
ADMINISTRATIVE TRIBUNAL

Judgement No. 457

Case No. 476: ANDERSON

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Arnold Kean, President; Mr. Jerome Ackerman,
Vice-President; Mr. Samar Sen;

Whereas, at the request of Marjorie Lorraine Anderson, a
staff member of the United Nations, the President of the Tribunal,
with the agreement of the Respondent, successively extended to
11 July, 11 and 18 August 1988 the time-limit for the filing of an
application to the Tribunal;

Whereas, on 16 August 1988, the Applicant filed an
application, the pleas of which read as follows:

"8. Applicant requests the Tribunal to rule:

- (a) That having determined that the appeal was not only
receivable, but that the former Assistant Secretary-
General's appraisal of the rebuttal panel's report could
have long-term adverse implications for Applicant's
career development, the Joint Appeals Board (JAB), erred
in equity in deciding to make no recommendation in
support of the appeal.
- (b) That the principle of equity ('the over-riding
consideration of equity'), which the Board used as a
guide to determine the receivability of the appeal and
the effects of the former Assistant Secretary-General's
decision on Applicant's career development, should have
been applied to the ultimate end of the appeal process,
namely a specific recommendation by the Board.
- (c) That the decision of the former Assistant

Secretary-General was reprehensible, in view of the admission by the first and second reporting officers that they had filed inaccurate performance evaluation reports, and that while Applicant's performance had not changed, their reporting and perceptions of the reporting system had changed as a result of instructions of the former Assistant Secretary-General.

9. Applicant further requests the Tribunal, in view of the above, and on the basis of equity, to declare the performance evaluation report for the period 1 March 1983 to 1 March 1986, null and void, and therefore has no place in Applicant's official status file."

Whereas the Respondent filed his answer on 16 February 1989;

Whereas the facts in the case are as follows:

Marjorie Lorraine Anderson entered the service of the United Nations on 18 May 1964 as a Clerk/Stenographer at the G-3 level in the Purchase and Transportation Service (PTS) of the Office of General Services (OGS). During the course of her employment, she was granted a probationary appointment on 18 August 1964 and a permanent appointment on 1 May 1966. On 1 July 1969, she was promoted to the G-4 level, and on 1 March 1972, her functional title was changed to Procurement Assistant. On 1 April 1974, the Applicant was promoted to the P-1 level and became an Assistant Procurement Officer. On 1 April 1977, she was promoted to the P-2 level as an Associate Procurement Officer and was detailed to the United Nations Emergency Force for two years until 31 March 1979. On 1 April 1980, the Applicant was promoted to the P-3 level as a Procurement Officer.

The Applicant's performance during the period running from 31 March 1981 to 1 March 1983 was evaluated in a performance evaluation report (PER) dated 22 March 1983, hereinafter referred to as "the first report". The Chief, Field Missions Procurement Section, who signed the report as first reporting officer, gave the Applicant six "outstanding" ratings and seven "very good" ratings. He noted that the Applicant was "a most dedicated and loyal staff

member to the principles and objectives of the Organization ... uniquely able to offer useful observations" in connection with aspects of her work. The Chief, PTS, OGS, rated her overall performance as "a very good performance".

The Applicant's performance during the period running from 1 March 1983 to 1 March 1986 was evaluated in a performance evaluation report dated 3 April 1986, hereinafter referred to as "the second report". The Chief, Field Missions Procurement Section, who again acted as first reporting officer and was the Applicant's immediate supervisor, indicated that the Applicant's performance had been evaluated "pursuant to the new PER [performance evaluation report] format which provides for a more accurate assessment of performance". He rated the Applicant's competence as "good" (C); her initiative as "somewhat below standard" (E); her skill in producing a solution as "fair" (D), and her effectiveness in maintaining harmonious working relations as "unsatisfactory" (F). In this connection, he noted that "the quality of communication between the Chief and the First Officer in the Section and the [Applicant] is most often difficult and characterized by tension which is neither harmonious nor effective...". The Chief, PTS, OGS, who acted as second reporting officer, rated her overall performance as "a performance that does not fully meet standards" and noted that "in particular, the lack of harmonious communication with supervisors precludes an effective performance". The Director of the Purchase and Transportation and Commercial Services Division commented that he shared the second reporting officer's concern and that "inability to work harmoniously with supervisors is a serious shortcoming, specifically in a procurement position".

On 5 May 1986, the Applicant filed a rebuttal to her second report, pursuant to administrative instruction ST/AI/240/Rev.2. The Panel constituted by the Assistant Secretary-General, OGS, to review the rebuttal in accordance with the provisions of that instruction, submitted its report on their investigation on 16 December 1986. The Panel "unanimously" recommended that:

(a) The rating for "competence" be changed from "C" (good) to "A" (excellent);

(b) The rating for "initiative" be changed from "E" (somewhat below standard) to "B" (very good);

(c) The rating for "effectiveness in maintaining harmonious working relations" be changed from "F" (unsatisfactory) to "C" (good);

(d) The rating for "skill in producing a solution" be changed from "D" (fair) to "B" (very good);

(e) Under the item "effectiveness in supervision", the comment "not applicable" be replaced by a "B" (very good);

(f) The Applicant's overall performance be rated as "a very good performance"; and

(g) The comments by the second and third reporting officers quoted above be deleted from the report.

