

*PROVISIONAL TRANSLATION*

*Translated from French*

**Administrative Tribunal**

Judgement No. 919

Case No. 959: **Facchin**

Against: The Secretary-General  
of the United Nations

**The Administrative Tribunal of the United Nations,**

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza, Vice-President; Mr. Victor Yenyi Olungu;

Whereas, on 27 January 1997, Brigitte Facchin, a former staff member of the United Nations, filed an application containing pleas which read, in part, as follows:

**“II. PLEAS**

Applicant respectfully requests the Tribunal to:

...

(b) *Decisions which the Applicant is contesting and whose rescission she is requesting:*

In the absence of any reply and reaction from the UNOG Administration, order the latter to reinstate the Applicant, respond to requests for contracts for her, re-establish the truth in her file, remove the obstacles she continues to encounter when she tries to enter UNOG premises to settle her affairs, pay her salary arrears and reimburse her for medical expenses incurred as a result of the incident of 4 July 1994.

(c) *Obligations the Applicant is invoking and whose performance she is requesting:*

Extension of Applicant's contract beyond 15 July 1994 represents a commitment by the Organization vis-à-vis Applicant. Interference by the UNOG Administration resulted in the cancellation of two firm offers of a contract (...), resulting in serious injury and prolonged unemployment. Moreover, the UNOG Administration appears to have tried to minimize Applicant's merits, thus reducing her chances of finding employment within the United Nations system and elsewhere. It is requested that Applicant be reinstated as a staff member so as to reduce the injury sustained by her as a result of the UNOG Administration's actions; the latter, moreover, damaged her reputation.

(d) *Amount of compensation claimed in the event that the Secretary-General decides (in the interest of the United Nations) to pay compensation for the injury sustained:*

*Material loss (effective cost):* salary that would have been paid to the Applicant if the UNOG Administration had not objected to her contract being extended: arrears since 15 July 1994, based on the last salary paid — 7,070 Swiss francs per month (net); medical expenses incurred as a result of the incident at the Training and Examination Section: Sw F 290.50 plus penalty for late payment; cost of the procedure. Emotional suffering: compensation for the injury sustained.

(e) *Other relief requested in accordance with the Statute:*

Indemnify Applicant for the serious injuries sustained — humiliation, defamation, attempt by the UNOG Administration to minimize her merits, thereby making it impossible for her to find employment within the United Nations system and even elsewhere — either by reinstating her or, since there is a distinct possibility, due to the attitude of the UNOG Administration, that she may not find employment, pay a monthly sum equivalent to the salary she had been receiving, based on the last salary paid, that is to say Sw F 7,070, until she reaches retirement age, that is to say until she reaches the age of 62.

(f) Take appropriate disciplinary action after conducting a proper investigation into the incident that occurred at the Training and Examination Section; witnesses and the victim should be questioned and the results of the investigation should be made public.

(g) In accordance with the provisions of ST/AI/292 and IC/Genève/3013, produce the reports of the Training and Examination Section and the Security Service (the “aggressors”) which are cited in several documents in Applicant’s file and on which all the decisions of the UNOG Administration have been based or, if the Administration maintains that there are no such reports, repair the serious injury Applicant has sustained by reinstating her and compensating her.

(h) Remove from Applicant’s file all documents containing inaccurate information, particularly that concerning the incident that occurred at the Training and Examination Section.

(i) Cease discriminating against Applicant when she applies for a job and respond to the requests submitted to UNOG that she be hired.

(j) Remove the obstacles Applicant encounters when she attempts to enter United Nations premises to settle her affairs.

Whereas the Respondent filed his answer on 4 December 1997;

Whereas the Applicant submitted additional pleas on 22 December 1997;

Whereas the Applicant filed written observations on 19 February 1998;

Whereas the Applicant submitted additional documents on 19 and 27 May 1998;

Whereas on 9 and 25 June 1998, the Applicant asked the Tribunal to postpone consideration of her case;

Whereas on 1 July 1998, the Secretary of the Tribunal informed the Applicant that the Tribunal had decided to defer consideration of the case to its next session;

Whereas the Applicant submitted additional documents on 6, 20 and 25 August 1998;

Whereas on 8 October 1998, the Applicant asked the Tribunal to postpone consideration of her case;

Whereas on 30 October 1998, 5 and 28 January, 24 February, 11 March, 16 April, 13 May, 10 and 18 June 1999, the Applicant submitted additional documents;

Whereas on 5 July 1999, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Office in Geneva (UNOG) on 8 August 1980, on a two-week contract as a Conference Secretary at the G-3 level. On 9 February 1981, she received a three-month fixed-term appointment as Conference Officer at the G-4 level. Thereafter, the Applicant served on a series of intermittent daily and monthly short-term appointments. On 5 April 1994, the Applicant was granted a three-month fixed-term appointment with the Economic Commission for Europe (ECE) as Secretary at the G-5 level, which was extended until 15 July 1994, when the Applicant separated from service.

