



Administrative Tribunal

Distr.

LIMITED

AT/DEC/647

15 July 1994

ENGLISH

ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 647

Case No. 698: PEREYRA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis

Spain;

Whereas, on 12 October 1992, Dorilda Serafina Pereyra, a former staff member of the United Nations, filed an application requesting the Tribunal, inter alia:

"To order the rescission of the decision ... not to renew my contract or pay me an indemnity ...;

To order that I be paid an indemnity equivalent to seven months' pensionable remuneration, ..., plus costs;

In the event that the Secretary-General decides that compensation be paid, in the interest of the United Nations, to order payment to me of compensation in the amount of \$10,000."

Whereas the Respondent filed his answer on 17 February 1993;

Whereas the Applicant filed written observations on 12 April 1993;

Whereas the facts in the case are as follows:

The Applicant, a national of Argentina, a local recruit, was employed by the Economic Commission for Latin America and the Caribbean from 15 April to 31 December 1984 as a library assistant at the GS-3 or GS-4 level under a series of Special Service Agreements. On 1 January 1985, the Applicant was given a six-month fixed-term appointment at the GS-3, step 1, level as a typist on a part-time basis. She was subsequently given a series of fixed-term appointments, the last of which expired on 31 July 1991. The Applicant asserts that upon the expiration of that last appointment she was informed that it would not be extended. According to the file, the appointment was not extended for budgetary reasons. The letters of appointment, as well as the personnel action forms implementing the appointments, specified that the Applicant's entitlements were to be considered in accordance with administrative instruction ST/AI/291 on part-time employment. With effect from 1 January 1985, the Applicant had the functional title of library clerk and her post was reclassified to GS-4, step 1.

On 26 September 1991, the Applicant wrote to the Secretary-General requesting an administrative review of the decision not to renew her appointment and not to pay her a termination indemnity. On 23 December 1991, having received no substantive reply from the Secretary-General, the Applicant filed an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 18 June 1992. Its considerations and recommendation read, in part, as follows:

"Considerations

...

13. In view of the length of the Appellant's continuous and apparently satisfactory service - involving more than a dozen renewals of her contract - the Board was of the opinion that she had a reasonable and justifiable expectation that her contract would be renewed again in July 1991. In fact the reason her last contract was not renewed was because there was no longer funding to cover her post, which was apparently abolished.

Accordingly, the Board considered that her situation, after more than seven years of continuous service, was essentially analogous to that of a permanent staff member whose post is abolished and who is, therefore, entitled to a termination indemnity.

14. As regards the calculation of a termination benefit in the Appellant's case, the Board was of the view that ST/AI/291 on part-time employment and Annex III of the Staff [Regulations] on termination benefits would allow the payment of a termination benefit at the part-time rate for her period of service under continuously renewed contracts, i.e. six years and seven months.

Recommendation

15. The Board recommends that the Appellant be paid the same termination indemnity she would have received had she been a permanent part-time staff member. This amount, in accordance with paragraph 6 of ST/AI/291 and Annex III of the Staff [Regulations], should be calculated on the basis of six years and seven months of service at her part-time salary."

On 1 July 1992, the Assistant Secretary-General for Human Resources Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

"The Secretary-General has re-examined your case in the light of the Board's report. Bearing in mind that:

(a) Under your terms and conditions of employment set out in your successive letters of appointment and in staff rule 109.7(b), the expiration of your appointment on the expiration date specified in your letter of appointment cannot be regarded as a termination within the meaning of the Staff Regulations and Rules, and does not therefore give rise to a termination indemnity;

(b) There is no provision in the Staff Regulations and Rules under which extended service would automatically trigger conversion of a fixed-term appointment to any other type of appointment;

(c) Even though you were a staff member for six years and seven months, you served on a part-time basis under the provisions of

ST/AI/291,

the Secretary-General cannot accept the Board's conclusion that your situation was 'essentially analogous to that of a permanent staff member whose post is abolished and who is, therefore, entitled to a termination indemnity.' Accordingly, he has decided to reject the Board's recommendation that you should be paid a termination indemnity and to maintain the contested decision."

