

that the resignation bars further prosecution of any rights or claims upon his part against the United Nations.

10. The Tribunal has noted that the Applicant claims that the refusal of the Secretary-General to permit him to sign the waiver was in violation of the Universal Declaration of Human Rights in that it amounted to a denial of a freedom of residence. In his answer the Respondent states that this contention of the Applicant is irrelevant and that he confused general human rights with particular conditions of service which govern his employment contract. With this position of the Respondent the Tribunal is in agreement.

11. For the foregoing reasons and conclusions, it is the judgement of the Tribunal that the application should be dismissed, which is accordingly ordered.

*(Signatures)*

Suzanne BASTID  
*President*

Sture PETRÉN  
*Vice-President*

Jacob Mark LASHLY  
*Member*

R. VENKATARAMAN  
*Alternate*

Mani SANASEN  
*Executive Secretary*

*New York, 8 December 1956*

### Judgement No. 67

**Case No. 68 :**

**Harris  
Eldridge  
Glassman  
Older  
Bancroft  
Elveson  
Reed  
Glaser**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Sture Petrán, Vice-President ; Mr. Omar Loutfi ;

Whereas Jack Sargent Harris, Hope Tisdale Eldridge, Sidney Glassman, Julia Older, Frank Carter Bancroft, Leon Elveson, Jane Reed and Eda Glaser filed an application with the Tribunal on

22 June 1956 requesting the Tribunal to order the reimbursement to them of all taxes paid or to be paid by them to the Government of the United States and to the State of New York upon salaries and emoluments received from the United Nations including those represented by lump-sum awards ordered in Judgements Nos. 31, 33 to 36, 37 (as amended by Judgement No. 51), 39 and 41 ;

Whereas the Applicants requested the payment of legal costs in the amount of \$2,500 ;

Whereas the Respondent filed his answer on 16 October 1956 ;

Whereas the Tribunal heard the parties in public session on 23 November 1956 ;

Whereas the facts in the case are as follows :

On 21 August 1953, the Tribunal ordered the payment of various awards in lieu of reinstatement in Judgements Nos. 31, 33 to 37 (amended by Judgement No. 51 of 11 December 1953), and in judgements Nos. 32 and 38 ordered reinstatement of the Applicants who had so requested. On 2 September 1953, the Secretary-General, in the exercise of his authority under article 9 of the Statute of the Tribunal, notified the Tribunal of his decision not to reinstate the Applicants in the cases dealt with in Judgements Nos. 32 and 38. Consequently, the Tribunal on 13 October 1953 rendered Judgements Nos. 39 and 41 ordering the payment of awards in lieu of reinstatement. In February 1955, the Secretary-General paid to the Applicants the amounts awarded in lieu of reinstatement together with other sums awarded by the judgements. Before accepting payment, the Applicants notified the Legal Counsel of the United Nations, by letter dated 9 February 1955, that they reserved the right to make an application to the Tribunal for an interpretation of its decisions and in connexion with the payment of taxes on the awards. On 21 October 1955, the Applicants filed a Motion to this effect with the Tribunal. On 2 December 1955, the Tribunal rendered Judgement No. 61 in which it held that the Motion was not receivable in so far as it sought a decision on a new question not previously submitted to the Tribunal. On 4 May 1956, the Secretary-General, in accordance with article 7 of the Statute of the Tribunal, agreed that the application should be submitted direct to the Tribunal. On 22 June 1956 the Applicants instituted proceedings before the Tribunal.

Whereas the Applicants' principal contentions are :

1. In declining to reimburse the Applicants for the payment of United States Federal and State income taxes for the year 1955 upon the lump-sum awards made by the Tribunal, the Secretary-General failed to observe the applicable texts concerning tax reimbursement.

2. A number of the letters of appointment of the Applicants contained the following explicit provision: "Any taxation levied on your salary by your national Government will be refunded to you by the

United Nations. This refund is computed without regard to any income except your salary and related payments from the United Nations and in accordance with the Staff Rules." Similarly the notifications of personnel action affecting members of the United Nations Secretariat contained provisions for a tax refund.

3. The tax reimbursement provisions were required in order to give effect to the provisions of Article 105 of the Charter and were necessitated by the failure of the United States to ratify the Convention on the Privileges and Immunities of the United Nations of 13 February 1946. This Convention was intended to give effect to Articles 104 and 105 of the Charter and was adopted by resolution of the General Assembly on 13 February 1946. It provides *inter alia* in article V, section 18, that "Officials of the United Nations shall: ... (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations". Thereafter, the General Assembly repeatedly passed resolutions recognizing the necessity for tax exemption in order to achieve equity among the Member States and equality among the staff members and authorizing reimbursement where such tax exemption does not exist. It was recognized that to give authority to a Member State to subject the incomes of staff members of the United Nations to taxes or other charges would necessarily impair the independence of the Secretariat in violation of the Charter and of Staff Regulations 1.1, 1.3 and 1.4.