On 4 July 1994, a Training Officer of the Training and Examination Section requested security guards to prevent the Applicant from attending a Russian language course that she had been informed she was not authorized to attend.

Also on 4 July 1994, the Applicant acknowledged receipt of a memorandum dated 1 July 1994 from the Executive Secretary, ECE, informing her of the decision not to extend her contract. In a meeting on 5 July 1994, the Applicant was informed that her contract would be extended no further than 15 July 1994.

In a memorandum dated 15 July 1994, the Chief, ECE (the Applicant's supervisor), informed the Applicant that the extension of her contract would be handled by the United Nations Conference on Trade and Development (UNCTAD) and that she should "continue to perform [her] duties in this office as before".

On 10 August 1994, the Chief, Personnel Section, UNCTAD, responded to queries by the Chief, ECE, concerning the renewal of the Applicant's contract, stating that the latter had already been "informed ... that [the Applicant's] contract

would not be extended beyond close-of-business on 15 July 1994” and consequently “there is no need for any further decision from UNCTAD regarding her contractual status”.

On 15 August 1994, the Applicant received a memorandum dated 11 August 1994 from the Director, Division of Administration, informing her that she was not permitted to enter the Palais des Nations.

On 18 August 1994, the Applicant submitted a “formal complaint” to the Director General, UNOG, regarding: the 4 July 1994 incident when she attempted to attend a Russian class; the fact that she had been prevented from entering the Palais; “slandorous hearsay” quoted by the Director, Division of Administration; adverse material included in her personnel file without having been shown to her; and the refusal of her request of 12 July 1994 to see her personnel file.

By memorandum dated “28 October 1994 (submitted 10 November 1994)”, the Applicant requested the Respondent to “review the decision by UNOG Administration to impede the renewal of [her] contract”. On 10 November 1994, the Chief, Personnel Administration Section, informed the Applicant that she should consider the case closed.

On 9 February 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 28 October 1996. Its findings, conclusion and recommendation are as follows:

“34. The panel examined the receivability of the appeal in compliance with staff rules 111.2 (a), (f) and (j). The Panel wishes to recall that under staff rule 111.2 (a), the Appellant must address a letter to the Secretary-General to request the administrative review of the contested decision, within two months from the date of notification of the decision.

35. Although the Appellant did not identify precisely which administrative decision she was contesting, the Panel noted that she was told on 5 July 1994 during a meeting with the Executive Secretary of ECE, that she would not obtain any further contract with ECE. On 15 August 1994, the Director, Division of Administration, informed her that she could no longer enter the Palais. Nevertheless, she only submitted her request for review to the Secretary-General on 10 November 1994.

36. In accordance with staff rule 111.2 (f), the Panel has the capacity to waive the prescribed time limits in ‘exceptional circumstances’. The United Nations Administrative Tribunal (hereinafter UNAT) recalled in its Judgement No. 372, *Kayigamba* (1986), that exceptional circumstances beyond the Appellant’s control must have precluded him from presenting his request in due time, therefore these circumstances have to be strictly appreciated. Moreover, the request and justification of the existence of such circumstances lies with the Appellant.

37. Guided by the Staff Rules and the precedents of the UNAT, the Panel carefully reviewed the JAB file but was not able to find any exceptional circumstance that could justify a waiver of the time limit in the present case. Consequently, the Panel considered that the appeal was not receivable.

*Conclusion and recommendation*

38. The Panel, in accordance with staff rules 111.2 (a) and (f), *concluded* that the appeal was time-barred and that no exceptional circumstance could justify a waiver of the time limits. The Panel nevertheless noted that some of the Appellant's requests were satisfied by the UNOG Administration.

39. In the light of the foregoing, the Panel *makes no recommendation* in support of this appeal."

On 9 January 1997, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

"The Secretary-General has considered your case in the light of the Board's report. The Secretary-General took note of the Board's conclusion, in accordance with staff rule 111.2 (a) and (f), that the appeal was time-barred, and that no exceptional circumstances could justify a waiver of the time limits. The Secretary-General also noted that some of your requests were satisfied by the UNOG Administration. The Board thus made no recommendation in support of your appeal and the Secretary-General has decided to accept the Board's determination and to take no further action regarding your case."

On 27 January 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's appeal was timely and thus receivable because the letter dated 10 November 1994 from the Chief, Personnel Administration Division, in response to the "formal complaint to the Director General of UNOG, delivered to his office on 18 August 1994 ... becomes the administrative decision". The Applicant claims that she never received that letter and only later found it in her personnel file. There can be no fixed time limit in this case because there was a "continuity of discussion" as the Applicant sought to clarify and regularize her situation with the Administration.

2. The Applicant is entitled to a renewal of her contract, or alternatively, to be reinstated as a staff member in the United Nations system. The Applicant is entitled to compensation for the failure to renew her contract. The Respondent

should cease discriminating against her and preventing her from being hired for posts at the United Nations.

