

Judged and pronounced *in camera* on 9 January 1952, in Paris, by the Administrative Tribunal composed of the members whose names are indicated above.

(Signatures)

S. BASTID

Vice-President, Acting President

Mani SANASEN

Executive Secretary

Judgement No. 14

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 ; the Lord Crook, Vice-President ; Mr. Sture Petré ;

Having been seized of the application filed by Mr. Daniel Vanhove alleging the wrongful termination of his temporary-indefinite contract as notified to him on behalf of the Secretary-General by letter of 26 July 1951 ;

Having received the following documentation on the case at the dates indicated :

Application	13 November 1951
Respondent's Answer	5 December 1951
Applicant's request for oral proceedings, which request was subsequently withdrawn	6 December 1951
Applicant's first Additional Statement	28 December 1951
Applicant's request for an interlocutory measure	7 January 1952
Applicant's second Additional Statement	11 January 1952
Delivery by Respondent of two Bureau of Personnel files on Applicant's services	11 January 1952
Respondent's comments on Applicant's first Additional Statement	15 January 1952
Applicant's request that certain documentation in the Bureau of Personnel files be set aside	18 January 1952

Respondent's written replies to the Tribunal : regarding procedure used for allotting marks in the Translating Division	21 January 1952
in response to the Tribunal's request for the text of instructions to revisers in the Translating Division	21 January 1952
regarding merger of Translating and Précis- writing Services and its effect upon functions of translators	22 January 1952
regarding personnel action for termination initi- ated on 29 May 1951 during trial period conceded to Applicant	23 January 1952
in response to the Tribunal's request for fur- ther explanation regarding the above reply and for production of the revisers' report on the Applicant's work for the first half of 1951	24 January 1952
regarding date of last revisers' report	24 January 1952

Having in its judgement No. 13 of 9 January 1952 rejected the Applicant's request for an interlocutory measure ;

Having conferred *in camera* from 21 to 26 January 1952 ;

Pronounced the following judgement in public session on 26 January 1952 ;

The Applicant entered the service of the United Nations on 6 October 1946 as a translator in the French Section of the Languages Division, Department of Conference and General Services, for the duration of the General Assembly of 1946. From 11 February 1947 the Applicant held a temporary-indefinite appointment. Following an adverse periodical report dated 2 March 1950, the Applicant was informed by the Director of the Language Services Division by letter of 20 October 1950 that unless a great improvement in his work was noticeable by 31 March 1951, he would be compelled to recommend the termination of his employment. On 15 May 1951, the Applicant was the subject of a further adverse periodical report. On 26 July 1951, the Applicant was given official notice by the Bureau of Personnel that his services would be terminated on 15 January 1952. On 6 September 1951, the Applicant filed an appeal to the Joint Appeals Board. On 15 October 1951, the Appeals Board rejected the appeal by a majority vote, with a dissenting opinion. On 13 November, the Applicant filed his application to the Administrative Tribunal.

The Applicant requests the Tribunal to order his reinstatement in his present position and further requests the Tribunal to order the rescission of the Respondent's decision to terminate his employment. Alternatively, he requests the Tribunal to recommend to the Secretary-

General that he be granted a further period in which to demonstrate his ability.

The Applicant has sought to prove :

(i) The inaccuracy of the facts put forward by the Respondent in justification of the termination ;

(ii) That the Respondent has not respected the conditions on which such termination should be dependent ;

(iii) That the administrative practice of assessing a translator's technical ability by the establishment of an arithmetical, individual and divisional rating on the basis of the revisers' rating either (a) has not been fully respected, or (b) has been distorted, or (c) has been influenced by the premature termination effected by the Respondent on 26 July 1951 ;

(iv) That Respondent's Periodical Reports for 1948, 1949 and 1950 contain (a) a number of contradictions and (b) certain facts which constitute presumptive evidence of the existence of extraneous factors ;

(v) That Respondent has not complied with the principles of due process of law.

The Applicant therefore alleges that the Respondent's decision to terminate was irregular and wrongful.

