

**Judgement No. 248***(Original: English)***Case No. 231:  
Segerström****Against: The United Nations Relief  
and Works Agency for  
Palestine Refugees in  
the Near East**

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*Non-renewal of the fixed-term appointment of a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.*

*Applicant's contention that the Respondent was not able to assess his performance because of his short assignments.—Nature of the Applicant's functions.—Performance reports prepared by the Respondent.—Contention rejected.—Applicant's contention that the Respondent judged his performance by standards higher than those applicable to the level to which he belonged.—Contention rejected.—Applicant's contention that the Respondent violated the terms of the contract by denying him an automatic extension for a second year.—The clause in the letter of appointment providing that such an extension shall be dependent on the satisfactory nature of the Applicant's services.—Contention rejected.—Extensions of the Applicant's probationary period.—Applicant's contention that the Respondent violated the terms of his contract by such extensions.—Contention rejected.—The Applicant contests the Respondent's evaluation of his performance.—In the absence of prejudice, the Tribunal cannot interfere with that evaluation.—Applicant's allegation that he was never advised that the result of his further probationary service was unsatisfactory.—Allegation rejected.—Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. T. Mutuale; Mr. Endre Ustor;  
Sir Roger Stevens, alternate member;

Whereas, on 7 December 1978, Karl-Henrik Segerström, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), filed an application the pleas of which read:

“(A) The Tribunal is requested, before proceeding to consider the merits of my case, to order an independent examination of the work I have done in different functions and hear the comments of my supervisors.

“(B) The Tribunal is requested to order the rescission of the decision not to extend my one-year fixed-term contract by a second year.

“(C) The Tribunal is requested to order my reinstatement as an Administrative Officer and in that actual function in accordance with my contract.

“(D) If the above is not possible the Tribunal is requested to order the payment of one year's salary, post adjustment and allowances including the assignment allowance in accordance with the Beirut and Vienna rates (the latter from the date the Department of Personnel moved to Vienna) which would have been paid had I not been separated from the Agency and the payment of a *further year's* salary and allowances (as above) in recognition of the damage to my future career, either in the UN or outside of it, which the premature separation is likely to have involved and costs in relation to the composition of my application including the cost of travel

to Vienna for consultation with the former Chairman of the UNRWA International Staff Association, estimated to be approximately \$1,000.”;

Whereas, on 23 March 1979, the Respondent filed his answer in which he stated that he was prepared to make the Applicant's performance reports available at the Tribunal's request;

Whereas, on 4 April 1979, the Tribunal requested the Respondent to make the Applicant's performance reports available to it;

Whereas, on 9 April 1979, the Respondent submitted the Applicant's performance reports to the Tribunal under a memorandum reading in part:

“Applicant's confidential periodic report file (which contains Applicant's performance reports) is accordingly transmitted herewith for the Tribunal's own information only, in view of the applicable UNRWA rules regarding the confidentiality of these reports. If the Tribunal considers, despite Respondent's contention to the contrary, that the text of these reports themselves is essential to the Tribunal's determination, the Respondent will give consideration, in consultation with the appropriate UNRWA officials, to waiving their confidentiality.”

Whereas, on 12 April 1979, the Applicant requested that his performance reports be made available to him in accordance with article 10, paragraph 2, of the Rules;

Whereas, on 1 May 1979, the Respondent informed the Tribunal that:

“ . . . in view of the apparent misunderstanding of paragraph 57 of Respondent's Answer, and in an effort to expedite these proceedings, Respondent will exceptionally submit the confidential material to the Tribunal as requested without any special limitation as to the Applicant's access.”;

Whereas the Applicant, having had access to his performance reports, filed written observations on 16 July 1979;

