



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1421

Case No. 1496

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; and Mr. Goh Joon Seng;

Whereas, on 29 August 2006, a staff member of the United Nations, filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 November 2006, the Applicant, after making the necessary corrections, filed an Application requesting the Tribunal, inter alia:

“8. ... [T]o find:

...

b) That the Applicant’s locker was forcefully opened without his presence, consent or knowledge;

...

j) That the Respondent failed to dispatch any communication to either the Applicant or the Applicant’s representative before, during, or after the forceful opening of the Applicant’s locker;

k) That the Respondent failed to take any reasonable precautions to secure personal effects of the Applicant while he was away on official mission assignment;

...

- n) That the Respondent recovered one of the Applicant's missing certificates ...
- ...
- s) That the Applicant's claim is attributable to service;
- ...
- z) That the Applicant has ... not had the capacity to file this case directly with the Claims Board.

...

11. ... *[T]o consider:*

That this is an exceptional case and order the payment of the higher indemnity as provided in article 10 (1) of the Statute of the Administrative Tribunal ...

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

- a) That the recommendations of the Joint Appeals Board [(JAB)], and consequently, the decision of the Secretary-General be set aside;
- ...
- c) That Respondent should pay compensation exceeding the equivalent of two years' net base salary of the Applicant ...
- d) That the Respondent should pay to the Applicant [appropriate] compensation ...
- ...
- e) That the Respondent should write an unequivocal statement to be put in the Applicant's Personal Status file, with one original letter to the Applicant, to the effect that the Respondent lost the Original Certificates of the Applicant.
- ...
- g) That the Respondent should desist from any further acts of harassing the Applicant for pursuing his rights.
- h) For any further remedies that the Administrative Tribunal may deem necessary."

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 11 May 2007, and once thereafter until 11 June;

Whereas the Applicant submitted additional documents on 24 May 2007;

Whereas the Respondent filed his Answer on 8 June 2007;

Whereas the Applicant filed Written Observations on 24 July 2007;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

***“Employment history***

The [Applicant] the United Nations Office at Nairobi [(UNON)] as Security Officer at the G-3 level on an initial short-term appointment for 2 months and 18 days in May 1996, which was extended until October 1996.

[Thereafter, the Applicant received a series of fixed-term appointments.] ...

In August 1999, the [Applicant] went on mission assignment to Kosovo (...). ...

...

***Facts of the Case:***

The [Applicant] has informed the [JAB] that when he joined the United Nations in May 1996, he was allocated a locker in which he used to secure his uniform and other personal effects.

In August 1999, he went on mission assignment to Kosovo. During the month of September 2002, he was in Nairobi on leave. He submits that before he departed for Kosovo at the end of the leave period on 12 October 2002, he visited the office and left behind a number of personal items including money, clothing, certificates and other valuables in the said locker.

The [Applicant] ... further submits that after resuming work in Kosovo, he learnt that the Security and Safety Section had issued an order to have certain lockers removed from the locker room and to be placed outside. He claims that after the lockers were removed, further instructions were issued to have the lockers broken and the contents removed.

The [Applicant] has stated that upon his return from Kosovo at the end of his mission assignment on 1 April 2003, he went straight to the office from the Airport to pick up the items he left in his locker, but discovered that the locker including the items were missing. When he enquired from the Deputy Chief of Security, he was informed that the lockers for security officers who were on mission assignment were opened in order to allow the newly recruited security officers to use them to store their personal effects while on duty.

The Respondent has submitted that all reasonable precautions to secure the personal effects of staff away on mission were made, [and that] communications were dispatched, advising them on the intention to open the lockers. The removal of the personal items from the lockers was supervised by security officers.

The [Applicant] approached the Chief, Security and Safety Section for assistance who thereafter advised him to write a statement regarding his claim to enable the Special Investigation Unit to investigate the matter.

...

By memorandum dated 15 September 2003, the Chief, Security and Safety Section forwarded the written statement of loss of personal items from the [Applicant] dated 28 August 2003 to the Deputy Chief, Security and Safety Section for action.

By memorandum dated 2 October 2003, the [Applicant] requested the Chief, Division of Administrative Services, UNON, to assist him to trace lost certificates, which he avers were among the lost items.

...

By memorandum dated 26 January 2004, from the Chief, Security and Safety Section, the [Applicant] was advised that the case had been referred to him for action by the Chief, Division of Administrative Services, UNON. He was further informed that all those involved in the emptying of the lockers who were interviewed by the Security Investigation Unit, denied having seen or handled the alleged missing documents, cash or other valuables and that the matter was therefore considered closed.

