

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;

Whereas the Staff Association of the United Nations, in accordance with article 17, paragraph 2, of the Tribunal's Rules, presented a written statement on July 18th of the general issues involved in the case ;

Whereas, at the Tribunal's request, the parties submitted written replies to certain questions put during the course of proceedings, as follows :

a. On the question of the circumstances of the Applicant's engagement by the United Nations

Question put to the Respondent on July 24th (49 — number recorded in the Tribunal's dossier)

The Respondent's reply of July 29th (57) ;

The Applicant's comment of July 30th on the Respondent's reply (58) ;

Question put to the Respondent in private session on July 31st, in the presence of both parties (61) ;

The Respondent's reply of July 31st (62) ;

Question put to the Respondent in private session on August 1st, in the presence of both parties (63) ;

The Respondent's reply of August 1st (64) ;

The Applicant's comment of August 1st (65).

b. On the question put to the Respondent in public session on July 25th with respect to the circumstances of the non-renewal of the Applicant's appointment (50)

The Respondent's answer of July 28th (55) ;

The Applicant's comment of July 28th (53).

c. On the argument advanced by the parties in private session on July 24th on the question of the production of a memorandum of September 20th 1951 signed by the Applicant's Divisional Director

The Respondent's summary of argument dated July 28th (51) ;

The Applicant's summary of argument dated July 28th (54) ;

The Applicant's and Respondent's supplementary comments of July 30th (59 and 59 a).

d. On the actual amounts claimed by the Applicant by way of damages : question put in open session on July 25th

The Applicant's reply of July 28th (52) ;

The Respondent's comment of July 29th (56) ;

The Applicant's further statement of July 30th (60).

Whereas the Tribunal ruled on July 24th that a document dated September 20th 1951 and signed by the Director of Applicant's Division be included in the dossier in the form agreed upon by both parties ;

Whereas the Tribunal heard both parties in public session on July 23rd, 24th and 25th as well as in private session on July 23rd, 24th, 31st and August 1st 1952 ;

After deliberating until August 10th, now pronounces the following judgement :

1. The Applicant has been a member of the Secretariat of the United Nations from January 14th 1950 until January 13th 1952 under two letters of appointment each for one year and signed respectively on 7/14 February 1950 and 15/18 January 1951. The case before the Tribunal concerns the non-renewal of the Applicant's fixed-term contract at its expiration on January 13th 1952.

2. Article 2 of the Statute of the Tribunal empowers it " to hear and pass judgement upon application alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the term of appointment of such staff members. The word ' contracts ' and ' terms of appointment ' include all pertinent regulations and rules in force at the time of alleged non-observance . . ." The letters of appointment referred to above contained the clause that the appointment is

" subject to the terms and conditions specified herein or otherwise provided in the Staff Regulations and the Staff Rules and any directives lawfully issued in pursuance thereto, together with such amendments as may from time to time be made to such Staff Regulations, such Staff Rules and such directives." (See United Nations Administrative Manual, Volume 2, Personnel.)

3. In view of a suggestion by the Respondent that " the procedural part of the Manual . . . merely consists of instruction to officials or units as to the detailed manner in which certain administrative actions shall be performed ", the Tribunal has examined all the relevant facts. Staff Rule 220 provided that

" These rules are subject to conditions and rates established by the Secretary-General in administrative instructions."

The Manual itself provided :

" The Administrative Manual shall be the official medium for the issuance of administrative policies, instructions and procedures designed to implement the Staff Rules . . ."

The letters of appointment contained the phrase quoted in the preceding paragraph.

4. The Tribunal therefore considers that the contractual relationship between the Secretary-General and the staff is governed not only by the Staff Regulations and Staff Rules, but also by any directives lawfully issued in pursuance thereto by the Secretary-General, the main body of which are to be found in the Administrative Manual. It follows that, as the Tribunal found in Judgement No. 2, the Administrative

Manual, being binding upon the Administration and the staff, is a document which the Tribunal must apply under the terms of article 2 of its Statute.

5. The Staff Regulations, Staff Rules and text of the Administrative Manual in force at the time of the alleged non-observance are those which were applicable prior to any revision consequent upon decisions of the Sixth General Assembly. In accordance with article 2 of the Tribunal's Statute, all references in this judgement must be read accordingly.

