
ADMINISTRATIVE TRIBUNAL

Judgement No. 453

Case No. 480: TAYLOR

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Roger Pinto, Vice-President, presiding;
Mr. Ahmed Osman; Mr. Francisco A. Forteza;

Whereas at the request of James Walton Taylor, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 17 June 1988 the time-limit for the filing of an application to the Tribunal;

Whereas, on 16 June 1988, the Applicant filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 31 October 1988;

Whereas in the pleas of the application the Applicant requested the Tribunal:

"(a) To examine his production sheets and medical excuses for absences, and to hear testimony from Robert Badillo, Neville Harvey and Alexander Phillips;

(b) To reverse the finding in Joint Appeals Board Report No. 625 that the decision to terminate Applicant's employment had been validly taken;

(c) To adjudge and declare that the Permanent Contract between the Secretary-General and the Applicant be specifically performed;

(d) To find that the Applicant has been damaged in the sum of \$34,000.00;

(e) To adjudge and declare that the Applicant be reinstated to grade and title with DCS [Department of Conference Services] Reproduction prior to his termination."

Whereas the Respondent filed his answer on 30 November 1988;
Whereas, on 3 January 1989, the Applicant filed written observations and requested oral proceedings;

Whereas, on 28 March 1989, the presiding member ruled that no oral proceedings would be held in the case;

Whereas, on 30 March 1989, the presiding member authorized the Applicant to submit affidavits to the Tribunal if he so wished;

Whereas the Applicant submitted an affidavit to the Tribunal on 3 May 1989;

Whereas the facts in the case are as follows:

The Applicant served from 20 July 1979 to 21 December 1979 as a Mimeograph Operator at the G-2 level in the Reproduction Section of the Department of Conference Services under three successive short-term appointments. On 6 February 1980 he reentered the service of the United Nations in the same capacity under a fixed-term appointment for three months which was extended several times until its conversion to a probationary appointment on 1 June 1981. On 1 February 1982 the Applicant was promoted to the G-3 level as a Bindery Machine Operator (Trainee) and on 1 March 1982 his appointment was converted to a permanent appointment.

On 18 January 1984, in a memorandum to the Deputy Director of the Publishing Division, one of the Applicant's supervisors, Mr. Brewer, commented unfavourably on his performance and suggested that his within- grade salary increment due on 1 February 1984 be withheld. On 19 January 1984 the Deputy Director forwarded the memorandum to the Assistant to the Director of the Publishing Division and asked her to make the necessary arrangements to inform the Applicant of the proposed action; he added that he also had received personally complaints against the Applicant from other supervisors and that he was therefore in agreement with the

supervisor's request. On 23 January 1984 the Assistant conveyed the substance of the supervisor's comments to the Applicant and informed him that this information would be forwarded to the Executive Office with a request that the salary increment be withheld. The Applicant acknowledged receipt of the communication the following day. On 25 January 1984 the Assistant accordingly recommended in a memorandum to the Administrative Officer of the Department of Conference Services that the Applicant's salary increment be withheld. On 26 January 1984 the Administrative Officer informed the Applicant that the Executive Office was supporting this recommendation and requesting the Office of Personnel Services to approve it; she also advised him that he had the option to submit a rebuttal to the supervisor's comments of 18 January 1984 in accordance with administrative instruction ST/AI/240/Rev.1. On 9 March 1984 the Office of Personnel Services withheld the Applicant's salary increment as of 1 February 1984.

On 21 September 1984 another supervisor, Mr. Millett, sent a memorandum to the Deputy Director of the Publishing Division to "again bring to [his] attention the erratic attendance and punctuality" of the Applicant, "a situation which has not improved ... in spite of several discussions with the staff member". This memorandum was transmitted to the Applicant on 9 October 1984 by the Assistant to the Director of the Publishing Division under a memorandum in which she reminded the Applicant "that we have had numerous discussions on your attendance and behaviour in the Plant in the past and you have promised to improve", which apparently "has not been the case". On 2 November 1984 Mr. Millett again complained in writing of the Applicant's performance and behaviour. On 7 November 1984 the Deputy Director of the Publishing Division addressed the following memorandum to the Executive Officer of the Department of Conference Services:

- "1. Many memoranda have been exchanged between the Reproduction Section, the Office of the Director of the Publishing Division, the staff member himself, and your Office on the subject of Mr. Taylor's performance; there have been four

since the beginning of the General Assembly ...