4. There is no logical reason for treating awards of compensation pursuant to judgements of the Tribunal differently from any other salaries or emoluments for the taxation of which the United Nations has agreed to make full reimbursement to members of the Secretariat.

The Respondent himself, in the course of the proceedings in 1953, argued that for the purpose of determining the amount of the compensation equitably, "the prospective earnings under the Applicants' contracts" should be taken into account. The Respondent asserted in his Answer to the Applicants' Motion of 21 October 1955, that the awards were based upon and in lieu of the salaries which the Applicants would have received under their contracts of employment with the United Nations.

5. Prior to the aforesaid judgements, no distinction was made, in the matter of tax reimbursement, between (a) salaries paid as a result of services rendered and (b) awards made as a result of wrongful termination of employment or failure to reinstate. Thus, monies received by a former staff member, Mrs. Mary Jane Keeney (case No. 18), as damages by reason of the Secretary-General's failure to reinstate her, resulted in Judgement No. 12 of the Tribunal and in the payment of taxes to the United States authorities for which Mrs. Keeney was reimbursed by the United Nations.

6. To interpret the Applicants' contracts of employment so as to

deny them reimbursement of taxes paid in respect of sums awarded by the Tribunal would constitute a monetary discrimination against the Applicants by reason of their nationality. This differentiation would be in violation of the Charter of the United Nations (Articles 1, 2, 100, 101 in particular); the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948 (articles 2, 7, 15, 20 in particular); and the Staff Regulations (Chapters I and III in particular).

7. Although the awards were intended as compensation for the prospective loss of employment with the Secretariat during the next several years, the awards were paid and received in a single year, 1955 and were taxed upon that basis. Consequently, the Applicants are required to pay taxes at a rate and in amounts considerably higher than would be required of them if they had remained with the Secretariat.

Whereas in reply the Respondent contends :

1. The Administrative Tribunal made the judgements which included the awards in lieu of reinstatement as a full and final settlement of the rights of the parties. There is no basis for impairing the awards by the imposition of staff assessment, or for increasing them by the payment of income tax reimbursement. In 1953 judgements are *res judicata* on the issue of the injury to the Applicants arising out of their termination and the Secretary-General's refusal to reinstate them and that issue cannot be raised again.

2. The issue of tax reimbursement is governed by the texts applicable to reimbursement of 1955 taxes, which consist of General Assembly resolution 973 C(X) of 15 December 1955 and Information Circulars ST/ADM/SER.A/354 and ST/ADM/SER.A/355 of 20 February 1956 concerning United States taxation for 1955. The Applicants do not meet the conditions of eligibility for tax reimbursement provided in these texts. They were not subject to staff assessment in respect of awards in lieu of reinstatement and the awards were neither "salaries and emoluments" within the meaning of article 8 of the Financial Regulations nor "earnings" as described in the Circulars. The Respondent submits that the various Staff Regulations and Rules invoked by the Applicants in support of their claim do not mention tax reimbursement and are all prior to resolution 973 C(X).

3. The Tribunal has held in the aforesaid judgements that it was not competent to interpret the Charter of the United Nations. As for the Convention on the Privileges and Immunities of the United Nations, it is even harder to bring this instrument within the scope of article 2 of the Tribunal's Statute.

4. The Applicants' letters of appointment offer no basis for their claim. While five of the eight Applicants who joined the United Nations in 1946 or 1947 had, in accordance with the general practice

then prevailing, received in their letters of appointment contract clauses not expressly cancelled later which provided for tax reimbursement on "salary", the awards in question were clearly not salary and the 1953 judgements gave no indication that they were to be assimilated to salary. Such indications as are given by the judgements tend to link the awards with gross salary rather than net and for purposes of tax reimbursement "salary" can only mean net salary. After the introduction of the Staff Assessment Plan, it was the net salary which corresponded to the term "salary" in letters of appointment of 1946-1947.