6. The Applicant alleges that he was entitled to expect the renewal of his contract and that accordingly this would give him the right, under Judgement No. 4 of this Tribunal, to be acquainted with the reason for the decision not to renew the contract.

7. The Respondent denies that Judgement No. 4 is applicable to this case and states that the engagement was for a specific period of one year, without any commitment as to the future, and that the practice of fixed-term appointment is a common one in the administrative practice of the United Nations. The Respondent further compares Applicant's situation to that of the staff member whose case was dealt with in Judgement No. 8.

8. The Tribunal notes that (i) at the time of his engagement, the Applicant was known to the Population Division and accordingly the Administration took the initiative in offering him a contract, (ii) the Division in question was understaffed (iii) the special field of his competence was a narrow one in which there are few candidates available, (iv) the annual report on the applicant for 1950 gave detailed recognition of his competence, work, production and character, (v) the post occupied by the Applicant was an established post and (vi) the Applicant was aware of the very favourable opinion of him consistently held by his superior officers. It is clear that all these elements were such as to create in the mind of the Applicant the hope of a renewal of his contract. The Respondent draws attention to the fact that in 1951 the Applicant was proposed for a two-year contract but that in fact a contract of only one year was granted. This, the Respondent suggests, was in itself a warning to the Applicant that the views of the Administration were not such as to lead him to believe that he was likely to be retained permanently. Moreover, the Respondent points out that the length of the Applicant's service was two years.

9. The Tribunal does not think it necessary to make any pronouncement on this issue because the Applicant also submits a further argument dealing with a major question of principle.

10. The Applicant contends that the decision of the Administration not to grant a further contract was based upon the Applicant's activities in the Staff Association, Staff Council and Staff Committee and

accordingly was contrary to the Applicant's right of association. The Tribunal therefore thinks that it should proceed to examine the question whether an appointment to the Secretariat of the United Nations conveys any right of association and, if so, what the nature of that right is and what its precise relation is to the claim of the Applicant.

11. The right of association is recognized by articles 20 and 23 (4) of the Universal Declaration of Human Rights, adopted by the third General Assembly. The Tribunal notes that the Secretary-General has taken steps to make known to the staff his clear views that the staff should be organized in an association with rights of representation to the Administration. The Tribunal is satisfied that the principle of the right of association to which the United Nations are solemnly pledged is admitted on all sides to be a principle which must prevail also inside the organization's own Secretariat.

12. The Secretary-General took a number of steps to implement this right of association. Regulation 15 of the Provisional Staff Regulations prescribed that "the Secretary-General shall provide machinery through which members of the staff may participate in the discussion of questions relating to appointments and promotions." Rule 135 of the Staff Rules provided that "A Staff Committee, elected by staff members to represent their views, shall be consulted on general questions relating to staff administration and welfare..." The Staff Association of the United Nations Secretariat was established, the rules of which provide in article 4 that "all members of the staff of the United Nations are members of the Staff Association." This Staff Association elects a Staff Council which in turn elects a Staff Committee.

13. It is clear, therefore, that the right of association is recognized for the staff of the United Nations. There can be no suggestion that the Secretary-General has at any time desired to disregard this right for he even considered the possibility of going beyond the field of his legal obligations in the statement made on his behalf on November 17th 1950 to the Fifth Committee of the fifth General Assembly, in which

"... he left with the Committee the question whether the Assembly might not have other obligations to present staff members at least as compelling as legal obligations, especially in the unusual circumstance where the employer was in a position of omnipotence; whether, for the sake of the integrity of the United Nations, the Assembly could afford to assume the posture of a commercial corporation employing labour and standing on legality, or whether by the very fact of its great power it did not likewise have a special responsibility to deal fairly and justly and in a stable manner with those who served it."

14. It is an indispensable element of the right of association that no action should be taken against a member of the staff on the ground

that he is or has been an officer or representative of the Staff Association or otherwise has been active in the Association. In the presentation of his case the Applicant quotes the following statement made by the Secretary-General on February 16th 1951 :

“ I want to make it very clear that under no circumstances will a staff member ever be terminated on the ground that he has been active in the Staff Association, and I want to make it equally clear that at no time will a staff member acquire immunity from termination merely because he happens to have been active in the Staff Association.”

