Judgement No. 65

Case No. 60: Hilpern *Against:* **United Nations Relief and Works Agency for Palestine Refugees in the Near East**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Sture Petrén, Vice-President; Mr. R. Venkataraman;

Whereas Walter Hilpern, former Manager of the Cairo Office of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, whose contract was terminated by decision of 15 April 1952, filed an application with the Tribunal on 18 October 1954, requesting that the Tribunal order the payment of:

(*a*) Three months' salary in lieu of sick leave . . .	£E 450
(*b*) Three months' salary as indemnity based on length of service	£E 450
(*c*) Special indemnity for improper termination and vexatious delay in the treatment of his case	£E 10,000
TOTAL	£E 10,900

(*d*) Costs, in addition to the above claims;

Whereas the Respondent, in his answer filed on 13 May 1955, raised the question of the Tribunal's competence to hear cases involving staff members of UNRWA;

Whereas the Tribunal, in its Judgement No. 57 of 9 September 1955, decided that it had jurisdiction to consider the merits of the case;

Whereas the Tribunal decided, at the request of the Applicant and with the agreement of the Respondent, to defer consideration of the merits of the case until its session in 1956;

Whereas the Tribunal, in its Judgement No. 63 of 30 August 1956, decided to adjourn consideration of the case pending the production by the Respondent of certain documents and information;

Whereas the Respondent submitted certain documents and information on 27 September 1956;

Whereas the Applicant and the Respondent submitted written observations on 15 October and 1 November 1956 respectively;

Whereas the Applicant requested and the Respondent opposed the holding of further oral proceedings;

Whereas the President of the Tribunal thereupon put certain questions to which the Respondent and the Applicant submitted written replies on 20 and 21 November respectively;

Whereas the Applicant reiterated his request of the holding of further oral proceedings or, if that were not possible, the exchange of further written documents;

Whereas the facts as to the Applicant and the principal contentions of the parties are set forth in Judgement No. 63;

The Tribunal, having examined the documents and information provided at its request by the parties and having deliberated from 21 November to 7 December 1956, decides to grant no further oral proceedings or delays and now pronounces the following judgement:

1. The Tribunal has stated in paragraph 12 of its earlier judgement of 30 August 1956 that there is no provision in the Applicant's contract under which he can claim to have acquired a right to a termination indemnity but that it follows from the Applicant's classification in the category of "Area Staff" under Administrative Instruction No. 106 that he can claim the general benefits applicable to such "Area Staff". The question whether the "Area Staff" were entitled to any terminal benefits must be examined in the light of the memorandum of 19 December 1951, the full text of which has now been communicated to the Tribunal.

2. The Respondent holds that this memorandum was of a confidential nature and addressed by the Chief of the Agency's Administrative Division to the Country Representatives, setting out policy decisions for their guidance. According to the Respondent, such decisions, as distinguished from Administrative Instructions and Staff Rules, did not form part of the contractual relationship between the Agency and the staff members and were subject to change and variation without the consent of the staff members concerned and even without notice to them.

3. The Respondent's contention that the memorandum did not confer any rights on the staff members is, however, contradicted by the wording of its paragraph (a) which provides that a staff member who is a bona fide national of the country will be "entitled" to the terminal emoluments "prescribed by the local National Labour Laws of the Country". While in paragraph (b) of the memorandum, it is stated that the local national labour laws ought to be used as a "guide" for payment of the *ex gratia* benefits for service-incurred injury, it is evident that the expression "entitled" used in paragraph (a) of the memorandum confers a right on the staff concerned. The Tribunal therefore finds that under the memorandum, the staff members covered by paragraph (a) could claim the benefits envisaged therein.

4. Although these benefits are described as the "terminal

emoluments" prescribed by the national labour laws of the country, the expression terminal emoluments must, however, be interpreted in keeping with the system of terminal benefits established in the United Nations Staff Regulations and Rules. It appears to the Tribunal that only benefits of a nature corresponding to those contained in Chapter IX of the Staff Rules of the United Nations should be taken into account.

The Tribunal therefore holds that provisions of Egyptian labour law relating to other matters as for example, compensation for wrongful termination or termination for illness or incapacity, cannot be invoked by a member of the "Area Staff" covered by the memorandum.

5. On the basis of the above interpretation, it is now possible to dispose of the claims of the Applicant, assuming that under the terms of paragraph (a) of the memoradum the Applicant was entitled to the benefits prescribed in the local national labour law.

Special indemnity

6. In paragraphs 26 to 30 and 42 of its earlier judgement dated 30 August 1956, the Tribunal reserved the question whether the Applicant would be entitled to any special indemnity under Egyptian law.

Article 22 of Law No. 41 of 1944 (item 10 of Annex A submitted by Respondent on 27 September 1956), under the heading "Personal Employment Contract", secures for an aggrieved party compensation for wrongful termination of contract.