5. Denial of tax reimbursement involved no discrimination against the Applicants on the basis of nationality. The General Assembly never intended to protect staff members from national taxation on all kinds of payments made to them by the United Nations, but only on "salaries and emoluments", which are the words used in section 18 (b) of the Convention on Privileges and Immunities and in resolution 973 C (X). Moreover, in resolutions 160 (II) and 239 C (III), the Assembly announced that the object of staff assessment was avoidance of double taxation. From this object it would follow that where there was a staff assessment, national taxes would be reimbursed, but there would be no reimbursement where there was no assessment. Thus there is no question of discrimination against the Applicants by the Respondent. The non-entitlement of the Applicants to tax reimbursement is simply the result of the limitations of the system created by the General Assembly which both the Respondent and the Tribunal can only apply and cannot alter.

The Tribunal having deliberated until 8 December 1956, now pronounces the following judgement:

1. The Tribunal has before it an application submitted by the eight Applicants for reimbursement by the United Nations of all taxes paid or to be paid by them, to the United States of America, of which they are citizens, and to the State of New York, of which they are or were residents, upon the compensation received by them from the United Nations pursuant to the awards of Judgements Nos. 31, 33 to 37, 39, 41 and 51.

In these decisions, the Tribunal awarded, firstly, full salary up to the date of judgement, less the amount paid at termination in lieu of notice and less also the amount of termination indemnity; and, secondly, an indemnity "in lieu of reinstatement" (Judgements Nos. 31, and 33 to 36) or an indemnity described as "further compensation" (Judgement Nos. 39 and 41). In one case (Judgement No. 37 and Judgement No. 51, which corrected a material error in Judgement No. 37) the Tribunal ruled that the Applicant should be paid a certain sum as damages, to cover the period from the date of judgement to the date of retirement, and subsequently each year such amount as she would normally have been entitled to expect as annual

pension, failing an agreement between the Applicant and the Respondent for an equivalent lump-sum payment.

In their claim the Applicants state that the United Nations has admitted liability for reimbursement of the taxes payable on salary arrears up to the date of the judgement. They therefore confine themselves to claiming reimbursement of the taxes chargeable on the compensation expressed as a lump-sum award in the judgements of the Tribunal; the payment of this compensation, which had been ordered in lieu of reinstatement, was effected on 16 February 1955.

The application does not specify the sums so claimed from the Respondent. It merely requests the Tribunal to order "the specific performance of the obligation invoked", as provided for in article 9.1 of the Statute of the Tribunal.

2. In the said judgements the Tribunal, having found the termination illegal, ruled that the right to salary should be restored to each Applicant up to the date of the judgement declaring the termination illegal, and accordingly the Tribunal awarded full salary up to the date of the judgement.

In addition, the Tribunal had, either at the Applicant's or at the Secretary-General's request, to fix the amount of compensation in lieu of reinstatement, as provided for in article 9 of its Statute then in force.

This compensation was intended to repair all the prejudice suffered by reason of the fact that the contract had ceased to be effective. It is clear from the terms of the judgements and from the Tribunal's statements in Judgements Nos. 39 and 41, that the compensation was fixed in the light of the advantages which might have been expected to accrue from the contract and of the possibilities of finding other employment, allowance being made for the *de facto* circumstances peculiar to each Applicant.

By its very nature, this compensation is fixed in the light of personal circumstances and is distinguishable from the system of remuneration applicable to serving staff members, which is fixed by means of general provisions. The compensation is intended to repair a wrong, not to remunerate services.

3. At the first session of the United Nations General Assembly it was considered that, for the purpose of safeguarding the principle of equality among its personnel and of equity among its Members, salaries and allowances paid out of the budget of the Organization should be exempt from taxation (resolution 13 (I)).

For this purpose, a provision was inserted in the Convention on Privileges and Immunities of the United Nations (article V, section 18, to the effect that the officials of the Organization :

"(b) shall be exempt from taxation on the salary and emoluments paid to them by the United Nations."

Inasmuch as certain States indicated, however, that they were unable to accept this provision of the Convention, it was decided by resolution 13 (I) that "Pending the necessary action being taken by Members to exempt from national taxation salaries and allowances paid out of the budget of the Organization, the Secretary-General is authorized to reimburse staff members who are required to pay taxation on salaries and wages received from the Organization."

In this way equality among the personnel was achieved but not equity among the States Members, since the reimbursement of taxes levied by certain States—before long the United States remained the only one—had to be charged to the general budget, which was financed by the contributions of all Member States.

A staff assessment scheme was subsequently established by the Organization; under this scheme deductions are made from gross salaries, which were increased by the amount of the assessment. The General Assembly consequently requested Member States to take action for the avoidance of double taxation (resolution 239 C (III)).

