

(b) For additional remedial relief to the extent of \$3,150 ;
 (c) For reimbursement of legal costs amounting to \$1,050 ;
 and has considered the Respondent's reply ;
 the Tribunal awards

(a) Since reinstatement is not ordered, there can be no amount for full salary payment to date ;

(b) No amount for remedial relief ;

(c) No amount for costs ;

and so orders.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Omar LOUTFI
Alternate Member

Mani SANASEN
Executive Secretary

Geneva, 21 August 1953

Statement by Mr. Petrén

On the question of acquired rights, I have reached the same conclusion as the majority of the Tribunal, as the General Assembly, in adopting the new Staff Regulations, did not contemplate a transitional stage for contracts in force at the time of its decision, and as the Applicant's contract contained no provision prohibiting the immediate application of the new staff regulation 9.1 (c).

(Signature)

Sture PETRÉN

Judgement No. 21

Case No. 29 :
Rubin

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 Martin H. Rubin, former member of the Documents and

Sales Division, Department of Conference and General Services, filed an application to the Tribunal on 17 February 1953, for rescission of the Secretary-General's decision of 22 May 1952 to terminate his employment, for reinstatement in his post and for compensation ;

Whereas a memorandum was presented to the Tribunal in his name and in the name of other Applicants ;

Whereas documents were produced on 23 and 29 July 1953 in justification of the amount of compensation claimed and substituting a request for compensation for the request for reinstatement ;

Whereas the Respondent filed his answer to the application on 20 March 1953 and his comments concerning damages on 10 August 1953 ;

Whereas oral information was obtained at Headquarters from 15 to 21 April 1953 in accordance with article 9(3) of the Tribunal's Rules ;

Whereas the Tribunal heard the parties in public session on 20, 21, 22 and 23 July 1953 ;

Whereas the Tribunal has received from the Staff Council of the United Nations Secretariat a written statement of its views on the questions of principle involved in this case ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 3 October 1946 when he was appointed on a temporary (later, temporary-indefinite) contract as Junior Printing Officer in the Documents and Sales Division of the Department of Conference and General Services. On 22 May 1952, the Bureau of Personnel notified the Applicant that his appointment would be effectively terminated on 30 June 1952 under the provisions of staff regulation 9.1(c). On 20 June 1952, the Applicant requested the Administration to reconsider its decision to terminate his appointment and, in view of the refusal encountered, filed an appeal with the Joint Appeals Board. After receiving the Board's report on the case, the Secretary-General informed the Applicant on 5 December 1952 that he reaffirmed his decision to terminate his appointment. On 17 February 1953, the Applicant filed an application to the Tribunal requesting reinstatement in the post previously held by him.

Whereas the Applicant's principal contentions are that :

(a) The procedure employed by the Secretary-General prior to termination was irregular and in violation of the Staff Regulations.

(b) Applicant's performance of his work at all times brought full approval and his annual reports prove this.

(c) Applicant was not submitted to the Walters Selection Committee.

(d) Applicant was recommended for a permanent contract only one week before his termination.

(e) Applicant was terminated without cause assigned or ascertainable.

(f) The Respondent violated recognized standards of due process in withholding specific reasons for the termination.

(g) Staff regulation 9.1 (c) does not grant absolute discretion to the Secretary-General in terminating temporary-indefinite contracts as such an interpretation would conflict with the tenor of the entire body of Staff Regulations.

(h) Whatever interpretation is given to staff regulation 9.1 (c), the Applicant claims that acquired rights under staff regulation 12.1 entitle him to the disclosure of specific reasons for termination and to full recourse to the appeals procedure.

Whereas the Respondent's answer is that :

(a) The Secretary-General is not required to give specific reasons for terminating temporary-indefinite contracts under the terms of staff regulation 9.1 (c).

(b) Staff regulation 9.1 (c) was intended to be a clarification of regulations in force prior to the General Assembly's adoption of the new regulations in February 1952. Thus the question of acquired rights does not arise in this connexion.

(c) The termination of Applicant's appointment was not related to matters of opinion or belief.

(d) The Respondent asserts that there is no evidence to show that he acted from prejudice, in bad faith or out of a mistake of law.

The Tribunal having deliberated until 21 August 1953, now pronounces the following judgement :

1. Under the terms of its Statute, the Tribunal is not competent to pass judgement on the validity, in relation to the Charter, of an agreement made between the Secretary-General and a Member State, whatever influence this agreement might actually have had on the decision taken in respect of the Applicant. It is part of the Tribunal's function, however, to consider whether the termination of the Applicant's employment is in conformity with the provisions of the Staff Regulations and the Staff Rules.

