



ADMINISTRATIVE TRIBUNAL

Judgement No. 1471

Case No. 1544

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; Mr. Goh Joon Seng;

Whereas, on 6 July 2007, a former staff member of the United Nations, filed an Application
requesting the Tribunal, inter alia:

“II. PLEAS

6. ...[T]o find:

(a) that it is competent to hear and pass Judgement upon the present application
under Article 2 of its Statute;

(b) that the present application is receivable under Article 7 of its Statute.

7. ...[T]o find:

(a) that the decision of the Respondent rejecting the unanimous findings and
recommendations of the Joint Appeals Board [JAB] is arbitrary and without merit; and

(b) that the compensation recommended by the JAB is insufficient in light of the
egregious violation of the Applicant’s right to due process;

8. ...[T]o order:

(a) that the Respondent pay interest on the compensation awarded by the Tribunal

pursuant to UNAT Judgement No. 1192 at the rate of eight percent per annum as from 90 days from the date of distribution of the Judgement (30 September 2004) through the date payment was effected (January 2007);

(b) that the Respondent pay additional compensation in the amount of three years' net base pay in light of the egregious refusal of the Respondent to honor the Tribunal's decision;

(c) to award the Applicant as cost, the sum of \$10,000.00 in legal fees and \$500.00 in expenses and disbursements."

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 24 January 2008, and once thereafter until 25 February;

Whereas the Respondent filed his Answer on 20 February 2008;

Whereas the Applicant filed Written Observations and amended his pleas on 23 May 2008;

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

"Employment history

From July 1992 to December 1994, [the Applicant] worked at the United Nations Development Programme (UNDP) in Kigali, Rwanda, as a Senior Information Assistant. From December 1996 to December 1999, he was with UNDP-Luanda, Angola, as a Local Area Network Manager. On 10 November 2000, [the Applicant] was recruited for the United Nations Interim Administration Mission in Kosovo (UNMIK) as an Electronic Data Processing (EDP) Assistant in Gjiljan region at the [International Field Limited Duration (IFLD)] 3-(A) level on an appointment of limited duration (ALD) through 30 April 2001. He was arrested on 11 April 2001. His ALD contract was subsequently not extended beyond 30 April 2001.

Summary of the facts

... On 30 September 2004, the UN Administrative Tribunal issued Judgement No. 1192 ..., in which it ordered the Respondent 'to pay to the Applicant as compensation the amount of twelve months' net base salary as of the date of his separation from the Organization, plus the unpaid last month of his employment.....'

... By a letter dated 5 January 2005, the Under-Secretary-General for Legal Affairs, The Legal Counsel, responded to the [Applicant's] counsel regarding Judgement No. 1192, and noting that the Administration was 'currently engaged in a review of this matter, and [would] revert substantively to [his] queries in the near future.'

... On 1 February 2005, [the Applicant] filed with UNAT an Application for interpretation and revision of judgement (No. 1192).

... In a letter dated 15 April 2005, addressed to The Legal Counsel, the [Applicant's] counsel referred to the 5 January ... letter and the promise contained therein that the Administration would revert in the near future to his correspondence regarding 'the failure to implement the ... Tribunal's judgement.' [The Applicant's] counsel also pointed out that three

months had elapsed, informed the Legal Counsel that the Tribunal had been advised and requested, nevertheless, a response to his previous correspondence.

... On 29 April 2005, The Legal Counsel ... informed [the Applicant's] counsel that the Administration would 'soon be filing a Respondent's Answer to [his] client's Application for revision and interpretation of judgement' and that a substantive response to his queries would be contained therein.

... On 30 August 2005, UNAT transmitted to the [Applicant's] counsel a copy of the Respondent's Answer to the Application, dated 30 June 2005, and advised that he would have 30 days to submit Written Observations. UNAT simultaneously transmitted the Respondent's Application for revision in the same case, entitled 'The Respondent's Request to the Tribunal to revise Judgement No. 1192 pursuant to Article 12 of the Tribunal Statute,' contained in Section B. of the Respondent's Answer. [The Applicant] was also advised that he would have 90 days from the date of receipt of the current letter to reply to the Respondent's Application.

... In a letter addressed to the Secretary-General of the United Nations, dated 4 October 2005, [the Applicant] formally requested an Administrative Review of 'the failure [by the Administration] to implement Judgement No. 1192.' [The Applicant] also noted that this was the first exposition he had had of the reasons for the decision of the Administration on his case."

On 5 December 2005, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 2 January 2007. Its considerations and recommendations read, in part, as follows:

"Considerations

22. The Chairperson, in summarizing the pleadings in the case, noted that the Panel, first, had to address whether or not the appeal was receivable.