It will thus be seen that there is no conflict between the Secretary-General and the staff of the Secretariat on this issue.

15. The Applicant, however, claims that he was separated from the United Nations Secretary by reason of his staff activities.

The Respondent replies first that the Applicant's activities on the Staff Association were not the reason for the Administration's decision. Secondly, in any case, the only matter for the Administration was the granting of a new contract after the expiration of the old one and the Secretary-General had full powers to decide upon making a new appointment.

As the Respondent indicates in a written reply of July 28th (55) to a question put to him during the proceedings :

“... Neither the fixed-term contract nor any rule or regulation gives any right to a renewal of the contract after its expiration. The question of the motive for a failure to give a new contract is legally immaterial, even if there were in fact an improper motive. The only way in which the question of motive could become relevant would be if the Tribunal were to make an affirmative finding of the existence of an expectancy arising out of the history of the contractual relationship. The situation would be sharply different if there were a claim of dismissal during the term of a fixed-term or permanent contract because of staff activities...”

While recognizing that the Applicant's appointment came to an end without actual “ termination ” by the Administration, the Tribunal cannot accept the Respondent's argument as well founded.

16. When the expiration date of a contract approaches, it is proper administrative action to consider whether the member of the staff is to be offered a further contract as from that date or not.

It is clear that the decision to make such an offer or not constitutes an action concerning the member of the staff. For this reason, staff rule 115 provided that normally a staff member serving under a fixed-term appointment “ shall be told well in advance what action is proposed on the expiration date.”

Thus there can be no simple automatic effect whereby a member of the staff reaches the expiration date specified in the letter of ap-

pointment without some action having been taken previously. Independently of any question as to whether the member of the staff has an expectation to continue in the post in question, it is an obvious right of the staff member to have a decision as to whether his fixed-term appointment is or is not to be followed by a further offer. If follows from the right of association of the member of the staff that the nature of the action to be taken in this regard must not be determined to his prejudice because of activities in the Staff Association, on the Staff Council or the Staff Committee.

17. In any consideration of the suggestion that the failure to offer further appointment was due to staff activities, the first matter for examination would be as to the position and work of the Applicant inside the Staff Association. It seems clear that the Applicant from the very beginning of his appointment, in January 1950, took a considerable interest in the Association and its work, as a result of which by June 1950 he was already a member of the Staff Committee and had been elected its Vice-Chairman. In that capacity he took part in discussions on a number of issues on which there were substantial differences of opinion between the Administration and the representatives of the Staff Association. At the beginning of 1951, in addition to his position as Vice-Chairman of the Staff Committee, the Applicant was chosen to represent the staff in a series of hearings before the Joint Appeals Board concerning the separation of a number of staff members. This task was of such proportion that the Applicant was relieved from his ordinary professional duties for approximately four months from March to June 1951. It was inevitable that during these proceedings the Applicant voiced opinions in conflict with those of the Administration. During this period (in May 1951), the Applicant was re-elected to the Staff Committee as the result of new elections and was made its Rapporteur, a position which he continued to hold until he left his post on January 13th 1952.

18. It is therefore established that the Applicant was an active member of the Staff Association, a member of the Staff Committee and an officer of the Staff Committee and that in those capacities he took part in discussions and representations in which he was opposed to the Administration on important and controversial issues.

19. As has been indicated, the Applicant seeks to prove by such indirect methods as are available to him, that the decision not to offer a new appointment was due to these Staff Association activities. He points out, as mentioned in paragraph 8 above, that he entered the service of the Secretariat not on his own initiative but on that of the United Nations. He draws attention to the fact that the post he occupied was an established one, in which he was doing work of a continuing nature and that there was a scarcity of persons with sufficient competence for the work in question. The Applicant's competence in the performance of his work in the United Nations was made clear by

the periodic reports made on him by his supervisors and by the Director of the Social Division on May 9th 1951 and February 21st 1952. Further, the Divisional Director on December 6th 1950 requested a two-year extension of the Applicant's contract and when the Administration granted only a one-year extension, the Director requested on October 26th 1951 that the Applicant be given a temporary-indefinite contract. As has been indicated already, no action was taken in respect of this request ; on the contrary, the second fixed-term appointment was allowed to lapse.

