

amount of the annual pension referred to in (2) above, may be substituted by a lump sum payment computed by actuaries as adequate compensation for the surrender of those rights to pension from the date 12 March 1955 to death and so orders.

13. Whereas the Tribunal having received from the Applicant a request for reimbursement of legal costs amounting to \$1,575, notes, with regard to its power to pronounce on such requests, that article 12 of its Rules authorizes applicants to be represented by counsel, and that accordingly costs may be incurred in submitting claims. It recalls that in a general statement of 14 December 1950 it pointed out that it could grant compensation for such costs if they are demonstrated to have been unavoidable, if they are reasonable in amount and if they exceed the normal expenses of litigation before the Tribunal. Recalling the case law of the League of Nations Tribunal (Judgements No. 13 of 7 March 1934 and No. 24 of 26 February 1946), "il n'y a aucune raison pour déroger au principe général de droit que les dépens, sauf compensation, sont payés par la partie qui succombe", the Tribunal considers that it is competent to pronounce upon the costs.

The Tribunal awards an amount of \$300 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

Judgement No. 38

Case No. 46 :
Glaser

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 Eda Glaser, a former member of the Secretariat Library

staff, filed an application with the Tribunal on 18 June 1953 for rescission of the Secretary-General's decision of 14 May 1953 to terminate her employment, for reinstatement in her post in the United Nations and for compensation ;

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

Whereas documents were produced on 23 and 29 July 1953 in justification of the amount of compensation claimed ;

Whereas the Respondent filed his reply to the application on 15 July 1953 and his comments concerning damages on 10 August 1953 ;

Whereas the Tribunal heard the parties in public session on 19 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 following are the facts as to the Applicant :

The Applicant entered the service of the United Nations on 29 September 1947 as a clerk-typist in the Editorial Division of the Department of Conference and General Services. After holding a temporary (later termed "temporary-indefinite") appointment, she received a permanent contract on 1 July 1952. At the time of her dismissal, the Applicant held the post of clerk-typist in the Executive Office of the Secretary-General in the Library Division. In January 1953, the Applicant received the questionnaire circulated to all United States citizens staff members of the Secretariat under the Executive Order of 9 January 1953 of the President of the United States. She was informed by an official of the United Nations, Col. Danielson, that she had the right to refrain from filling up the questionnaire. He nevertheless urged her to do so, and upon the Applicant's firm refusal he stated that he would be forced "to turn her name over". On 17 February 1953, shortly after a conference with Col. Danielson, she was summoned to appear before a Federal Grand Jury, and on 19 February before the Internal Security Sub-Committee of the United States Senate, which was investigating the activities of U.S. citizens employed by the United Nations. At the Sub-Committee's hearing, she refused to answer certain questions put to her, pleading privilege under the Fifth Amendment to the Constitution of the United States. On 4 May 1953, the Applicant received a communication from Mr. George-Picot, Assistant Secretary-General, advising her that the Secretary-General had appointed a Committee to "ascertain and report to the Secretary-General on the facts, circumstances and reasons" that had led the Applicant to invoke the privilege against self-incrimination before the Internal Security Sub-Committee of the United States Senate and on related matters". On 6 May 1953, she appeared before the

Committee appointed by the Secretary-General. She was asked questions relating to her invocation of the privilege under the Fifth Amendment before the Senate Sub-Committee and was involved in an extensive colloquy with respect thereto, the Secretary-General being present to observe. By letter of 14 May 1953, the Assistant Secretary-General in charge of the Department of Administrative and Financial Services notified the Applicant that she had acted "in violation of her obligations under Staff Regulation 1.4 and under her oath to the United Nations", that her action had "rendered her unsuitable for service as a United Nations staff member", and that, consequently, she was "subject to termination for unsatisfactory services under Staff Regulation 9.1 (a)". A memorandum of the Secretary-General dated 13 May was made available to her. The Applicant was also informed that her appointment would be terminated immediately and that she would receive compensation in lieu of notice. On 26 May 1953, the Secretary-General agreed to the submission of the application directly to the Tribunal under article 7, paragraph 1, of the Statute of the Tribunal. On 18 June 1953 the Applicant filed an application with the Tribunal requesting reinstatement in the post previously held by her.

Whereas the Applicant's principal contentions are as follows :

(a) The procedure followed by the Respondent was in violation of Staff Regulations. In particular, the Applicant was refused the fundamental right of counsel in a hearing conducted by the *ad hoc* Committee appointed by the Secretary-General, whose findings have had a decisive influence on the decisions taken concerning her.

(b) The termination of her employment was a violation of her fundamental rights of freedom of speech, conscience and association, and her rights under the United States Constitution and the Universal Declaration of Human Rights. It disregarded the freedom of opinion recognized by article 1.4 of the Staff Regulations.

(c) The finding that the Applicant's employment had to be terminated because her services were unsatisfactory is wholly unwarranted in fact or in law. The Applicant's termination is without justification in that or in any other applicable Regulation or Rule.

(d) Termination of her employment constituted a breach by the Respondent of the contract of employment and added a new condition of employment. It represented interference with the Applicant's acquired rights.

