

Judgement No. 69

**Case No. 71 :
Coutsis**

**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 Petrén, Vice-President; the Honourable Mr. R. Venkataraman, alternate;

Whereas Mrs. Sophy Coutsis, former Community Development Expert of the United Nations Technical Assistance Administration at Haiti, filed an application to the Tribunal on 10 April 1957 against the Secretary-General's decision not to renew her fixed-term appointment beyond 17 August 1956 on grounds of health and requested:

(1) That the Tribunal, as preliminary measures:

(a) Obtain communication of the Applicant's medical file in order to

(i) Establish, on the basis of the number of days of sick leave she had taken, whether the bacillary dysentery she contracted in June 1955 in Haiti had any ill effects on her health and her work;

(ii) Ascertain the medical findings of the United Nations doctors who, in January and August 1956, examined the Applicant and reported to the Medical Director;

(b) Take the evidence of the Applicant's physician and of the Chief Medical Officer of the United Nations Health Service in order to establish whether they considered that the Applicant was, at the time of their examinations (January 1956 and August 1956 respectively) in a condition to continue her normal duties in Haiti;

(c) If necessary, designate a medical expert or a panel of doctors to settle the conflict between the Medical Director's opinion and the opinions of the other doctors and ascertain whether the bacillary dysentery the Applicant contracted while in United Nations employment in Haiti is an obstacle to her future employment in the tropics;

(2) If the Tribunal finds that the illness contracted by the Applicant while in United Nations employment in Haiti is not an obstacle to her future employment in the tropics, to rescind the Secretary-General's decision not to renew her contract for health reasons and award her compensation commensurate with the moral and material injury sustained, namely double the salary she would have received during the period covered by a further contract of one year;

(3) If the Tribunal finds that the Applicant's health was affected by service-incurred illness contracted while employed in Haiti and that

she cannot work in the tropics for a period of two years, to award her compensation as provided in Staff Rule 206.3 (b), corresponding to the salary she would have received during the period of one year ;

Whereas the Respondent filed his answer to the application on 4 June 1957 ;

Whereas the Tribunal heard the parties in public session on 9 August 1957 ;

Whereas on 12 August 1957 the Respondent submitted his reply to the questions put to Counsel during the public hearing ;

Whereas on 16 August the Respondent submitted at the request of the Tribunal a document referred to by the Applicant ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 11 January 1954, as a Community Development Expert employed by the Technical Assistance Administration in Haiti, under a six months' fixed-term appointment. In conformity with Staff Rule 204.6 the Applicant underwent a medical examination in Greece before being recruited and, on her way to Haiti, she was re-examined by the United Nations Health Service in New York ; both examinations were satisfactory. On 7 June 1954, in reply to an inquiry from the Technical Assistance Recruitment Office, the Medical Director of the United Nations Health Service stated that there did "not seem to be any medical contra-indication to extending Miss Coutsis' appointment for a period of eighteen months". On 11 July 1954, the Applicant's fixed-term appointment was renewed for a period expiring on 31 December 1955. In June 1955, the Applicant contracted dysentery accompanied by other intestinal disorders and was treated by her private physician in New York from 17 June to 5 July 1955. In reply to the Applicant's request for reimbursement of her private physician's fees, in accordance with Staff Rule 206.3 (a) (ii), she was informed, by letter of 1 September 1955 from the Acting Chief of the Office for Latin America, Technical Assistance Administration, that the Health Service did not approve the medical expenses in question because "it appears that she was treated... for... an intestinal and liver condition which is a recurrence of the dysentery she had between 1941 and 1951". The Applicant thereupon presented further documents from her private physician stating that the intestinal trouble occurred during her stay in Haiti and was not a recurrence of the dysentery she had had before. On 13 October 1955, following a request from the Government of Haiti for an extension of the Applicant's contract for a period of one year, the Acting Chief of the Office for Latin America, Technical Assistance Administration, informed her that the Technical Assistance Recruitment office had been asked to extend her contract after 31 December 1955. On 2 November 1955, however, he informed her that, for medical reasons, her contract would not be extended. In