20. From these arguments, the Applicant draws the conclusion that all the circumstances connected with his professional work indicated that his further continued employment in the post was justified. He further suggests that the fact that his appointment nevertheless was not renewed could lead to no other conclusion than that the non-renewal of his contract was decided by the Administration because of his Staff Association activities.

21. The Respondent in reply alleges that the reason for the decision not to renew the Applicant's contract was not the Applicant's activities in the Staff Association, categorically denying all assertions to that effect. The Respondent does not deny the Applicant's competence for his professional work but alleges that the decision was "based entirely on considerations of suitability". In response to questions by the Tribunal as to this matter, the Respondent makes two submissions. The first is that because of an "obligation of confidence", the Respondent does not "consider that he should *on his own initiative* place before the Tribunal" relevant facts underlying the decision "in view of the confidential nature of certain of these facts". The second is that a statement of his reason on the Respondent's "own initiative would imply an abandonment of his clear legal position relating to the non-renewal of contracts".

22. From what has been said previously about the right of association, it follows in particular that no action must be taken against a staff member either because he has taken a certain position as an officer or representative of the Staff Association or because of his methods of expression or personal behaviour in that capacity. As has been recorded in earlier paragraphs, the Applicant had played a very active part in the work of the Staff Association and above all, as a member of the Staff Committee, had had to take up matters in opposition to the Administration. In the case of such a staff member, the non-renewal of his contract is bound to give rise to suggestions as to the denial of the right of association.

In a situation of this kind, it will normally not be possible for the staff member to produce positive evidence that the reason for the non-renewal of his contract was his Staff Association activities. The most that he can do is to bring evidence to the effect that certain other reasons have not been the cause of the decision, as has been done in this

case, that the record of performance of professional functions is satisfactory and that the reports of superior officers are in his favour. If, therefore, his contractual right of association is to be effectively protected, it must be recognized as inherent in that right that the Administration should provide the reason for the non-renewal of his contract.

In view of the Applicant's Staff Association activities, the Tribunal finds that this applies to his case and that the Administration accordingly should have given the reason for its decision not to renew the Applicant's appointment.

23. A general reference by the Respondent to the Applicant's "suitability" cannot be considered a sufficiently specific reason. The Respondent's refusal to state his reason, because of his view that this would imply an abandonment of his legal position relating to the non-renewal of contracts, is not well founded. It is normal in legal proceedings for each party to produce arguments and evidence which can be subject to test by the other side in all matters, including arguments of the opposite party, which become relevant only if the Tribunal finds against the first party on some primary issue. In the event of one party failing to comply with this procedural practice, it must clearly be at his own risk.

24. In this connexion, what the Respondent alleges as to the confidential nature of certain of the facts underlying his decision not to renew the appointment cannot have any effect upon the Tribunal in respect to its judgement. The Tribunal does not feel that it is proper for it to take the initiative where the Secretary-General's obligation of confidence is involved. It must clearly be for the Secretary-General to decide what information and evidence he places before the Tribunal which can be subject to test and counter-argument by the Applicant. When Respondent does not, of his own initiative, produce such information and evidence, despite a number of requests by the Tribunal that a clear statement should be made, the Tribunal is left with no option but to proceed to a conclusion in the absence of such information and evidence.

25. The Applicant cannot be penalized because certain information is regarded by the Respondent as confidential and the Applicant has no opportunity either of knowing what the reason is or of challenging it. Otherwise in a case of this kind there would be no effective protection of the right of association inherent in the contractual relationship of the Applicant and the United Nations in accordance with the terms of appointment.

26. The Tribunal finds therefore that the failure to adduce a reason for non-renewal in this case is contrary to the Applicant's right of association and that this entitles him to relief.