Whereas the Respondent submitted one additional statement on 13 August 1979;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 2 July 1977 under a fixed-term appointment of one year with an initial assignment as an Administrative Officer at the P-2 level in the Department of Personnel at UNRWA headquarters at Beirut, temporarily relocated to Vienna; the letter of appointment specified that after the completion of six months of satisfactory service the appointment should automatically be extended to two years with an expiry date on 1 July 1979, if not converted to a temporary indefinite appointment under the provisions of paragraph (c) of Staff Rule 104.3. From 5 July to 16 September 1977 the Applicant was temporarily assigned to the Budget Division and from 17 September to 1 October 1977 he was temporarily assigned to the Department of Personnel. On 2 October 1977 the Applicant, who until then had been on “extended temporary duty” at UNRWA temporary headquarters (Vienna Office), was sent to UNRWA temporary headquarters (Amman Office) for “extended temporary duty” until 27 November 1977; from 8 to 25 October 1977 he served as Acting Administrative and Protective Services Officer. On 28 November 1977 he joined UNRWA headquarters at Beirut, his official duty station. From 5 December 1977 to 7 March 1978 the Applicant was temporarily assigned to the Gaza Field Office; from 28 December 1977 to 7 February 1978 he served as Officer-in-Charge of the Department of Relief Services. On 18 February 1978 the Director of Personnel informed the Applicant that the Periodic Reports Review

Committee had reviewed the performance reports from supervisors during his probationary period, that these unfortunately indicated that some aspects of his performance had been below the standard reasonably required by UNRWA, and that accordingly it had been decided to extend his probationary period for a further period of four months. On 10 March 1978 the Applicant was temporarily assigned to the Accounts Division at UNRWA headquarters at Beirut, where he served until the expiry of his appointment. On 14 March 1978 he asked the Director of Personnel for clarification of the reasons why his probationary period had been extended by four months. On 29 March 1978 the Director of Personnel gave him such clarification in a letter in which, after explaining the functioning of UNRWA's periodic performance appraisal system, he stated:

"From the reports of the four supervisors who submitted memorandum reports on your performance the Periodic Reports Review Committee noted the general view that you tend to have difficulty in systematically analysing problems and producing solutions, that your approach to your work is slow and somewhat hesitant and that your overall performance is erratic. The Committee noted that these defects may be due in part to your inexperience with the Agency and the brevity of your individual assignments. The Committee felt however that another contributing factor may have been your apparent preoccupation with your personal life which detracted from your ability to concentrate on your work.

"The decision of the Periodic Reports Review Committee to extend your probationary period was not based on any specific 'failings' but rather was based on a general impression gained from the comments of the four supervisors under whom you have worked that you have not yet demonstrated to the satisfaction of the members of the Committee that your work is at and will continue to be at an acceptable level. This impression results not so much from any negative comments made by supervisors as by their failure to make positive comments. In large part the supervisors were non-committal which in the view of the Committee required a further period of evaluation before a decision is reached concerning the extension of your fixed-term appointment."

On 28 April 1978 the Director of Personnel notified the Applicant that the Periodic Reports Review Committee had decided to extend his probationary period again from 1 May to 30 June 1978 as it had felt that additional time was required for him to demonstrate whether his performance was at an acceptable level. On 29 April 1978 the Applicant asked the Director of Personnel to give evidence of his weak performance during his four-month extended probationary period. On 5 May 1978 the Director of Personnel replied:

"... I am writing to confirm for the record that when we recently discussed the matter, we agreed that I would not give you a substantive *written* reply."

On 3 June 1978 the Applicant requested the Director of Personnel to confirm that his contract had been extended. On 9 June 1978 the Officer-in-Charge of the Department of Personnel replied in part:

"With regret I am obliged to inform you that the Agency has decided not to renew your current fixed-term appointment for one year which expires on 1 July 1978. There is no obligation on the Agency's part to give any notice in the case of expiry of a fixed-term contract but in view of the short time between now and the expiry of your contract I am exceptionally authorizing an extension to 15 July 1978

to enable you to wind up your personal affairs in Beirut before your departure.”