23. In the Panel's view, the fact that the Administration had not taken a decision on the Tribunal's Judgment was in itself a decision. While noting that the delay was a de facto decision, the Panel found unconvincing Respondent's argument that the appeal was time-barred. Respondent's contention that the Appellant should have been aware of the 'alleged decision' not to implement the subject Judgement on 1 February 2005, when he filed his Application for the interpretation and revision of Judgement, and that Appellant, therefore, should have written to the Secretary-General by 1 April 2005 asking for an Administrative Review of this decision, simply did not make sense. Particularly, the Panel observed, when taken in conjunction with the Respondent's follow-up contention that the Appellant had failed to establish that an administrative decision not to abide by the Tribunal's decision and to 'refuse payment' had been taken and that there was 'no basis in fact' for the Appellant's claims. The Panel was moved to suggest that the Respondent's two main contentions were so inconsistent with each other that they seemed almost to have been written by two different people.

24. The Panel concluded its consideration of receivability with the observation that had the Administration implemented the Tribunal's Judgement, as it was legally bound to do, there would have been no trivial issues now pending about deadlines being missed.

25. The Panel decided that, based on the time lines and the facts as presented by both the Appellant and the Respondent, this appeal was eminently receivable.

26. The Panel examined the substance of the case. It unanimously objected to the Administration's delaying tactics and its delinquency in implementing the Tribunal's judgement. Recalling the final, mandatory and binding nature of the Tribunal's decisions, the Panel questioned the Administration's reasoning and wondered why it would need to spend two years

‘reviewing’ the subject Judgement. The Panel considered that the Administration’s delay may well have been a reaction on its part to the additional information it received in February 2006 and ultimately presented to the Tribunal in June 2006. The Panel questioned, however, the fact that when the Administrative Tribunal took its decision (AT/DEC/1283, 29 September 2006) that the information was indeed not ‘new’, why, then, did the Administration not immediately implement the original Judgement and pay the Appellant, as the Tribunal had ordered?

27. The Panel found that the Administration’s behaviour regretfully confirmed what had been in more than one instance stigmatised by UNAT, i.e., that a ‘procrastination in rendering justice is equivalent to denying justice’ and that a ‘delayed justice is no justice at all.’

28. In the Panel’s view, the gravity of the Administration’s failure to implement a decision of the highest appellate body within the Organization was unprecedented and demeaning to the whole system of justice. This behaviour, on the part of the Administration, could lead Staff Members to believe that there was no certitude of justice and that, the Panel stressed, would send entirely the wrong signal.

29. The Panel recalled the opinions of the Tribunal Members in UNAT Judgement 1283 ... notably paragraph 2 of the Judgement which states:

‘No matter how sensitive it is to political considerations of the Organization, it is bound to remind the Administration that the Tribunal’s decisions are final, mandatory and binding. Within the parameters set out in the Statute of the Tribunal, the Administration has no right of discretion whether or not to apply the Tribunal’s Judgements, as it is the final authority in the administration of justice in the Organization and must be respected.’

30. The Tribunal also observes that the ‘mandatory character of the Tribunal’s decisions is the cornerstone of the judicial system of the United Nations. Without that, the Tribunal would have merely an advisory function, and the Secretary-General would be judge and party at the same time, which was exactly what the General Assembly wanted to avoid when it created the Tribunal.’

31. In conclusion, the Panel agreed that, ultimately, like the Tribunal, it too was relying on ‘the conscience of the Administration’ in this case. It took heart in the Tribunal’s final observation that, at present, ‘the Tribunal cannot recall any order that has not been carried out by the Administration, and it hopes that it will never have such a painful experience.’

Recommendations

32. In light of the above, the Panel unanimously recommends to the Secretary-General that:

(a) The Administration implement UNAT Judgement 1192, i.e., that the Appellant be paid as ‘compensation the amount of twelve months’ net base salary as of the date of separation from the Organization, plus the unpaid last month of his employment...’, with interest payable at eight per cent per annum as from 90 days from the date of distribution of the Judgement (30 September 2004) until payment is effected. (See UNAT, Judgement 1298, VI).

(b) Appellant be paid two months net base salary. While the Panel agreed with the Appellant that additional compensation should be awarded the Appellant for the egregious practice of disregarding the rule of law that such dereliction involves, it found Appellant’s request that he be compensated in the amount of three years net base pay as being somewhat arbitrary, especially since the Administration’s delay in implementing the judgement had only been a little more than two years. For its part, one month’s salary per year would send a sufficiently strong message.

33. With regard to Appellant's third plea, that financial accountability should be imposed on those officials responsible for the costs to the Organization caused by its failure to implement the Tribunal's judgement, the Panel unanimously agreed that it was not within its competence to make this recommendation."

