United Nations **AT**

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1089

Case No. 1197: ROMAN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Julio Barboza, Vice-President; Mr. Spyridon Flogaitis;

Whereas at the request of Jacques Roman, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 May 2001 the time limit for the filing of an application with the Tribunal;

Whereas, on 4 June 2001, the Applicant filed an Application containing pleas which read, in part, as follows:

"The Applicant requests the Tribunal to declare and adjudge that:

(1) The Respondent was wrong to refuse him, on the basis of the regulations in force at the time, payment of full removal costs for personal effects upon retirement on 30 April 1998;

(2) The Respondent was wrong summarily to recover, with retroactive effect to 1 July 1997, the sum of [US$ 1,251.21], corresponding to payments made for the non-removal element of the mobility and hardship allowance for the period July 1997 to January 1998;

…

For these reasons and all others to deduce that:

(4) The Applicant must be once more placed in a position to effect a full removal …;

(5) The sum of [US$ 1,251.21], corresponding to the amount improperly recovered, must be returned to him;

(6) He is entitled to receive compensation for the prejudice suffered through administrative delays and the resulting disruption of his plans to return to France."

Whereas, on 23 August 2001, the Applicant submitted additional documents and amended his pleas as follows:

"The Applicant

(a) Requests the Tribunal to find that the claim for reimbursement of full removal costs on retirement (*claim 1*) which was the subject of the initial Application … no longer stands, since the Administration has acknowledged the Applicant's right in the matter;

…"

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 31 October 2001 and periodically thereafter until 30 April 2002;

Whereas the Respondent filed his Answer on 30 April 2002;

Whereas the Applicant filed Written Observations on 30 May 2002, and the Respondent responded thereto on 28 June 2002;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 13 October 1966, as a Translator-trainee on a probationary appointment at the P-2 level in the Office of Conference Services. At the material time, he held a permanent contract and was serving as a P-4 level Translator with the Economic and Social Commission for Asia and the Pacific (ESCAP), Bangkok.

On 1 February 1987, the Applicant was assigned to ESCAP from Headquarters, and was authorized to receive an assignment allowance in lieu of removal of his household goods.

Although his initial assignment was for a period of two years, the Applicant remained at ESCAP until his retirement from service on 30 April 1998.

On 1 July 1990, administrative instruction ST/AI/363, "Mobility and Hardship Allowance", was issued and, in accordance with the provisions of Paragraph 19, Section E thereof, the Applicant was awarded a non-removal allowance which was intended to "[compensate] for the absence of an entitlement to removal of household goods to the staff member's duty station". Paragraph 20 of ST/AI/363 provided that "[t]he element for non-removal is applicable for as long as the staff member is not entitled to a removal of household goods to the duty station, irrespective of the length of his/her total consecutive service with the United Nations at the duty station".

On 18 December 1996, the General Assembly adopted resolution 51/216, entitled "United Nations Common System: Report of the International Civil Service Commission [ICSC)]", which approved, inter alia, an ICSC recommendation that, as of 1 January 1997, non-removal allowance should be limited to a period of five years at one duty station, which period could be extended to seven years on an exceptional basis. On 26 June 1997, information circular ST/IC/1997/38, "Mobility and Hardship Allowance", which provided for the implementation of resolution 51/216, was issued. Paragraph 2 read as follows:

> "(a) As a transitional measure, and taking into account the fact that the mobility and hardship allowance was introduced as of 1 July 1990, the non-removal element of the allowance will continue to be paid until 30 June 1997 in all cases;
>
> (b) Afterwards, and in accordance with paragraph 40 of administrative instruction ST/AI/363, which provides that the mobility and hardship allowance is normally paid in advance on an annual basis, the determination as to whether the non-removal element of the mobility and hardship allowance has been paid for five years or more at one duty station will be made on the anniversary date of the payment of the allowance for each staff member;
>
> (c) If, as of the anniversary date, a staff member has been in receipt of the non-removal element of the allowance for five years or more at one duty station, payment of the non-removal element will be discontinued …"

On 25 February 1998, the Applicant was informed that, as he had been in receipt of non-removal allowance in accordance with staff rule 103.22 and ST/AI/363, he would not be entitled to full removal of his household effects upon his forthcoming retirement as the allowance was

paid only to staff members who were not entitled to such removal. He disputed this interpretation, stating that he was entitled to full removal from New York (where his household goods had been in storage during his assignment to Bangkok) to France. Following a request from ESCAP for clarification of the matter, on 13 March the Office of Human Resources Management (OHRM) verified that the Applicant was not entitled to full removal. On 27 April, OHRM wrote to the Applicant, reiterating this decision but "acknowledg[ing] that staff rule 107.27, in its current form, is complex and cumbersome due to multiple cross references to other rules".

