



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 571

Case No. 633: NOBLE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen,
Vice-President; Mr. Ioan Voicu;

Whereas at the request of Miriam P. Noble, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 28 February 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 18 November 1991, the Applicant filed an application containing pleas which read, in part, as follows:

"II. PLEAS

16. ...

(a) Applicant requests the Tribunal:

To order that the payment of interest to her ... as recommended by the JAB [Joint Appeals Board], and accepted by the Secretary-General ... be expedited.

(b) To order, under article 9.1 of the Statute, rescission of the decision ... to deduct from the award of interest payment to her at (a) above, an amount of \$3,698.34 for alleged salary overpayments by Respondent...

(c) ...

to find the Respondent's claim for alleged salary overpayments ... invalid, and to rule that the decision ... for repayment of said amount ... be rescinded ...

17. Furthermore, ... Applicant requests the Tribunal to rule:

- (a) that Applicant is entitled to the 1 1/2 days pay for annual leave determined due her by the final audit report dated 30 August 1989 ... and to balances in salary entitlement that became due prior to her retirement but effected after her last working day, 31 December 1988 ...
- (b) that Applicant is entitled to just and full compensation for damages in the amount of 2 years' net salary for the unreasonable delay exceeding one year in payment of her pension benefits/entitlements, and
- (c) that the Respondent be required to make reparation for injury to Applicant sustained as a direct result of the unreasonable delay, ... in the amount of \$52,702.00.

18. In the event that the Secretary-General decides to exercise the option under article 9, paragraph 1 of the Statute, ... to fix the amount of compensation in a sum equivalent to two (2) years' net base salary of Applicant, in 1988.

19. Finally to rule that Applicant may bring before the Tribunal in the future, questions on her claims to pension entitlements not dealt with by the JAB ..."

Whereas, in Judgement No. 382, delivered on 25 May 1987, the Tribunal held that

"the Administration acted in gross derogation of the Applicant's rights ... in its prolonged withholding of the Applicant's pay, and ... in making deductions for lateness, ..."; and

"in consequence ... award[ed] the Applicant US\$7,000.00 in damages"; and ordered

"... the Administration [to] recalculate the amount, if any, [claimed as] owing to it ...;

If the parties were unable to agree on the amount within 90 days, the Tribunal would resolve any remaining disputed issue upon request of either party.

Whereas, in Judgement No. 407, delivered on 13 November 1987, the Tribunal specified how to calculate the amounts to be paid to the Applicant by the Administration, pursuant to Judgement No. 382.

Whereas, in Judgement No. 503, delivered on 25 February 1991, the Tribunal rejected an application for interpretation of Judgement No. 407, holding

"... that the Respondent's compliance with Judgement No. 407, including his calculation of interest, was reasonable and proper".

On 30 June 1989, the Applicant wrote to the Secretary of the UN Joint Staff Pension Fund (the Pension Fund), requesting "speedy action" with information she had asked for and the payment of her benefits as soon as possible.

In a reply dated 2 August 1989, the Secretary of the Pension Fund advised the Applicant that he was unable to provide her with an estimate of her benefits because her file was incomplete. He stated that there was a discrepancy in the pension contributions (erroneously reported by the UN for the period 1979 through December 1988). Although the Pension Fund had requested clarification from the Accounts Division, no reply had been received. Furthermore, the separation documents required to process her benefits had not been sent by the UN Accounts Division to the Pension Fund.

The Applicant claims that it was not until November 1989, that she was told that her records had been processed by the Accounts Division and sent to the Pension Fund. On 13 January 1990, the Applicant was notified by the Pension Fund that

1990, the Applicant was notified by the Pension Fund that arrangements had been made to remit her lump sum and periodic benefits to her bank account.

On 22 January 1990, the Applicant wrote to the Secretary of the Pension Fund asking for clarifications concerning the amount of her lump sum payment and for further details concerning her entitlements, as he had promised.