On 12 June 2007, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

"The Secretary-General has noted the JAB's findings, conclusions and recommendations. With respect to the JAB's first recommendation, the Administration has implemented UNAT Judgement No 1192 and, therefore, this is no longer an issue. As to the recommendation that you be paid two month's salary 'for the egregious practice of disregarding the rule of law that such dereliction involves', the Secretary-General has decided that he is not able to accept this recommendation on the ground that the UNAT Judgement No. 1192 was not implemented earlier because the Administration considered that it had legitimate grounds for applying to the Tribunal concerning that judgement. The Secretary-General agrees with the JAB that it is not within the JAB's competence to address the issue that financial accountability should be imposed on those officials responsible for the cost to the Organization caused by its failure to implement the Tribunal's Judgement No. 1192. Accordingly, the Secretary-General has decided to take no further action in this matter."

On 6 July 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The present Application is receivable under article 7 of the Tribunal's Statute.
2. There was undue delay in implementing Judgement No. 1192, and such delay warrants compensation.
3. The Respondent abused his discretion in his decision to reject the findings and recommendations of the JAB.
4. Additional compensation, including legal fees and related expenses should be awarded.

Whereas the Respondent's principal contentions are:

1. The present Application is not receivable under article 12 of the Tribunal's Statute.
2. There was no undue delay in the implementation of Judgement No. 1192.
3. The Tribunal does not have the authority to rectify Judgement No. 1192 in the context of the present proceedings.
4. It is within the Respondent's discretion to reject the findings and recommendations of the JAB.
5. There is no basis for compensation to the Applicant or justification for an award of legal fees and related expenses.

The Tribunal, having deliberated from 8 July to 31 July 2009, now pronounces the following Judgement:

I. The Applicant joined UNDP on July 1992, in Kigali, Rwanda, as Senior Information Assistant. Throughout his years of service he worked in various missions and in different capacities until his ALD expired on 30 April 2001. On 30 September 2004, the Tribunal issued Judgement No. 1192, wherein it ordered the Respondent “to pay to the Applicant as compensation the amount of twelve months’ net base salary as of the date of his separation from the Organization, plus the unpaid last month of his employment, if not already paid”. On 29 September 2006, the Tribunal rendered Judgement No. 1283, on the interpretation and revision of Judgement No. 1192. On 4 October 2005, the Applicant requested administrative review of the Administration’s failure to implement Judgement No. 1192 and, on 5 December, he filed an appeal with the JAB. On 2 January 2007, the JAB unanimously recommended that the Secretary-General implement Judgement No. 1192; that the Applicant be paid compensation in the amount of 12 months’ net base salary plus interest; and, that the Applicant be paid additional compensation in the amount of two months’ net base salary for the Respondent’s “egregious practice of disregarding the rule of law that such dereliction involves”. On 12 June 2007, the Applicant was informed that the Secretary-General noted the JAB’s findings and conclusions and considered that since Judgement No. 1192 had already been implemented, it was no longer an issue. Additionally, the Secretary-General did not accept the JAB’s recommendation of two months’ salary for the delay in implementing Judgement No. 1192 because the Administration had legitimate grounds to review the case.

II. At first blush and going by the date of release of Judgement No. 1192 on 30 September 2004 and the Respondent’s payment of US\$32,036.00 on 3 January 2007 there was an exceptionally long delay in complying with Judgment No. 1192. However, close examination of the events will reveal that the Applicant did to some extent contribute to that delay.

III. Within just four months of the date of distribution of Judgement No. 1192, the Applicant on 1 February 2005 filed an Application in Case No. 1287 for interpretation and revision of Judgement No. 1192.

IV. The Respondent thereafter, filed a response including a counterclaim. In his counterclaim, the Respondent asserted an allegedly new fact and requested the Tribunal to reconsider its earlier decision in light of this alleged new fact. As a result of this claim and counterclaim payment was reasonably put on hold until the resolution of the revision case by the Tribunal. Consequently, the Tribunal considers that the delay occasioned thereby was justified.

V. Following the Tribunal’s Judgement No. 1283 release on 29 September 2006, the Applicant, on 20 November 2006, submitted said judgement to the JAB with the request that it consider his appeal without further delay.

VI. The JAB considered the appeal in executive session on 14 December 2006 and submitted its report to the Secretary-General on 2 January 2007.

VII. On 3 January 2007, one day after the JAB adopted its report and three months after the distribution of Judgement No. 1283, the Respondent paid the Applicant US\$32,036.00 in compliance with Judgement No. 1192.

VIII. In view of the foregoing:

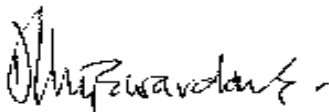
1. The Tribunal is not persuaded that the Applicant is solely responsible for the delay in implementing Judgement No. 1192. Accordingly, the Tribunal orders the Respondent to pay the Applicant three months' net base salary at the rate in effect at the date of Judgement, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected, as full compensation for the delay complained of.

2. The Tribunal rejects all other claims.

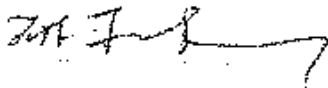
(Signatures)



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



Dayendra Sena **Wijewardane**
Second Vice-President



Goh Joon Seng
Member

Geneva, 31 July 2009



Tamara **Shockley**
Executive Secretary