27. Consideration must then be given to the further complaint of

the Applicant that the circumstances surrounding the non-renewal of his appointment violated due process. In the first part of his submission, the Applicant alleges that the Administration did not follow the procedure set down in the Administrative Manual (at Chapter 6, Section 15, on page 333, Rev. 2, January 1st 1951) which required as follows :

“ The following procedure shall be used in connexion with expiration of fixed-term appointment :

“ At least two months before the appointment is due to expire, the Department shall consult the Bureau of Personnel regarding the future employment status of the staff member . . . ”

In the proceedings, it was made clear that the Administration's decision not to renew the Applicant's appointment was taken prior to the operation of the procedure thus set out and quoted above. This would be an independent ground for complaint falling to be dealt with by the Tribunal had the decision indicated in the preceding paragraph not already been reached by the Tribunal.

The Applicant also contends that given that the Administration had determined not to offer him a further contract in the post he was then holding, the Administration did not in the alternative make any effort to secure for Applicant another position. The rule which the Applicant invokes in this connexion is the interpretation of staff rule 104 contained in the Administrative Manual (at Chapter 6, Section 6, page 313, Rev. No. 3, January 1st 1951) which provided as follows :

“ The holder of a temporary-indefinite appointment or a fixed-term appointment with less than three months to run shall be terminated unless there is a thoroughly suitable vacancy elsewhere in which the Bureau of Personnel can place him without prejudice to the possibility of filling it with a holder of a higher priority appointment or with a better qualified external candidate ;”

The Respondent in this connexion directs attention to the fact that the quotation referred to is prefaced earlier with an indication that this is only applicable “ when it is necessary to terminate staff members because of abolition of post or budgetary cuts.” Since this is not a case where the post is being abolished or there is a budgetary cut, the Tribunal does not find this complaint of the Applicant justified.

28. Consequent upon paragraph 26, it is for the Tribunal to decide on the measure of relief to be afforded the Applicant. The Applicant in the course of proceedings indicated that he no longer desired the Tribunal to order the rescinding of the decision contested but, pursuant to article 9 of the Tribunal's Statute, requested that compensation for the injury sustained be fixed by the Tribunal.

29. The Applicant's request was in four parts as follows :

(1) Salary from the date of expiration of the contract to the date of this decision ;

(2) Compensation for lack of earnings by reason of loss of post in the United Nations ;

(3) Certain expenses in connexion with legal procedure before the Tribunal ;

4) Certain expenses in connexion with procedure before the Joint Appeals Board. (This claim was withdrawn during proceedings.)

30. On these requests, the Tribunal decides as follows :

(1) The Tribunal awards an amount corresponding to salary and allowances from the date of expiration of the contract to the date of the Tribunal's decision, a sum of U.S. dollars 3,990, calculated on an annual gross salary plus allowances of U.S. dollars 7,090, the amount computed as accurate by counsel for the Applicant and counsel for the Respondent ;

(2) In view of the high qualities possessed by the Applicant, the shortage of persons of his knowledge and experience, the Tribunal feels that the amount of compensation for lack of earnings should be related only to providing him with an opportunity of returning to his country of origin and securing a new appointment. It accordingly awards the sum of U.S. dollars 2,000 ;

(3) With regard to expenses, it was necessary for the Tribunal to consider whether any claims should be met, since the Secretary-General had already paid the travelling expenses of the Applicant, in accordance with the terms of the circular of May 10th 1951 issued on behalf of the Secretary-General by Mr. Byron Price, undertaking to pay the travelling and subsistence expenses of Applicants when oral hearings are held by the Tribunal away from Headquarters. The Tribunal notes the special nature of this case, in addition to the decision to convene the Tribunal in Geneva, and it feels that pursuant to the Tribunal's statement of policy of December 14th 1950 (A/CN.5/R.2) there is justification for the payment also of travelling and subsistence expenses of the Applicant's counsel. The Tribunal accordingly awards the amount of U.S. dollars 1,000 in this respect.

Judged and pronounced in public session on August 11th, 1952 at Geneva by the members of the Administrative Tribunal indicated above who have affixed their signatures hereto together with the Executive Secretary.

(Signatures)

Suzanne BASTID
*Vice-President and
Acting President*

CROOK
Vice-President

Sture PETRÉN
Member

Hamed SULTAN
Alternate Member

Mani SANASEN
Executive Secretary