On 10 May 1990, the Applicant wrote again to the Secretary of the Pension Fund complaining about the lack of response to her letter of 22 January 1990 and claiming that an amount exceeding \$6,000.00 was still due to her on the lump sum.

In a memorandum dated 28 June 1990, to the Director, Accounts Division, the Secretary of the Pension Fund recalled his request of 8 December 1988, for clarification of the Applicant's pension contributions for the years 1980, 1984, 1986 and 1987. He stated that he had authorized "on an exceptional basis" payments to the Applicant, but ... final adjustment in payments to the Applicant could only be made after the Pension Fund received from the United Nations, the correct pension contributions." He noted that the Pension Fund had contacted his office but had not received the final report.

On 29 August 1990, the Applicant asked the Secretary-General to direct the UN Accounts Division to pay into the Pension Fund all outstanding contributions due on her account which had not been paid, plus interest. She also sought compensation for the hardship caused as a consequence of the delay of approximately 20 months. Not having received a reply from the Secretary-General, on 15 November 1990, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 9 August 1991. Its considerations and recommendation read in part as follows:

"Considerations

...

38. The Appellant is asking for damages equal to two years' net salary. She calculated her loss of interest on the lump-sum alone at \$6,000. Her other itemized damages include expenses for rent, living expenses and miscellaneous totalling \$52,702.00. The Panel is determined not to be dragged into matters that have been the subject of three Administrative Tribunal judgements. The only pertinent issue in this case is the delay in presenting the first PF/4 form in October 1989. As soon as this was submitted, the Pension Fund processed payments to the Appellant. In other words, there was admittedly one year's delay.

Recommendation

39. In view of the aforesaid, the Panel considers that the delay in finalizing the accounts has resulted in about one year's delay in processing the Appellant's pension entitlements. For the length of this delay, the Panel recommends to the Secretary-General the payment of eight percent interest on the lump-sum and on each monthly payment according to the length of the delay.

40. The Appellant's claim includes damages for her alleged inability to leave the expensive New York area and return to her country, Trinidad & Tobago. The records indicate that the Appellant was recruited from the New York area and the Administration bore no responsibility for her repatriation. Consequently, the Panel sees no merit in this aspect of her claim. The Panel therefore decided to make no other recommendation in this case."

On 22 August 1991, the Officer-in-Charge for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her that:

"The Secretary-General has re-examined your case in the light of the Board's report. He fully shares the Board's position in paragraph 40 of the report. With regard to the Board's recommendation in paragraph 39 of the report, while he has reservations, he has decided, in view of the Board's unanimous recommen-

dation, that you be paid interest at the annual rate of eight per cent:

- (a) on the lump sum for the delay of about one year in its payment;
- (b) on each of the monthly pension amounts, where there was a delay in payment, for the length of the respective delay;

less the overpayment made to you of \$3,698.34."

On 18 November 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Respondent filed his answer on 10 January 1992;
Whereas the Applicant filed written observations on 30 June 1992;

Whereas the Applicant's principal contentions are:

1. The Respondent is liable for the injury to the Applicant by his unreasonable delay in processing her records, depriving her of funds with which to support herself for a period longer than one year.

2. The Respondent should not be entitled to recover from the Applicant the amount of \$3,698.34 for alleged salary overpayments, which he failed to recover before her separation from service. There is nothing in the rules which authorizes the Respondent to credit alleged salary overpayments in the circumstances of the Applicant's case.

3. The Applicant should not be penalized for the Respondent's failure to carry out his administrative responsibilities, by depriving her of her pension entitlements.

Whereas the Respondent's principal contentions are:

1. Delay in the implementation of the Secretary-General's decision was caused by the Applicant's failure to authorize release of pension information. The decision was implemented with reasonable promptness after the information was released.