The Tribunal has already held that this provision of the local national labour law is inapplicable to the staff covered by paragraph (a) of the memorandum dated 19 December 1951.

Even assuming, therefore, that the Applicant is entitled to the benefit of paragraph (*a*) of the memorandum, the claim for special indemnity fails and is hereby rejected.

Sick leave

7. In paragraph 37 of the judgement dated 30 August 1956, the Tribunal observed that the only question which remained to be decided was whether "under the Rules of the Agency or under the local laws of Egypt, if applicable to the Applicant, he could claim any compensation as sickness benefit".

In view of the conclusion reached by the Tribunal in paragraph 4 as to the interpretation of the expression "terminal emoluments", the claim for any sickness benefit based on Egyptian labour law cannot be sustained.

Paragraph (*b*) of the memorandum dated 19 December 1951 provides for *ex gratia* payments to all "Area Staff" as compensation "for service-incurred injuries". In paragraph 36 of the earlier judgement dated 30 August 1956, the Tribunal has rejected the plea that the Applicant's illness was service-incurred. The Tribunal therefore dismisses the claim for sickness benefit.

Terminal indemnity

8. Law No. 41 of 1944 quoted above contains the following provisions:

Article 21: "If the contract is an indeterminate one, each party may terminate it by means of a termination notice fixed as follows:

"(*a*) 3 days for daily workers;

"(*b*) 7 days for weekly workers;

"(*c*) 30 days for monthly workers."

Article 22: "Failure to observe the termination notice laid down in the preceding article shall render the party breaking the contract liable to the other party for the payment of compensation equivalent to the worker's salary for the period of notice or for the remainder of that period...."

Article 23: "If the contract is terminated by the employer, the latter shall own the worker a service indemnity calculated as follows:...

"(*b*) For monthly workers:

"One-half month of the last salary for each of the first six years of service....

"Intellectual workers shall be treated in the same manner as monthly workers."

The Tribunal pointed out in its judgement of 30 August 1956 that the Applicant must be considered as having already received one month's salary in lieu of notice. If the Egyptian law did apply to him, he would be entitled to a termination indemnity which would probably amount to one-half month's salary for each year of his service from February 1949 to June 1952 in addition to the salary in lieu of notice.

In this connexion, the Tribunal wishes to recall its earlier decision that what was stated by the Respondent to be an *ex gratia* payment approximating with the dues under the local labour laws was in fact only a payment in lieu of notice.

9. Whether the Applicant is entitled to invoke the Egyptian law depends, however, upon the condition that he was a bona fide national of the country within the meaning of paragraph (*a*) of the memorandum of 19 December 1951. On this point, the Tribunal asked the

Respondent to produce information concerning the interpretation of the term "bona fide national".

10. The Respondent thereafter, in his written submissions, developed his opinion on this matter according to which the term "bona fide national" would mean a person "who was from the legal standpoint a national or a citizen of a country situated within the Agency's area of operations". In the Respondent's opinion, this was not the case of the Applicant.

11. In his written replies to these submissions, the Applicant, relying on the historical background of the term "bona fide national" in the Middle East and to the particular circumstances of his own connexion with Palestinian and Egyptian territories, submits that the term in question could not be interpreted as the Respondent contends and that the Applicant for the purpose of the memorandum of 19 December 1951 should be deemed to be a bona fide national. Furthermore, the Applicant argues that the clarification of this question requires a new oral procedure before the Tribunal and requests such a procedure.

12. In view of the contentions raised by the parties, the Tribunal does not find it possible to pronounce itself on the interpretation of the term "bona fide national" merely on the available written submissions of the parties. It follows, however, from the foregoing conclusions, that even an affirmative answer to the question whether the Applicant is to be considered a bona fide national of Egypt within the meaning of the memorandum, would only entitle him to a comparatively small amount of money, out of all proportion to the heavy costs that a new oral procedure would involve. The Tribunal therefore does not find itself justified in ordering such a procedure without first giving the parties an opportunity to arrive at a settlement between themselves in the light of the foregoing conclusions. If such a settlement is not reached, either party may submit the question to the Tribunal for its final determination.

13. The Applicant has claimed costs in addition to this other claims. The Respondent's denial of the Tribunal's competence and his delay in producing certain pertinent documents have prolonged the consideration of the case. Inasmuch as the delays were caused by the Respondent, the Respondent cannot avoid the obligation to compensate the Applicant for costs. The Tribunal therefore awards costs to the Applicant in the sum of $150; and so orders.

(*Signatures*)

Suzanne BASTID *President*	Sture PETRÉN *Vice-President*	R. VENKATARAMAN *Member*

Mani SANASEN
Executive Secretary

New York, 7 December 1956