On 29 November 2004, the [Applicant] reported the matter to the Kenyan Authorities and obtained a police abstract with a list of all items the [Applicant] claimed to have lost.

By letter dated 16 December 2004, the [Applicant] submitted a request for administrative ...

...”

On 15 February 2005, the Applicant lodged an appeal with the JAB in Nairobi. The JAB adopted its report on 27 March 2006. Its considerations and recommendations read, in part, as follows:

**“VI. Considerations:**

1. The Panel took note of the Appellant’s plea to be compensated for the loss of his personal effects, which raises the issue of jurisdiction of the JAB.

The United Nations has established a special recourse procedure in cases of compensation for loss of or damage to personal effects attributable to service in the Organization. The legal basis for this procedure is laid down in staff rule 106.5 and [in administrative instruction] ST/AI/149 Rev. 4 of 14 April 1993 [entitled “Compensation for Loss of or Damage to Personal Effects Attributable to Service”.] The proper body to deal with such claims is the Compensation Claims Board (section 16, ST/AI/149 Rev. 1)

The totality of the Appellant’s submissions as well as his plea for compensation show that he deems this to be a case of loss or damage to his personal effects attributable to service in the Organization and thus the only conclusion is that the aforementioned special recourse is applicable to his case (*lex specialis derogat lex generalis*).

It follows that this Appeal is not receivable for lack of jurisdiction of the JAB.

Since the present Appeal is not receivable the JAB will not enter into the merits of the claim.

...

**VII. Recommendations:**

In ... light of the foregoing considerations and conclusions, the Panel recommends to the Secretary-General to reject the present Appeal as not receivable due to lack of jurisdiction of the JAB and to refer the case to the Compensation Claims Committee as soon as possible.”

On 25 May 2006, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General accepted the JAB’s findings and recommendation to reject his appeal, and that no further action would be taken on the matter. The

Applicant was further informed that “any recourse in respect of [this final decision] should be addressed to the Administrative Tribunal”.

On 27 November 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. In his absence and without his consent or knowledge, the Respondent opened his locker by force and, without taking inventory, placed the contents in an unsecured cardboard box in the Security Officers’ Locker Room.
2. The Respondent failed to dispatch any communication to him or his representative before, during, or after the forceful opening of the locker.
3. The Respondent failed to take any reasonable precautions to secure his personal effects.
4. The JAB was incorrect in concluding that the appeal be rejected and that the case be referred to the Compensation Claims Committee.

Whereas the Respondent’s principal contentions are:

1. The Applicant’s appeal against the Respondent’s decision to accept the JAB’s findings and recommendation, and to take no further action on the Applicant’s case, is not receivable by the Tribunal.
2. The Applicant’s additional pleas are not receivable by the Tribunal.

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

I. The Applicant joined UNON as a Security Officer at the G-3 level on a short-term appointment in May 1996, which was converted to a fixed-term contract in November. The Applicant received several extensions of his fixed-term contract. In August 1999, the Applicant went on mission assignment to Kosovo, where he remained until May 2003.

According to the Applicant on 12 October 2002, while in Nairobi on leave from Kosovo, he put a number of personal items, including money, certificates and other valuables, in his personal locker. That same day, he departed for Kosovo. Subsequently, he learnt that certain lockers had been taken out of the locker room and put outside, and that instructions were given to break them open and remove the contents. Thus, on his next return to Nairobi, on 1 April 2003, the Applicant found his locker and his belongings to be missing. Upon inquiry, he learned from the Deputy Security Chief that the lockers had been assigned to newly recruited security officers.

The Respondent submits that all reasonable precautions to secure the personal effects of staff away on mission were made; that communications were dispatched, advising them of the intention to open the lockers; and that the removal of the personal items from the lockers was supervised by security officers.

The Applicant “persistently denies” that he received any notice that his locker would be emptied out, and maintains that his personal items are missing.

On 28 August 2003, the Applicant advised the SSS of the disappearance of his personal effects. On 26 January 2004, the Chief, Security and Safety Section, informed the Applicant that all those involved in the emptying of the lockers, denied having seen or handled the alleged missing documents, cash or other valuables and that the matter was therefore considered closed.

On 29 November 2004, the Applicant reported the matter to the Kenyan Authorities. By letter dated 16 December, the Applicant submitted a request for administrative review and, on 15 February 2005, he lodged an appeal with the JAB in Nairobi. The JAB adopted its report on 27 March 2006. According to the JAB, the “[a]ppeal [was] not receivable due to lack of jurisdiction of the JAB” and thus, it did not enter into the merits of the claim. It recommended to the Secretary-General “to refer the case to the Compensation Claims Committee as soon as possible”. By a letter dated 25 May 2006, the Secretary-General decided to take no further action on his case.

