



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1434

Case No. 1313

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Brigitte Stern; Sir Bob Hepple;

Whereas, on 11 March 2008, a former staff member of the United Nations, filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 1232, rendered by the Tribunal on 22 July 2005 and Judgement No. 1350, rendered by the Tribunal on 21 November 2007;

Whereas the Application contains pleas which read, inter alia, as follows:

“PLEAS

...

- (a) To find that, Judgement No. 1350 (and the one preceding it, Judgement No. 1232), contain a number of grey areas, and as such, stand in need of interpretation and clarification;
- (b) To find that the two Judgements further raise a significant question of law that warrants the attention of the entire membership of the Tribunal, as provided for in Article 8 of the Tribunal's Statute; and
- (c) To find that another piece of evidence that has just come to the Applicant's possession – one that was unknown either to the Tribunal or to the Applicant – totally negates the evidence tendered by the Respondent and admitted by the Tribunal in rendering Judgements Nos. 1232 and 1350;
- (d) To find that the Respondent's earlier victory is undeserved and, having been obtained by deception, is a nullity *ab initio*.

2. The Applicant further requests the Tribunal:
  - (i) To review and revise Judgement Nos. 1232 and 1350 in light of the cogent legal, evidential, and moral issues raised in the latest Application;
  - (ii) To direct the Respondent to pay the Applicant indemnity of 12 months gross salary (less staff assessment) for the Applicant's fifteen-year[s] service, as provided for in Staff Regulations 9.3(a) and Annex III of the Regulations, as well as in [the] 200-Series Staff Rules 209.2(a) and (b), and 208.5(a);
  - (iii) To award the Applicant moral damages equivalent to six months net base salary, or higher, at the Tribunal's discretion;
  - (iv) To give the case accelerated hearing".

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 27 August 2008, and once thereafter until 29 September 2008;

Whereas the Respondent filed his Answer on 29 September 2008;

Whereas the Applicant filed Written Observations on 29 January 2009;

Whereas, on 7 July 2009, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the present case were set forth in Judgement No. 1232 and Judgement No. 1350.

Whereas the Applicant's principal contentions are:

1. The Applicant has discovered "new material evidence" that warrants a revision of the Tribunal's Judgement.
2. The JAB had not fairly considered all pertinent facts of his case.
3. The Applicant's rights were violated by the non-renewal of his fixed-term appointment.

Whereas the Respondent's principal contentions are:

1. The Applicant's Request for Revision of Judgement No. 1232 and Judgement No. 1350 is without merit because the Applicant has not introduced any fact of a "decisive" nature, which was unknown to the Tribunal and to the Applicant at the time Judgement No. 1232 was delivered.
2. The Applicant's Request for Revision of Judgement No. 1232 and Judgement No. 1350 is without merit and the Applicant cannot continue to re-litigate a decision with which he disagrees.

The Tribunal, having deliberated from 29 June to 31 July 2009, now pronounces the following Judgement:

I. On 31 October 2005, the Applicant filed an Application requesting, in accordance with article 12 of the Statute of the Tribunal, the revision and interpretation of Judgement No. 1232 (2005).

II. In its Judgement No. 1350 (2007), the Tribunal reiterated its well-established jurisprudence that, "no party may seek revision of the Judgement merely because that party is dissatisfied with the pronouncement of the Tribunal

and wants to have a second round of litigation”. The Tribunal took the view that the Application was an “effort to produce fresh evidence that might have supported the Applicant’s original claim”. Moreover, the Tribunal observed that the information presented by the Applicant in support of his Application for revision was not “new” information, as it concerned events that took place “almost one year prior to the Tribunal’s original decision on 22 July 2005 [Judgement No. 1232]”.

III. On 11 March 2008, the Applicant again filed an Application requesting revision and interpretation of Judgements Nos. 1232 and 1350. In particular, the Applicant seeks the Tribunal’s interpretation as to the difference between the “reasons” and the “facts” cited by the Respondent in deciding not to renew his fixed-term appointment as well as those of other Regional Advisers. He further requests the Tribunal’s interpretation as to whether the JAB had violated its rules of procedure in the handling of his appeal, and whether the JAB was an appropriately qualified body in the United Nations’ system of administration of justice.

