



ADMINISTRATIVE TRIBUNAL

Judgement No. 384

Case No. 388: SAWIRI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Endre Ustor; Mr. Jerome
Ackerman;

Whereas on 23 January 1986, Saadallah Shinouda Sawiri, a former staff member of the United Nations Emergency Force I, hereinafter referred to as UNEF I, filed an application that did not fulfil the formal requirements of Article 7 of the Rules of the Tribunal;

Whereas on 18 June 1986 the Applicant, having made the necessary corrections, filed a corrected application, the pleas of which read as follows:

"Pleas according to Article 7 (Statute and Rules)

- a. Any further document which you may require with regard to my claim may furnish upon request.
- b. The Secretary-General for Personnel Services decision is contested: The total claim was on £.E. [Egyptian Pounds] 940.570/-.
- c. I was submitted a claim of my salary from 6th June 1967 to 10 September 1967, approximately £.E. 268,700 is to be settled.

Money looted in the bus and property loss as per Administrative Tribunal decision [sic] on 8th August, 1985 ...

Present claim as follows:-

1. My salary from 6th June 1967 to 10th September 1967, Approximately 268.700/-
2. 4% interest of the full amount of £.E.940.570/- for the last 11 years".

Whereas the Respondent filed his answer on 16 September 1986;
Whereas the Applicant filed written observations on 22 October 1981;
Whereas in reply to questions put by the Tribunal on 5 May 1987 and 20 May 1987, the Respondent provided additional information on 11 May and 21 May 1987;

Whereas on 12 May 1987, the Applicant commented on the Respondent's reply of 5 May 1987;

Whereas the facts in the case are as follows:

The Applicant, an Egyptian national, entered the service of UNEF I on 18 May 1957 as a locally-recruited Clerk Typist. According to a certificate of employment issued by UNEF-UNTSO [UN Truce Supervision Organization] on 14 August 1967, the Applicant served with UNEF-I until 5 June 1967, the date on which his employment was terminated on account of the cessation of the mandate of UNEF-I. The Applicant asserts that in early June 1967, during the initial stages of the Arab-Israeli war, a Personnel Officer asked him and his colleagues to continue working as usual. On 5 June 1967, the Israeli forces attacked the camp. They arrested him, as well as other locally-recruited employees and they remained in custody and detention by the Israeli forces until 10 September 1967.

In a letter dated 5 October 1974, the Applicant requested the Secretary-General to favourably consider his case and to authorize payment of:

- "(a) salary for the period 6-6-1967 to 10-9-67;
- (b) compensation for the personal effects lost during the Israeli attack;
- (c) other benefits due under existing rules."

The record of the case available to the Tribunal in the present proceedings shows that an exchange of correspondence ensued during 1975 and 1978 between the Applicant and the Director, Field Operations Service, FOS, Office of General Services, OGS, and the Under-Secretary-General, UNEF.

On 8 February 1978, the Director, FOS, OGS, acknowledged receipt of letters from the Applicant dated 5 November and 1 December 1977, together with copies of previous correspondence concerning the Applicant's claim for payment of additional salary and compensation for loss of his personal belongings, resulting from his employment by UNEF I. He stated that the United Nations position, as conveyed to him a year earlier, remained the same and would not be revised. The Organization was not obliged to make any payment for events that occurred after 5 June 1967, the date of the Applicant's separation from the service of UNEF I. He quoted the statutory provisions on time limits for the submission of claims, but added that the United Nations, would, however, be prepared to consider whether his request could be treated as an exception to the Staff Regulations. For this purpose, he asked the Applicant to provide him with a series of documents and evidence in support of his claim.

In a reply dated 12 March 1978, the Applicant set forth the reasons why he did not regard himself as having been separated from the service of UNEF I on 5 June 1967, and provided a list of his personal belongings, as well as a summary of the amounts of money claimed as salary until 10 September 1967. He also explained the reasons for the delay in submitting his claim.