response to her request for an explanation, the Medical Director of the United Nations Health Service wrote to the Applicant, on 21 November 1955, that his "conclusions were based on the episodes of colitis, hepatitis, vaginitis, urethritis and cystitis, as certified by your physicians, which caused you a considerable amount of ill-health during your past mission assignment". By letter of 29 December 1955, the Administration informed the Applicant that the Medical Director of the United Nations Health Service had agreed to a four months' extension of her appointment and that, in accordance with a request she had made on 21 November 1955, she would be re-examined by the Health Service during her forthcoming visit to New York. The Applicant was examined by the Health Service on 9 January 1956 and classified in category "C" meaning that, in the Medical Director's opinion, she should no longer work in the tropics. Her own private physician, however, gave her a certificate on 11 January 1956 stating that, in his opinion, there was no medical contra-indication for her of performing her usual active duties. The Applicant asked that a third medical opinion be sought but this request was refused. She was told, however, by the Deputy Director-General of Technical Assistance Administration in January 1956 that there was no difference in the opinion of the Health Service and her doctor as far as her health was concerned. In February 1956, the Applicant was reimbursed for her above-mentioned medical expenses, in accordance with Staff Rule 206.3 (a). On 17 February 1956, the Applicant signed two letters of appointment for fixed-term contracts, effective from 1 January to 30 April 1956 and from 1 May to 30 June 1956, respectively. During May 1956, the Government of Haiti requested an extension of the Applicant's appointment for a further period of six months or one year. Although this request was supported by the Technical Assistance Administration Resident Representative in Haiti, the Haitian Government was advised that the Applicant's state of health made it impossible to accede to it. After two further extensions of her appointment, covering the periods 1 July to 3 August 1956 and 4 August to 17 August 1956, the Applicant was separated from the Organization. On 8 August 1956, the Applicant underwent a final medical examination and was found in good health by the Chief Medical Officer of the Health Service. On 15 August 1956, the Applicant asked the Secretary-General to reconsider his decision of non-renewal of her fixed-term contract as an expert in Haiti. In reply, on 27 August 1956, the Technical Assistance Recruitment Services wrote to the Applicant that: "the United Nations Medical Director has reported that there would be no present medical objection to your re-employment by the United Nations for work in a *non-tropical* area, but that he could not now recommend your further employment by the United Nations in Haiti or in any other tropical area. I am sorry that in these circumstances we cannot ask you to accept a new appointment in

Haiti, and that at present we have no suitable vacancies in non-tropical areas." On 18 September 1956 the Applicant submitted an appeal to the Joint Appeals Board, which, on 7 January 1957, decided that it would make no recommendation in support of the appeal. On 10 April 1957, the Applicant instituted proceedings before the Administrative Tribunal.

Whereas the Applicant's principal contentions are :

1. While the Applicant admits that her fixed-term contract did not entitle her to re-employment after its expiration date, she contends that the letter of 13 October 1955, in which the Acting Chief of the Office for Latin America, Technical Assistance Administration, informed her that the Technical Assistance Recruitment Office had been asked to extend her contract, constituted an offer of further employment. This offer was certainly made subject to the condition precedent that the Medical Director would agree, but as the Medical Director's negative recommendation was erroneous and arbitrary, the offer of further employment must be considered as binding.

2. The Medical Director's persistent refusal to give the Applicant medical clearance was erroneous. Thus in November 1955 he obviously was still under the wrong impression that the Applicant's illness in 1955 was a recurrence of a chronic dysentery and not of an acute service-incurred nature. It was also wrongly stated in the Medical Director's letter of 21 November 1955 that the Applicant had suffered a considerable amount of illness during her past mission assignment. Contrary to the Medical Director's opinion, the Applicant was fit for further service in Haiti at the date of her separation. The Medical Director's erroneous findings were challenged by the Applicant's own physician, with whose views the Chief Medical Officer of the United Nations Health Service concurred.

3. When the case came before the Joint Appeals Board it was not possible to obtain production of the Applicant's medical file, or to take the evidence of the Applicant's physician and of the Chief Medical Officer of the Health Service, or to secure the appointment of a panel of doctors to pronounce upon the conflict of opinion.

4. The Medical Director claimed before the Joint Appeals Board that it was his established practice not to recommend the employment for at least two years in tropical areas of individuals who had been suffering from dysentery. This reason, however, which was only applicable to chronic dysentery, had not been advanced earlier by the Medical Director when he opposed the Applicant's re-employment in his recommendations to the Secretary-General. This was another indication of the arbitrary nature of the Medical Director's action.

