

Judgement No. 79*(Original: French)***Case No. 76:**
Fath*Against:* **The Secretary-General
of the United Nations**

See note on Judgement No. 76 above.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Francisco A. Forteza ;
Mr. Harold RIEGELMAN ;

Whereas Louis-Georges Fath, proof-reader, P-1 level, serving in the European Office of the United Nations, filed an application with the Tribunal on 10 March 1958 and amended the claims thereof on 7 August 1959 ;

Whereas the application as amended requests the Tribunal :

(a) to admit his application ;

(b) to rescind the decision of 25 March 1957, as well as the decision of 6 December 1957 by which the Secretary-General rejected the recommendation of the Joint Appeals Board, made on 8 August 1957, that the Applicant should be reclassified to the P-2 level ;

(c) to order that, if the Administration fails to reclassify the Applicant to the P-2 level with retroactive effect from the date of his request to the Secretary-General, *i.e.* 7 March 1957, there be granted to him from that date and until the date of his reclassification to the P-2 level, compensation in adjustment of the difference between the respective salary and benefits of levels P-1 and P-2 ;

(d) to order that the sum of 11,178.55 Swiss francs be paid to the Applicant as damages, in compensation for the material injury sustained by him, in particular from 13 December 1950 to 7 March 1957 ;

(e) to order that the sum of 1 Swiss franc be paid to the Applicant as compensation for the moral injury sustained by him ;

(f) to order the payment of legal costs ;

Whereas the Respondent delivered his answer on 7 May 1958 ;

Whereas oral statements were taken on 21 May 1958 at the European Office of the United Nations in accordance with article 9, paragraph 3, of the Rules of the Tribunal ;

Whereas, in addition, the parties submitted written statements on 16 March and 24 April 1959 ;

Whereas at public hearings held on 4 and 5 August 1959 the Tribunal heard one witness and the parties ;

Whereas the parties submitted, at the request of the Tribunal, additional written statements on 4, 5, 6, 7, 8 and 10 August 1959 ;

Whereas the Applicant, on 7 August 1959, amended as aforesaid the claims he has filed on 10 March 1959 ;

Whereas the Applicant is a proof-reader who has held a permanent contract since 1953 ; upon entering the employment of the United Nations in 1948,

he was assigned to duty at the European Office of the United Nations, Geneva ; he was placed in the P-1 level on 1 January 1951 ; and the facts of the case after 1 January 1951 are the same as those of Case No. 73, as reported in Judgement No. 76, rendered in respect of the application of Marcel Champoury, with the exception of the date on which the Applicant submitted his request to the Reclassification Committee, that date having been 19 April 1951 ;

Whereas the Applicant's principal contentions are the same as those reported in Judgement No. 76 ;

Whereas the Respondent's principal contentions are the same as those reported in Judgement No. 76 ;

The Tribunal having deliberated from 5 to 17 August 1959, now pronounces the following judgement :

I. The text of section I of Judgement No. 76 constitutes the text of section I of this judgement.

II. The text of section II of Judgement No. 76 constitutes the text of section II of this judgement.

III. The text of section III of Judgement No. 76 constitutes the text of section III of this judgement.

IV. The text of section IV of Judgement No. 76 constitutes the text of section IV of this judgement.

V. The text of section V of Judgement No. 76 constitutes the text of section V of this judgement.

VI. The Tribunal has considered the length of service of the Applicant and his seniority in the P-1 level. He was born in 1923, and was recruited by the United Nations in 1948 in grade 9, step 1. He was given a temporary indefinite contract, which was changed to a permanent contract as from 1 August 1953. On 1 January 1951, he was placed in the P-1 level, step 5. The applicant has been at the ceiling of the P-1 level since 1 January 1956. The Tribunal has noted, in this connexion, the information furnished by the Secretary-General regarding twenty-six proof-readers now employed at Headquarters. According to this information, nine of these proof-readers, placed in the P-2 and P-3 levels, never served at the P-1 level ; three others, now at the P-2 level, remained at the P-1 level for an average period of three years and two months ; the fourteen others have been at the P-1 level for an average period of two years and eleven months. By contrast, the average period of service of the Geneva P-1 proof-readers at the P-1 level exceeds seven years.

