
ADMINISTRATIVE TRIBUNAL

Judgement No. 476

Case No. 498: VALTERS

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding;

Mr. Samar Sen; Mr. Ioan Voicu;

Whereas, on 1 February 1989, Erik Nikolaus Valters, a former staff member of the United Nations, filed an application, the pleas of which read as follows:

"II. Pleas

10. The Applicant respectfully requests the Administrative Tribunal to make the following findings as well as to take the following decision:

(a) To endorse the unanimous conclusion of the Joint Appeals Board that the Administration failed to protect the Applicant's reputation and that the Applicant suffered embarrassment as any reasonable person would under similar circumstances (...).

(b) To find that the Joint Appeals Board erred when it considered that it did not have competence (...) to consider the memorandum of 7 May 1987 from the Assistant Secretary-General for Human Resources Management through the Legal Counsel and the Under-Secretary-General for Administration and Management to the Secretary-General concerning the termination of the Applicant's permanent appointment (...), a memorandum which was made available to the Applicant only in October 1988; and to find also that this memorandum (i) amounted to a further instance of defamation directed against the Applicant, and (ii) substituted a new reason for relieving the Applicant of

his functions.

- (c) To find that the Joint Appeals Board erred in requiring the Applicant to provide evidence to substantiate monetary loss directly resulting from the Administration's failure to protect his reputation (...).
- (d) To find that the Secretary-General failed to implement in good faith the unanimous recommendation of the Joint Appeals Board, approved by him, that the Administration issue to the Applicant a personal letter of apology for its failure to protect his personal reputation (...).
- (e) To find that the Secretary-General failed to implement in good faith the unanimous recommendation of the Joint Appeals Board, approved by him, that the Administration issue a formal clarification of the situation so as to correct any misconception concerning the circumstances under which the Applicant was separated from service and to acknowledge his meritorious service and good standing (...).
- (f) To find that, as a result of the double failure of the Secretary-General to implement in good faith a unanimous recommendation of the Joint Appeals Board, as well as a result of the submission of the Respondent's reply to the Joint Appeals Board after a lapse of eight months (instead of within two months as required by staff rule 111.2(g)), the Administration inadmissibly delayed the Applicant's vindication and thereby caused further injury to him.
- (g) In view of all of the above, and in view of the unprecedented and exceptional nature of the case, to decide that, for all the injuries he has suffered, the Applicant be paid the equivalent of 39 months net base salary (less the one day's salary he has already received) as well as four years education grant for his daughter, thus bringing the Applicant's total compensation, including the allowances for the agreed termination of his permanent appointment, to the 60 months net base salary, plus education grant, which he would have received had he remained in the service of the United Nations until the normal retirement age of 60."

Whereas the Respondent filed his answer on 10 April 1989;

Whereas the Applicant filed written observations on 15 June 1989;

Whereas, on 3 April 1990, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 October 1956 as a Special Intern at the Offices of the Secretary-General. Between October 1957 and December 1960, he served the Organization in the Office of Public Information on special service agreements. On 1 January 1961, he was offered a probationary appointment as an Associate Information Officer at the P-2, step I level at the Radio and Visual Services Division of the Department of Public Information (DPI). On 1 January 1963, he was offered a permanent appointment. The Applicant continued to serve the Organization in the same Department until 1 May 1987, when he was granted special leave with full pay until 31 August 1987, the date of his separation from the service of the UN. Throughout his career with the United Nations, the Applicant was promoted to the P-3 level in 1964, to the P-4 level in 1968, to the P-5 level in 1972 and to the D-1 level in 1977. At the time of the Applicant's separation from service, he held the post of Chief of the Radio Service at the Radio and Visual Services Division, DPI.

On 16 April 1987, the recently appointed Under-Secretary-General, DPI, informed the Applicant, at a meeting in her office, that she was relieving the Applicant of his duties as Chief of the Radio Service with immediate effect. On the same date, the Applicant wrote a memorandum to the Under-Secretary-General, DPI, summarizing the contents of their discussion at the meeting. According to the Applicant, the Under-Secretary-General, DPI, had taken her decision on the ground that "there should not be two management levels between [the Under-Secretary-General] and staff members in the Radio Service". In addition, she had not offered to reassign the Applicant but "suggested that [he] should consider resigning from the Secretariat". To this end, the Applicant asserts that the Under-Secretary-General, DPI, stated she "would be willing to assist [him] in contacts with ... [the] Assistant Secretary-General for Human Resources Management [OHRM]".