It was not until the establishment of the Tax Equilization Fund at the tenth session of the General Assembly (resolution 973 A (X)) that the United States in effect assumed the burden of the federal income tax on the salaries of American staff members. The question of local and State income tax is still on the agenda of the eleventh session of the General Assembly.

The reimbursement of income tax was therefore an expedient devised in view of the special position of certain Member States.

4. In these circumstances, the position of staff members with regard to the reimbursement of tax has been determined in the light of considerations quite distinct from those governing the other benefits enjoyed by United Nations staff.

At first, from 1946 to November 1947, a special clause was inserted in each staff member's contract providing for the reimbursement of national income tax. This clause, which covers Mr. Harris, Mr. Glassman, Mrs. Older, Mr. Bancroft and Mrs. Reed, provides:

"Any taxation levied on your salary by your national Government will be refunded to you by the United Nations. This refund is computed without regard to any income except your salary and related payments from the United Nations and in accordance with the Staff Rules."

The Applicants have sought to prove that the compensation in question constituted salary and was, hence, covered by this contractual clause.

For this purpose they relied in the first place on United States law. But even on the supposition that compensation of this kind, which differs from the payment of arrears of salary due up to the date of the

judgement declaring the termination illegal, is regarded as salary under United States law, it does not follow that the United Nations must necessarily accept this interpretation when applying a clause which concerns "salary and related payments" and in which reference is made to the Staff Rules.

The Applicants also maintain that the criterion which the Tribunal adopted for the purpose of fixing the compensation was the salary to which they were entitled and contend that this compensation is assimilable to the arrears of salary, in respect of which the right to tax reimbursement is admitted.

As has been said above, however, the Tribunal did not extend the obligation to pay the salary beyond the date of the judgement. It awarded lump-sum compensation which, though admittedly intended to repair a prejudice spread over a number of years, yet differs from salary both in legal basis and in character.

Nor is it possible to class the compensation in question as one of the "related payments": this expression means payments additional to salary, which presuppose the existence of the salary itself. Actually, the compensation in question originates in the severance of the contractual nexus—in other words, at a time when the salary no longer exists.

The Tribunal accordingly concludes that the Applicants' claim based on the above-mentioned clause in their contracts is not well founded.

5. It is therefore necessary to consider whether, as the Applicants maintain, their claim to tax reimbursement receives any support from the resolutions of the General Assembly.

These resolutions have not been embodied in the Staff Rules, but the Respondent does not dispute that the resolutions, together with the Secretary-General's circulars by which they were put into effect, are, with respect to the staff members to whom they apply, part of the terms of appointment which it is the Tribunal's duty to take into account under article 2 of the Statute.

Until 1955 the Assembly did not adopt any resolution making permanent provision for the reimbursement of national taxes; but as a result of the permanent staff assessment scheme and the unaltered position of the United States, the reimbursement system was carried over from year to year without being embodied in the Staff Rules.

Each year the Secretary-General has been given special authority to make reimbursement, but the terms of the authority have varied.

Resolution 13 (I), referred to above, was followed by resolution 160 (II), which authorized the Secretary-General to reimburse staff members for national taxes paid by them on "salaries and allowances received from the United Nations during the years 1946, 1947 and 1948".



The following year, resolution 239 D (III) authorized the Secretary-General to reimburse staff members for national income taxes paid by them "in respect of payments" received from the United Nations during 1949.

For the next three years it was in the resolution on the Working Capital Fund that the Secretary-General was authorized to advance from the Fund "such sums, if any, as may be necessary to reimburse staff members for national income taxes paid by them in respect of payments received from the United Nations during 1950 or in respect of prior years for which reimbursement had not previously been made" (resolutions 358 (IV); see also 473 (V), 585 (VI)).

Since the seventh session of the General Assembly there has been no reference to the question in any particular text, reimbursement being made out of the supplementary budget under the heading: Common Staff Costs.

The Advisory Committee's report of 1 December 1953 states that "The reimbursement of national income taxes is authorized by the General Assembly on an annual basis. No assurance can therefore be given to any staff member or category of staff members that such reimbursement will be approved in respect of subsequent years." (A/2581, para. 7)

As the judgements rendered by the Tribunal in 1953 were, under its Statute, final and without appeal, they gave the Applicants an immediate right to be paid by the United Nations, but since the monies due were not paid until 1955 and the income tax did not fall due until 1956, it follows that the question of reimbursement could only arise on the basis of the resolution authorizing the Secretary-General to make the necessary payments during 1956.