2. The Tribunal has adjudicated upon the Applicant's claims for payment of salary and the Applicant is entitled only to payment in accord with the Tribunal's judgement. The Respondent may, therefore, take overpayments into account when deciding to compensate the Applicant for delay.

3. The Applicant's contentions regarding the amount of the salary overpayments and other matters are not properly before the Tribunal.

The Tribunal, having deliberated from 28 October to 9 November 1992, now pronounces the following judgement:

I. The Applicant in this case appeals from a decision of the Secretary-General dated 22 August 1991, in which he accepted a unanimous Joint Appeals Board (JAB) recommendation that the Applicant be paid interest at the annual rate of eight percent on the lump-sum receivable by her from the United Nations Joint Staff Pension Fund (Pension Fund) for the delay of about one year in its payment and on each of the monthly pension amounts where there was a delay in payment. The Secretary-General also decided to offset against the interest thus payable a salary overpayment previously made to the Applicant of \$3,698.34. The Applicant asks that the Tribunal order expedited payment of the interest to her, and also to order rescission of what she erroneously describes as a JAB decision, to deduct from the award of interest to her the amount of \$3,698.34. In addition, the Applicant asks that the Tribunal find, on various grounds, that the Respondent's claim of salary overpayment in the amount of \$3,698.34 is invalid, and may not be collected. The Applicant also asks the Tribunal to make certain rulings regarding her entitlement to annual leave and salary entitlements, damages for unreasonable delay, and reparation for other alleged injury to her. The Applicant asks, finally, that the Tribunal rule in advance that it will entertain certain questions she may bring before the Tribunal in the future.

II. With respect to the Applicant's plea for payment to her of interest in accordance with the decision of the Respondent dated 22 August 1991, the Tribunal notes from the Applicant's observations that, by letter dated 22 January 1992, the Respondent transmitted to the Applicant a cheque in the amount of \$870.11 in implementation of that decision. The delay in payment was due to the inability of the Respondent to obtain from the Pension Fund information with respect to the amounts of the Applicant's entitlement. That information was essential for calculation of the interest owing. It appears that the Respondent's inability to obtain this information from the Pension Fund resulted from a failure, until 27 December 1991, on the part of the Applicant to authorize, unconditionally, release by the Pension Fund of the information, notwithstanding a request by the Pension Fund for such authorization in a letter to the Applicant dated 2 October 1991.

III. In these circumstances, the Tribunal finds no improper delay on the part of the Respondent in the implementation of the decision of 22 August 1991. The Applicant's plea in paragraph 16(a) of her application therefore requires no further consideration by the Tribunal.

IV. With respect to the Applicant's request to order rescission of the decision to deduct the amount of \$3,698.34 from the award of interest, the Tribunal finds that the JAB made no such decision or recommendation. In fact, the JAB report clearly shows that the panel considered that the only question it needed to address and that it deemed within its competence, was whether the delay in processing the pension payments to the Applicant was unreasonable. In keeping with its view of the issue before it, the only recommendation made by the JAB was for the payment of eight percent interest on account of the delay in such payments. Although the JAB considered a claim by the Applicant for damages relating to her alleged inability to leave the New York area and

return to her home country, the JAB saw no merit in that claim, and the Tribunal concurs.

V. In the pleas contained in paragraph 16(c) of her application, the Applicant requests that the Tribunal find that the Respondent's claim for salary overpayments in the amount of \$3,698.34 is invalid. It appears that the Applicant was informed by a letter to her dated 29 October 1990, from the Chief, Payroll Unit, Office of Programme Planning, Budget and Finance, of the administrative decision that she had received salary overpayments in that amount. In a letter dated 5 November 1990, addressed to the Chief, Payroll Unit, the Applicant denied owing the United Nations that amount and asked that the indebtedness be removed from her record. However, it does not appear that the Applicant ever sought review of the administrative decision under staff rule 111.2(a). In the Applicant's observations dated 15 May 1991, on the response of the Secretary-General before the JAB, the Applicant mentioned her disagreement with the claimed salary overpayment of \$3,698.34. In a communication dated 29 July 1991, which she delivered to the JAB on 12 August 1991, after the adoption by the JAB of its report dated 9 August 1991, the Applicant commented further with regard to this matter and submitted two additional annexes. In view of article 7 of its Statute, the Tribunal does not deem that this matter is properly before it. Obviously, the failure by the Applicant to follow the procedure required by staff rule 111.2 after the administrative decision communicated to her in the letter dated 29 October 1990, renders any further consideration of that decision by the Tribunal beyond its competence.

