

**Judgement No. 52**

**Case No. 57 :**  
**Zimmet**

**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. Jacob Mark Lashly, alternate member ;

Whereas Gérard Ferdinand Zimmet, former member of the Narcotic Drugs Division of the Department of Social Affairs, filed an application to the Tribunal on 15 February 1954 (after rejection by the Secretary-General, on 18 November 1953, of a favourable recommendation of the Joint Appeals Board), for the rescission of the Secretary-General's decision of 29 October 1952 whereby Applicant was separated from the service of the United Nations ; and for compensation and costs ;

Whereas the Respondent filed his answer to the application on 23 March 1954 ;

Whereas the Tribunal heard the parties in public session on 24 and 25 May 1954 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 24 December 1946 under a temporary (later temporary-indefinite) appointment as Social Affairs Officer in the Social Activities Division of the Department of Social Affairs. On 6 June 1947 the Applicant's temporary appointment was changed to a two-year fixed-term contract. On 26 January 1948 the Applicant was transferred to the Narcotic Drugs Division of the Department of Social Affairs. His contract was extended for the following periods : one year on 6 June 1949, one year on 6 June 1950, six months and twenty-six days on 6 June 1951, four months on 1 January 1952, three months on 1 May 1952, three months on 1 August 1952. On 29 October 1952, the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided not to keep him on the Staff after 31 December 1952 and, since his contract expired on 31 October 1952, to offer him a new fixed-term appointment for two months. In so doing, the Secretary-General acted on the basis of a recommendation of the Walters Selection Committee which stated : "The Committee considers that Mr. Zimmet is below the required standard both of intelligence and industry." The Applicant accepted the extension of his appointment without prejudice to his right of appeal. On 25 November 1952 he requested the Assistant Secretary-General in charge of Administrative and Financial Services to reconsider this decision. In view of

the refusal encountered, the Applicant filed an appeal with the Joint Appeals Board on 18 December 1952.

The Appeals Board, in its report of 4 June 1953, recommended that in view of certain facts to which it invited the attention of the Secretary-General the Applicant "be given a period of probation (of possibly one year) during which his qualification for career service in the Secretariat may be finally appraised."

On 25 June 1953, the Secretary-General appointed a special committee composed of Messrs. Martin Hill, Adrian Pelt and Ralph Bunche, "to look into the alleged administrative irregularities" in connexion with the case of the Applicant. This committee was asked to indicate whether, in its judgement, "the administrative irregularities, if any, should have a bearing upon the recommendation of the Personnel Selection Committee".

On 3 July 1953 the Secretary-General informed the Applicant that he had received the Joint Appeals Board's conclusions and recommendations on 4 June 1953 but in view of his desire to give it careful consideration he would be unable to inform the Applicant of his decision within the thirty-day time-limit provided in article 7, paragraph 2 of the Statute of the Administrative Tribunal.

The Special Fact-finding Committee made its report to the Secretary-General on 2 August 1953. The Committee found that "procedural and administrative irregularities did occur" but that "these were not of such a nature as to warrant rejection of the recommendation of the Selection Committee, which would be the case if the recommendation of the Appeals Board were to be accepted." It concluded that "the most desirable course" would be the resubmission of the case to the Selection Committee since this would not only afford "full protection to Mr. Zimmet's rights and interest but would also tend to allay any doubt or suspicion which may have arisen concerning possible arbitrariness in the handling of this case."

On 21 August 1953, the Assistant Secretary-General in charge of Administrative and Financial Services sent a copy of the conclusions and recommendations of the Joint Appeals Board and a copy of the conclusions of the report of the special Fact-finding Committee to the Applicant. At the same time, he confirmed the Secretary-General's decision to resubmit the Applicant's case to the Personnel Selection Committee which was meeting under the chairmanship of Sir Ramaswami Mudaliar.

On 9 September 1953, the Secretary of the Mudaliar Selection Committee wrote to the Applicant inviting him to appear before the Committee on 14 September 1953. The Applicant did not appear at that date, but on 27 September 1953 he wrote to the Secretary-General giving his reasons for declining to appear before the Mudaliar Committee. The Applicant pointed out that further review of his case

by another extra-statutory committee, which offered none of the safeguards provided in the Appeals Board procedure and the Staff Rules, might be prejudicial to his interests. He raised the question whether his appearance before the Selection Committee would be without prejudice to his statutory rights and whether it would delay the statutory time-limits for the submission of his case to the Tribunal. He requested clarification as to his administrative status in appearing before an internal committee appointed to determine the merits of staff members. Finally, he expressed doubt as to the ability of the Selection Committee to reach any sound conclusion in view of the condition of his personal file which he claimed was vitiated by administrative irregularities and by prejudice. On 18 November 1953 the Secretary-General informed the Applicant that he had again carefully reviewed the documentation in Applicant's case and reaffirmed his original decision not to offer him a new appointment.

