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ADMINISTRATIVE TRIBUNAL

Judgement No. 511

Case No. 534: PARKER

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. Luis de Posadas Montero;

Whereas at the request of George Parker, a staff member  
of the United Nations, the President of the Tribunal, with the  
agreement of the Respondent, successively extended to 29 December  
1989 and 30 January 1990, the time-limit for the filing of an  
application to the Tribunal;

Whereas, on 30 January 1990, the Applicant filed an  
application, containing the following pleas:

"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 find that the Joint Appeals Board erred when it  
decided that the Applicant's appeal did not fall  
within its competence;

(b) To find that the first round of the 1988-89

Professional selection process in the Department of Public Information was seriously flawed and that these flaws, although subsequently recognized by the Administration, were not retroactively corrected, thus resulting in a continuation of injury to the Applicant;

(c) To find that the Applicant's job description had been modified by the addition of an expanded language requirement which was subsequently waived for another candidate, thus depriving the discontinuation of the Applicant's post of its justification and resulting in continuing injury to the Applicant;

(d) To decide that, in view of the above, the Applicant should be paid an amount equal to two years of his net base salary, this amount being payable also in the event that the Administrative Tribunal should decide to remand the case back to the Joint Appeals Board."

Whereas the Respondent filed his answer on 29 March 1990;  
Whereas the Applicant filed written observations on 7 May 1990;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 12 July 1971, as an Associate Information Officer. He was initially offered a probationary appointment at the P-2, Step VI level that was converted to a permanent appointment effective 1 July 1974. During the course of his employment with the UN, the Applicant was promoted to the P-3 level on 1 April 1976, to the P-4 level on 1 April 1980, and to the P-5 level on 1 April 1986, as Senior Information Officer, at the Central News Desk, Press and Publications Division, Department of Public Information (DPI).

At its fortieth session in 1985, the General Assembly, in its resolution 40/237, decided to "establish a Group of

High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations" (the Group of 18). In its report to the General Assembly dated 15 August 1986 (A/41/49, Supplement No. 49 (1986)), the Group of 18 recommended that: "A thorough review of the functions and working methods as well as of the policies of [DPI] should be conducted, with a view to bringing its role and policies up to date in order to improve the capacity and ability of the Department to provide information on United Nations activities ..." (Recommendation 37(1)). The General Assembly approved this recommendation in its resolution 41/213 of 19 December 1986 and directed the Secretary-General to conduct the reform. In implementing the General Assembly's decision, the Secretary-General also had to take into account Recommendation No. 15 of the Group of 18, concerning the reduction of 15 percent of "the overall number of regular budget posts" within a period of three years, "particularly in the higher echelons".

During the first quarter of 1987, the Secretary-General appointed a new Under-Secretary-General to head the Department of Public Information. On 23 October 1987, a document entitled "A Plan to Revitalize the Department of Public Information" was submitted to the staff of DPI. On 2 November 1987, the Secretary-General announced to the staff in ST/SGB/Organization/DPI the new organization and functions of the Department.

In a memorandum dated 8 April 1988, the Under-Secretary-General for DPI announced to DPI staff in the Professional levels and above, the procedures to be followed for the selection of staff to fill Headquarters posts at the Professional levels and above under the new staffing table for the Department, attached to the memorandum. She stated that the procedures for the reorganization had been approved jointly by the Assistant

Secretary- General, Office of Human Resources Management (OHRM) and herself, following discussions with staff representatives of both Departments, including DPI. In essence, there would be "three rounds of internal DPI advertising for posts at the P-2/1 through P-4 levels, for which only qualified DPI staff [could] apply, and of Secretariat-wide advertising for posts at the P-5 and D-1 levels". The advertising and selection process would be commenced forthwith.

Also on 8 April 1988, the Director, Committee Liaison and Administrative Services, DPI, informed the Applicant that the post he was currently encumbering was to be discontinued under the revised staffing table. In order to be considered for posts under the revised staffing table, he was required to apply for posts to be advertised. In the first round of the selection process, the Applicant applied for one D-1 post and six P-5 posts.

In a memorandum dated 26 August 1988, the Under-Secretary-General for DPI announced the names of staff selected to fill posts circulated in the first round of the staff selection process. The Applicant was not selected for any of these posts.

On 2 September 1988, the Applicant, together with six other DPI staff members, requested the Secretary-General to review the administrative decision announcing the results of the first round of the selection process as well as to stay administrative action pending a review. On 14 September 1988, the President of the Staff Committee wrote to the Under-Secretary-General for DPI to express her concern about possible departures from the principle that priority should be given to lateral assignments of staff in the first round of the selection process.

On 28 September 1988, the Assistant Secretary-General,

OHRM, informed the Applicant and the other six DPI staff members who had requested review of the decision, that only the first phase of a three-stage selection process had been concluded and that "[t]he two forthcoming rounds of selection for posts at Headquarters together with available UNIC [United Nations Information Centre] posts should provide ample opportunity for the Department to address the concerns [they] raised in [their] letter to the Secretary-General". He further noted that he had requested the Under-Secretary-General for DPI to place "primary emphasis on the lateral redeployment of staff" and that "the implementation of those decisions which entail promotion to the P-5 level be deferred until phases 2 and 3 of the selection process have been completed, since further adjustments or shifts may be called for at that stage". On 4 October 1988, the Under-Secretary-General for Administration and Management informed the Applicant and the other six DPI staff members of his decision that "it will be in the interest of the Organization and of good administration, that the selection process should move into phases 2 and 3", and that at the end of those phases "a general review of staff, particularly those at the P-5 level, will be undertaken to ensure optimum placement".