On 30 April 1998, the Applicant retired from service. On 20 May, he wrote to the Chief, Division of Administration, ESCAP, challenging the deduction of the sum of US$ 1,798.52 from his final payments as recovery of non-removal allowance paid to him from July 1997 until his retirement in April 1998. In her response of 16 June, the Chief, Division of Administration, advised the Applicant that OHRM had decided staff members who had received non-removal allowance for five years or more as of 30 June 1997 were no longer entitled to same, unless an exception was granted. She also confirmed that he was not entitled to removal of his household goods.

On 23 June 1998, the Applicant requested administrative review of the decisions not to pay full removal of his household effects and to recover non-removal allowance for the period July 1997 through January (and not April) 1998 (an amount of US$ 1,251.21).

On 25 August 1998, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 2 January 2001. Its considerations and recommendation read, in part, as follows:

> "***Considerations***
>
> …
>
> 14. The Panel noted that under the terms of [staff rule]107.27 in effect prior to the introduction of the [Mobility and Hardship Allowance] in 1990 [the Applicant] would have been clearly entitled to removal, and that under the terms of [staff rule]107.27, now in effect as a result of [a] 'simplification exercise', he would also be entitled to removal. The Panel found it difficult to believe that a measure introduced for the purpose of providing an 'incentive to mobility' ([staff rule]103.22) could have been intended to deprive staff members of a long-standing and currently recognized right.

…

16. The Panel then considered the question of [the Applicant's] right to payment of the non-removal [allowance]. Even though ST/IC/1997/38 was not issued until June 1997, the General Assembly had stipulated in its resolution 51/216 that the time limit should be introduced effective 1 January 1997, date at which [the Applicant] had received the allowance for six years and six months. The Panel agrees with [the Applicant] that implementation of the new limitation could be effected prospectively, not retroactively, after the issuance of the circular. In the view of the Panel, however, this was reflected by the decision to pay the non-removal element through 30 June 1997 in all cases. [The Applicant] had, therefore, no right to the allowance beyond that date.

Recommendation

17. The Panel recommends to the Secretary-General that [the Applicant] be authorized payment of full removal of household goods.

18. The Panel makes no other recommendation with respect to this appeal."

In response to a request from the Applicant, on 26 March 2001, the Secretary of the JAB sent him a copy of the JAB report.

On 4 June 2001, the Applicant, having not received any decision from the Secretary-General regarding his appeal to the JAB, filed the above-referenced Application with the Tribunal.

On 19 June 2001, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant, advised him that the Secretary-General had accepted the conclusions of the JAB, and informed him as follows:

"…

… in view of the following considerations, namely that (a) you had a full removal entitlement from New York to France, prior to your assignment to Bangkok; (b) you were expected to return to New York since you were assigned, rather than transferred, to Bangkok; and (c) this is reinforced by the fact that the Organization paid the storage costs of your household goods in New York, the Secretary-General has decided to grant you the full removal of your household goods from New York to your place of home leave in accordance with staff rule 107.1(c).

…"

On 23 August 2001, the Applicant amended his pleas before the Tribunal to reflect this decision.

Whereas the Applicant's principal contentions are:

1. The Respondent erred in recovering the non-removal allowance paid to the Applicant between July 1997 and January 1998. The Applicant had an acquired right to the allowance until his "anniversary date" of 1 February 1998.

2. The Applicant is entitled to compensation for the administrative delays he has endured.

Whereas the Respondent's principal contentions are:

1. The Applicant has no right to reimbursement of the sum of US$ 1,251.21.

2. The Applicant is not entitled to be awarded compensation as a result of "administrative delays".

The Tribunal, having deliberated from 4 to 25 November 2002, now pronounces the following Judgement:

I. The Applicant entered the service of the Organization in October 1966, as a Translator-trainee on a probationary appointment at the P-2 level in the Office of Conference Services. At the time of the events that gave rise to this Application, he held a permanent contract and was serving as a P-4 level Translator with ESCAP in Bangkok.