Whereas the Applicant's principal contentions are :

1. The termination of the Applicant's appointment was based upon the statement of the Walters Selection Committee that "Mr. Zimmet is below the required standard both of intelligence and industry". On the question of "industry" the conclusion is not borne out by the periodic reports rendered on the Applicant's work. In reaching its conclusions, the Walters Selection Committee relied upon a summary of the Applicant's record presented by the Administration and containing false and damaging errors as to the facts.

2. The procedure of the Walters Selection Committee was defective as it failed to give the Applicant any notice of charges or any hearing on such charges.

3. The periodic reports rendered on the Applicant's work for 1951 were contrary to Staff Rule 65 as interpreted by Section 3-19 of the Administrative Manual in effect at that time. Two reports, dated 16 April 1952 and 23 April 1952, were rendered where only one was prescribed, and neither of the supervisors signing the reports was the "present supervisor", *i.e.*, the supervisor competent to sign within the meaning of Staff Rule 65.

4. The periodic report on the Applicant's work for 1949 contained an adverse comment which was not disclosed to the Applicant, in violation of Staff Rule 65.

5. No report concerning the Applicant contains any comment of lack of industry.

6. The Applicant's termination was motivated by personal prejudice on the part of his superior officer whose appraisal of his work was affected by the tension existing at the time between the Narcotic Drugs Division and the Commission on Narcotic Drugs. This charge of prejudice is supported by the direct testimony of third parties.

7. The administrative irregularities alleged by the Applicant were

recognized by the Joint Appeals Board which unanimously recommended the Applicant's reinstatement. The special Fact-finding Committee subsequently appointed by the Secretary-General noted certain irregularities and recommended re-submission of the case to the second Selection Committee.

8. The Applicant was justified in declining to appear before the second Selection Committee under the chairmanship of Sir Ramaswami Mudaliar. In the first place, the majority, three members, of the first (Walters) Committee were expected to sit on the second committee and the same three members had already stated that the inaccurate summary of the Applicant's record, used at the first hearings, "could in no way have affected his judgement". Secondly, the Applicant's case had already been considered by two extra-statutory committees as well as the Joint Appeals Board; to have forced him through a fourth administrative proceeding over a period of sixteen months would have placed an unfair burden upon him and unduly delayed the presentation of his case to the Tribunal.

Whereas the Respondent's answer is :

1. The application does not involve the termination of the Applicant's appointment but the non-renewal of a fixed-term appointment. The decision not to renew the appointment was taken in conformity with former Staff Rule 115 and present Staff Rule 109.7.

2. In deciding not to renew the Applicant's fixed-term appointment, the Secretary-General acted in the exercise of his discretionary powers and on the ground that the Applicant was not in his opinion qualified for a permanent appointment.

(a) The Walters Selection Committee was a reasonable method for arriving at an administrative determination of the Applicant's qualifications.

(b) The record of the Applicant's service bears out that the Applicant's work was not of a high calibre.

3. There was no improper motive on the part of the Respondent.

(a) The sole reason for the non-renewal of the Applicant's appointment was that he did not possess the high qualifications required for the permanent career service.

(b) Two periodic reports were rendered in 1952 in respect of the Applicant's work in 1951 because it was decided in this case to go beyond the minimum requirements set out in the interpretations and conditions relating to Staff Rule 65. The reports were thus completed by the actual supervisors concerned and not the "present supervisor" under whose supervision the Applicant performed only French translation work on a provisional basis.

(c) The Respondent did not violate Staff Rule 65 by withholding from the Applicant knowledge of the entries on his periodic report for

the year 1949. The Rule requires that the staff member be informed of any comments which show him to be less than satisfactory and this was not the case with respect to the comments made in this report.

(d) The Summary of the Applicant's record presented to the Walters Selection Committee and incorrectly describing the Applicant's two periodic reports for 1951 as "below standard" was the result of a pure typographical error. The Committee's procedure was such that the summary had little or no importance and could not have misguided the Committee. This was corroborated by three permanent members of the Committee and by its secretary.

(e) The tension between the Narcotic Drugs Division and the Commission on Narcotic Drugs did not adversely affect the Applicant's case. The Applicant's role in relation to the work of the Commission and in particular in relation to the matter in dispute was of a minor character. It was a pure coincidence that his supervisor's recommendation as to his contractual status should have been made during this period of tension.

(f) The conclusions and recommendations of the Joint Appeals Board were based on insufficient and misleading information. Its conclusions and recommendations would have been entirely different if it had been in possession of the full evidence relating to this case.