On the same date, the Under-Secretary-General, DPI, informed the Directors of the Department and other staff that the Applicant had "been relieved of his duties and responsibilities as Chief of the Radio Service, effective immediately" and that the Chief, Visual Service would "take direct charge of both the Visual Service and

Radio Service". Initially, the Applicant objected to the action taken by the Under-Secretary-General, DPI, and on 20 April 1987, he wrote to the Secretary-General, requesting review of the administrative decision to relieve him of his duties without offering to reassign him. In his letter, he argued that the "manner" in which the contested administrative decision had been taken and conveyed, led the staff to believe that the decision constituted a veiled disciplinary measure taken against him personally.

The Applicant and the Administration subsequently entered into negotiations to resolve the matter of the Applicant's separation from service. In a memorandum dated 29 April 1987, the Applicant confirmed to the Assistant Secretary-General, OHRM, that should the Secretary-General decide to terminate his permanent appointment as of 31 August 1987, in accordance with staff regulation 9.1(a), he would not contest such decision on the "understanding" he would receive "the repatriation grant, three months' salary in lieu of notice, compensation for accrued annual leave and a termination indemnity of 24 months' salary".

In a reply dated 1 May 1987, the Assistant Secretary-General, OHRM, set forth the terms of a termination agreement whereby "in view of the exceptional circumstances of [the Applicant's] case" and because he would reach age 55 in August of 1987, his separation from service would be made effective on 31 August 1987. The Applicant would be placed on special leave with full pay from 1 May 1987 until 31 August 1987 and the termination indemnity would be based on 18 and not 24 months salary as the Applicant had requested. The Applicant accepted the terms of the offer and confirmed that he was withdrawing his appeal.

In a memorandum dated 7 May 1987, the Assistant Secretary-General, OHRM, sought the Secretary-General's approval to terminate the Applicant's permanent appointment "in the interest of the good administration of the Organization under the final paragraph of staff regulation 9.1(a), effective 31 August 1987". He set forth the financial terms of the termination agreement and a summary of the reasons therefor. He noted in this regard, that in connection with a restructuring of DPI, "it became apparent that the continuing involvement of [the Applicant] in the DPI Radio and Visual

Programmes and in the review process itself would not be conducive to the attainment of the objectives set forth by DPI top management". Consequently, the Applicant who had been "relieved from his functions without being offered a new assignment" had "appealed the decision on obvious legal and moral grounds". The Applicant asserts that he was never provided with a copy of this memorandum and that the reasons stated for his separation are different from the reasons given to him by the Under-Secretary-General, DPI, at their meeting on 16 April 1987.

In a letter dated 22 May 1987, the Assistant Secretary-General, OHRM, informed the Applicant that the Secretary-General had decided to terminate his permanent appointment under the final paragraph of staff regulation 9.1(a). He also set forth the terms of his termination indemnity and other separation payments.

In the meantime, and after the Applicant's separation from service, questions were raised at different U.N. Press briefings concerning the circumstances of the Applicant's separation from service. The Applicant contends that some of the questions put by the Press and the replies thereto by officials of DPI, concerning "his abrupt removal from his functions" gave rise "to rumours and speculation among his colleagues as well as among media correspondents reflecting negatively upon [his] professional performance and personal integrity". The Applicant claims that at those Press briefings, the United Nations Spokesperson failed to protect his reputation.

On 7 June 1987, the Applicant wrote to the Assistant Secretary-General, OHRM, to thank him for his efforts in helping to settle the matter of his termination, and to request him to ask the Under-Secretary-General, DPI, to give an explanation vindicating his "personal integrity and professional competence" at the next Press briefing to be held on 11 June 1987. The Applicant received no reply to this letter.

On 31 August 1987, the Applicant requested, under staff rule 111.2, administrative review of the decision by the Under-Secretary-General, DPI, not to vindicate his professional competence and personal integrity. Having received no reply from the Secretary-General, on 5 January 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its

report on 21 November 1988. Its conclusions and recommendations read as follows:

"Conclusions and recommendations

36. The Panel concludes that the Administration failed to protect the appellant's reputation.
37. In the absence of evidence to substantiate monetary loss directly resulting therefrom, the Panel recommends that:
 - (a) The Administration issue to the appellant a personal letter of apology for its failure to protect his personal reputation;
 - (b) If the appellant so requests, the Administration issue a formal clarification of the situation so as to correct any misconception concerning the circumstances under which the appellant was separated from service and to acknowledge his meritorious service and good standing; and,
 - (c) The Administration pay the appellant the equivalent of one day's net base pay (at the time of his separation from service) as a nominal payment for the moral injury suffered by the appellant as a result of the Administration's improper handling of the matter.
38. The Panel makes no further recommendations in support of the appeal."