On 12 June 1978 the Applicant asked the Commissioner-General of UNRWA to review the decision not to extend his contract by one year. On 22 June 1978 the Commissioner-General maintained the decision and on 24 June 1978 the Applicant lodged an appeal with the Joint Appeals Board of UNRWA. On 30 June 1978 the Applicant refused the two-week extension of his contract. On 26 July 1978 the Joint Appeals Board submitted its report, which read as follows:

“A Joint Appeals Board was constituted under International Staff Rule III.2 (a) to consider the appeal against an administrative decision, dated 24 June, of Mr. Karl-Henrik Segerström, filed under Rule III.3 (b).

“The membership of the Board was:

“J. F. Defrates—Chairman,

“D. R. Spencer—Alternate Appointee of the Commissioner-General,

“P. M. Holdaway—Elected by ballot of the staff;

“Secretary:

“P. D. Pearson.

“The appeal having been received within the time-limit laid down in Rule III.3 (b), the Appellant and the Director of Personnel were notified of the composition of the Board by the Secretary on 3 July. The Appellant in a 3 July letter expressed reservations about one member of the Board but withdrew them after consultation with the Chairman and Secretary. The Director of Personnel raised no objection to the membership.

“The Director of Personnel was provided with a copy of the 24 June appeal on 27 June and invited to make a statement or rebuttal pertaining to the appeal (Rule III.3 (h)).

“In view of Mr. Segerström’s plan to leave Beirut on 5 July the Board invited him to make an oral statement and met on 5 July for that purpose. Mr. Segerström made a statement in support of his appeal and answered questions, informing the Board also that he had arranged for Mr. Vernon Taylor to make any additional statements on his behalf that might be authorized by the Board.

“The Director of Personnel, handicapped by the absence of most of his staff since 1 July because of the ‘disturbances’ in Beirut, made an oral rebuttal before the Board on 6 July.

“The Members of the Board, meeting again on 24 July and having considered the evidence presented by both parties, were unanimous in their opinion that the administrative decision not to extend the Appellant’s contract of employment with the Agency was fair, in that there was no evidence that the decision was motivated by prejudice or by some other extraneous factor (Rule III.1 (b)).

“Accordingly the Members of the Board all agreed that the Appeal failed and that the Commissioner-General should be so advised.”

On 21 September 1978 the Commissioner-General advised the Applicant that he had accepted the Board’s recommendation and on 7 December 1978 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. It is implicit in the clause in the Applicant's contract regarding automatic extension to two years after the completion of six months of satisfactory service that such satisfactory service would be in the post for which he was recruited, i.e. Administrative Officer at the P-2 level. In fact, most of his service was spent in short-term assignments and usually doing jobs at higher grades. UNRWA should have continued to employ the Applicant until it could properly assess his performance in a purely administrative function at the P-2 level.

2. Although UNRWA in general terms advised the Applicant officially in February 1978 that his performance record to 1 January 1978 was inadequate (in higher graded posts) and could, at the same time, have advised him that his contract would not be extended, it did not do so and extended instead his probation. UNRWA is therefore stopped from using his six months' performance for not extending his contract. The inadequate performance referred to was all in the first six months of service and the Applicant has never been advised that the result of his second six probationary months of service was unsatisfactory and in accordance with the automatic extension clause of his contract it should therefore have been extended.

3. Notwithstanding that the Applicant's period of service was practically all in higher graded posts which were not in accordance with his administrative function and which often required specialist knowledge which he did not claim to have, he never received any adverse comment from any of his supervisors nor any advice on where his approach to his various jobs could be improved. His requests to be advised were not answered.

4. The result of the Applicant's separation from UNRWA is the loss of a year's salary and a very severe prejudice against him in finding other United Nations employment if not indeed other employment.

Whereas the Respondent's principal contentions are:

1. The nature of the Applicant's assignments was consistent with the conditions of his appointment and the information supplied by him concerning his qualifications on which the offer of appointment was based.

2. The decision not to extend the Applicant's appointment was properly grounded in evidence. His performance was not such as to entitle him to an extension of his contract. Having regard to the terms of the automatic extension clause of his letter of appointment and of UNRWA International Staff Rule 103.5 (b), there was no legal basis for a decision to extend his appointment.