Resolution 973 (X) established a Tax Equalization Fund (973 A (X)) and made standing regulations governing refunds (973 C (X)).

This resolution differs from the earlier texts in that there is no question of reimbursement for national taxes in respect of "payments received" from the United Nations; it creates a more complex system, whereby the amount of *staff assessment* is refunded to such staff members as are also subject to national taxation in respect of salaries and emoluments paid by the United Nations.

The amount of such refund must not, however, either exceed or be inferior to the amount of national tax.

The basis of the new system established by this resolution is liability for staff assessment under resolution 359 (IV). That resolution enumerates the payments on which assessment is chargeable (article 1) · it makes no reference to compensation for injury sustained in consequence of wrongful dismissal. It mentions salaries, wages, overtime and night differential payments, cost-of-living adjustments and the allowance for dependent children. The payments envisaged, therefore,

are all either salary or sums directly connected with the payment of salary.

As the compensation awarded by the Tribunal is not subject to staff assessment, the new article 8 added by resolution 973 C (X) to resolution 359 (IV) does not authorize the Secretary-General to refund the amount of the assessment even if the compensation is subject to national taxation.

6. Nevertheless during the hearing before the Tribunal, the Respondent has stated that national taxes are also refunded in respect of certain payments which are not subject to assessment ; the examples mentioned were *ex gratia* payments and part of the actuarial equivalent of retirement benefit payable to staff members who cease to perform their functions after more than five years' service with the United Nations.

The Tribunal notes, therefore, that the requirements stipulated in resolution 973 C (X) are in fact waived in certain cases.

7. The Tribunal must consequently consider whether the failure to refund the national income taxes levied on the compensation awarded by the aforesaid judgements is inconsistent with the fundamental principles underlying, since 1946, the system adopted in these matters. These principles are stated in General Assembly resolutions and are cited in the Secretary-General's report of 21 June 1956 on the Establishment of the Tax Equalization Fund (Budget Estimates for the Financial Year 1957 (A/C.5/657)).

These principles are : the principle of equity among Member States, the principle of equality among staff members, and protection against double taxation.

The question of double taxation is not relevant to this case, because the compensation in question is not subject to staff assessment.

The principle of equality among staff members is also inapplicable. This principle operates in cases in which the sum in question is one determined by some rule or regulation. It applies in the case of termination indemnities, which are fixed by the relevant rules applicable to all staff members on the basis of length of service and without reference to personal circumstances. The General Assembly did not wish it to happen that, through national taxation, two categories of staff members receiving different sums should come into being.

The compensation for injury sustained, awarded by the Tribunal pursuant to its Statute, is meant to repair a personal wrong and was specially assessed in the light of every factor which the Tribunal could reasonably take into account. It cannot be compared with the compensation awarded to another staff member in whose case the Tribunal may have ruled, for example, along the lines set forth in Judgement No. 56.

As regards the principle of equity among Member States, the

Tribunal has been informed that the lump-sum compensation awarded by the aforesaid judgements was held by the fiscal authorities of the United States to constitute income, subject in at least one case to taxation in an amount as high as or exceeding 50 per cent of the total award.

The Tribunal is not competent to consider the circumstances in which United States fiscal legislation was held to apply to compensation which the Tribunal awarded, on the request of the parties, as a lump sum designed to repair the prejudice sustained through the termination of a contract expected to remain in force for many years.

If a large fraction of the compensation awarded to the Applicants out of funds constituted by contributions from all the Member States is recovered as income tax by a particular Member State, then the principle of equity postulated in resolution 13 (I) cannot be said to be upheld. But it is not for the Tribunal to rule that, as a consequence, the United Nations has a duty to reimburse the individuals concerned.

8. The Tribunal notes, however, that the Circulars concerning reimbursement of taxes (ST/ADM/SER.A/354 and 355) request staff members to co-operate faithfully in lawfully minimizing their taxes.

The provisions of the judgements which relate to compensation do not contain anything to prevent the parties from agreeing, with similar considerations in mind, that the sums awarded by the Tribunal should be paid in a manner designed to reduce as far as possible the amount of tax which may be chargeable thereon.

9. By reason of the foregoing considerations the Tribunal rejects the application.

*(Signatures)*

Suzanne BASTID  
*President*

Sture PETRÉN  
*Vice-President*

Omar LOUTFI  
*Member*

Mani SANASEN  
*Executive Secretary*

*New York, 10 December 1956*

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### Judgement No. 68

**Case No. 69 :**  
**Bulsara**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Madame Paul Bastid, President ; the Lord Crook,