UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/413
18 May 1988

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 413

Case No. 332: SABATIER

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Roger Pinto, First Vice-President; Mr. Arnold Kean, Second Vice-President;

Whereas, in Judgement No. 347 delivered on 13 June 1985, the Tribunal decided that the Respondent should "pay the Applicant nine months' net base salary from 1 November 1981 to 31 July 1982, less $25,000 (U.S.) being the amount of the termination indemnity already paid";

Whereas, in letters dated 19 September 1985 and 30 September 1985, the Applicant requested the Tribunal to "order UNICEF to review" their calculation of the amount of the award paid on the ground that it did not "represent the actual financial loss" incurred by the Applicant;

Whereas, on 18 October 1985 a Staff Officer at UNICEF informed the Applicant that upon "rechecking amounts already paid to [him]", the Administration realized that the termination indemnity paid to the Applicant when he separated from the service of UNICEF amounted to $16,201 (U.S.) and not to $25,000 (U.S.), as the Applicant had asserted in his pleas to the Tribunal in Judgement No. 347. Accordingly, the Comptroller's Division would deposit the sum of $8,798.22 (U.S.) to the Applicant's bank account in New York;

Whereas, on 7 April 1986 the Applicant addressed a letter to the Executive Secretary of the Tribunal in which he amended the amount of the balance due to him from the Respondent, as he had described it in the written observations on the Respondent's answer. The Applicant requested payment by UNICEF of an additional sum of $5,476.51 (U.S.). On 11 April 1986 he asked that the contents of his letter of 7 April 1986 "should be considered as [his] official and final stand in this matter";

Whereas, on 23 May 1986 the Administrative Tribunal rendered Judgement No. 366 in which it noted that in making its award in Judgement No. 347, the Tribunal had accepted the statement of the Applicant that he had been paid $25,000 (U.S.) by way of termination indemnity. Since it later appeared that the Applicant had overstated the amount so paid, which in fact was $16,201.80 (U.S.), and the Respondent, upon discovery of this error, had "voluntarily and promptly made good the difference", the Tribunal, "to correct the record ... [substituted] $16,201.80 (U.S.) for $25,000 (U.S.) in paragraph XXIV of Judgement No. 347";

Whereas, on 30 March 1987 the Applicant filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 25 March 1987 the Applicant, after making the necessary corrections, filed an application, the pleas of which read as follows:

"II. PLEAS

1. In accordance with Article 7, item 3c of Rules and under Article 9.1 of the Statute, I am contesting the award of 9-month net salary based on 'Appendix A, Schedule of separation' showing net salaries after application of Staff Assessment.

Schedule 'A' is meant to calculate allowances in bona fide cases of separation or termination, not to settle the injury sustained by a Staff member through systematic violation by the Administration of UN Rules and Regulations as evidenced in my case and the failure of UNICEF to perform its obligation under the terms of my contract.

Indeed, Schedule 'A' was used back in 1982 when I was paid a 5-month Termination Indemnity (see ...) and it is obvious from reading ... that the Respondent was still considering me as 'terminated' 4 years later and in spite of

the Tribunal having declared my termination 'invalid' in Judgement No. 347 a year before.

In accordance with Article 9.1 of Statute, I am asking the rescission of the decision to award me a 9-month net salary based on Appendix 'A', Schedule of Separation Payments ...

Instead, I am asking a compensation which more fully takes into consideration the actual financial loss I incurred as a result of the Respondent having failed to perform its obligation, that is one which reflects my Beirut posting and the payment of the allowances it was bringing me at the time of the Respondent's decision, which is no more than what the Tribunal had previously awarded the Applicant in the Klee case (Judgement 253).

There was no extenuating circumstances for the Respondent systematically violating UN rules in my case, a guilt which the Tribunal award in Judgement No. 347 fails to sanction or penalize. In this respect, it is perhaps relevant to note that one serious violation concerning the appointment in Islamabad of an outside hire, as Vehicle Management Adviser, six months after the so-called cancellation of my post and in disregard of the priority I should have been given, was never addressed, not only by the Tribunal but by the Respondent, his Counsel, the Global Staff Association and the Joint Appeals Board as well.

In my letter of 7 April 1986 to the Tribunal (see ... previously submitted), I produced a tentative and rather conservative outline of what a fair settlement should normally encompass. While I remain open to reasonable amendment of that proposal, I believe the use of Appendix 'A' is improper and represent an injustice.