(g) The Applicant's rejection of the Secretary-General's invitation to appear before the Selection Committee a second time was a clear admission that even he had no faith in his own case. In accepting the recommendation of his special Fact-finding Committee to re-submit the case to the Selection Committee, the Secretary-General wished to give the Applicant every possible opportunity to be heard on all the points at issue before submission of the case to the Tribunal.

The Tribunal having deliberated until 29 May 1954, now pronounces the following judgement :

1. The Applicant's claim is directed against the Secretary-General's decision of 29 October 1952 not to renew the Applicant's appointment, which decision was based on the Walters Selection Committee's recommendation. However, the Secretary-General's decision of 29 October 1952 was reviewed by him in the light of the findings of the Joint Appeals Board and of the Fact-finding Committee of three senior officers. Accordingly, for this claim to succeed, the Applicant must show not only that the decision of 29 October 1952 was invalid but that the subsequent decision of 18 November 1953 also was invalid.

It would be convenient, in order to avoid repetition, to deal with the findings of the Appeals Board and of the special Fact-finding Committee appointed by the Secretary-General thereafter.

2. The Walters Selection Committee having reached the conclusion that Mr. Zimmet was "below the required standard both of intel-

ligence and industry”, the Applicant was given notice that he would not have his contract renewed. The Appeals Board, reporting on 4 June 1953 on his appeal, informed the Secretary-General that evidence was presented to the Board indicating that the summary of the Applicant’s record, as presented to the Walters Selection Committee, contained a serious inaccuracy and the omission of an important qualifying circumstance. The Board in this matter was referring to the inclusion in a list of alleged facts as to the Applicant (called the “fact-sheet”), information that in respect of 1951 two Periodic Reports were issued, both of which indicated that the Applicant was below standard, whereas in the preceding years, the reports had indicated: 1947 — “above average”, 1948 — “satisfactory”, 1949 — “average-satisfactory”, 1950 — “satisfactory”. It is clear that such reporting is contrary to the provisions of the Administrative Manual on the Rules and that the mention of two “below standard” markings could have affected the Applicant’s case adversely. Indeed that was the conclusion of the Appeals Board.

3. The Respondent admits that the “fact-sheet”, to which reference was made, was inaccurate and the only explanation offered is that there must have been a typographical error. Be that as it may, if such a typographical error was made, it was made as the result of copying from a document, produced by the Respondent, which appears to be the origin of the “fact-sheet” in question. This document (Annex No. 31) is dated *March 1951* and had typed on it information as to the record of Mr. Zimmet. On this document appears a record of entries made on *21 March 1951*. Yet also, on this document, there are entries in manuscript as follows:

“1951 January/July — below standard

“August/November — below standard”

which obviously could not have been on the document as early as *March 1951*.

4. The Tribunal notes with satisfaction that as soon as the Secretary-General was apprised of the terms of the report of the Appeals Board, he proceeded to take advantage of the fact that there were in Geneva, at that time, three members of his senior Administration, Mr. A. Pelt, Mr. M. Hill and Mr. R. Bunche, who were asked to examine the question of certain “administrative irregularities” in this matter.

On 1 August 1953 these three senior officers submitted to the Secretary-General an important report which makes it clear, in respect to the Periodic Reports for 1951, that they were filed, the one by Mr. Zimmet’s immediate superior, Dr. Steinig and the other in response to official requests by Dr. Steinig. In this latter instance, the reporting officer asked permission not to submit a report since Mr. Zimmet had been in the Division for only three months but

subsequently made such a report, as he pointed out, on instructions received. This Fact-finding Committee found that the first report (of 1 July 1951) had no "below standard" rating; and as to the second, the "below standard" rating was qualified by the handwritten comment of the officer completing the form "for work in the Population Division".

5. Examination of the various Periodic Reports shows that no adverse comment was communicated to Mr. Zimmet until 6 May 1952, at which date the report for 1951 referred back to comments made by Dr. Steinig in the 1949 and 1950 Periodic Reports. The comments to which such reference was made were observations clearly intending to indicate that his services were "less than satisfactory". There was no evidence before the Tribunal that any notification to the Applicant had ever been made as to these critical comments in accordance with the procedure set down, and indeed, on the Periodic Reports, where provision is made for the Reporting Officer to indicate that the staff member has been apprised of comments showing him to be "less than satisfactory", there was no entry by Dr. Steinig. The Respondent, at one stage, sought to explain to the Tribunal that the comments were not such as to be regarded as "less than satisfactory". This contention was contradicted by the Respondent in his earlier written submissions to the Tribunal where Dr. Steinig's critical reporting was said to "go to the very heart of the trouble with the Applicant's work".