On 28 October 1988, the Applicant filed a preliminary statement of appeal with the Joint Appeals Board (JAB) and on 1 December 1988, he submitted a full statement of appeal against the announcement dated 26 August 1988, of the results of the first phase of the selection process. He further requested that implementation of the administrative decision announcing that the selection process should move into phases 2 and 3 be suspended.

The second phase of the selection process was initiated on 8 November 1988, with the circulation of a list of the posts to be filled in that phase. The results of the second round were announced on 8 March 1989. The Applicant was not included among

those staff who were selected as a result of the second phase of the selection process. The third phase of the selection process was initiated on 5 May 1989.

The Board adopted its report on 27 June 1989. Its considerations, conclusion and recommendation read as follows:

"Considerations

45. The Panel was asked to consider the appellant's allegation that his 'contractual rights' had been violated through the use of an improper staff selection process applied in connection with the restructuring of DPI.
46. The Panel noted that the selection process in question was to be effectuated in three rounds, the first of which had already been completed at the time this appeal was filed, and the second and third of which had not yet been finalized (as of this moment, the second round has been completed).
47. The Panel also noted the appellant continues to serve at his previous level.
48. The Panel observed that under Staff Regulation 11.1, staff members may appeal 'against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules ...'.
49. Based upon the foregoing, the Panel was of the view that the appellant in the present case failed to identify any specific injury which would be appealable under Chapter XI of the Staff Rules. It appeared to the Panel that since the selection process has not yet been completed, the appellant's allegation of injury was premature. In fact, the Panel noted that at this stage it was impossible to determine whether or not the selection process would result in any injury to the appellant.
50. Accordingly, the Panel felt that it was not competent to consider the merits of the case at this point in time, without prejudice to any decision by the Joint Appeals Board to do so at a later stage when and if the appellant is able to demonstrate that his terms of appointment have

been affected.

#### Conclusion and recommendation

51. The Panel decides that the present case does not fall within its competence and, accordingly, makes no recommendation in support of the appeal."

On 8 August 1989, the Acting Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General had taken note of the Board's conclusions and decision that it was not competent to entertain the appeal.

Also on 8 August 1989, the Under-Secretary-General, DPI, announced to the staff of DPI the results of the third round of the selection process. The Applicant was not included among those selected.

On 30 January 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Joint Appeals Board erred in deciding that the Applicant's appeal did not fall within its competence.

2. The arbitrary and illegal staff selection process employed to the detriment of the Applicant is at variance with Staff Rules and Regulations, particularly staff regulations 2.1, 4.2 and 9.1(a), as well as staff rule 104.14(f)(iii).

3. The modification of the Applicants's job description to expand the language requirement, a requirement subsequently waived for another candidate, not only augmented the harm to him but also negated the rationale for discontinuing his post.

Whereas the Respondent's principal contentions are:

1. Staff have no right of appeal unless their terms of appointment are violated.

2. Where the Secretary-General reorganizes a Department

in the Secretariat, a staff member can only challenge the reorganization by showing that it was improperly motivated.

The Tribunal, having deliberated from 12 February to 1 March 1991, now pronounces the following judgement:

I. The Applicant essentially contends that the procedures and decisions taken by the Department of Public Information (DPI) in connection with a reorganization of its structure and functions eroded or violated contractual and other rights as defined in the Staff Regulations and Rules or as deduced from established practice. The Respondent's contention is that everything that the Applicant complains of was done under the authority of the General Assembly and through the legitimate exercise of the Secretary-General's discretionary powers. The Joint Appeals Board (JAB), which reviewed the Applicant's complaint in June 1989, considered that, as argued by the Respondent, since only the first phase of the staff reorganization had been undertaken and two more phases were still to come, no specific injury to the Applicant could be identified at that time. The JAB concluded that "the appellant's allegation of injury was premature. In fact, the Panel noted that at this stage it was impossible to determine whether or not the selection process would result in any injury to the appellant" (emphasis added). Thus, the JAB itself kept the door open for further consideration and examination and indeed stated specifically that its conclusion that the complaint was premature was "without prejudice to any decision by the JAB" to consider the merits of the case "at a later stage". Since the JAB did not reach the question of injury to the Applicant from the administrative decisions which were taken, the Tribunal is unable to deal with that issue at present. However, if there had been improper



action which reduced the number of posts potentially available for the Applicant, that might have established injury to the Applicant sufficient to warrant consideration of the merits by the JAB.

II. After the JAB wrote its report on 27 June 1989, two more rounds of selection were undertaken and the process of restructuring the DPI was apparently completed. The application to the Tribunal indicates that the issues raised by the Applicant and rejected by the Respondent still need further examination. In particular, the JAB may wish to analyse whether the various administrative measures (eg. action taken at different times by the Under-Secretary-General for DPI in connection with the restructuring of the Department and consequent staff deployment) infringed the "contractual rights" of staff members, whether the discretion of the Secretary-General, undoubtedly of wide application, was properly exercised, and whether in this instance staff members can legitimately claim that their interests have been adversely affected "as a result of unfair or improper procedures, or the injection of extraneous motives in connection with these procedures" (Cf. Judgement No. 412, Gross (1988)). Finally, the documents before the Tribunal do not show how, why and by whom, the requirement of language qualification initially prescribed for any post was waived; the reasons for such a waiver (or waivers) would also need analysis.

III. In view of the above, the Tribunal remands the case to the JAB for further review of all of the issues raised by the Applicant.

(Signatures)

Jerome ACKERMAN  
Vice-President, presiding

Samar SEN  
Member

Luis de POSADAS MONTERO  
Member

New York, 1 March 1991

R. Maria VICIEN-MILBURN  
Executive Secretary