The Panel stated that the first and second reporting officers, who had prepared and signed the Applicant's first and second performance evaluation reports, when asked if they could "account for the dramatic change" in the ratings given to the Applicant explained that her performance "had remained exactly the same; it was only they who had changed. Instead of preparing reports as they had previously, ... they had prepared the current one to truly reflect their opinions of the staff member's performance ... at the suggestion of the present Assistant Secretary-General, who had indicated that she wanted honest evaluations." The third reporting officer, who had been Director of the Office for only the last few months of the reporting period, stated that "he had not been familiar with the staff member or her performance, but had solicited the opinion of one of the staff member's colleagues, and it was solely on that (questionable) basis, and the [second] report as presented to him that he added his remarks."

The Panel noted that the second reporting officer stated that "he had never, during the subject reporting period or previously,

discussed the Complainant's performance with her and only once did he have the occasion to discuss with her some work in progress." The Applicant was never advised that her performance was below standard; "moreover, Within-Grade Salary Increments were always granted - including one immediately after the current Performance Evaluation Report." The Panel also interviewed the staff member who performs secretarial work for the Applicant and further concluded that:

"all of the poor ratings stem from the poor supervisory/ subordinate relationship and finds no reason to give any credence to these poor ratings because -

- (a) The Panel is convinced, as stated by everyone, that the staff member's performance has not changed over the years;
- (b) Her former supervisor states that her performance had been very good, and his evaluation reports state this;
- (c) Her present supervisors assert that her performance has always been poor but that they had repeatedly prepared and signed glowing reports;
- (d) Now, her present supervisors assert, they have prepared and signed, for the first time, a 'true' report - of an extremely poor performance.

It would not be reasonable to accept as valid the report of the present supervisors, who admit that they had repeatedly filed inaccurate reports."

In their general observations, the members of the Panel explained that they fully supported the Assistant Secretary-General's suggestion that "honest evaluations be provided". They found however that "under the present system any staff member would be at a serious disadvantage if 'truth' were to be told with respect to him or her unless this were done for all staff members".

The Assistant Secretary-General, OGS, recorded her appraisal of the Panel's report in a note for the file dated 23 December 1986, and rejected the Panel's recommendation to upgrade certain of the ratings in the second report because, in her opinion, there were

insufficient grounds for such action. In connection with the disparity between the grades given by the Applicant's supervisors in the first and second reports she considered it "correct for the supervisors to have prepared the report to reflect their actual evaluation of the staff member's performance even if markedly less favourable than previously reported evaluations ... of her unchanged performance", since this was done at her "instruction for honest evaluations". As regards the Panel's comments concerning the failure by reporting officers to discuss the Applicant's performance with her, she explained that it was her impression "that the supervisors appear to have been fearful that apparent criticisms would exacerbate an already very uncomfortable situation and may not have handled the problem as skillfully as possible." She noted however that "their reluctance and possible failure in this regard [did] not invalidate the ratings."

The Assistant Secretary-General, OGS, did not consider that the reporting officers' credibility as regards the second report had been "undermined by their previous casually high evaluations which followed the unfortunately prevalent practice in the Secretariat". She deemed the report to be "a fair evaluation seeking to reflect those aspects of the staff member's performance which could be characterized as 'good' or 'very good' and those which were unsatisfactory ...". The Assistant Secretary-General recommended that pending efforts by the Applicant "to work more successfully and make a positive contribution to the Organization's work in the future" and an assessment of their results, any further adverse administrative action consequent on her rating in the second report be delayed.

On 3 February 1987, the Applicant was assigned, on a one year loan basis, to the Department of Technical Cooperation and Development (DTCD) as a Procurement Officer.

In a letter dated 17 February 1987, the Applicant requested the Secretary-General to review the administrative decision by the Assistant Secretary-General, OGS, to reject the recommendations of

the rebuttal panel and upgrade her report. Having received no reply from the Secretary-General, on 28 April 1987, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 3 March 1988. Its conclusions and recommendation read as follows:

"Conclusions and recommendation

26. The Panel concludes that the rejection by the former ASG [Assistant Secretary-General] of the recommendations of the rebuttal panel to upgrade several ratings in the appellant's PER [performance evaluation report] was a decision which could have long-term adverse implications for the appellant's career development. In the light of this fact and the overriding consideration of equity, the Panel considered that it was within its purview to review the appeal.
27. However, the Panel also concludes that the allegations of the appellant did not sustain the burden of proof required for establishing that the Administration was influenced by prejudice or other improper motivation in the preparation of the appellant's PER or in not accepting the recommendations of the rebuttal panel to upgrade several ratings in the appellant's PER.
28. Accordingly, the Panel makes no recommendation in support of the present appeal."

