

up to the date of this judgement and of further compensation to the amount of \$4,730.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Mani SANASEN
Executive Secretary

London, 13 October 1953

Judgement No. 43

Case No. 50 :
Levinson

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Sture Petrén, Vice-President and Acting President ; Mr. Omar Loutfi ; Dr. Djalal Abdoh ;

Whereas Paul Levinson, former member of the Division of Trusteeship, Department of Trusteeship and Information from Non-Self-Governing Territories, filed an application to the Tribunal on 2 July 1953, for rescission of the Secretary-General's decision of 16 October 1952 terminating his employment, and for reinstatement in his post and for compensation ;

Whereas the Respondent filed his reply to the application on 10 November 1953 ;

Whereas the Tribunal heard the parties in public session on 25 November 1953 ;

Whereas the Applicant filed on 30 November a document amplifying his application and claim for reimbursement for counsel's fees and costs of the proceedings as follows :

(a) Full salary from the date of termination to the date of reinstatement, including all benefits and within-grade increases ;

(b) Payment of counsel's fees and costs of the proceedings to the amount of \$2,500 ;

Whereas the facts as to the Applicant are as follows :

The Applicant first served as a translator in the Division of Languages, Department of Conference and General Services, on a

General Assembly appointment from 25 August 1947 to 31 December 1947. On 2 July 1948 he took up a temporary-indefinite appointment as a Social Affairs Officer in the Trusteeship Division of the Department of Trusteeship and Information from Non-Self-Governing Territories. On 16 October 1952, the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided to terminate his appointment effective 21 November 1952 on the basis of a recommendation of the Walters Selection Committee stating that "The Committee considers that Mr. Levinson is not fully qualified either by experience or by knowledge to take an adequate share in the work of the Secretariat." On 10 November 1952 the Applicant requested the Bureau of Personnel to consider the possibility of reclassifying him in a lower grade but received no reply. On 20 November 1952 the Applicant requested reconsideration of the decision to terminate his appointment and, in view of the refusal encountered, filed an appeal with the Joint Appeals Board. On 7 April 1953, after receiving the report of the Joint Appeals Board, the Secretary-General informed the Applicant of his decision to reaffirm the termination of his appointment. On 2 July 1953, the Applicant filed an application with the Tribunal for reinstatement in his former post and damages.

Whereas the Applicant's principal contentions are :

1. The termination of the Applicant's appointment violated the applicable Staff Regulations and Rules.

(a) No affirmative finding of cause constituting reasonable grounds for termination had been made.

The Walters Selection Committee had made its statement concerning the Applicant's qualifications despite the high opinion of the Applicant held and expressed by his immediate superiors. The Joint Appeals Board report of 25 March 1953, while making no recommendation in support of the appeal, recorded that "there was no apparent conflict of views concerning Appellant's qualifications" and, in view of testimony received, directed attention to the fact that "the wording of the Walters Committee recommendation does not coincide with the high commendation of the responsible director, and that therefore this wording might have a different connotation, which was not within the competence of the Board to ascertain." On 7 April 1953 the Secretary-General reaffirmed the termination.

(b) The Applicant's efficiency and competence had never been questioned during his service in the United Nations and lack of qualification could not therefore be advanced as a reason for termination.

2. The dismissal violated the requirements of due process because the Applicant did not receive a statement of cause in terms sufficiently specific to facilitate proceedings before the Appeals Board and the

Administrative Tribunal (Judgement No. 4 of the Administrative Tribunal). The very structure of the Walters Committee, its method of operation and its deliberate destruction of its records also made it impossible for the Applicant adequately to present his case.

3. The Respondent failed to make any effort to place the Applicant in another post and thus disregarded the ruling of the Tribunal in Judgement No. 4 that in the case of termination of employees with service ratings of "satisfactory" or better, there is a presumptive right to consideration for posts elsewhere in the Secretariat for which their qualifications are appropriate and that an essential of due process is an affirmative showing either that reasonable efforts were made to place such employees in other posts, or a statement of reasons why this was not done.