5. The decision of the Secretary-General not to renew the Applicant's contract for health reasons is therefore contested on the

ground that it was based upon an arbitrary medical opinion without taking into consideration the contrary opinion of other doctors.

6. If however the Secretary-General's decision were upheld by the Tribunal, this would suppose that the Applicant had not been re-appointed because of a service-incurred illness. She then would be entitled to compensation on this basis.

Whereas the Respondent's principal contentions are :

1. As to the letter of 13 October 1955 to the Applicant from the Acting Chief of the Office for Latin America, Technical Assistance Administration, this officer had no authority to offer the Applicant a new contract, since the decision not to reappoint was an act completely within the Secretary-General's administrative discretion. In this connexion, the Respondent points out that it is well established in the jurisprudence of the Tribunal that the review of an act within the administrative discretion of the Secretary-General can in no circumstances go beyond the questions of arbitrary action or improper motivation.

2. The decision of the Secretary-General is not arbitrary merely because he accepts the recommendations of the Medical Director that, based on general practice, individuals who have suffered from dysentery should not be assigned to tropical areas for at least two years. A review of the Secretary-General's decision would be inconsistent with his authority under Staff Regulation 4.6 to establish and apply medical standards. Furthermore, whatever differences of opinion existed between the Medical Director and other persons, the Secretary-General is entitled to rely upon the recommendation of the Medical Director and his action, in this case, is no more open to question than his acceptance of recommendations of the Walters Committee. In Judgements Nos. 46 and 47, the Tribunal has held such reliance to constitute a valid reason for withholding new appointments and in Judgement No. 63 the Tribunal itself has stated that it "cannot enter into the relative merits of the medical reports, but accepts the final decision of the Chief of the Medical Division".

3. As regards the Applicant's alternative request based on Staff Rule 206.3 (b), the Respondent points out that the Applicant has not filed a claim with the Advisory Board on Compensation Claims provided for in Staff Rule 206.3 and Appendix D to Staff Rules and that she did not raise the question before the Joint Appeals Board. Consideration of the question by the Tribunal is therefore precluded by article 7, paragraph 1, of its Statute.

The Tribunal having deliberated until 22 August 1957, now pronounces the following judgement :

1. The Applicant has advanced that she received a letter of 13 October 1955 in which the Acting Chief of the Office for Latin America, Technical Assistance Administration, told the Applicant that

he had asked the Technical Assistance Recruitment Office for an extension of her contract. This letter, however, did not constitute a valid offer of new employment, but only meant that the Applicant was informed that a proposal to that effect would be made to the Secretary-General, with whom lay the decision in the matter.

2. Therefore the decision of the Secretary-General not to renew the Applicant's appointment comes before the Tribunal only for review as to whether this decision was caused by prejudice or other improper motivation.

3. The Secretary-General, in taking the contested decision, followed the recommendation of the Medical Director of the United Nations Health Service, who had found that the Applicant did not at the material date meet the medical standards for employment in a tropical climate. An examination of the Staff Regulations and Rules discloses no provision for recourse to the employment of a medical referee by the Administration in cases of conflict of medical opinion. It therefore must be considered to be the normal course for the Secretary-General under Staff Regulation 4.6 to let himself be guided by the Medical Director's recommendations as to which staff members should be deemed fit for appointment.

4. The Tribunal could not regard itself as a body competent to express views on the accuracy of the diagnoses or conclusions of the medical profession. The Tribunal therefore cannot proceed to a review on medical grounds of the Secretary-General's decision based upon the Medical Director's recommendation merely because of the Applicant's contention that the Medical Director's findings were erroneous and conflicting with the opinions of other doctors.

5. The Tribunal finds no evidence of prejudice or improper motivation in the decision taken by the Secretary-General.

6. The Tribunal accordingly rejects the Applicant's requests both for further medical evidence and for rescission of the Secretary-General's decision not to renew her appointment or for compensation.

7. As to the Applicant's alternative request for compensation under Staff Rule 206.3 (b) for service-incurred illness, the procedure for submitting claims of this nature prescribed in Staff Rules has not been observed. There is, therefore, no decision of the Secretary-General before the Tribunal for adjudication on such a claim made by the Applicant. Accordingly the Tribunal rejects the request.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

R. VENKATARAMAN
Alternate

Mani SANASEN
Executive Secretary

Geneva, 22 August 1957