On 9 March 1988, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined her case in the light of the Board's report, had decided to maintain the contested decision and to take no further action on her case.

The Applicant was transferred to DTCD, effective 14 March 1988.

On 16 August 1988, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision by the Administration to reject the substantive recommendations of the rebuttal panel was unjustified.

2. The rebuttal panel was correct in not giving credence to the lower ratings in the contested report, since the Applicant's supervisors admitted repeatedly filing inaccurate reports.

3. It is unfair for the Applicant's supervisors to unilaterally and selectively impose a change in the performance evaluation reporting system. The more "honest" reporting which the former Assistant Secretary-General, OGS, had sought to institute in her department resulted in a drastic inconsistency between the Applicant's first and second reports.

Whereas the Respondent's principal contentions are:

1. The JAB found no concrete evidence of prejudice or other improper motivation on the part of the Applicant's supervisors in their preparation of the performance evaluation report on the Applicant. The evaluation of the Applicant's performance was a valid exercise of administrative discretion and, accordingly, that assessment must stand.

2. The Administrative Instruction governing the performance evaluation reporting system only requires the head of the department or office to make an independent appraisal of the report of the rebuttal panel. The decision of the former Assistant Secretary-General for OGS not to accept the rebuttal panel's recommendations was a valid exercise of administrative discretion and was untainted by prejudice.

The Tribunal, having deliberated from 18 October to 7 November 1989, now pronounces the following judgement:

I. The Tribunal does not accept the contention by the Respondent, advanced to the Joint Appeals Board, that the appraisal of the report of the Rebuttal Panel was not an administrative decision reviewable under staff regulation 11.1. Appraisal is ordinarily a process which leads to and includes an administrative

decision whether or not to accept the Panel's report, and it is this decision on which the Tribunal is competent to pass judgement.

II. The Tribunal should not substitute its own opinion for that of the officer making the appraisal, in this case the then Assistant Secretary-General for the Office of General Services. It will only interfere with that opinion if it was the consequence of prejudice, discrimination or some other extraneous consideration. The Applicant "surmises" (the word is hers) that the decision of the Assistant Secretary-General was influenced by the Applicant's union activities and, probably, was "not unrelated to the relative vigilance which Applicant demonstrates from time to time in respect of procedure in the processing of purchase orders". No evidence is produced in support of this surmise, other than evidence that the Applicant was in fact vigilant in connection with the processing of purchases, and no link is shown to have existed between her vigilance and the appraisal of the Rebuttal Panel's report by the then Assistant Secretary-General.

III. Prejudice or other irregularity is, however, alleged in another respect. Previous performance evaluation reports had been substantially more favourable to the Applicant than the report now under consideration, a discrepancy which could, in some circumstances, be evidence of prejudice. In Judgement No. 225, Sandys, paragraph IV, (1977), the Tribunal emphasized its view that "for a supervisor to make periodic reports which describe a staff member's performance in unjustifiably favourable terms, which are subsequently retracted, is as reprehensible as to report in unjustifiably unfavourable terms...". In the present case, it is not contested that the series of favourable reports came to an end and was followed by the report in question, not because of any change in the Applicant's performance but because the Assistant Secretary-General had drawn attention of reporting officers to the need for strictly truthful reports. This, in itself, cannot be

considered to be an irregularity, appearing, as it does, to state the obvious need for reports to be truthful. The Tribunal attaches great importance to the integrity of the performance evaluation reporting system, in particular its candour and honesty, and to the opportunity which should be given to meet the required standards. It is, nevertheless, regrettable that the Applicant was confronted with this tightening of reporting criteria without any specific warning so as to alert her to the need to improve her performance, in particular by improving her relations with her colleagues.

IV. No evidence has been produced to show that the tightening of criteria was discriminatory, in the sense that it only applied to the Applicant and not to all members of the staff for whom the then Assistant Secretary-General was responsible. The Tribunal would assume that any change in criteria would not be confined to a particular sector of the staff.

V. The Tribunal further notes that the then Assistant Secretary-General made a very thorough and careful appraisal of the Rebuttal Panel's report and demonstrated her lack of prejudice against the Applicant by expressing the hope that her future usefulness to the Organization would not be impeded. Moreover, she recognized, as does the Tribunal, the propriety of avoiding unfair retrospective application of changes in the criteria. In fact, far from being blocked in her career, the Applicant received a within-grade salary increment. Furthermore, in the Tribunal's view, it would be wrong for the Applicant to suffer in any way for having made this application.

VI. For the foregoing reasons, the Applicant's pleas must be rejected and the Tribunal orders that a copy of this judgement be included in her personnel file.

(Signatures)

Arnold KEAN
President

Jerome ACKERMAN
Vice-President

Samar SEN
Member

New York, 7 November 1989

R. Maria VICIEN-MILBURN
Executive Secretary