On 27 November 2006, the Applicant filed the above-referenced Application with the Tribunal.

II. The Tribunal is asked to determine whether the Applicant’s claim for compensation for loss of personal effects is receivable.

According to the JAB, which found that the appeal was not receivable by it due to lack of jurisdiction, the Applicant should have filed his claim with the Compensation Claims Committee, in accordance with the provisions of staff rule 106.5 and ST/AI/149/Rev. 4 of 14 April 1993. Staff rule 106.5 provides that

“Staff members shall be entitled, within the limits and under terms and conditions established by the Secretary-General, to reasonable compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of official duties on behalf of the United Nations”.

ST/AI/149/Rev. 4 defines the terms, conditions and limits governing such compensation and sets forth the procedure for the “submission and examination of claims in connection with such loss or damage”.

III. The Tribunal is mindful of the fact that the Applicant did not pursue his claim in accordance with the prescribed procedure cited above. Instead, he submitted his statement of loss to the Chief of Security on 28 August 2003, four months after he discovered that his locker and the items contained therein were missing and, subsequently, filed a formal appeal.

IV. The Tribunal agrees with the JAB that the proper venue for the Applicant’s claim should be the Compensation Claims Committee. However, the record shows that, as noted by the JAB in its report, “despite several exchanges of communication between the [Applicant] and the Administration, the

[Applicant] was never informed by the Administration of the recourse procedures available to him under the Staff Rules”. Moreover, the letter of 25 May 2006, transmitting the decision of the Secretary-General on the JAB’s recommendation, advised the Applicant that “any recourse in respect of [the Secretary-General’s decision] should be addressed to the Administrative Tribunal”. As in Judgement No. 1301 (2006), the Tribunal is of the opinion that, while it is indisputable that the Applicant did not address his complaint to the proper body - the Compensation Claims Committee - the advice he was given was misleading. Thus, the Applicant should be given an opportunity to follow the proper recourse procedure, that is, he should be allowed to submit his claim to the Compensation Claims Committee to determine whether or not he is entitled to compensation. The Tribunal recalls in this regard Judgement 1348 (2007), paragraph VII:

“Although it was the Applicant’s responsibility to exercise due diligence in her case, it is obvious to the Tribunal that the failure of the Director to communicate his implied decision not to forward her request, or to disabuse her of the above-mentioned belief, of which he was aware, played a significant contributory part in her decision not to exercise her right to make her request to OHRM. The Applicant was either induced to operate under misguided or mistaken beliefs or, at the very least, permitted to continue to operate thereunder despite the knowledge of the Director that she was so doing. This failure of communication constituted a violation of her right to due process.”

V. The Tribunal takes note of the Respondent’s request to submit arguments on the merits of the case, should this matter be deemed receivable, and remands the case for correction of procedure, pursuant to article 10, paragraph 2, of its Statute:

“Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits of the case, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation, which is not to exceed the equivalent of three months’ net base salary, to the applicant for such loss as may have been caused by the procedural delay.”

In the interest of justice, the Tribunal considers the Respondent’s request to submit on the merits as a request in accordance with the provisions of article 10, paragraph 2.

VI. Moreover, finding that the Applicant may have been misled by the letter of 25 May 2006 addressed to him by the Administration and finding that he was never informed by the Administration, despite various exchanges of correspondence regarding the loss of his personal effects, of the recourse procedures available to him, the Tribunal decides to award him compensation equal to three months’ net base salary for the delay. (See generally Judgements No. 98, *Gillman* (1966); No. 157, *Nelson* (1972); No. 184, *Mila* (1974); and, 1301 (*ibid.*))

VII. Accordingly, the Tribunal:

1. Decides to remand the case for institution of the correct procedure;
2. Orders the Respondent to pay the Applicant compensation of three months' net base salary at the rate in effect at the date of Judgement for loss resulting from the procedural delay, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and,
3. Rejects all other pleas.

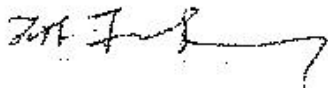
*(Signatures)*



Jacqueline R. **Scott**  
Vice-President



Brigitte **Stern**  
Member



Goh Joon Seng  
Member

New York, 26 November 2008



Maritza **Struyvenberg**  
Executive Secretary