VI. The Applicant also challenges the right of the Respondent to offset the claimed salary overpayment against the interest payable to her. The Applicant argues that salary overpayments may not be recovered from a retired staff member 22 months after she has left the service of the United Nations. In support of

her contention, the Applicant cites ST/AI/155/Rev. 1, a communication dated 20 May 1988, from the United Nations Comptroller, and the absence of any specific provision in staff rule 103.18 or any other staff rule for recovery of such indebtedness from a retired staff member or from an award of interest.

VII. In the opinion of the Tribunal, the Applicant's contentions lack merit. The interest payment is the result of a decision by the Respondent to accept a recommendation by the JAB to provide redress to the Applicant for a delay in processing pension payments. It would make no sense at all for the Tribunal to hold, that in implementing such a decision, the Respondent was not entitled to offset amounts previously paid to the Applicant in excess of what she was entitled to. Otherwise, the Tribunal would, in effect, be requiring the Respondent to pay not only what he had decided to pay, but, in addition, either to forgive an existing indebtedness, or be subjected to the inconvenience and expense of instituting a separate proceeding for its recovery. It is not the function of the Tribunal to impose unnecessary burdens on the Organization. Moreover, ST/AI/155/Rev.1 and the communication dated 20 May 1988, from the UN Comptroller have no bearing at all on a decision by the Respondent to pay interest long after a staff member's retirement, which the Tribunal finds wholly unrelated to normal payroll clearance procedures. Similarly, staff rule 103.18 is irrelevant since it is not addressed to such situations and does not prohibit the action taken by the Respondent.

VIII. With respect to the Applicant's claim for additional pay for annual leave and for balances in salary entitlements that became due prior to her retirement, the Tribunal finds that these matters were not properly before the JAB and are therefore not before the Tribunal. Moreover, in view of the circumstances of this case and particularly the complexities regarding the calculation of the Applicant's salary entitlements and amounts

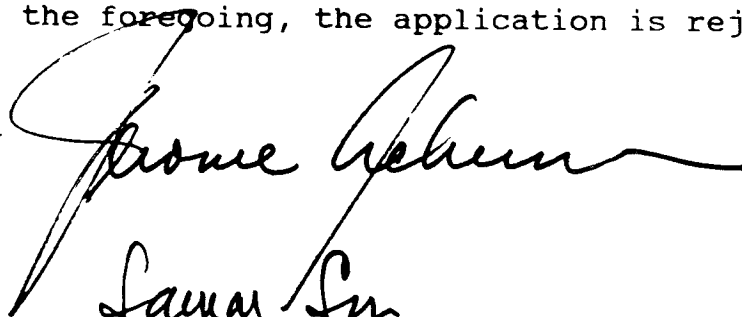
contributable to the Pension Fund, the Tribunal is unable to conclude that the Applicant is entitled to anything more as damages or for the delay in the payment of her pension benefits than the amount specified in the Respondent's decision of 22 August 1991.

IX. With respect to the Applicant's plea for an advance ruling by the Tribunal that it will entertain future claims, the Tribunal declines to make any such ruling.

X. In view of the foregoing, the application is rejected.

(Signatures)

Jerome ACKERMAN
President



Samar SEN
Vice-President



Ioan VOICU
Member



New York, 9 November 1992



R. Maria VICIEN-MILBURN
Executive Secretary