After a further extensive exchange of correspondence and requests for additional information, the Director, Office for Field Operational and External Support Activities, OFOESA, submitted the Applicant's claim - as

described in his letter of 12 March 1978 - to the Secretary of the Headquarters Claims Board. The Board considered the claim at its 187th meeting held on 9-10 March 1983. Its recommendation, as approved by the Controller on 14 April 1983, reads as follows:

"The Board noted that the claimant was a locally-recruited employee who had submitted a claim in February 1982 related to the loss of personal effects while serving with UNEF in June 1967. As regards the date of the claim, there seemed to be some doubt inasmuch as the claimant also submitted a photocopy of a letter, dated 12 March 1978, addressed to the then Director, FOS. However, since no records exist of UNEF I, the events of June 1967 can no longer be documented. In the Board's opinion this case is similar to one in which the Board based its negative recommendation on the legal opinion obtained from OLA [Office of Legal Affairs]. The Board decided therefore that ST/AI/149/Rev.1 was not applicable to this claim and that it could not recommend compensation."

In a letter dated 21 April 1983, the Director, OFOESA, informed the Applicant of the decision by the Controller.

On 20 August 1983, the Applicant requested the Secretary-General to review the administrative decision not to compensate him. Not having received a reply from the Secretary-General, on 18 December 1983, the Applicant lodged an appeal with the Joint Appeals Board. The Board adopted its report on 8 July 1985. Its conclusions and recommendations read as follows:

"Conclusions and Recommendation

38. The Panel finds that the local employees of UNEF I are entitled to an appeals machinery and that, in the absence of administrative procedures specifically established for the purpose by the UNEF Commander in pursuance of Article XXXIX of the UNEF Staff Regulations for Local Employees, the United Nations appeals machinery should be open to those employees.

39. The Panel further finds that, having submitted the appellant's claim to the Headquarters Claims Board and having thus recognized the competence of that body to consider it, the Administration is estopped from raising

the issue of the competence of the Joint Appeals Board in the appeal stage of the Claims Board proceedings. The Panel therefore concludes that the Joint Appeals Board has competence to hear the appeal.

40. The Panel also finds that, having forwarded the appellant's claim to the Headquarters Claims Board with the express admission that there were extenuating circumstances which had prevented the appellant from submitting his claims earlier, the Administration is estopped from raising the issue of the receivability of the appellant's claim in the appeal stage of the Claims Board proceedings. The Panel therefore concludes that the appellant's claim is receivable.

41. Finally the Panel finds that in the absence of supporting evidence to establish the value of the items allegedly lost by the appellant in connection with the events which took place on 5 June 1967, the Respondent cannot be held legally responsible for the payment of the amounts claimed by the appellant.

42. At the same time, the Panel finds that, in view of the attitude of the Administration, there is a strong moral obligation on the part of the Respondent to compensate the appellant for the losses that he sustained in connection with those events.

43. For that reason, and taking also into account humanitarian considerations as well as the long delays which occurred in the decision-making process, the Panel recommends that the Secretary-General grant the appellant an ex gratia payment equivalent to £.E. 671.870 at the rate of exchange prevailing on 5 June 1967."

On 6 August 1985 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board's report and had decided to grant him an "ex gratia payment equivalent to £.E. 671.870 at the rate of exchange prevailing on 5 June 1967."

Whereas on 18 June 1986, the Applicant filed the application referred to above,

Whereas the Applicant's principal contention is:

1. Since the Applicant was arrested by the Israeli authorities until 10 September 1967, he is entitled to payment of salary by UNEF-I until that date.

Whereas the Respondent's principal contentions are:

1. The claim for salary should be declared non-receivable because it is raised for the first time here and it is time-barred.
2. No claim for interest can arise in respect of an ex gratia payment.

The Tribunal, having deliberated from 4 May 1987 to 29 May 1987, now pronounces the following judgement.

I. The main plea is for the payment of salary to the Applicant during the period he was in the custody of the Israeli military forces which took him prisoner on the 5th or 6th of June 1967. The Applicant states that he was orally instructed by his supervisor or a senior officer of UNEF I to continue to work for the United Nations until 26 June 1967; in the circumstances of this case - i.e. records destroyed or dispersed because of the war or war-like atmosphere in the area - no evidence is forthcoming to confirm this statement of the Applicant. He was allegedly detained by the Israeli authorities for about 100 days and at an initial stage he had asked for payment of all these 100 days (£.E. 268.700 according to the Applicant) even though a certificate was issued, apparently unchallenged, to the Applicant in 1967 showing that his contract with the United Nations came to an end on 5 June 1967. It was not renewed.