The Respondent in the course of his reply points out that the decision to terminate the Applicant's employment was proper and was based only upon consideration of his competence to perform his work ;

The Respondent states that :

(i) The majority of the Appeals Board recognized that the termination action met the requirements of provisional staff regulations 12a and 21 and staff rules 61 and 102, and

(ii) The termination did not involve the non-observance of any established administrative practice and

(iii) Was not motivated by prejudice.

The Tribunal's findings are as follows :

As to allegations that Respondent failed to comply with certain rules and regulations and established administrative practices

1. The Applicant points out that there was no periodical report on his work for 1947 and that he had worked long enough under the direction of a single supervisor to make it possible for a well-considered periodical report to be given. The Applicant was unable to obtain access to the complete personnel file which the Tribunal subsequently secured on 11 January 1952. The Tribunal examined all the documents in this file, including the "request for personnel" forms dated 3 December 1946 and 27 May 1947. It is not for the Tribunal to decide in this case whether, according to the Rules and the Regulations in force at that period, any action of the Respondent at that date was

prejudicial to the Applicant's interests. The decision of 26 July 1951 to dismiss can only be judged in relation to the situation in fact and in law existing at the time.

II. The Applicant alleges that the decision to dismiss was taken before receipt of the special report of the revisers for the first six months of 1951 and that this report constitutes in the French Translators' Section an established administrative practice within the meaning of staff rule 145.

The Respondent replies that these reports only serve to provide the senior officials of the Division with information on all members of the Section and that there is no significance in the fact that they were subsequent in date to the decision to terminate since they represented only further confirmation of the previous adverse appraisals.

Without entering into the question whether established administrative practice required the Respondent to await the revisers' report before taking the decision to terminate, the Tribunal considers that the Respondent's omission in this respect cannot be held to invalidate the termination seeing that the revisers' report upon the Applicant's work was still unfavourable.

The Tribunal must, however, observe that the Respondent who, after 31 March 1951 had promised the Applicant a further extension of three months of the period of trial, had nevertheless initiated personnel action on 29 and 31 May 1951 to bring about the Applicant's termination, thus prejudging any final decision as to the Applicant's competence.

III. The Applicant claims that he received no warning before 20 October 1950.

The Tribunal notes that the Applicant was informed on 2 March 1950 that he was considered as being below the required standard and his signature appears on the report for 1949. Moreover, an oral warning preceded the written warning of October 1950.

IV. It is also stated by the Applicant that he did not receive from his revisers or from his superiors any indication or advice on the possibility of improving his work.

The Tribunal comments that the Applicant could have taken the opportunity on 2 March 1950 to request advice from his superior officers ; and the fact that no responsible officer voluntarily offered advice to him — an officer with three years' service — in 1950, cannot be pleaded as a reason for invalidating the termination action taken 16 months later.

As to allegations that Respondent's actions were inconsistent

V. The Applicant alleges that the motives for dismissal given by the Respondent are inconsistent. He maintains that successive periodical

reports made concerning his work contain such contradictions as to deprive them of value.

The Tribunal has studied the observations contained in the "Request for Personnel" forms of 3 December 1946 and 27 May 1947 as well as the periodical reports for 1948, 1949 and 1950. The Tribunal has arrived at the conclusion that, while certain of the Applicant's qualities have been recognized, certain inadequacies have been noted since the beginning of his service with the United Nations. Having been recruited for the first General Assembly, the Applicant remained in a service in which the work became increasingly difficult as a result of the general development of the activities of the Organization. The General Assembly furthermore has insisted that the general standard of the staff should be improved. In spite, therefore, of his efforts — which his superiors have always acknowledged — the Applicant, from 1949 onwards, was not considered competent for the work of his Division.

The Tribunal considers that the lack of competence was noted in successive reports for a period of time long enough to justify dismissal.

VI. The Applicant alleges that the Administration

(i) Calculated the Applicant's individual mark for 1949 in an irregular manner and

(ii) Applied the coefficient for systematic reduction, requested by the Personnel Bureau, to certain translators only and in particular to the Applicant.

The Tribunal considers that individual mathematical marks should be taken into consideration as one element only of periodical reports.

The Tribunal could not accept a proposition that the effect of a general revision of the standard of marking must result in the maintenance of the same relative position in the scale of marking between officials as in the preceding year. In these circumstances, it is the view of the Tribunal that no consideration or reconsideration of the mathematical marks awarded to the Applicant should modify the opinion expressed in paragraph V.