On 7 December 1988, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General had re-examined his case in the light of the Board's report, and had taken note of its conclusions. He stated in this regard:

"... It is regrettable that the appropriate officials did not more clearly deal with implications raised by correspondents in regard to you, and that your good standing in the Organization was not proclaimed. In this connection, the Secretary-General wishes to assure you that your departure from the Department of Public Information in no manner reflected upon your integrity as an international civil servant or your recognized high professional competence and reputation in the field.

The Secretary-General has, in this context, decided to accept the Board's unanimous recommendation to grant you one day's net base salary as a nominal payment for the moral injury you suffered and to take no further action on the matter."

In a letter dated 13 December 1988, the Applicant asked the Under-Secretary-General for Administration and Management for a letter of apology from him, in compliance with the recommendation of the JAB, and asked that he circulate the letter as widely as possible among journalists, staff and representatives of Member States.

On 1 February 1989, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant suffered moral injury because of the Respondent's failure to protect his reputation.
2. The Respondent failed to implement in good faith the unanimous recommendation of the JAB, approved by the Secretary-General.
3. The Respondent failed to issue to the Applicant a personal letter of apology as recommended by the JAB.

Whereas the Respondent's principal contentions are:

1. The Respondent has no affirmative legally enforceable obligation to protect the Applicant from press innuendoes consequent on properly imposed administrative measures.
2. The Applicant apparently did not take the logical, available and effective steps to protect his own reputation in face of the innuendoes spread by correspondents.
3. The Respondent has no further legally cognizable obligations towards the Applicant. The Respondent has already sufficiently apologized to the Applicant. The Applicant's demands for dissemination are unreasonable; and the Applicant's request for monetary compensation is unjustified, excessive and beyond the Tribunal's competence.

The Tribunal, having deliberated from 25 April to 16 May 1990, now pronounces the following judgement:

- I. Although the Applicant lists seven pleas, fundamentally they form part of two principal complaints. The first is that the

Respondent did not extend to him the protection to which he was entitled as a staff member, and the second is that the memorandum of 7 May 1987, from the Assistant Secretary-General for Human Resources Management (OHRM), to the Secretary-General defames him and establishes that his separation was brought about by questionable means; he therefore claims monetary compensation.

II. The Joint Appeals Board (JAB) examined in detail the complaint about the lack of protection and concluded that "the Administration failed to protect the appellant's reputation" and suggested some remedial measures. The Respondent accepted the recommendations of the JAB, but the Applicant asserts that he failed to take properly the remedial measures which formed an integral part of the recommendations.

III. As for the second principal plea regarding the memorandum of 7 May 1987, the JAB did not examine it as it "did not have competence to consider [the] issues raised ... since the present appeal ... is limited to the issue of protection of personal and professional reputation only". In view of this, the question of receivability of the present plea, concerning the memorandum of 7 May 1987 might theoretically be invoked, but the Applicant side-steps the issue by suggesting that the two principal pleas are inseparable and intertwined and also as a corollary that all the other pleas arise out of these two closely connected matters. The Respondent has not raised the question of receivability in his answer.

IV. As a follow-up action for the JAB's conclusion that the Respondent had failed to protect the Applicant's reputation, the JAB recommended, and the Respondent accepted, that a "personal letter of apology" should be sent to the Applicant. However, the letter which in fact was written to the Applicant does not, in his view, reflect what the JAB had intended and so he asserts that the acceptance of the JAB's recommendation was neither clear nor straightforward. The relevant part of the letter of 7 December 1988, from the Under-Secretary-General for Administration and Management to the Applicant reads:

"It is regrettable that the appropriate officials did not more clearly deal with implications raised by correspondents in regard to you, and that your good standing in the Organization was not proclaimed. In this connection, the Secretary-General wishes to assure you that your departure from the Department of Public Information in no manner reflected upon your integrity as an international civil servant or your recognized high professional competence and reputation in the field."