2. The latest report on Mr. Taylor's performance is given in Mr. Millett's memorandum to me dated 2 November ... I wish to add that, regardless of the reasons for Mr. Taylor's inability to carry out his duties, this apparent lack of action over his continued erratic behaviour and bad attendance record, are viewed by both his supervisors and co-workers as a reflection of managerial indifference.
3. By way of this memorandum, I am asking once again for a medical evaluation of the staff member. If his condition is such that he is unable to work, a replacement should be authorized until he has recovered. If, on the other hand, he is considered fit to carry out his assignment, I am requesting termination for unsatisfactory performance."

On 9 November 1984 the Applicant wrote to the Officer-in-Charge of the Reproduction Section complaining that he was discriminated against and used as a scapegoat by his supervisors; he stated inter alia:

"... My poor attendance has been due mainly to ill-health which has been supported by medical certificates. I do think that my work has improved over the years as I have always performed to the best of my ability and my relationship with my co-workers has always been very good. But I am not being treated fairly by my supervisors who show no sympathy for me.

I know you will be good enough to extend me your sympathy and consideration in view of my health problems which [are] being taken care of."

The Applicant was on certified sick leave for 21 days in November and 15 days in December 1984. On 4 February 1985 the Administrative Officer of the Department of Conference Services advised him as follows:

"Please refer to the exchange of correspondence between your Supervisors, the Office of the Director, Publishing Division, the Medical Director and the Executive Office during most of 1984, as well as to the numerous conversations Mrs. Morrison [Assistant to the Director of the Publishing Division] and I have had with you personally on the above.

Now that you have been medically cleared to return to work, I

wish to place on record this Department's expectation that your poor attendance record in 1984 as well as the erratic behaviour you displayed during several occasions, will cease. Any further lapses on your part will be immediately drawn to the attention of the Office of Personnel Services for appropriate action.

I am sure you will agree that you have been given every opportunity by the Organization to solve your problems and improve your record. I am therefore stressing the fact that the onus is now, on you."

On 21 February 1985 another supervisor of the Applicant, Mr. Paulino, complained of the Applicant's behaviour in a memorandum to the Deputy Director of the Publishing Division; he added:

"staff members on the shift have indicated that they would rather request to be put on annual leave than to have Mr. Taylor assigned to work with them as part of a team. The situation is becoming intolerable and in the name of all concerned, we are requesting that action be taken on this matter in order to enable us to fulfil our responsibilities."

On the same day the Deputy Director forwarded the memorandum to the Director of the Publishing Division with a request that the Applicant be terminated for unsatisfactory performance. On 5 March 1985 the Assistant to the Director of the Publishing Division advised the Administrative Officer of the Department of Conference Services that the Publishing Division strongly recommended that the Applicant's permanent appointment be terminated for unsatisfactory service under staff regulation 9.1(a).

In March 1985 a performance evaluation report covering the period 1 February 1982 - 28 February 1985 was issued in which the Applicant's performance was rated "unsatisfactory". On 2 April 1985 the Administrative Officer of the Department of Conference Services, having received the performance evaluation report, advised the Office of Personnel Services that the Department recommended that the Applicant's appointment be terminated under staff regulation 9.1(a). On 4 April 1985 the Applicant submitted a rebuttal to his performance evaluation report. A three-member Panel

investigated the Applicant's rebuttal and reported to the Under-Secretary- General for Conference Services, on 5 June 1985, that it had found no reason to change any of the ratings given in the performance evaluation report. On 10 June 1985 the Under-Secretary-General for Conference Services concurred with the conclusions of the Panel and decided that all the ratings given in the performance evaluation report should be maintained.

The Office of Personnel Services supported the recommendation of the Department of Conference Services to terminate the Applicant's appointment for unsatisfactory services and forwarded it to the Appointment and Promotion Panel in a memorandum dated 19 September 1985. On 18 October 1985 the Secretary of the Appointment and Promotion Panel sent a copy of this memorandum to the Applicant and informed him of the procedure set forth in administrative instruction ST/AI/222 for the review of a proposal to terminate a permanent appointment for unsatisfactory services. The Joint Review Body considered the Applicant's case at six meetings, interviewed eight persons, including the Applicant, and decided unanimously, in its report dated 27 November 1985, to concur with the joint recommendation of the Department of Conference Services and the Office of Personnel Services for the separation of the Applicant for unsatisfactory service under staff regulation 9.1(a).

