

**Judgement No. 17**

**Case No. 25 :**  
**De Pojidaeff**

*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; n;

Whereas Vladimir de Pojidaeff, former member of the Language Services Division of the United Nations Secretariat, filed an application to the Tribunal on 16 June 1952 contesting the administrative decision not to renew his contract as confirmed to him by the Secretary-General's letter of 19 March 1952;

Whereas the Secretary-General, Respondent in this case, delivered his answer to the application on 19 September 1952;

Whereas the Applicant delivered a further statement on 26 November and the Respondent an additional answer on 3 December 1952;

Whereas the Tribunal heard both parties in private session on 28 November and in public session on 2, 3, 5 and 6 December 1952;

Having deliberated until 15 December, now pronounces the following judgement:

1. The Applicant served in the United Nations Secretariat from 16 April 1948 to 2 December 1951 as English Translator, and later as a Translator/Précis-Writer, in the Department of Conference and General Services. After holding a temporary appointment for a few months, the Applicant received a fixed-term contract for one year beginning 3 October 1948. On 12 October 1949, he received a further fixed-term contract for two years ending 2 October 1951. On 1 October 1951, the Bureau of Personnel advised the Applicant that his contract was extended for two months and that his services were no longer required after 3 December 1951.

2. The Applicant requested the Administration to reconsider its decision not to renew his contract and, in view of the refusal encountered, filed an appeal with the Joint Appeals Board in accordance with the Staff Rules. After receiving the recommendations unanimously adopted by the Joint Appeals Board, the Respondent informed the Applicant, by letter of 19 March 1952, that he reaffirmed his decision not to offer him a further appointment. This is the decision contested by the Applicant.

3. The Applicant, invoking the opinion rendered by the Joint Appeals Board, contends that he enjoyed a reasonable expectancy of

continued employment with the United Nations for the reason that he occupied an established post, was performing work of a continuing nature and had been recommended in 1950 for promotion and the award of an indeterminate contract.

4. The Applicant contends that if his periodic report for 1950, which was communicated to him in May 1951, contains an unfavourable evaluation of his services, it is because of his alleged attitude when he was assigned to proceed to Korea at the end of 1950. The Applicant contests the accuracy of the charges made against him and the facts alleged. Furthermore, he maintains that these damaging evaluations were wrongfully inserted in the periodic report and that conclusions were drawn from them by the Administration without the observance of due process. He alleges that he had no exact knowledge of the charges made against him nor did he have the opportunity to present any explanation before the decision was taken by the Administration.

5. The Applicant therefore asks the Tribunal to order (1) his reinstatement in the Secretariat, (2) deletion of the relevant statement in his periodic report for 1950, (3) correction of his rating and classification in the said report, and (4) payment of damages for the alleged defamatory statements.

6. The Respondent, replying to the Applicant's contentions, states (1) that the decision contested merely consisted in the expiration of a fixed-term contract, (2) that the Applicant did not acquire any reasonable expectancy of continued employment with the United Nations, and (3) that all the Applicant's superiors were unanimous in their appraisal of his attitude and, finally, that the Applicant was extended all the guarantees provided for under the Staff Rules.

7. The Tribunal does not consider that it is called upon to rule as to a number of the questions which the parties dealt with at length and upon which, in view of the terms of its Statute, it is not appropriate to pronounce.

It is not for the Tribunal, for instance, to re-examine in this case the action of the Administration concerning which the Joint Appeals Board has already reported to the Secretary-General. The Board's recommendations were broadly speaking as follows:

(a) Although it was recognized that the Applicant had a certain measure of expectancy of continued employment with the United Nations prior to about 11 January 1951, the Board found that there was no such expectancy after the date indicated.

(b) The Board rejected the Applicant's claims for reinstatement and for the payment of damages for the non-renewal of his contract.

(c) The Board found that elements of due process had been lacking in the treatment accorded to the Applicant and therefore recommended

that the Secretary-General consider the granting of relief on grounds of equity.

(d) While rejecting the Applicant's claim for damages in respect of the alleged defamatory statements, the Board recommended that the periodic report for 1950 and other related documents be kept in a separate inactive file to prevent disclosure.

But the Tribunal would take the opportunity of stating that it does not accept the Respondent's submission in the oral proceedings that because the Applicant's employment had ceased in accordance with the terms of his fixed-term appointment, from a legal point of view the appeal was not well-founded. To accept any such proposition would be to accept a general thesis that no holder of a fixed-term appointment can ever be regarded as having a justifiable right to state a case to the Tribunal.

8. The question before the Tribunal is whether the Applicant has grounds for reinstatement or no and whether there should be damages of any kind and if so, to what extent.