In view of what the Applicant considers to be an evasive implementation of the JAB recommendation, he urges that since it is too late to take corrective measures to undo the harm he had suffered, he should now receive suitable monetary compensation. The Respondent is however of the view that he had acted in keeping with the spirit of the JAB recommendation for "an apology" and "has offered to make amends by disseminating a fully exculpatory statement".

V. The Applicant elaborates his arguments that the prejudice against him became abundantly clear when the Administration failed, without any stated reasons, to come to his defence when his reputation for integrity and proper personal conduct came to be questioned at a succession of press conferences - from 22 April 1987 and extending for a period of nearly five months. The Spokesperson of the U.N. was asked on numerous occasions questions reflecting on the Applicant's conduct and activities, and on each occasion an answer was evaded or the answer was supposed to be furnished by knowledgeable authorities. In fact, further statements were hardly ever made. For example, at a Staff Committee meeting on 22 July 1987, the Under-Secretary-General, DPI, was asked: "Why was Erik Valters dismissed and why was he given such a big payoff?". To this, the reply was: "No comment. It happens in corporations - in private and crown corporations".

VI. The Applicant takes particular exception to the Under-Secretary-General's reply as it did not comment on the word "dismissed" and avoided any full explanation. The Applicant's grievance was all the greater as he had written as early as 7 June 1987, i.e. several weeks earlier, in the following terms to the

Assistant Secretary-General, OHRM:

"Thank you very much for your letter dated 22 May 1987 concerning the agreed termination of my permanent appointment.

I want to take this opportunity to thank you most sincerely for your personal contribution in bringing about a settlement of an awkward situation the continuation of which was neither in the best interests of the Organization nor desired by me.

The only outstanding matter is, as I have mentioned to you before, some sort of vindication of my personal integrity and professional competence which have been called into question as a result of the procedure chosen, and lack of explanation offered, by the Under-Secretary-General for Public Information.

In this connexion, I note that the Under-Secretary-General will meet correspondents following the noon briefing on Thursday, 11 June 1987. I respectfully suggest that this would be an appropriate opportunity for redress.

With many thanks for the understanding which you have indicated to me in this matter."

VII. Thus, the Applicant claims that the Under-Secretary-General, instead of coming to his defence, did in fact increase his injury. Inasmuch as the JAB has discussed this aspect of the problem in detail, and has found that the Applicant's reputation was not adequately protected, and the Respondent has accepted that finding, the Tribunal sees no need to cover the same ground again, except to point out that in its view, the radio broadcast by the Austrian Radio about 30 April 1987 - which was not before the JAB - did not accurately reflect what happened at these press conferences and in any event, did not inflict any discernible injury to the Applicant.

VIII. There is a question whether the Applicant, under staff rule 101.6(e)(i), could have undertaken to clear up the innuendoes and insinuations which in his view the U.N. Spokesperson's statements (e.g. "no comment") had created. The Tribunal accepts that these statements are susceptible to several meanings, but not necessarily the ones the Applicant might choose to give. In any event, he made no serious attempt to seek permission to defend his personal reputation by a public statement of his own. This he could have done even if the interpretation of the rights of a staff member

under staff rule 101.6(e)(i) might not have been entirely clear to him. He did not pursue this course. His primary interest at the time appears to have been the terms of settlement for his separation. The Applicant's only statement requesting correction that the Tribunal has been able to trace, apart from unsupported oral statements, is in his letter of 7 June 1987, asking that when on 11 June, the Under-Secretary-General, DPI, met press correspondents, that "would be an appropriate opportunity for redress". This statement does not reflect, in the Tribunal's view, any great urgency in respect of the impressions created by the press conferences.

IX. Any claim now that the Applicant was put in such a situation that he could not reasonably expect permission from the Secretary-General to clear up his good name is not convincing. In the circumstances of the Applicant, vigorous action to remove any unfavourable impression left by the press conferences might not have appeared easy or feasible, but whatever might be his motives for his rather passive attitude, except for his letter of 7 June 1987, relating to an upcoming press conference, the Applicant cannot claim that the Respondent was legally obliged to do more than he actually did. The Respondent's responsibilities in these matters, as described in the Report on Standards of Conduct of the International Civil Service 1954 are not applicable since they relate to public criticism of a staff member regarding assignments carried out for the Organization. The Tribunal finds that in these circumstances there is no legal basis for any further compensation because of the statements made or not made at press conferences.

