

Judged and pronounced in closed session on 12 November 1951, at Paris, by the Administrative Tribunal composed of the members indicated above.

(Signatures)

Rowland EGGER
Vice-President, presiding
Mani SANASEN
Executive Secretary

Judgement No. 12

Case No. 18 :
Keeney

***Against:* The Secretary-General
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Rowland Andrews Egger, Vice-President, presiding ; Dr. Emilo N. Oribe ; Dr. Hamed Sultan ; Madame Paul Bastid, Vice President, alternate member ;

Having rendered judgement on 4 September 1951 (Judgement No. 6) ordering the rescinding of the decision terminating Applicant's temporary-indefinite employment contract with the United Nations ;

Having been notified by the Secretary-General on 12 September 1951 that, in accordance with the provision of article 9 of the Statute of the Tribunal, it was, in his opinion, inadvisable to reinstate the Applicant ;

Having therefore been seized of the question, under the aforesaid article 9 of the Statute, of fixing the amount of damages sustained by the Applicant in consequence of the non-observance of her contract ;

Having received the documentation with respect to such damages on the following dates :

Statement of Claim, 16 October 1951 ;
Statement by Respondent, 2 November 1951 ;
Applicant's answer, 6 November 1951 ;
Respondent's comments, 9 November 1951 ;

Having conferred from 8-12 November 1951 upon said claims ;

Pronounced in closed session on 12 November 1951 the following judgement :

The original claim of Mrs. Keeney for damages resulting from the decision of the Secretary-General to terminate her employment contract

with the United Nations was in the total amount of \$169,180.60. A supplementary claim filed with her reply of 6 November 1951 aggregated \$285.00. The total claim is therefore \$169,465.60. Of this amount \$3,752.56 is for back pay, \$1,417.00 is for legal costs, \$100,000.00 is for defamation of character and reputation, and \$64,296.04 is a calculation of the total she might have earned in salary, annual leave, and pension benefits if she had remained in the employment of the United Nations until retirement.

With respect to Applicant's claims based upon the prospect of continued employment by the United Nations until retirement, including the receipt of basic net salary, annual leave, and pension benefits, the Tribunal is of the opinion that Applicant has imputed a certainty with respect to contingencies under a temporary-indefinite contract which the obligations of such a contract do not warrant. What Applicant has attempted to value is a problematical chance, rather than anything approaching a firm expectancy. As has been pointed out by Professor Charles T. McCormick in his *Handbook on the Law of Damages*, at page 117, "Where the damage claimed by the plaintiff is the deprivation of an opportunity (not amounting to a reasonable certainty) to gain a specific prize, award, or profit the courts have been slow to allow recovery of the value of a mere chance." The Tribunal is of the opinion that the Applicant's chances of receiving the sums claimed in these categories are not fairly calculable on a reasonable estimate of probabilities, in view of the nature of the contract. The Tribunal accordingly disallows the claim of \$64,296.04 of Mrs. Keeney based upon these expectancies.

Applicant claims \$100,000.00 for defamation of character and reputation. From the record of the case, it does not appear that any slander has been uttered nor any libel published. The Tribunal is of the opinion that the essential pre-conditions of the claim have only been insinuated; they have not actually been placed, and have certainly not been proved. The Tribunal accordingly disallows Mrs. Keeney's claim of \$100,000.00 for defamation of character and reputation.

Applicant's claims in the amount of \$1,417.00 for legal costs include \$1,250.00 for attorney's fees in connexion with the prosecution of her case before the Administrative Tribunal and the preparation of claims, and \$167.00 for stenographic, mimeographing and other expenses. The Tribunal is of the opinion that Mrs. Keeney's case satisfies none of the conditions in which the Tribunal has indicated, in its Statement of Policy of 14 December 1950 (A/CN.5/R.2), that costs might in some circumstances be allowed. The Tribunal therefore disallows Applicant's claim for \$1,417.00 in respect of costs.

In the consideration of the injuries sustained by Applicant as a consequence of the decision of the Secretary-General not to reinstate her in her employment in the United Nations, the Tribunal is of the opinion that two basic factors must be taken into account: (1) the injury

sustained by Applicant as a consequence of the original decision of the Secretary-General to terminate her contract ; (2) the injury sustained by Applicant in consequence of the decision of the Secretary-General not to rescind his original decision in accordance with the judgement of the Tribunal, which resulted in the definitive termination of the Applicant's connexion with the United Nations Secretariat.

In view of the fact that Applicant has not engaged in other gainful employment during the period of time consumed by the consideration of her case by the Joint Appeals Board, the Secretary-General, and the Tribunal, the Tribunal is of the opinion that a proper measure of the damage sustained by the Applicant in respect of the first injury aforesaid is the total amount of salary which she would otherwise have received from the date of her original termination to the day of the communication to Applicant of the Secretary-General's decision not to reinstate her in her employment, after deducting all sums paid to her by the Secretary-General as indemnity for termination. From information received from the Bureau of Finance on 10 November 1951, the Tribunal understands that this amount is \$4,243.11.

With respect to the second injury referred to, the Tribunal is of the opinion, as it has previously indicated, that the damage sustained by the Applicant in consequence of the Secretary-General's decision not to reinstate her cannot be precisely calculated, in view of the nature of her contract. The Tribunal's decision of 4 September 1951, ordering the rescinding of the decision to terminate Applicant's contract, moreover, was based upon the fact that she had not had the opportunity to plead directly to the causes for termination assigned by the Secretary-General, and not upon any inadequacies in the causes assigned themselves. On the other hand, there can be no doubt that Applicant did sustain an injury in consequence of the Secretary-General's refusal to reinstate. The Tribunal has given consideration to the equity and justice of equating Applicant's position, as a minimum provision, with that of employees who have been terminated in a manner satisfying the full requirements of the law. It has given consideration also to the spirit of the Staff Rules and Regulations, and it has taken fully into account the circumstances surrounding the case.

The Tribunal, in view of all the above consideration, fixes the damages for injuries sustained by Applicant as follows :

In respect of injuries sustained in consequence of the original decision of the Secretary-General to terminate her contract	\$4,250.00
In respect of injuries sustained in consequence of the decision of the Secretary-General not to reinstate her in her employment in accordance with the judgement of the Administrative Tribunal	\$2,000.00
	\$6,250.00

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(Signatures)

Rowland EGGER
Vice-President, presiding

Mani SANASEN
Executive Secretary

Judgement No. 13

Case No. 22 :
Vanhove

**Against: The Secretary-General
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President and Acting President ; Dr. Hamed Sultan ; Mr. Sture Petré ;

Having received on 7 January 1952 an application for an interlocutory order filed by Mr. Daniel F. Vanhove ;

Having received on 8 January 1952 the observations of Mr. Axel Serup, Counsel for the Secretary-General ;

Having considered the application on 8 and 9 January 1952 ;

Pronounced *in camera* on 9 January 1952 the following judgement :

Considering that the applicant requests the Tribunal to order the suspension of the Secretary-General's decision of termination for one month or at least until the Tribunal's final decision ;

Considering that he bases the said application on his subsidiary conclusions, to the effect that he should be granted the opportunity of proving his abilities for a period of one month or at least until the Tribunal's decision ;

Considering that the Tribunal being seized of the substantive case, is required to give its ruling very shortly after the expiry of the applicant's engagement pursuant to the decision of termination ;

Considering the general circumstances of the case and the assurances given by the Secretary-General regarding the applicant's situation, particularly in respect of his United States visa ;

The Tribunal decides that there are no grounds for granting the request to suspend the decision of termination.