9. It is not the function of the Tribunal to deal with the internal administrative problems raised in the recommendations in the report of the Joint Appeals Board. Nor is it part of the function of the Tribunal to indicate views on alleged weaknesses in internal administrative procedures or actions taken under such procedures.

10. Whatever measure of expectancy there was prior to the receipt of the periodic report for 1950, no such expectancy could have existed thereafter.

11. In this case, the Secretary-General reached a conclusion not to offer a further contract to this holder of a fixed-term contract which expired on the 2nd of October 1951. This decision was conveyed to the Applicant together with the reason, and he was given a period of two months in which to adjust his affairs in the light of the non-renewal of his contract. This additional two months satisfactorily disposes of the Staff Rule and the provision of the Administrative Manual thereunder, that normally the staff member shall be told well in advance of the action proposed and that this normally means a period of at least two months. In this case, the extended consideration given to all the relevant issues over a period of months meant that the decision could not be reached until approximately the date of the end of the contract. In order to comply with the spirit of the staff rule 115 and provisions of the Manual, the additional two months, notice was given.

12. This is the case of a fixed-term appointment and the Secretary-General had reached the conclusion in the light of all the facts adduced and after consideration of the recommendation of the Appeals Board and had so stated.

13. The Applicant had due opportunity of dealing with the

administrative issues before the Appeals Board. If the recommendation of the Appeals Board shows up a weakness in the machinery of the Secretariat, it is for the Secretary-General to deal with that matter, but it was for the Secretary-General to reach the decision after consideration of all the material in the files, including the divergence as to facts, and, having reached his conclusion, to take action.

14. In fact, he took the action of not offering a further contract. The Tribunal can see no legal reason for reversing that decision.

15. As regards the argument presented by the Applicant alleging denial of due process, the Tribunal must observe that the Applicant had knowledge of his periodic report which he signed, that, furthermore, he expressed his views to his superiors in writing and orally and that, finally, he has been able to resort to the appeals procedure provided for by the Staff Regulations and Rules.

16. It is not for the Tribunal to analyse or comment upon motives which may have led to the decision of the Administration. The Tribunal's task is to ascertain whether the procedures set down have been observed correctly. In this case, it is clear that all prescribed procedures have been correctly observed.

17. As to the claim for damages, the fact that internally, administratively, the Appeals Board recommended the Secretary-General as it did, has nothing to do with the position which the Tribunal must take. As has been indicated, the Applicant was not dismissed. He was in the position that he was not offered a further contract on the expiry of his two-year fixed-term contract consequent upon a decision properly reached and communicated to him.

18. It would not be appropriate for the Tribunal to intervene in what are administrative matters as to the method and manner of presentation of periodic reports. The Tribunal should, however, at least offer comment on a general proposition which appears to be involved, which is that those completing periodic reports should not make completely candid statements to their senior officers. All methods of annual report upon staff are difficult both in conception and in application. But such markings serve a double purpose. Firstly, they enable the essential appraisal of efficiency to be reached. Secondly, they afford the staff the opportunity of knowing critical comments made about them, with a view both to offering their observations thereon and to correcting any lack of efficiency. The Tribunal, therefore, would at any time be cautious about passing any comment which discouraged the development of the best possible annual reporting system.

19. With regard to the issue as to damages, the powers of the Tribunal are related to article 2 of the Statute which provides that the Tribunal should pass judgement with regard to non-observance of contracts of employment or of the terms of appointment, such words

“contract” and “terms of appointment” including all pertinent regulations and rules in force at the time of alleged non-observance. The Tribunal is unable in this case to find any non-observance. The Tribunal awards no damages.

20. With regard to the request for the deletion from the Applicant's Periodic Report for 1950 of a certain paragraph and the changing of the rating and classification shown in this report, the Tribunal does not regard itself as entitled to intervene in this administrative matter appropriate for internal action within the Secretariat.

21. The Tribunal accordingly rejects the claims of the Applicant.

*(Signatures)*

Suzanne BASTID  
*Vice-President and  
Acting President*

CROOK  
*Vice-President*

Sture PETRÉN  
*Member*

Mani SANASEN  
*Executive Secretary*

*New York, 16 December 1952*

## Judgement No. 18

**Case No. 26 :**  
**Crawford**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. Sture Petrén, Vice-President; Mr. Omar Loutfi, alternate member;

Whereas Ruth E. Crawford, former member of the staff of the United Nations International Children's Emergency Fund, filed an application with the Tribunal on 17 February 1953, for the rescission of the decision to terminate her employment communicated to her by letter from the Secretary-General on 7 January 1953;

Whereas a memorandum was submitted to the Tribunal on behalf of the Applicant;

Whereas the Applicant, on 23 July 1953, filed an application for compensation;

Whereas the Respondent filed his reply to the application for