

Judgement No. 50

Case No. 55 :
Brown

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 ; Dr. Djalal Abdoh ;

Whereas Guillermo Brown, former member of the Language Services Division of the Conference and General Services Department, filed an application to the Tribunal on 13 November 1953, for rescission of the Secretary-General's decision of 20 October 1952 terminating his employment and for reinstatement in his post ; for damage for loss of earnings ; compensation for damage to reputation ; and costs of the proceedings, including counsel's fee ;

Whereas the Respondent filed his reply to the application on 1 December 1953 ;

Whereas the Applicant filed his comments on the Respondent's answer on 7 December 1953 ;

Whereas the Tribunal heard the parties in public session on 8 December 1953 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 29 May 1946 under a temporary-indefinite appointment as a Translator in the Language Services Division of the Conference and General Services Department. On 20 October 1952, the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided to terminate his appointment effective 31 December 1952 on the basis of a recommendation of the Walters Selection Committee stating that "the Committee considers that Mr. Guillermo Brown is not able to maintain the high standard required in the translation services of the United Nations." On 7 November 1952, the Applicant requested the reconsideration of the decision to terminate his appointment and, in view of the refusal encountered, filed an appeal with the Joint Appeals Board on 27 November 1952. The Appeals Board having concluded that it could not support the appeal, the Director of the Bureau of Personnel on 1 May 1953 notified the Applicant that the Secretary-General "will ask the Selection Committee when it reconvenes, in the near future, to reconsider your case and report to him again. Pending this recommendation there will be

no change in your status." A request from the Applicant that he be provisionally reinstated in his post pending the reconsideration of his case by the Selection Committee was denied on 30 June 1953. The Applicant's case having been reconsidered by the Selection Committee under the chairmanship of Sir Ramaswami Mudaliar, the Secretary-General on 21 October 1953 informed the Applicant that he, on the unanimous recommendation of the Committee, reaffirmed the termination of the Applicant's appointment. In the meantime, the time for presentation of the Applicant's appeal to the Administrative Tribunal had been extended to 15 November 1953. On 13 November 1953, the Applicant filed an application with the Tribunal for reinstatement in his former post and compensation and costs of the proceedings.

Whereas the Applicant's principal contentions are :

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

(a) An affirmative finding of cause constituting reasonable grounds for termination has not been made. The only reasons advanced to the Applicant were in accordance with the findings of the Walters Selection Committee and the Mudaliar Selection Committee, namely, that the Applicant failed "to maintain the high standards required" and to meet "the standard required". The Applicant has been unable to ascertain the nature of such standards.

(b) Previous actions of the Secretary-General demonstrated that the Applicant was competent and qualified for his position. Failure to meet the standards required cannot therefore be advanced as a reason for the termination of the Applicant's appointment. When the reason given for termination "is shown to be unreasonable" Staff Regulation 9.1 (c) does not give the Secretary-General the power to claim that Article 9.1 (c) gives the Secretary-General the power to terminate without giving a specific reason.

2. The Applicant's dismissal violated the requirements of due process.

(a) The statement of cause was not in terms sufficiently specific to facilitate proceedings before the Administrative Tribunal as set down in Judgement No. 4.

(b) The Applicant was denied a fair hearing by the Mudaliar Selection Committee. The Applicant was examined without benefit of counsel and by a member of the Committee who had also sat on the Walters Selection Committee. The latter Committee, before which the Applicant had appeared, had recommended termination of the Applicant's appointment.

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.

4. The Applicant's termination was motivated by prejudice on the part of his superior officers because the Applicant persisted in his candidacy in 1949 for chairmanship of Unit 31 of the United Nations Staff Association, while his superior had preference for another candidate. Furthermore, the prejudice had manifested itself in the overwhelming number of Argentinians in the Section.

In the course of the proceedings, it was asserted by the Counsel for the Applicant that the insertion in the Applicant's file, after he had been terminated from the United Nations, was to support the position of the Administration before a reviewing Tribunal.

The Mudaliar Selection Committee examined two officers of Unit 31 of the Staff Association who testified to the allegation of prejudice and other matters, but the Committee omitted mention of the substance of this testimony in its report.

Whereas the Respondent's answer is :

1. The Secretary-General's judgement of the Applicant's performance and professional qualifications is not reviewable by the Tribunal. This has been established by the Tribunal in previous judgements (Nos. 4, 21 and 24).

2. The termination was fully justified on the basis of the record of the Applicant's performance. All the supervisors who commented on the Applicant's work agreed upon his poor performance as a translator into Spanish.

3. The Applicant was not denied due process but enjoyed procedural guarantees in excess of those required by the Staff Regulations and Rules. In spite of the Applicant's inadequate performance, the Secretary-General submitted his case to the Walters Selection Committee. After that Committee had recommended termination, the Secretary-General sent the case to the Mudaliar Selection Committee for a further review. Thus the Applicant was given special consideration and enjoyed procedural guarantees in excess of those prescribed by the Staff Regulations and Rules.

4. The Applicant's allegation of prejudice is entirely unfounded. Translators are recruited on the basis of written examination and because of that, the principle of geographical distribution does not apply to the Section.

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

1. Article 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 appointments, 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 able to maintain the high standard required in the translation services of the United Nations.

5. As the result of the Committee's recommendation, the Director of the Bureau of Personnel sent a memorandum to the Applicant on 20 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 31 December 1952. The Secretary-General resubmitted the case to the Selection Committee which, under a new chairmanship, confirmed its previous decision with respect to the Applicant.

6. The Tribunal considers that the Secretary-General is entitled to set such standards for recruitment to permanent appointment as appear to him to be appropriate. Accordingly, the Tribunal finds that the ground alleged by the Respondent for the termination appears 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. Furthermore, the Tribunal considers that the Applicant's contention that he was dismissed because of prejudice and other extraneous factors has not been established. Taking into account the review of the Applicant's case by the Mudaliar Selection Committee, which reached the same conclusion as the Walters Committee, the Tribunal cannot believe that appraisal of his work had been affected by improper motivation.

Accordingly, the Tribunal rejects the claim and all subsidiary claims for damages, compensation and costs.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Djalal ABDOH
Member

Mani SANASEN
Executive Secretary

New York, 11 December 1953

Judgement No. 51

Case No. 45 :
Reed

***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 ; Mr. Omar Loutfi, alternate member ;

Whereas in Judgement No. 37 of 21 August 1953, the Tribunal awarded as to the Applicant Jane Reed in case No. 45, as follows :

“ 1. That she be paid \$10,000 damages to cover the period from the date of this judgement until the date on which she would normally have retired on pension, on 12 March 1955 ;

2. That she be paid in every twelve months thereafter until her death such amount as she would normally have been entitled to expect as annual pension ;

3. That if the Applicant and the Respondent mutually so agree, the 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.”

Whereas the Tribunal noted in so awarding that it had taken note of facts as to the Applicant as follows :

“(a) She joined the United Nations service on 1 March 1946 after previous employment with the United Nations Information Service from October 1943 until her transfer to the service of the United Nations on 1 March 1946 ;