IV. The Applicant then seeks to have recourse to article 12 of the Statute of the Tribunal, claiming that he recently discovered the whereabouts of the former Officer-in-Charge of the Human Resources Section, Economic Commission for Africa (ECA), who reveals an impermissible motivation on the part of the Executive Secretary of the ECA that, the Applicant argues, could not have been previously discovered by the parties or the Tribunal. The Applicant contends that such evidence reveals that the “Respondent obtained his victory by deception” and consequently, the Applicant asserts that such “victory deserves to be overturned”. According to article 12 of the Statute of the Tribunal:

“[t]he 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.”

Article 12 is clear in its requirements and insofar as his Application is an effort to reargue the same case, the Applicant has no such right of recourse available to him. In Judgement No. 1201, *Berg* (2004), the Tribunal dismissed such an attempt in the following terms:

“what the Applicant is seeking is ‘another bite at the cherry’, another chance to litigate the same issues which have been settled in the previous litigation. The jurisprudence of the Tribunal is clear that he cannot do this ....”

V. For an application based on article 12 to succeed, there must be the discovery of a new fact which was not only unknown to the Tribunal and the party applying for revision at the time of the judgement, but which could not have been discovered with due diligence, and could affect the outcome of the case.

VI. The Applicant explains the provenance of his “new fact”, in that the key witness was in the service of the ECA, and he was unlikely to volunteer any information that might help test the veracity of the Executive Secretary’s

claims. Moreover, he contends that it was only recently that he managed to obtain this witness' e-mail address in order to communicate with him.

VII. However, the information contained in the e-mail response from this witness, cited by the Applicant as new evidence, does not bring forward a fact of such a nature as to be a decisive factor. This witness simply states that he "... vaguely remember[s] the meeting convened ... criticizing [the Applicant] ...." and expressed the opinion that "(m)anagement wanted to get rid of [the Applicant]" without substantiating these statements. Moreover, no reasons were given as to why this witness was not involved in the proceedings before the JAB during its original consideration of the case since he was such a key witness.

VIII. Therefore, as the Tribunal has affirmed, "no one should believe that a mere restatement of claims, even though made in new language and with changed emphasis, can be a basis for the revision of a Judgement made by the Tribunal". (Judgement No. 1055, *Al-Jassani* (2002)).


IX. The Tribunal has also ruled that "attempts to re-argue issues already decided by Judgement ... and which are res judicata" are "improper", and constitute an "abuse" of the Tribunal's procedure (Judgement No. 497, *Silveira* (1990)).

X. Moreover, the fact that the Applicant submits the alleged new evidence, requesting the revision of Judgement No. 1232, more than a year after its deliverance on 22 July 2005, makes his Application time-barred, following the conditions laid down in article 12 of the Statute of the Tribunal.

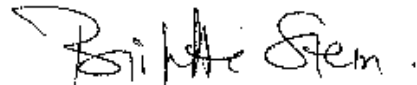
XI. Thus, the Tribunal holds that there is no need to refer the case for an oral hearing to the Tribunal *en banc*, as requested by the Applicant, and that the Applicant is not entitled to apply for revision and interpretation of the two prior Judgements Nos. 1232 and 1350.

XII. In view of the foregoing, the Application is rejected in its entirety.

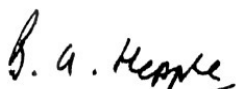
(Signatures)



Spyridon **Flogaitis**  
President



Brigitte **Stern**  
Member



AT/DEC/1434

Bob Hepple  
Member

Geneva, 31 July 2009

A handwritten signature in black ink that reads "Tamara Shockley". The signature is written in a cursive style with a large initial 'T' and a distinct 'S'.

Tamara **Shockley**  
Executive Secretary