On 12 October 1992, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. Since the Applicant had given the Organization more than six years of continuous and satisfactory service and was performing functions of a permanent nature, she had a reasonable expectation that her appointment would be extended.
2. The Applicant should be assimilated to a staff member on a permanent contract.

Whereas the Respondent's principal contentions are:

1. Temporary appointments do not carry any expectation of renewal. No circumstances exist which give rise to any legal expectancy of renewal.
2. The Applicant cannot be assimilated to a permanent staff member in order to receive a termination indemnity; upon the expiration of her temporary appointment, she was not entitled to such an indemnity.

The Tribunal, having deliberated from 27 June to 15 July 1994, now pronounces the following judgement:

- I. The Tribunal is asked to decide on the Applicant's legal status and to draw

conclusions as to her rights following the non-renewal of contracts under which she discharged the functions of part-time library assistant with the Economic Commission for Latin America and the Caribbean from January 1985 until 31 July 1991. The Tribunal must determine whether the Applicant was entitled to the renewal of her last contract and whether she can claim compensation because of its non-renewal.

II. According to the Applicant's arguments, in which the Joint Appeals Board concurred, because of her continuous service for more than six years and the favourable performance reports on that service her legal status was comparable or analogous to that of a permanent staff member and should be assimilated to it. In accordance with this view, the Applicant would have been entitled to the renewal of her contract and, in the event of non-renewal, to payment of a termination indemnity in accordance with Annex III to the Staff Regulations.

The Tribunal, in accordance with its consistent case law on this matter, does not subscribe to such assimilation, which would contradict the terms of contracts freely accepted by the Applicant. It would also eliminate the distinction clearly established in the Staff Regulations between the rights of staff members on fixed-term contracts and those of permanent staff members.

In the Teixeira case, where the Tribunal was also asked to take into consideration a factual situation which the Applicant maintained was in contradiction with his contractual status, the Tribunal stated that: "the Applicant cannot use his factual situation as an argument to claim a legal status different from his contractual status" (Judgement No.233, para. IV (1978)). The same applies in the present case and the Applicant did not therefore have an acquired right to the renewal of her contract or to a termination indemnity in accordance with Annex III to the Staff Regulations.

III. In the absence of a right to the renewal of their contract or to a termination

indemnity in accordance with Annex III to the Staff Regulations, staff members on fixed-term contracts extended over a long period of time whose services have been favourably evaluated may, in certain cases, have a reasonable expectancy that their contracts will be renewed. When this expectancy is not met, for example if their post is abolished, it must be taken into account. The objective existence of such a reasonable expectancy is not automatic and must be considered on a case-by-case basis by the Administration and, when appropriate, by the Tribunal.

It is because of the existence of such reasonable expectancy that the Tribunal decided in the Teixeira case that: "in view of the length of the period during which the Applicant worked for ECLA and the Administration's ratings of the quality of his work, as are contained in the dossier, the Tribunal considers that, although his contracts contained no provisions to that effect, the Applicant could count on receiving a termination indemnity from the Respondent." (Cf. Judgement No. 233, Teixeira, para. XII (1978)).

In the present case and in view of the circumstances, the Tribunal considers that it should apply the case law deriving, inter alia, from Judgement No. 233. The Applicant was employed continuously and gave satisfactory service for more than six years. Her contracts were renewed 12 times and, even though she did not have a right to their renewal, the Tribunal finds that in the particular circumstances of this case, the Applicant had a reasonable expectation of renewal. This would justify the payment of some compensation.

IV. For these reasons, the Tribunal:

- (a) Rejects the Applicant's plea for the rescission of the decision of the Secretary-General not to renew her contract.
- (b) Decides that she should be paid an indemnity in the amount of \$5,000.

- (c) Rejects the plea for reimbursement of costs.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 15 July 1994

R. Maria VICIEN-MILBURN
Secretary