VII. The Applicant alleges that the unfavourable appraisals given him are unimportant or inconsistent with the positive qualities which have been recognized in his periodical reports.

The determination of standards of qualification of the staff is a matter of administration and not one for the Tribunal. The Tribunal can take into consideration only the decision of the Respondent that an official is below the required standard. This decision has been expressed in the present case by means of the periodical reports prescribed by the Staff Rules.

VIII. Similarly, it is not incumbent upon the Tribunal to consider or to pronounce upon the statements and insinuations relating to an alleged general situation in the Translators' Division.

The Tribunal is called upon to verify that the decisions of the Secretary-General in the particular case are in conformity with the contract of employment and the terms of appointment. The Tribunal cannot consider mere assertions of a general nature on matters unconnected with the facts of the application.

The Tribunal must observe that the presentation of such irrelevant matter in the submission of an application to the Tribunal is hardly in the best interests of the staff.

As to allegations on procedure

IX. The Applicant has criticized the Respondent's method of applying the appeals procedure which is guaranteed to officials by the Staff Rules and Regulations. The Applicant had pointed out in particular that important witnesses were absent from New York when the Appeals Board met to examine his case.

The Tribunal notes that the appeal was filed with the Appeals Board on 6 September 1951 and was only reported upon by the Board on 15 October. That the period of 30 days which the Administrative Manual lays down as a general rule was not observed provides an obvious matter for criticism. The impending departure from New York of the witnesses in question was probably known to the Respondent and their absence could well have given the Applicant the impression that his case was examined without disclosure of all the facts. But the Applicant must recognize that the Appeals Board has discretion to decide upon the witnesses whom it wishes to hear. Any unfavourable decision on this point would not suffice to invalidate the procedure before the Appeals Board.

X. The Applicant has mentioned certain difficulties which he claims to have met in presenting his case before the Tribunal. The Applicant's counsel appears to have been refused access not only to the jurisprudence of the Appeals Board in previous cases but also access to the records of discussions of the Board with respect to the present case. The Tribunal observes that the Administrative Manual requires the Secretary of the Appeals Board to keep a record of proceedings. The Tribunal considers that the records of the Appeals Board with respect to any case which is before the Tribunal and which has been reported upon by the Appeals Board, should not only be available to the Tribunal but also accessible to the Applicant.

The provisions of staff rule 145 would seem to imply the publication (in some form to be decided upon by the Secretary-General) of the reports of the Appeals Board on the application of established administrative practices. The Tribunal must point out, however, that the action of the Respondent, as referred to by the Applicant, is not of such a nature in the present case as to have an effect upon the Tribunal's judgement.

XI. The Applicant contends that he was practically prevented from exercising his right to secure oral proceedings before the Tribunal, since the Secretary-General refused to pay the travelling expenses of his counsel to and from Paris.

The Tribunal must, however, observe that under its rules, provision is made for procedure without the conduct of oral proceedings since the Tribunal is empowered to elicit information on all points which are not made clear in the statements of the parties.

XII. In conclusion, the Tribunal does not consider that any of the actions of the Respondent which have been criticized by the Applicant have had any adverse effect on the proper consideration of the merits of this case.

The Tribunal accordingly decides to reject the principal requests of the Applicant.

As regards the alternative request, the Tribunal is not in a position to make such a recommendation to the Secretary-General and therefore must set aside this alternative request.

Judged and pronounced in public session on 26 January 1952, at Paris, by the Administrative Tribunal composed of the members indicated above.

(Signatures)

S. BASTID

Vice-President, Acting President

Mani SANASEN

Executive Secretary

Judgement No. 15

Case No. 23 :
Robinson

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; the Lord Crook, Vice-President; Mr. Sture Petrén; Dr. Hamed Sultan, alternate member;

Whereas Hugh Lukin Robinson, former member of the Population Division of the Department of Social Affairs of the United Nations Secretariat, filed an application to the Tribunal on June 17th 1952;

Whereas the Secretary-General, the Respondent in this case, delivered his answer to the application on July 3rd 1952;