VII. The text of section VII of Judgement No. 76 constitutes the text of section VII of this judgement.

VIII. The text of section VIII of Judgement No. 76 constitutes the text of section VIII of this judgement.

IX. The text of section IX of Judgement No. 76 constitutes the text of section IX of this judgement.

X. The text of section X of Judgement No. 76 constitutes the text of section X of this judgement.

XI. The text of section XI of Judgement No. 76 constitutes the text of section XI of this judgement.

XII. The text of section XII of Judgement No. 76 constitutes the text of section XII of this judgement.

XIII. The text of section XIII of Judgement No. 76 constitutes the text of section XIII of this judgement.

XIV. The text of section XIV of Judgement No. 76 constitutes the text of section XIV of this judgement.

XV. The text of section XV of Judgement No. 76 constitutes the text of section XV of this judgement.

XVI. The text of section XVI of Judgement No. 76 constitutes the text of section XVI of this judgement.

XVII. The following conclusions arrived at by the Tribunal are based upon and limited to the circumstances peculiar to this case, where a thorough review of the facts has established that there exists in practice parity of duties and responsibilities of two groups of Professional staff members differently classified.

XVIII. The decision of 6 December 1957 is, in the opinion of the Tribunal, based on an erroneous interpretation of the Respondent's powers under Staff Regulation 2.1 ; it is therefore rescinded.

The decision of 25 March 1957 is rescinded to the extent that it might imply a similarly motivated rejection of the Applicant's claim.

In consequence of the rescission of the contested decisions and in view of the Tribunal's findings concerning the right of the Applicant to reclassification, the Respondent is bound to exercise his competence in the matter of reclassification in conformity with Staff Regulation 2.1.

XIX. The Tribunal recognizes that the Applicant's reclassification to the P-2 level may be subject to certain procedures now in effect or hereafter to be adopted in the interest of the sound administration of United Nations staff. The Tribunal therefore decides that the Respondent should proceed to reclassify the Applicant to the P-2 level with all speed consistent with the said procedures.

For the purposes of the preceding paragraph the Tribunal considers that these proceedings remain open and that the Applicant may, if necessary, directly seize the Tribunal of any supplementary application.

XX. The Applicant requests the Tribunal to order that if the Administration fails to reclassify him to the P-2 level with retroactive effect from the date of his request to the Secretary-General, *i.e.* 7 March 1957, there be awarded to him, as from that date and until the date of his reclassification to the P-2 level, compensation in adjustment of the difference between the respective salary and benefits of levels P-1 and P-2.

The Tribunal interprets this request as being made under article 9, paragraph 1, of its Statute and as contemplating the situation in which the Secretary-General should decide, within thirty days, that the Applicant shall be compensated without further action being taken in his case. The Tribunal decides that in that event the Applicant shall receive, as from the date of this judgement, a monthly compensation in an amount equal to the difference between the net monthly salary and benefits which the Applicant will be receiving in his present level and the net monthly salary and benefits to which the Applicant would be entitled if he were placed in the P-2 level on the date of this judgement. This monthly compensation shall be paid until the Applicant's employment by the United Nations in his present capacity and level ceases or until an agreement

is reached between the Secretary-General and the Applicant. The total amount of the compensation so paid to the Applicant shall not exceed the equivalent of one year's net annual base salary of the Applicant at the rate existing on the date of this judgement.

XXI. As damages in compensation for the material injury sustained by him, in particular from 13 December 1950 to 7 March 1957, the Applicant requests the sum of 11,178.55 Swiss francs plus legal costs.

As regards the request for reparation of the material injury sustained, the Tribunal notes that in 1955 the Respondent took appropriate steps with a view to the Applicant's reclassification. Subsequently, he sought other means of rectifying the Applicant's position.

The Tribunal notes, however, that the trial and disposition of this case have been delayed by reason of circumstances outside the Applicant's control and by the Tribunal's acceptance of the Respondent's request for a postponement. In the normal course of events, the judgement ought to have been rendered in May 1958, or about fifteen months before the date of the present judgement. By analogy with article 9, paragraph 2, of its Statute, the Tribunal decides to award to the Applicant compensation equal to the difference between the net salary and benefits received by the Applicant during the past fifteen months and the net salary and benefits which he would have received during the same period if he had been reclassified to the P-2 level on 1 June 1958.

XXII. As regards the payment of costs, the Applicant indicated that his request was for the reimbursement of counsel's fees and expenses connected with these proceedings and asked the Tribunal to assess the sum to be reimbursed. The Tribunal, having regard to its resolution of 14 December 1950 and considering the nature and circumstances of the case, orders the Respondent to pay the sum of \$200 as costs.

XXIII. The Tribunal dismisses all claims and contentions of the Applicant other than those expressly admitted in this judgement.

(Signatures)

Suzanne BASTID
President

Francisco A. FORTEZA
Member

Harold RIEGELMAN
Member

Nicholas TESLENKO
Executive Secretary

Geneva, 17 August 1959.

Statement by Mr. Harold Riegelman

(Original: English)

I have read the final draft of the judgement in this case in English and I concur with the decision.

(Signature)

Harold RIEGELMAN

Geneva, 17 August 1959.