X. A detailed examination of all the arguments put forward before the Tribunal shows that the Applicant now considers that his separation from service was brought about through deception. The basis for this is that the contents of the memorandum of 7 May 1987, from the Assistant Secretary-General, OHRM, to the Secretary-General, were not known to him. However, the Tribunal finds no substantial difference between what the Under-Secretary-General, DPI, told the Applicant on 16 April 1987, as a reason for his separation or resignation, and what the 7 May memorandum sets out.

The Applicant had no contractual right to a copy of the 7 May 1987 memorandum in question, which contained the reasons for the recommendation that the Administration agree to the type of settlement terms proposed by the Applicant. Such an internal communication need not be made available.

In any event, there is evidence that the Applicant accepted that the Administration was within its rights to make whatever changes it considered necessary to improve the efficiency of the Department of Public Information. This is clear from his letter of 20 April 1987 to the Secretary-General in which he stated inter alia that: "I fully recognize the right of the Under-Secretary-General to administer her Department in the way with which she feels most comfortable." At that stage the Applicant, according to records, neither asked nor received any further reasons for his separation. In addition, on 29 April 1987, the Applicant wrote to the Assistant Secretary-General, OHRM:

"I should like to confirm that should the Secretary-General decide to terminate my permanent appointment, as of 31 August 1987, under the last paragraph of staff regulation 9.1(a), I will not contest such decision. In such case, it is my understanding that I will receive the repatriation grant, 3 months salary in lieu of notice, compensation for accrued annual leave and a termination indemnity of 24 months salary."

XI. The Applicant now states that:

"... He would have never accepted an agreed termination of his permanent appointment had he known that the proposal would be presented to the Secretary-General on the basis of an unsubstantiated allegation of shortcomings or deficiencies; ...".

He later concludes:

"... To this day, the Applicant is not certain of the reason for this action [to relieve him of his duties]. He only knows that, in view of his rank, he had no choice but to accept an agreed termination of his permanent appointment, ...".

However, in view of the absence of any significant difference between the 7 May 1987 memorandum and the reasons given for the Applicant's separation, the Tribunal finds no basis for any

suggestion that the agreed termination is now open to attack. Moreover, the Tribunal finds no evidence to suggest that personal difficulties between the Applicant and his Under-Secretary-General are the determining factor in his separation. For example, it appears from the Applicant's personnel files that he was considering resignation as early as 24 February 1986, before the new Under-Secretary-General assumed her duties.

XII. A few peripheral issues remain to be disposed of. The Tribunal must record its disapproval at the Respondent's delay of nearly eight months in filing his answer before the JAB. However, there is nothing to show that the Applicant suffered any significant injury from this.

XIII. The Applicant complained that he was neither given the usual farewell reception nor sent a letter of appreciation at the time of his separation. This latter has been put right, and it is now too late to arrange any farewell reception - after nearly three years. The Applicant cites Judgement No. 401, Upadhya (1987) in support of some of his arguments, but the Tribunal finds that the considerations of that case - dealing with unexplained inaction by the Administration in spite of a recommendation by the Panel on Discrimination and Other Grievances - do not at all apply in the present case. The Tribunal also holds that had the letter of 7 June 1987, from the Applicant to the Assistant Secretary-General, OHRM, been acted upon, some of the complications that followed could have been avoided - for this omission the Respondent is open to reproof.

XIV. Since the legal arguments advanced by the Applicant are not acceptable, the only suggestion that the Tribunal allows itself to make is that the Respondent should seriously consider whether another letter fully explaining and exculpating the Applicant could not be sent to him, even though the Tribunal regards the letter of 7 December 1988, which the Under-Secretary-General for Administration and Management wrote to the Applicant, as tantamount to an apology in terms of the JAB's recommendation. But by giving suitable circulation and publicity to a new letter - through posting in suitable bulletin boards and sending it to not more than

50 addressees that the Applicant might supply, the entire matter may be allowed to rest. This conclusion of the Tribunal, and also the fact that a copy of this judgement will form part of the Applicant's personnel file should bring some comfort to the Applicant - even if his claim to monetary damages and compensation cannot be legally entertained.

XV. Subject to the suggestions in paragraph XIV and in view of the considerations set out above, the application is rejected in its entirety.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Samar SEN
Member

Ioan VOICU
Member

Geneva, 16 May 1990

R. Maria VICIEN-MILBURN
Executive Secretary