(e) The Applicant's termination was contrary to the Charter and the oath required of the Secretariat, including the Secretary-General, in that it was part of a general plan to give the United States Government control over the recruitment and employment of its nationals by the United Nations.

Whereas the Respondent's answer is as follows :

(a) The Secretary-General's decision is in no way concerned with refusal of the Applicant to complete the questionnaire issued by the United States authorities or her appearance before a Federal Grand Jury.

(b) Where the Staff Regulations do not prescribe a specific procedure, the Secretary-General is entitled, before terminating employment, to inform himself of facts through such channels as he deems appropriate. There is no provision in the Staff Regulations for representation by counsel before a fact-finding committee.

(c) The pleading of privilege constitutes an "action" or "public pronouncement" which may adversely reflect on the status of a staff member as an international civil servant and creates a presumption against the person pleading privilege. By so doing the Applicant failed to show the reserve and tact incumbent upon her by reason of her international status. Knowing the difficulties her conduct would cause the Organization, she acted in accordance with what she deemed to be her own personal interest rather than in accordance with the interest of the United Nations. She thus disregarded her obligations under article 1.4 of the Staff Regulations and under her oath to the United Nations. Her appointment could therefore properly be terminated under article 9.1 (a) for unsatisfactory services.

(d) Finally, she knew that a plea of constitutional privilege had been defined by the Secretary-General as improper and she acted with a full knowledge thereof.

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

1. The Tribunal notes the Respondent's statement that the procedure before the Grand Jury and the conduct of the Applicant with respect to the questionnaire circulated among U.S. citizen staff members of the Secretariat were not taken into consideration in deciding that the Applicant's appointment should be terminated.

2. The Tribunal must, however, record the fact that the *ad hoc* Committee appointed by the Secretary-General questioned the Applicant on the reasons that had led her not to answer the questionnaire.

3. Moreover, in the Secretary-General's memorandum of 13 May 1953 stating the reasons for terminating the Applicant's appointment, the conclusions regarding the moral obligation of loyalty to third persons relate only to the replies made by the Applicant in respect of the questionnaire. At no time did the Applicant plead before the *ad hoc* Committee appointed by the Secretary-General the interest of third persons as a justification for claiming privilege under the Fifth Amendment.

4. With regard to the procedure followed before the decision contested was taken, the Tribunal recognizes that the Secretary-

General may, if he deems fit, set up a special committee to clarify or advise him on a specific situation. Such a committee cannot, however, supersede the bodies set up by the Staff Regulations or Rules in cases where the intervention of such bodies is prescribed.

5. The Tribunal must consider whether, in view of the complaints made, the Respondent was entitled to terminate the Applicant's appointment under Staff Regulation 9.1 (a).

Staff Regulation 9.1 (a) provides for the dismissal of the holder of a permanent appointment when his "services . . . prove unsatisfactory". The French text uses the words "services qui ne donnent pas satisfaction". The decision taken by the Secretary-General implies that the Applicant's services had proved unsatisfactory. The Tribunal must therefore seek an accurate interpretation of the word "services" in relation to a staff member.

The terms "services" and "service" are used on several occasions in the Staff Regulations and Rules.

In the English text of the Staff Regulations it is found, *inter alia*, in Regulation 1.6 (war service), 4.4 (service of the United Nations), 9.1 (a) (necessities of the service, unsatisfactory services) and in the title of article IX (Separation from service). The French text renders the term as "emploi" (title of article IX), and as "service" (article 4.4) or as "services" (articles 1.6 and 9.1 (a)). The Staff Rules in force when the Applicant's appointment was terminated existed only in English. They contain the word "service" in many provisions: 103.21 (mission service), 104.3 (period of service, staff member's services), 104.12 (full-time satisfactory service), 105.1 (his service is expected to continue), 107.4 (one year of service), 109.1 the necessities of the service, suitable posts in which their services can be effectively utilized), 109.10 (certification of service, leaving the service), 112.6 (the service and conduct).

From a comparison of these various phrases, it appears that the term "service" is used in the singular with the meaning of "nature of employment" or "functions" (103.21), and both in the singular and plural in the current normal meaning of "work done for someone".

The term "service" is thus applicable to the professional activities of staff members.

When the Staff Regulations refer to the whole of the obligations incumbent on the staff other terms are used: Regulations 1.3 and 1.4 mention "duties" (*devoirs et fonctions*); regulation 1.9 refers successively to "functions" and "conduct" (*fonctions, conduite*).

It thus appears that the term "services" is never used in the Staff Regulations to designate the whole of the obligations incumbent upon staff members, but refers to the carrying out of the tasks entrusted to them in the Secretariat.

Staff Regulation 9.1 (a) thus permits the termination of an appointment only when a staff member's professional activities within the United Nations itself prove unsatisfactory.