II. When the Applicant was assigned to Bangkok from Headquarters in February 1987, he did not have a full household removal but, rather, the Organization paid him an allowance in lieu thereof, known, originally, as "assignment allowance", and also paid for the storage of his household goods in New York.

On 1 July 1990, ST/AI/363, entitled "Mobility and Hardship Allowance", was issued. In accordance therewith, the Applicant was awarded a "non-removal allowance" which effectively replaced the previous "assignment allowance" he had received. On 26 June 1997, ST/IC/1997/38, also entitled "Mobility and Hardship Allowance", limited the payment of non-

removal allowance to a maximum of five years, but allowed for the allowance to be paid for up to seven years on an exceptional basis. As a transitional measure, payment was authorized until 30 June 1997 in all cases. Thereafter, the determination on continuation of the allowance was to be made on the "anniversary date" of the payment of the allowance.

On 25 February 1998, the Applicant was informed that he would not be entitled to full removal of his household effects upon his forthcoming retirement on 30 April, as he had received non-removal allowance and the allowance was paid only to staff members who were not entitled to such removal. The Applicant maintained that he was entitled to full removal from New York to France. Following his retirement, the sum of US$ 1,798.52 was deducted from his final payments as recovery of non-removal allowance paid to him from July 1997 until April 1998. The Applicant was subsequently advised that staff members who had received non-removal allowance for five years or more as of 30 June 1997, were no longer entitled to do so, unless an exception was granted in accordance with ST/IC/1997/38.

On 23 June 1998, the Applicant requested administrative review of the decision not to pay full removal of his household effects, and the recovery of $1,251.21 from his final payments, such amount being the non-removal allowance he had received from July 1997 until January 1998. On 25 August 1998, the Applicant lodged an appeal with the JAB. In its report of 2 January 2001, the JAB found that the Applicant had been entitled to full removal before he went to Bangkok and, indeed, due to a change in the policy was again so entitled and that the allowance, which had been introduced as an "incentive to mobility", could not have been intended to deprive staff members of a long-standing - and currently recognized - right. It recommended that full removal of his household goods be authorized, but did not find in his favour with regards to the recovery of his non-removal allowance. The Secretary-General accepted these recommendations and, quite rightly in the view of the Tribunal, granted the Applicant the full removal of his household goods.

III. In light of the Secretary-General's decision, this case now concerns only the recovered amount of US$ 1,251.21 plus damages claimed by the Applicant for delays in procedure.

The Tribunal wishes to note that, normally, cases of such low financial interest should not be worth litigating, following the principle *de minimis non curat praetor*. However, as this

principle is supported neither by the Statute of the Tribunal nor by the intentions of the Applicant, the Tribunal is bound to decide upon this case.

IV. It is the opinion of the Tribunal that the rules under which the non-removal allowance was paid were explicit in terms of the duration for which this allowance should be paid: five years, which period, in exceptional cases, could be extended for two additional years. The Applicant maintains that, as ST/IC/1997/38 authorized payment of the allowance until the end of June 1997, he had an acquired right to continue receiving the allowance until his "anniversary date" of February 1998. The Tribunal is not convinced by this argument. The Applicant had no right to receive the allowance after 30 June 1997. The "anniversary date" was established only as an administrative convenience; a date upon which a determination regarding payment of the allowance could be made. In any event, it would have been impossible for the Applicant to have had such acquired rights as his "anniversary date" fell after the seven-year period, which is the matrix of the applicable law. The Applicant could not have acquired rights in contradiction to the law.

Further, the Applicant had already benefited, as he had no legal right to have the five-year period extended to seven years. Such extensions were clearly intended to be the exception rather than the rule. In the Applicant's case, he benefited from the blanket extension contained in ST/IC/1997/38, which took him to the seven-year benchmark without any examination of his individual circumstances.

V. The Tribunal now turns its attention to the Applicant's request for damages for the administrative delays in his case.

The Tribunal finds that the delays in this case were not long and unconscionable (see Judgement No. 353, *El-Bolkany* (1985)), as even the JAB recognized that the applicable rules were ambiguously drafted. It is apparent from the dossier that there was a period of transition and flux in the payment of these allowances. Ultimately, the Applicant received the removal of his household and the Tribunal is satisfied that the delay in reaching that point was neither prejudicial nor unwarranted.

VI. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)

Mayer GABAY
President

Julio BARBOZA
Vice-President

Spyridon FLOGAITIS
Member

New York, 25 November 2002

Maritza STRUYVENBERG
Executive Secretary