The report of the Joint Review Body was endorsed by the Appointment and Promotion Board on 17 December 1985 and the separation of the Applicant from the service was approved on behalf of the Secretary-General on 26 January 1986. On 6 February 1986 formal notice of termination was sent to the Applicant, who received compensation in lieu of three months' notice and left the service of the United Nations on 11 February 1986.

On 26 February 1986, 25 March 1986, 25 April 1986 and 21 January 1987 the Applicant requested the Secretary-General to review the termination decision. On 3 March 1987 the Assistant Secretary-General for Human Resources Management advised the Applicant that there were no grounds for reopening the case and on

2 April 1987 the Applicant lodged an appeal with the Joint Appeals Board. The Board adopted its report on 22 January 1988. The Board's conclusions and recommendation read as follows:

"Conclusions and recommendation

13. The Panel concluded that the present appeal was receivable as the appellant had substantially complied with the provisions in the Staff Rules concerning time limits for requesting a review of the contested decision and for submitting an appeal.
14. The Panel concluded that the decision to terminate the appellant's permanent appointment for unsatisfactory services had been validly taken as that decision had been reached through due process and as the appellant had adduced no evidence to show that that decision was vitiated by prejudice or improper motivation.
15. In view of the above, the Panel makes no recommendation in favour of the appeal."

On 17 February 1988 the Assistant Secretary-General for Human Resources Management informed the Applicant that the Secretary-General, having re-examined the Applicant's case in the light of the Board's report, had decided to maintain the contested decision and to take no further action on his case. On 16 June 1988 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision of the Joint Appeals Board is based on a presumption and inference which have no basis in fact. There is no proof that the rebuttal panel actually had considered the allegations concerning malice and personality conflicts. The Board did not even provide any proof that the rebuttal panel heard any evidence regarding the allegations.
2. The Applicant was denied a hearing through ineffective assistance of counsel.

Whereas the Respondent's principal contentions are:

1. The unsatisfactory nature of the Applicant's services was conclusively established in a number of cumulative proceedings, by several impartial bodies all of which acted unanimously.

2. The Joint Appeals Board's conclusion was not vitiated by being based on unjustified presumptions and inferences.

3. The Applicant cannot raise now any alleged ineffectiveness of his counsel in the Joint Appeals Board proceeding.

The Tribunal, having deliberated from 30 May to 8 June 1989, now pronounces the following judgement:

I. The Applicant requests the Tribunal to hear witnesses in connexion with his allegation of malice or personality conflict with his supervisors. The Tribunal recalls that, on 28 March 1989, the presiding member ruled that no oral proceedings would be held in the case under consideration. The Tribunal considers that there is no need to hear testimonies in this case as all the relevant material is on record before it.

II. The questions to be determined by the Tribunal are:

(a) Whether the decision of the Secretary-General to terminate the Applicant's permanent appointment for unsatisfactory services under staff regulation 9.1(a) was valid, having been taken, as the Respondent maintains, in the proper exercise of his authority; or

(b) Whether it was vitiated by prejudice or improper motivation and by procedural irregularities as the Applicant contends.

III. In support of the decision to terminate the Applicant's appointment for unsatisfactory services, the Respondent cites the

Applicant's poor performance evaluation report which inter alia led to the withholding of his within-grade salary increment for the period preceding his separation and the rejection of the Applicant's rebuttal to the performance evaluation report by the panel set up under the relevant procedures.

In turn, the Applicant contends that he performed well, that he acquired additional skills and that his co-workers would provide him with testimonials affirming both the quality of his work and the existence of animosity between him and his supervisor. The Applicant further claims that the sudden lowering of his ratings from an earlier performance evaluation report to the one on which his separation was based was due to that animosity.

The Applicant claims that his attempts to demonstrate this at earlier stages of the proceedings were frustrated by the failure of the Respondent to follow proper procedures and by the incompetence of his previous counsel.