Whereas the Respondent's answer is :

1. The termination was in strict accordance with the terms and conditions of the Applicant's appointment. The Applicant's temporary appointment was terminated under the authority of Staff Regulation 9.1 (c) and Staff Rule 103 (c). Staff Regulation 9.1 (c) made it quite clear that the temporary staff of the United Nations is subject to termination when such action is in the interests of the Organization and that the Secretary-General and he alone is the judge as to whether or not the interests of the Organization require a termination. Accordingly the Joint Appeals Board in its report had found that the termination was not in conflict with the relevant Staff Regulations and Staff Rules. The remark of the Joint Appeals Board quoted by the Applicant concerned only the wording of the report of the Walters Selection Committee.

2. In terminating the Applicant's appointment all the requirements of due process were fully satisfied.

(a) The termination was effected on the clear and valid ground that the Applicant was not fully qualified, either by experience or knowledge, to take an adequate share in the work of the Secretariat. In any event Staff Regulation 9.1 (c) made it clear that the Secretary-General must be considered the final judge of the interest of the Organization in such matters.

(b) Not only were all the elements of due process required under the applicable Staff Regulations and Rules observed by the Secretary-General but the Secretary-General as an additional safeguard in the interests of both the staff and the Organization sought the advice of the Walters Committee before making the decision to terminate the appointment of the Applicant. The Committee had a free hand to adopt its own rules of procedure and its procedures were reasonable in view of the special nature of its task.

3. No effort was made by the Respondent to place the Applicant in another post because both the Secretary-General and the Respondent

had recognized the need of reaching a final decision regarding the future of all the staff in the Applicant's category and had agreed that subject to certain exceptions the decision in each case must be either that the appointment of the staff member concerned should be terminated or that the staff member should be granted a permanent appointment.

The Tribunal having deliberated until 11 December 1953, now pronounces the following judgement :

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

2. 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.

3. Such discretionary powers must be exercised without improper motive so that there shall be no misuse of power, since any such misuse of power would call for the rescinding of the decision.

4. With regard to the case under consideration, the Applicant was informed that the reason for the termination of his appointment was a recommendation of the Walters Selection Committee.

The function of the Walters Selection Committee was to make recommendations to the Secretary-General as to which temporary staff (a) should be granted permanent appointment, or (b) should be placed on a further probationary period of one year or (c) should be terminated.

The Walters Committee's recommendation as to the Applicant was that he be terminated as the Committee considered him not fully qualified, either by experience or by knowledge, to take an adequate share in the work of the Secretariat.

5. As the result of the Committee's recommendation, the Director of the Bureau of Personnel sent a memorandum to the Applicant on 16 October 1952 stating that the Secretary-General had given the most thorough consideration to the report of the Walters Committee and had decided to accept the recommendation that the Applicant's temporary appointment be terminated as of 21 November 1952.

6. As regards the argument alleging the absence of due process before the Walters Committee, the Tribunal notes that the Committee was an internal administrative body, established by and functioning in the way approved by the Secretary-General in order to tender him advice. It is not for the Tribunal to express an opinion on internal administrative practices adopted by the Secretary-General.

The Tribunal notes that the Secretary-General was aware of the

procedure of and the methods followed by the Committee and decided to accept the recommendations of this body.

7. The Tribunal notes that the Applicant's immediate superiors considered him fully qualified for the post he occupied. On the other hand, the Secretary-General is entitled to set such standards for recruitment to permanent appointments as appear to him to be appropriate. Accordingly, the Tribunal finds that the grounds alleged by the Respondent for the termination of the Applicant's employment appear to be such as might cause the Secretary-General to reach the opinion that the termination was in the interest of the United Nations under article 9.1(c) of the Staff Regulations. Moreover no evidence has established improper motivation for the termination of the Applicant.

Accordingly the Tribunal rejects the claim.

(Signatures)

Sture PETRÉN
*Vice-President
and Acting President*

Omar LOUTFI
Member

Djalal ABDOH
Member

Mani SANASEN
Executive Secretary

New York, 11 December 1953

Judgement No. 44

Case No. 54 :
Bergh

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Sture Petrén, Vice-President and Acting President; Mr. Omar Loutfi; Dr. Djalal Abdoh;

Whereas Sven-Erik Bergh, former member of the Purchase and Transportation Division, Department of Conference and General Services, filed an application to the Tribunal on 18 August 1953, for rescission of the Secretary-General's decision of 3 November 1952 to terminate his employment, for reinstatement in his post and for compensation;

Whereas the Respondent filed his answer to the application on 6 November 1953;

Whereas the Tribunal heard the parties in public session on 26 November 1953;