6. In respect to the damage which might have been caused to the Applicant by the submission of the wrong information as to his career, the Tribunal notes the following paragraph from the report of the Fact-finding Committee of the three senior officers to the Secretary-General:

"We also took note of the memorandum of 15 June 1953 to Mr. Byron Price from Mr. Stewart Gowans, Secretary of the Selection Committee, concerning the errors in the Summary. Mr. Gowans states that the Committee 'did not rely upon the contents of the fact-sheet, but invariably studied the Staff Member's file itself'. He adds that 'mistakes were not infrequently found in the fact-sheets...'

"Mr. Gowans also reports that each of the three permanent members of the Selection Committee who sat on the Zimmet case confirmed to him that 'any mistake in the Summary could in no way have affected his judgement'. However, there appears to be no evidence that the Selection Committee was aware that, in fact, the Summary was erroneous."

The Tribunal notes with concern the following important facts:

(a) That a committee charged specifically with the task of reviewing future staffing should have had submitted to it "fact-sheets" as to members of the staff in which "mistakes were not infrequently found"

(b) That the secretary of such a committee should assume authority to make assertions as to matters upon which the committee did or did not rely ;

(c) That the secretary of the committee should consider it appropriate, after an informal consultation with the three permanent members of the Selection Committee, to make a formal observation that the inaccuracies in such "fact-sheets" in respect of each of those three members "could in no way have affected his judgement".

(d) That no effective step appears to have been taken to acquaint the Committee of the fact that it had reached conclusions based upon statements which are admitted to have been erroneous.

7. In the light of the fact as to the reliance placed by the Administration on both the report of the Appeals Board and the report of the Fact-finding Committee, the Tribunal has found some difficulty in understanding certain of the subsequent submissions by the Respondent in this case, notably :

Paragraph 71 — "the assumptions on which the [Appeals] Board based its CONCLUSIONS AND RECOMMENDATIONS were incorrect and misleading. Had the Board been in possession of the full evidence relating to this case its CONCLUSIONS AND RECOMMENDATIONS would have been entirely different."

Paragraph 73 — "We are not prepared to agree with the conclusion of the Secretary-General's Special Panel that 'procedural and administrative irregularities did occur'. The fact remains, however, that the Secretary-General did take a decision on the basis of the recommendations of the Panel. He decided to accept the Panel's recommendation that the Applicant's case be resubmitted to the Selection Committee."

8. However, all of the above-mentioned information was brought to the knowledge of the Fact-finding Committee of three senior officers and through its report presented to the Secretary-General before he took his final decision not to renew the Applicant's appointment. In accordance with what has been noted previously, the Tribunal does not find that the decision should be reversed upon that issue.

9. As to the contention of the Applicant concerning the finding of the Secretary-General as to the quality of his work or as to his habits of industry or productivity, it is the view of the Tribunal that these matters are properly left to the sound discretion of the Secretary-General.

10. There have been injected into this case various claims of prejudice, upon the assumption without direct proof, that the attitude of the supervisor, Dr. Steinig, may have been influenced by ill-feeling toward the Applicant. It is conceivable that any dissatisfaction existing upon the part of the supervisor may have been prompted by adverse estimates upon the value of the work of the Applicant, rather than



upon more personal considerations. It was admitted on all sides that "there was a tension between the Commission and the Narcotics Division" and in addition "some tension within the Division itself".

There were submitted to the Tribunal various documents including:

(a) Letters from members of delegations on the Narcotics Commission indicating their views that bias and prejudice existed against the Applicant;

(b) Reports, such as that of the three senior officers, that some of the officers senior to the Applicant were under the impression that the atmosphere which had obtained in the Division had had some influence with respect to the decision taken as regards the Applicant;

(c) That Dr. Steinig had described Mr. Zimmet as "a busybody".

While the evidence upon this whole subject is not very clear or convincing, such as there was rather supports the view that any disagreements between them stemmed from differences in ideas of methods or policy of work arising in the course of the employment. In this view of it the Tribunal considers that the facts in regard to this aspect of the case having fallen within the purview of the Secretary-General, his decision should be respected.

11. In the light of all the facts and foregoing considerations, the Tribunal has reached the following conclusion:

This is a case in which the Secretary-General decided not to renew a fixed-term appointment. Whatever view this Tribunal may have either of the opinion of the Secretary-General, his exercise of powers, or the decisions he may reach, it is not for this Tribunal to express an opinion as to the services and values of Mr. Zimmet or the facts surrounding his previous employment; those matters would depend upon the opinion of the Secretary-General and of the administrative decision he may take.

Accordingly the Tribunal rejects the claim made.

As to costs, the Tribunal makes no award.

*(Signatures)*

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

Sture PETRÉN  
*Vice-President*

J. M. LASHLY  
*Alternate Member*

Mani SANASEN  
*Executive Secretary*

Paris, 29 May 1954

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