IV. The Tribunal must decide whether, in the light of the conflicting presentations, the Secretary-General's decision is valid.

Having examined the material submitted, the Tribunal finds that what led to the Applicant's separation was not only the poor quality of his work, if and when the Applicant performed it, but also the erratic manner in which he discharged his responsibilities; he was frequently late and occasionally unfit to operate machinery without endangering his own safety or that of his co-workers. In his rebuttal dated 4 April 1985 to his performance evaluation report, the Applicant himself admits that he had "a personal health problem, which [he was] trying to overcome" but he pleads that his health problem should not be taken into consideration to judge his performance.

V. The Joint Review Body established in accordance with administrative instruction ST/AI/222 had reviewed, in October-

November 1985, the recommendation to the Secretary-General by the Department of Conference Services and the Office of Personnel Services to separate the Applicant for unsatisfactory services. The Joint Review Body had received testimony from the Medical Director of the United Nations that, in 1984, it was discovered that the Applicant's main problem was the use of narcotic drugs. The Applicant had undergone treatment; however, it could not be determined whether he had been cured as he refused to subject himself to a complete medical examination.

The Tribunal notes that, on 27 November 1985, the Joint Review Body, in its report to the Assistant Secretary-General for Personnel Services, stated in paragraph 14:

"However, in order to still give him [the Applicant] the benefits of the doubt, the Group requested him, through the Secretary, to go to the Medical Service before their last meeting."

Thus, the Joint Review Body requested an evaluation to determine whether any medical factor should be taken into consideration before arriving at a final conclusion on the proposed termination of the Applicant's appointment under staff regulation 9.1(a). The Applicant, although he had promised to go to the Medical Service, did not comply. The Joint Review Body therefore concurred unanimously with the recommendation for separation for unsatisfactory services. The Tribunal regrets that the Applicant did not comply with the request made to him by the Joint Review Body.

VI. The Applicant contends that he performed well, that he "was doing his job" and that he can provide testimonials affirming the quality of his work. The Tribunal recalls in this respect that it "has repeatedly held that it cannot substitute its judgement for that of the Secretary-General concerning the evaluation of the performance of a staff member and that this matter lies within the Secretary-General's discretionary authority" (Judgement No. 257

(1980), Rosbasch, paragraph XII).

VII. The Tribunal must now consider (a) whether the Secretary-General's decision was reached through due process, i.e. by means of a complete, fair and reasonable procedure, and (b) whether the termination decision was vitiated by prejudice or improper motivation (Judgement No. 309 (1983), De Shields, paragraph II).

VIII. As to the Applicant's complaints about procedural irregularities, the Tribunal finds that the Applicant was accorded due process and consequently that his complaints are unfounded.

IX. The Applicant claims in his application "that his supervisors had decided to downgrade his ratings due to malice or a personality conflict with his supervisor". The Tribunal notes that three and a half years before the date of the application, the Applicant included a similar claim, on 4 April 1985, in his rebuttal to his performance evaluation report for the period 1 February 1982 - 28 February 1985. The Tribunal also notes that the Panel investigating his rebuttal, after holding 8 meetings, found no reason to change the ratings given on any of the eleven items under consideration. The Tribunal further notes from paragraph 9 of the report of the Joint Review Body dated 27 November 1985 that "When a member told Mr. Millett [one of the Applicant's supervisors] that the staff member [the Applicant] believed that his supervisors had no sympathy for him, Mr. Millett replied that he had been given many chances. He did not feel Mr. Taylor had problems with the supervisors". After examining all the material, including the Joint Appeals Board's proceedings, the Tribunal finds that there is no evidence of prejudice or improper motivation vitiating the termination decision.

X. Accordingly, the decision to terminate the Applicant's appointment was validly taken and the Tribunal rejects the

Applicant's claims for damages and reinstatement.

XI. As to the Applicant's complaint regarding ineffective assistance of his previous counsel before the Joint Appeals Board, the Tribunal agrees with the Respondent that the Applicant cannot raise belatedly such an accusation before the Tribunal since he did not make timely objection in the proceeding in question.

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

(Signatures)

Roger PINTO
Vice-President, presiding

Ahmed OSMAN
Member

Francisco A. FORTEZA
Member

Geneva, 8 June 1989

Jean HARDY
Acting Executive Secretary