3. UNRWA's procedures for evaluating staff members' performance were fully observed. There was no violation of any of the Applicant's procedural rights under the rules and neither has any improper motive been established as influencing the application of the rules in the Applicant's case or the decision based thereon:

(a) The Applicant was adequately informed of the shortcomings in his performance and was not entitled to more information than he received;

(b) The Applicant's complaint of discriminatory treatment is groundless;

(c) For a decision to extend the Applicant's contract, an affirmative finding that his service was satisfactory was required. The burden was on the Applicant to demonstrate satisfactory performance. It was not incumbent upon UNRWA's Director of Personnel to supply the Applicant with specific illustrations or examples of the unsatisfactory nature of his performance.

4. UNRWA's procedures for evaluating staff members' performance are consistent with the general principle of fair procedures and the Applicant's rights with respect to the evaluation of his performance were observed.

The Tribunal, having deliberated from 24 September to 5 October 1979, now pronounces the following judgement:

I. In the letter of appointment dated 10 and 15 May 1977, the function of the Applicant was designated as Administrative Officer at the P-2, step I level. The Applicant complains—admitting in his written observations that his main contention does not rest on this basis—that most of his service was spent in short time assignments and that he never had time to settle down to any job. Moreover he replaced temporarily persons who usually worked at higher levels. Hence he contends that the Respondent was not in a position to assess his service in a purely administrative function at the P-2 level owing to the fact that he was usually doing jobs at a higher level.

The correspondence with the Respondent which preceded the appointment of the Applicant shows that he must have been fully aware of the fact that his job was that of a "relieving officer". It was part of the duties of such a job to travel frequently and to provide assistance when and where required. The Applicant was described on his initial personnel action form as belonging to the Corps of Supplemental Officers and this fact must have been known to him. Moreover he never complained of his frequent transfers to different posts during his service.

II. The record shows that in the initial six months' period of the Applicant's service, four performance reports were submitted by his supervisors, dated 10 October 1977, 14 December 1977, 2 February 1978 and 21/22 March 1978 and that these reports were considered by the Respondent's Periodic Reports Review Committee. Thereafter a report dated 24 April 1978 and lastly one dated 5 June 1978 appraised the Applicant's performance.

All of these six reports made in the course of one year contain substantial appraisals of the Applicant's performance and show the Respondent's due diligence in assessing the Applicant's service. The contention that the Respondent was not able to assess the Applicant's performance because of his short assignments cannot therefore be upheld by the Tribunal.

III. During his service the Applicant was assigned to different offices for providing administrative help. From 8 to 25 October 1977 he was Acting Administrative and Protective Services Officer in the Amman Office of UNRWA and from 28 December 1977 to 7 February 1978 he was Officer-in-Charge of the Department of Relief Services in the Gaza Field Office.

Apart from these relatively short periods the Applicant did not have any "acting" assignments. The Respondent alleges—and this has not been refuted by the Applicant—that in all of his assignments the Applicant's function was only to assist the office concerned by providing additional help during the absence of a senior official. The Tribunal finds that this situation is consistent with the nature of the Applicant's employment as "relieving officer" and cannot be considered as violating the Applicant's rights. There is moreover no indication in the records or otherwise that the Respondent judged the Applicant's performance by any standard higher than that of the P-2 level to which he belonged.

IV. The Applicant contends that the Respondent violated the terms of the contract

by denying him an automatic extension of his appointment for a second year. The relevant clause in the Applicant's letter of appointment provides that:

“After the completion of six months of satisfactory service this appointment shall automatically be extended to two years with an expiry date on the 1st day of July 1979, if not converted to a Temporary Indefinite appointment under the provisions of paragraph (c) of Staff Rule 104.3.”

The Applicant's claim for the extension of his service therefore turns on the question of whether he has shown six months of satisfactory service.