2. The Applicant contends that when he entered the services of the United Nations, the Staff Regulations then in force did not permit the Secretary-General to terminate a temporary-indefinite appointment without stating the reasons.

He also contends that those Staff Regulations continue to apply to him, although they have been changed by the General Assembly, because he enjoys the benefit of an "acquired right" in this connexion.

He further submits that relations between the United Nations and its staff are contractual in nature and that consequently the two

parties are bound by the contract and neither party may change its provisions without the consent of the other.

He points out in addition that regulation 28 of the former Staff Regulations states that : " These regulations may be supplemented or amended by the General Assembly, without prejudice to the acquired rights of members of the staff " ; and that this provision was reproduced in regulation 12.1 of the new Staff Regulations.

3. The Tribunal considers that relations between staff members and the United Nations involve various elements and are consequently not solely contractual in nature.

Article 101 of the Charter gives the General Assembly the right to establish regulations for the appointment of the staff, and consequently the right to change them.

The General Assembly under that Article established new Staff Regulations and decided that these new Staff Regulations should become effective on 1 March 1952 and supersede all previous staff regulations.

It follows from the foregoing that notwithstanding the existence of contracts between the United Nations and staff members, the legal regulations governing the staff are established by the General Assembly of the United Nations.

In determining the legal position of staff members a distinction should be made between contractual elements and statutory elements :

all matters being contractual which affect the personal status of each staff member, e.g., nature of his contract, salary, grade ;

all matters being statutory which affect in general the organization of the international civil service, and the need for its proper functioning, e.g., general rules that have no personal reference.

While the contractual elements cannot be changed without the agreement of the two parties, the statutory elements on the other hand may always be changed at any time through regulations established by the General Assembly, and these changes are binding on staff members.

The Tribunal interprets the provisions of regulation 28 of the Provisional Staff Regulations and article XII of the new Staff Regulations in this manner.

With regard to the case under consideration, the Tribunal decides that a statutory element is involved and that in fact the question of the termination of temporary appointments is one of a general rule subject to amendment by the General Assembly and against which acquired rights cannot be invoked.

4. The Tribunal has examined the whole of the personnel file and all papers relating to the Applicant and finds as follows :

(i) As to conduct outside United Nations

(a) There is no evidence that this Applicant took any part in political activities of any kind ;

(b) he was not called before the Grand Jury ;

(c) he was not summoned before the Internal Security Sub-Committee of the U.S. Senate ;

(d) he was not the subject of any adverse comment by the State Department.

(ii) As to his work

(a) His reports from 1947 to 1952 have given him either an average or above average rating ;

(b) The comments of his next supervisor as to the over-all rating have been either "satisfactory" or "very good" throughout his service ;

(c) In his most recent report, in March 1952, he is given credit for bringing new ideas to his daily work problems and is described as a "devoted staff member" ;

(d) Phrases like "especially industrious", "devoted to his job", "considerable resourcefulness" and "good judgement", appear throughout his reports ;

(e) One week prior to dismissal he had been recommended by his immediate supervisor for a permanent contract ;

(f) His case was never submitted to the Walters Committee although similar cases (e.g., Marjorie Zap) were so submitted.

(iii) As to personnel action

The Applicant was interviewed on a number of occasions and asked to resign voluntarily with payment of indemnities.

Article 9.1 (c) provides that the Secretary-General may terminate temporary appointments if, in his opinion, such action would be in the interests of the United Nations.

The discussions in the Fifth Committee show that the intention of the authors of the United Nations Staff Regulations approved by General Assembly resolution 590 (VI) on 2 February 1952, was to invest the Secretary-General with discretionary powers in the termination of temporary appointments.

It is not a question of the opinion of the Tribunal but of the opinion of the Secretary-General.

It is for the Tribunal to be satisfied that such discretionary powers are exercised without improper motive so that there shall be no misuse of power, since such misuse of power would call for the rescinding of the decision.

Since in this case there is no evidence of any kind, the assertion of the Respondent that there is no evidence to show that he acted from

prejudice, in bad faith or out of a mistake of law, must be accepted as a correct assertion.

Accordingly, the Applicant having failed to establish improper motivation, the Tribunal has no alternative but to reject the claim.

5. Whereas the Tribunal has received claims as follows :

(a) For full salary up to reinstatement, less amount paid at termination ;

(b) For additional remedial relief to the extent of \$5,048 ;

(c) For reimbursement of legal costs amounting to \$1,682 ;
and has considered Respondent's reply ;
the Tribunal awards

(a) Since reinstatement is not ordered, there can be no amount for full salary payment to date ;

(b) No amount for remedial relief ;

(c) No amount for costs ;
and so orders.

(Signatures)

Suzanne BASTID
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