. Applying this methodological rationale, the Respondent determines that the number of days for which the Applicant receives compensation is 261 (365 days in a year minus 104 weekend days for which the Applicant is not compensated), contending that the 10 days holiday and 30 days of annual leave should not be excluded from the calculations, as they are days for which staff members are compensated. Therefore, applying this methodology, the Respondent calculates each day as compensable at a rate of US\$ 540.16.

IV. The Tribunal first turns to the issue of the Applicant's repatriation grant, for which he admittedly was paid. In this regard, the Tribunal notes that the Applicant's claim is moot. However, the Applicant additionally requests that the Tribunal opine on the proper methodology for calculating the repatriation grant so as to protect the potential rights of all staff members. As the Tribunal finds that the Applicant's claims are moot, it will not further engage in offering an opinion regarding the methodology *in abstracto*:

“As the Tribunal has previously held in Judgement No. 722, *Knight et al.* (1995), ‘[t]he Tribunal’s function, as defined by its Statute, is to determine whether there has been non-observance of the terms of the employment [contract]’. Moreover, the Tribunal recalls its Judgement No. 1145, *Tabari* (2003), in which it held

‘Unlike a Staff Association or a Staff Union, neither a JAB nor the Tribunal is a vehicle available to a staff member to be used to lobby management or to seek to persuade

management to effect what the staff member would perceive to be improvements in his working conditions or the terms of his employment, unless that staff member seeks to establish that the matter of which he complains arises from the non-observance of the terms of his appointment or that it arises from the infringement or denial of some employment right. Both the JAB and the Tribunal are parts of the justice system whose primary objective is to right employment wrongs and to provide remedies to staff members who establish that they have been wronged in relation to a condition of employment or been denied an employment right.’

In sum, it is not the Tribunal’s role to substitute its views for those of the Secretary-General or the General Assembly on how best to manage the Organization.” (See Judgement 1231 (2005), paragraph IX.)

In the instant case, the Applicant concedes that the harm of which he complains is not one by which he himself has been damaged. As such, the Tribunal will not address this matter further.

V. As for the issue of the daily calculation of the compensation for his unused annual leave and one day of travel pay, however, this is a term of employment that the Applicant alleges has been applied improperly to him and for which he seeks redress from the Tribunal. However, the Tribunal is neither the General Assembly nor the Secretary-General, and therefore it is not in a position to substitute its judgement for policy decisions on personnel matters such as this - i.e., whether the methodology employed by the Respondent is the one that should be used to calculate the daily rate of compensation for staff members. (See Judgement No. 1396 (2008), paragraph VIII.)

VI. Notwithstanding the above, it is the view of the Tribunal that the Applicant’s computation is flawed, because he misunderstands the way in which he is compensated. If the Applicant were correct, that he only worked 221 days, he would not be entitled to compensation for the additional 40 days (10 days holiday and 30 days annual leave) for which he actually is compensated. On the other hand, the Respondent’s methodology makes mathematical and conceptual sense, and is, in fact, how salaries should be and are calculated. The 40 days are treated *as if* the Applicant had worked; which is why he is paid for them. Furthermore, the Applicant has made no case whatsoever that the methodology has been applied in his case in a manner that is arbitrary or capricious or that is prejudicial, discriminatory or motivated by extraneous factors.

VII. For the reasons set forth above, then, the Tribunal rejects all pleas.

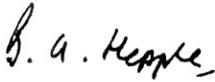
(Signatures)



Jacqueline R. **Scott**
Vice-President



Brigitte **Stern**
Member



Bob **Hepple**
Member

New York, 26 November 2008



Maritza **Struyvenberg**
Executive Secretary