6. This interpretation is confirmed by the modification made in 1952 in the provision on disciplinary measures. Regulation 19 of the Provisional Staff Regulations provided for disciplinary measures in the case of unsatisfactory "conduct or work". When the Staff Regulations were being revised, the Secretary-General informed the Fifth Committee on 19 January 1952 that with regard to article X, relating to disciplinary measures, the Advisory Committee had omitted reference to disciplinary measures in cases where work proved unsatisfactory, since paragraph 1 of article 9 already covered the case.

7. It does not follow that no measures can be taken in cases of breaches of the obligations created by the Staff Regulations concerning the behaviour of staff members outside their professional duties. These obligations concern the conduct of staff members, and breaches of such obligations come under the provisions of article X.

Article X makes no distinction between cases where the alleged acts were committed in carrying out professional duties, and where they were committed outside the Organization, in so far as the private life of the staff member must conform to special provisions.

In the event of breaches of staff members' obligations under the oath in respect of their conduct, disciplinary measures can thus be taken under article X.

Moreover, with regard to Staff Regulation 1.4, a member of the Fifth Committee asked during the discussion on the revision of the Staff Regulations at the 333rd meeting on 22 January 1952 how this provision would be applied in practice. The Chairman pointed out that the Secretary-General was authorized under Staff Regulation 1.4 to take disciplinary measures in respect of the staff. He added that the Secretary-General was himself responsible to the General Assembly for the manner in which he discharged his duties. No objection was made to this statement.

Hence, in the case of complaints against the conduct of a staff member, his appointment, except in the event of serious misconduct, can be terminated only in the circumstances and subject to the guarantees laid down by the Secretary-General in the Staff Rules framed in application of Staff Regulation 10.1.

8. In the case under consideration, the breaches of the oath and of Staff Regulation 1.4 of which the Applicant is alleged to be guilty concern her behaviour before an official organ of the United States and relate to acts outside her professional duties. They concern her private life, not her professional life. The obligations by which she may be bound in that respect relate to her conduct, not to her services.

The same is true of the complaint that she did not take into

consideration the Secretary-General's decision with regard to pleading privilege under the Fifth Amendment, a decision of which she was deemed to be fully aware.

This decision, which was never embodied in explicit instructions addressed to the staff, in any case concerned the conduct of the staff members, not their services. Failure to comply with it cannot be dealt with under Staff Regulation 9.1 (a).

9. Consequently, the Tribunal cannot consider that the complaints made against the Applicant, even on the assumption that they are well-founded, relate to her services. In any case, the Secretary-General's memorandum of 13 May 1952 ended the enumeration of these grounds for complaint with the statement that the Applicant had chosen "not to regulate her conduct with the interests of the United Nations only in view".

It may, of course, be considered that a staff member who disregards the obligations laid down by the Staff Regulations concerning his conduct is unsuitable for service with the United Nations in the sense that it is desirable that he should not be employed there, but it does not follow that his services have proved to be unsatisfactory and that his appointment can be terminated under Staff Regulation 9.1 (a).

10. The Tribunal consequently holds the application to be well-founded and orders, under article 9 of its Statute, the rescinding of the decision contested and the reinstatement of the Applicant.

11. Whereas the Tribunal has received claims in respect of the period up to the date of reinstatement as follows:

(a) For full salary up to the date of reinstatement, less amount paid at termination in lieu of notice;

(b) For additional remedial relief to the extent of \$3,600, and has considered the Respondent's reply,

The Tribunal awards:

(a) Full salary up to the date of reinstatement less the amount paid at termination in lieu of notice and less also the amount of termination indemnity,

(b) No remedial relief, and so orders.

12. Whereas the Tribunal having received from the Applicant a request for reimbursement of legal costs amounting to \$1,200, notes, with regard to its power to pronounce on such requests, that article 12 of its Rules authorizes applicants to be represented by counsel, and that accordingly costs may be incurred in submitting claims; whereas in a general statement of 14 December 1950 it pointed out that it could grant compensation for such costs if they are demonstrated to have been unavoidable, if they are reasonable in amount and if they exceed the normal expenses of litigation before the Tribunal; recalling

the case law of the League of Nations Tribunal (Judgements No. 13 of 7 March 1934 and No. 24 of 26 February 1946), "il n'y a aucune raison pour déroger au principe général de droit que les dépens, sauf compensation, sont payés par la partie qui succombe", the Tribunal considers that it is competent to pronounce upon the costs.

The Tribunal awards an amount of \$300 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

Judgement No. 39

Case No. 40 :
Eldridge

**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 Petré, Vice-President;

Whereas the Tribunal ordered the rescinding of the Secretary-General's decision to terminate the Applicant's permanent appointment with the United Nations in Judgement No. 32 of 21 August 1953;

Whereas the Tribunal was notified by the Secretary-General in a communication dated 2 September 1953 that he had

"decided that it would be inadvisable, from the points of view which it is my duty to take into consideration, to reinstate" the Applicant;

Whereas the Tribunal is required therefore, in accordance with article 9 of the Statute, to "order the payment to the Applicant of compensation for the injury sustained";

Whereas the Tribunal has received documentation with respect to such compensation on the following dates:

Statement of Claim by the Applicant, 10 September 1953;

Statement by the Respondent, 2 October 1953;