



ADMINISTRATIVE TRIBUNAL

Judgement No. 1094

Case No. 1090: AL-HAFIZ

Against: The Commissioner-General
of the United Nations
Relief and Works Agency
for Palestinian Refugees in
the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, First Vice-President, presiding; Mr. Kevin Haugh,
Second Vice-President; Ms. Marsha Echols;

Whereas, on 4 February 2001, Saber Saleh Abd Al-Hafiz, a former staff member of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (hereinafter referred to as UNRWA), filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 22 April 2001, the Applicant, after making the necessary corrections, again filed an Application in which he requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 979, rendered by the Tribunal on 17 November 2000;

Whereas the Application contained pleas which read, in relevant part, as follows:

"Liabilities

... I am claiming ... all of my financial entitlements from the time of my dismissal ... until my reinstatement in my post, including all the benefits, leave and promotions to which I would have been entitled during that time, as well as the costs I have incurred in the case in the amount of US\$ 50,000.

Judgement

... I seek ... reinstatement in my former post ...

Compensation

... [Because of] the damage to my reputation ... caused by ... my separation and ... the impact on my mental health and on the well-being of my family ... I am ... seeking the sum of US\$1 million in compensation.

Statements

[The Tribunal] is requested to review Case No. 1090: Al-Hafiz in its entirety, together with all the records and documents relating to it ..."

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 January 2002;

Whereas the Respondent filed his Answer on 24 January 2002;

Whereas, the Applicant filed Written Observations on 23 March 2002 and, on 31 October 2002, the Respondent submitted comments thereon;

Whereas the facts of the case subsequent to the statement of facts contained in Judgement No. 979 are as follows:

On 23 October 2000, the Applicant sent additional material to the Tribunal, comprising an "Attestation" by the Committee that met with the Director of UNRWA Operations, Jordan, on 4 December 1997. This material was received on 1 November 2000, subsequent to the first five working days of the session. In accordance with the standard practice of the Tribunal, it was returned to the Applicant without having been considered by the Tribunal, on 10 January 2001. The Applicant subsequently submitted evidence that the document in question was received by the United Nations on 27 October 2000, the fifth day of the session.

Whereas the Applicant's principal contentions are:

1. Had the Tribunal had the attestation before it, as it should have, it would have been in a better position to determine the Applicant's case.
2. UNRWA, Jordan, intentionally and deliberately, did not present a true record of the meeting of 4 December 1997, because it would have shown conclusively that the dismissal of the Applicant was arbitrary and directly and inextricably linked with the issue of the sexual harassment practised in the Agency that is covered up by its officials.
3. The detailed supplemental medical report submitted in support of his request for revision, better explains his mental state at the time when his original Application was due.

Whereas the Respondent's principal contentions are:

1. The standards contained in article 12 of the Statute are strict and lay a substantial burden on the Applicant. The Applicant has failed to discharge that burden.
2. The documents submitted by the Applicant do not prove conclusively that his final submission was timely. The Applicant's letter from Federal Express indicates that the 23 October 2000 letter was delivered to a "Mr. T. Worith" at the United Nations on 27 October 2000: however, depending on Mr. Worith's position and physical location, it might not be surprising that the 23 October letter only made it to the secretariat of the Tribunal on 1 November 2000.
3. The notes of the 4 December meeting do not show that the Agency's record-keeping is not to be trusted. Assuming *arguendo* that the document proves what the Applicant alleges, it is nevertheless irrelevant to the Applicant's failure to comply with the time limits; it was not his credibility vis-à-vis the Agency that was relevant, but his own lack of credibility regarding his explanations of the 13 September 1997 incident and his failure to produce sufficient evidence of exceptional circumstances that would justify his late submission.
4. The Applicant's failure to produce a detailed medical report as part of his original Application appears to have been an error of judgement on his part: it does not amount to the discovery of a new fact which was unknown to the party claiming revision at the time of judgement.
5. The supplemental medical report does not support the Applicant's contention that his mental condition prevented him from abiding by the time limits. According to the report, he

was able to practice medicine at times when his condition improved: it is inconceivable that he would be fit to practice medicine but be incapable of making a timely application.

The Tribunal, having deliberated from 6 to 29 November 2002, now pronounces the following Judgement:

I. The Tribunal must first examine the admissibility of the additional material sent to the Tribunal by the Applicant, on 23 October 2000. The Applicant claims that this material arrived at the United Nations, albeit not at the secretariat of the Tribunal proper, on the very last day allowed for that purpose, namely on 27 October 2000, the fifth day following the commencement of the session. He submits a statement to that effect from Federal Express which corroborates his claim: the letter from Federal Express to him states that "Shipment has been delivered on October, 27th, 2000 at 10.28 am signed by T. Worith". Nevertheless, this material was returned to the Applicant.

The Tribunal is satisfied that, in the instant case, the delay was due to the internal processes of the United Nations, and therefore that the material should be accepted and incorporated into the dossier. In effect, were the Tribunal to deny its admission, and therefore not take into account the delays in the reception of mail that can be caused by the internal processes of delivering mail in the United Nations, the time limit of five days counted from the commencement of the session would lose all certitude and parties concerned would not know how far in advance to mail parcels in order not to exceed the five-day period. Thus, the Tribunal will accept such material, provided that the applicant submits proof that it was delivered to the United Nations by the fifth working day of the session.

II. The Tribunal must turn now to the request for revision of Judgement No. 979, dated 17 November 2000. Article 12 of the Statute clearly stipulates that an applicant may apply for revision of a judgement on the basis of the discovery of a new fact "of such nature as to be a decisive factor" for the Tribunal to revise its judgement. That "new" fact must have been "unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence".

III. The documents alleged by the Applicant to constitute such a new fact comprise (a) a "supplement" to the medical report of 14 March 1999, which was issued on 17 April 2001, referring to his mental state during the period, and (b) the "Attestation" by the Committee that met with the Director of UNRWA Operations, Jordan, on 4 December 1997, relating to the Applicant's dismissal and recommending his reinstatement. Neither submission discloses a materially "new" fact unknown to the Tribunal or the Applicant at the time of the Judgement.

IV. In fact, the issue decided in Judgement No. 979 was whether the original Application should be time-barred on the grounds that it was not made until more than a year after the Commissioner-General had notified the Applicant that he agreed with the recommendation of the JAB and dismissed his appeal. In the circumstances of this case, for the request for revision to be admissible, the Applicant should have established the existence of a new fact directed at proving that there were exceptional circumstances justifying his non-compliance with the time limit for filing his original Application.

In Judgement No. 979, the Tribunal rejected the Applicant's proffered excuse or explanation, namely that his mental state arising from depression was such that it prevented him from processing the Application in time, for two reasons: first, the Tribunal was not persuaded by the Applicant's own assertions because there was evidence to the contrary and because his own credibility had been severely damaged by reason of the irreconcilably different explanations which had been given by him as to how the prescription and report of 13 September 1997 had come into existence; and, second, because the medical report did not provide evidence that his depression affected him sufficiently to support his excuse. Having rejected the Applicant's excuse or explanation, the Tribunal was satisfied then that there were no exceptional circumstances which would have justified an extension or a waiver and is satisfied now that its former Judgement should not be revised.

V. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Julio BARBOZA
First Vice-President

Kevin HAUGH
Second Vice-President

Marsha ECHOLS
Member

New York, 29 November 2002

Maritza STRUYVENBERG
Executive Secretary