2. The foregoing notwithstanding, I challenge the right of the Tribunal to deny me a tax refund on the award they pronounced. The chart as per Appendix 'A' clearly states that amounts shown are after deduction of assessment which, by definition, implies that a provision was made by the UN for the purpose of national taxation refund which applies to US [United States] staff members such as I.

Accordingly, my request to the Tribunal on this point would be that a refund be paid to me upon presentation of proof, in amount of whatever US Tax I disbursed in 1985 and 1986 on the contested award it offered me.

Short of paying me a Tax refund based on the gross equivalent of the 9-month net salary offered (which is the

legal procedure as evidenced by ...), I would expect that the Administration, at least, refund me the US Tax I have now paid on the two payments effected by the Respondent on the Tribunal's orders, namely on $4,163.22 in 1985 and on the so-called balance of my termination indemnity or $8,798.22 in 1986".

Whereas the Respondent filed his answer on 2 October 1987;

Whereas the Applicant filed written observations on 22 November 1988;

Whereas the Applicant's principal contentions are:

1. The Applicant's letter of 16 April 1986 to the Executive Secretary of the Tribunal, which is of a nature as to be a decisive factor when the judgement was given, was not mentioned in Judgement No. 366 and this indicates that the letter was overlooked by the Tribunal or was never considered by the Tribunal.

2. The Tribunal should compensate the Applicant for the amount of taxes that he had to pay to the US Government on his award.

3. It was not the Respondent but the Applicant who noticed the mistake in the amount of termination indemnity paid and brought it to the attention of the Respondent.

Whereas the Respondent's principal contentions are:

1. Revisions of judgements may be requested pursuant to article 12 of the Statute of the Tribunal on the basis of a newly discovered decisive fact and must in any event be made within one year of the judgement.

2. The Applicant alleges no new fact and the one year time limit has long expired.

The Tribunal, having considered the case from 6 May 1988 to 18 May 1988, now pronounces the following judgement:

I. By his letter of 25 March 1987, the Applicant applied to the Tribunal for a revision of Judgement No. 366.

II. Judgement No. 366 was dated 23 May 1986, and the present application was therefore made within the period of one year of the date of the judgement allowed by article 12 of the Tribunal's Statute.

III. Article 12 of the Tribunal's Statute permits an application to be made to the Tribunal for 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".

IV. In Judgement No. 366, of which the Applicant now seeks the revision, the Tribunal regarded the Applicant's request for the interpretation of Judgement No. 347 as being an application for the revision of that judgement. The Applicant had contended that Judgement No. 347 had failed to do him justice, but without asserting the discovery of some new fact within the meaning of article 12 of the Tribunal's Statute referred to above. In consequence, the Tribunal, in Judgement No. 366, rejected the application for revision of Judgement No. 347.

V. The Applicant now seeks the revision of Judgement No. 366, in which the Tribunal had rejected the application for the revision of Judgement No. 347. He does so without producing evidence of any newly discovered fact of a decisive nature, within the meaning of article 12 of the Tribunal's Statute, but alleges the failure of the Tribunal, in Judgement No. 347, to consider the "actual financial prejudice sustained as a result of the condemned UNICEF decision". In consequence, he asserts the Tribunal awarded him insufficient compensation.

VI. In view of the requirements of article 12 of the Tribunal's Statute, the present application for revision of Judgement No. 366 must be rejected.

VII. The Applicant also relies upon the opening words of article 9 of the Tribunal's Statute, reading as follows: "If the Tribunal finds that the

application is well founded, it shall order the rescinding of the decision contested ...". He is apparently under the impression that "the decision contested" refers to a decision of the Tribunal, whereas it is clear from the context that it refers to a contested decision of the Secretary-General, and that it does not provide a means of revising the Tribunal's judgements outside the parameters of article 12 of the Statute. Indeed, in this context, the term "decision" means a decision of the Respondent and not of the Tribunal.

VIII. For the foregoing reasons, the application is rejected.

(Signatures)

Samar SEN
President

Roger PINTO
First Vice-President

Arnold KEAN
Second Vice-President

Geneva, 18 May 1988

R. Maria VICIEN-MILBURN
Executive Secretary