3. The Applicant has suffered humiliation. She was a victim of defamation and is entitled to compensation for such injuries.

4. The Applicant properly remained in her post after 15 July 1994 because it is normal to continue to work while a contract renewal request is being processed. Thus the Applicant should have been permitted to enter the Palais des Nations and should have been paid for the period that she continued to work after 15 July 1994.

5. The Board erred by not holding a hearing to investigate the incident of 4 July 1994. The Applicant was mistreated by United Nations security guards when they prevented her from attending her Russian class, which she was entitled to attend, and she should be compensated for the physical injuries and emotional suffering sustained during that incident. All inaccurate documents pertaining to that incident should be removed from her personnel file.

Whereas, the Respondent's principal contention is:

The Board properly held that the Applicant's appeal was not receivable because it was not timely filed. Although the Applicant did not identify to the Board which administrative decision she was contesting, she had been told on 5 July 1994 that her contract would not be extended beyond 15 July 1994, and she had been informed on 15 August 1994 that she could no longer enter the Palais. She submitted her request for review to the Respondent on 10 November 1994, more than two months after any administrative decision the Applicant may be contesting. No exceptional circumstances warrant a waiver of the time limit.

The Tribunal, having deliberated on 30 June 1998 at Geneva and from 2 to 23 July 1999 at Geneva, now pronounces the following judgement:

I. Ms. Facchin's application concerns the decision — which, in her opinion, was improper — not to renew her fixed-term appointment which ended on 15 July 1994. Her request is, however, surrounded by additional claims concerning:

(1) Payment of salary for days she claims to have worked after 15 July 1994 and therefore after the end of her contract.

(2) An incident that occurred on 4 July 1994 in which she claims to have been mistreated by security guards who were called to stop her entering Villa Le Bocage to attend Russian language classes, which she was not authorized to attend

because of the decision not to renew her contract. She asks to be compensated for injuries suffered as a result of that incident.

(3) The removal from her file of documents which she claims were improperly placed there.

II. In its report of 28 October 1996, the Joint Appeals Board noted that it was hard to determine which administrative decision the Applicant was contesting. It is true that her submissions, both to the Joint Appeals Board and to the Tribunal, which she prepared without help of counsel, are not at all clear. The Board nonetheless concluded that, in so far as it dealt with the decision not to renew her contract, the Application was time-barred, since the decision on the matter had been communicated to her at a meeting held on 5 July 1994, whereas Applicant did not submit the request for review of the decision to the Secretary-General until 10 November 1994; according to the time limit established in staff rule 111.2 (a), the request should have been submitted no later than 5 September 1994.

The Tribunal reviewed the file but was unable to find any compelling reasons for calling into question the decision taken by the Administration in light of the JAB report. Nor could the Tribunal find any "exceptional circumstances" that could justify a waiver of the time limits established in staff rule 111.2 (a).

In that connection, although it is true that Applicant mentioned that her supervisor had told her he planned to secure an extension of her contract and had urged her to continue working in hopes of such extension, she could not have had any doubt in her mind as to the fact that her contract had ended on 15 July, since on 15 August 1994 the Director, Division of Administration of UNOG had enjoined her not to enter the Palais des Nations since she did not have a valid permit or contract.

The Tribunal therefore considers that the application is time-barred in so far as the decision not to renew Applicant's contract is concerned. Moreover, the Administration could have exercised its discretionary power to renew the contract; no evidence has been adduced to indicate that in not doing so it was prompted by any consideration other than the interests of the service.

III. The Tribunal notes, on the other hand that the Board did not consider the Applicant's requests, aside from the one dealing with the renewal of her contract. While it may be felt in that regard that Applicant's claim regarding salary for the days worked following the end of her contract should normally be treated in the same way as the main claim which is time-barred, the same does not apply to the consequences for the Applicant of the incident of 4 July 1994 in which she alleges

that she was mistreated by security guards. It is up to the Joint Appeals Board, whose role is essentially to clarify the facts on which applicants base their application, to re-examine as far as possible the circumstances of the incident that occurred in 1994 and any injury resulting therefrom. Lastly, the Joint Appeals Board should check to see whether the Applicant's file contains any documents of which she was unaware or that were improperly placed therein.

IV. The Tribunal finds that the Application is time-barred in so far as the decision not to renew Applicant's contract is concerned and refers the claims regarding the 4 July 1994 incident back to the Board.

V. For the foregoing reasons the Tribunal :

- (a) Finds the application time-barred as regards the decision not to renew the Applicant's contract;
- (b) Refers the claims relating to the incident of 4 July 1994 back to the Board;
- (c) Rejects all other pleas.

(Signed)

Hubert **Thierry**  
President

Julio **Barboza**  
Vice-President

Victor **Yenyi Olungu**  
Member

Geneva, 23 July 1999

Maritza **Struyvenberg**  
Executive Secretary

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