V. The Applicant was informed by a letter of the Director of Personnel dated 18 February 1978 that according to the reports of his supervisors some aspects of his performance were below the standard reasonably required by the Respondent, that he did not appear to apply himself to the tasks assigned to him with an aim to understanding and completing those tasks and that he appeared to adopt a rather casual attitude in the performance of his assigned duties. He was also informed that the same reports indicated that he might not have motivated himself to the extent to which he was capable.

Accordingly the Director of Personnel informed the Applicant that the Respondent had decided to extend his probationary period for a further four months. This decision proves that the performance of the Applicant during his first six months of service was not considered to be satisfactory by the Respondent.

VI. The Applicant contends that this action of the Respondent violated the terms of his contract under which he was entitled to know after six months—in order to plan his life accordingly—whether his service would be extended for a second year or whether he should commence preparations to quit in another six months. The Applicant characterizes this attitude of the Respondent as a breach of contract.

VII. This view of the Applicant does not seem to be substantiated by the terms of his contract. There is no provision in the contract according to which it was mandatory to give notice either of termination or of renewal of the appointment after the first six months.

In the course of the correspondence between the Applicant and the Director of Personnel, the Applicant himself stated in a letter dated 29 April 1978:

“My contract ends at 1 July 1978 unless it has not before this time been extended. From the legal point of view this probably means that the Agency has to notify me per 1 June about its decision, i.e. either an extension of my contract notified for this date or termination with 30 days of notice bringing all facts behind such a decision to light.”

Accordingly the Tribunal finds that the rights of the Applicant were not violated by the mere fact that his first probationary period of six months was extended by four months. The same applies to the second extension of his probation for a further period of two months.

VIII. The Applicant contests the Respondent's evaluation of his performance. With regard to the first six months of his service, he complains that his performance was rated low because he had worked in higher posts than could be expected from a person at the P-2 level and, with regard to the second and third periods of probation, he alleges that he was never advised that his service was unsatisfactory.

The Tribunal observes that under the heading “Special conditions”, the contract provided for an extension of the Applicant's appointment subject to the completion of

“six months of satisfactory service”. It was obviously for the Respondent to decide whether the service of the Applicant had been satisfactory or not. The Applicant does not allege and much less prove that the relevant decisions of the Respondent and the periodic reports underlying these decisions were tainted with prejudice or improper motive. The fact that he received almost uniformly mediocre reports from a wide range of supervisors disposes of charges of prejudice. The Tribunal therefore holds that, in the absence of prejudice, it cannot interfere with the evaluation of the Applicant’s performance by the Respondent.

IX. The allegation of the Applicant that he was never advised that the result of his further probationary service was unsatisfactory does not hold in the light of the correspondence between the parties and particularly in view of the letters of the Respondent dated 18 February, 29 March, 28 April and 5 May 1978.

Furthermore, the Respondent states in his answer that the Applicant’s supervisors were specifically asked whether they had discussed with the Applicant the shortcomings of his performance. According to the Respondent, the supervisors affirmed that “they routinely discuss work assignments with their subordinates, including any shortcomings in the work produced, and that there has been no departure from this practice in Applicant’s case . . . Chief, Accounts Division and Applicant’s supervisor in Personnel Department have confirmed that they did (contrary to the statement by the Applicant) explain to him shortcomings in his work”. The Respondent refers to similar statements made by the Chief of the Budget Division and by the Director and the Deputy Director of UNRWA Operations at Gaza.

Considering that the Applicant has not denied these statements made by the Respondent and considering that the letters quoted above referred to his unsatisfactory service, the Tribunal finds that the Applicant’s rights have not been violated in this respect either.

X. For the foregoing reasons, the application is rejected.

*(Signatures)*

R. VENKATARAMAN  
*President*

Roger STEVENS  
*Alternate Member*

T. MUTUALE  
*Member*

Jean HARDY  
*Executive Secretary*

Endre USTOR  
*Member*

*New York, 5 October 1979*

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