II. The records do not show any decision by the Respondent on the Applicant's claim for his back pay. Apparently there was no administrative decision on it and the Applicant does not seem to have insisted on such a decision. The entire controversy before the JAB between the parties revolved around the claim of the Applicant for losses

he suffered by the confiscation of his personal belongings. In the report of the JAB it is stated that the claim for the Applicant's salary from 6 June to 10 September 1967 was dropped. On this basis the Respondent argues that the Tribunal cannot under its Statute consider the renewed claim for his salary as it was not taken up before the Joint Appeals Board (JAB). It is also noted that the Respondent had described before the JAB that the claim for his salary from 6 to 26 June 1967 for (Egyptian) £268.700 as "later claims, however, (among them, the present appeal) do not include this item". This statement of the Respondent before the JAB and the JAB's own report leave no doubt in the mind of the Tribunal that for reasons not explained by the Applicant this claim was not pursued by him in the JAB. In the circumstances the Tribunal would not wish to rule on the claim.

III. Nonetheless, because of the very special features of the case - a local recruit unfamiliar with, if not ignorant of, the rules and regulations, but who had been in the employment of the United Nations for 10 years when he was stated to have been taken prisoner and the unusual delay of several years - the Tribunal considered whether these features should be examined in greater detail. With this end in view and since the records are no longer available, the Tribunal enquired of the Respondent if anyone in a position similar to that of the Applicant (i.e. without a valid contract) had been given any salary for any part of the time when he was in captivity. The Tribunal's telegram to the Respondent read:

"Applicant asserts that many UNEF I employees were taken prisoner with Applicant by Israeli authorities on 5/6 June 1967. Tribunal would be grateful to know whether any person who was detained was paid salary for any period even if he did not have a contract with UNEF or if his contract expired while in detention."

The reply received from the Respondent is as follows:

"UNEF I local records destroyed. Limited records in archives at Headquarters by names, not by subject. Monumental task to go through. However, if Applicant could recall any name, we would verify."

These telegrams were all copied and sent to the Applicant who, however, did not cite any specific comparable instance in which the Respondent paid a staff member whose contract had expired while in detention. In view of this and taking into account the fact that the Applicant's claim was stated by his Counsel in a submission before the JAB "as a simple claim for loss and damages (amounting approximately to US\$ 2,000)..." - and of which the Respondent had already paid US\$ 1,545 without any verification of the details of claims for personal losses - the Tribunal holds that in this case the ends of justice have been served, even if the delay of over eight years the Claims Board took to turn down what the Applicant considered to be his due, is open to criticism. The Applicant was also remiss in not applying in time, but he offered some explanation for the delay - which was to a large measure condoned by the Respondent, as indeed had been pointed out by the JAB. The ignorance of or unfamiliarity with the rules and regulations or the procedure to be followed by the Applicant in pursuing his claims before the JAB cannot ipso facto entitle him to legal relief.

IV. There remains the question of interest which the Applicant claims as his due for the losses suffered over 20 years ago and settled only about 2 years ago. He further claims interest on his back pay for about 100 days he considered as owing to him; this latter claim cannot be entertained as the Tribunal has not concluded that the Respondent was under any legal obligation to pay him salary for the period of the Applicant's detention after the expiry of his contract.

V. As regards the claim of interest on the grant of US\$ 1,545.00 already paid to the Applicant - a grant which the JAB had recommended as an ex gratia payment and which the Respondent has treated as such - the Tribunal notes that the Respondent settled the Applicant's claim for loss of personal belongings in full and without verification. In view of this, there is no reason for the Tribunal to award any further payment by way of interest. The Tribunal is sympathetically aware of the possible hardship the Applicant may have undergone, but in the circumstances of the case,

the Applicant cannot be extended any further remedy based on legal considerations. In view of this, the Tribunal sees no need to consider the Respondent's argument that interest cannot accrue when a grant is made ex gratia.

VI. The Application is rejected.

(Signatures)

Mr. Samar SEN
President

Mr. Endre USTOR
Member

Mr. Jerome ACKERMAN
Member

Geneva, 29 May 1987

R. Maria VICIEN-MILBURN
Executive Secretary