

**Judgement No. 86***(Original: English)***Case No. 86:  
Mr. A.****Against: The Secretary-General  
of the United Nations**

*Non-renewal of a fixed-term appointment held by an official of the United Nations Special Fund.*

*Offer to renew the appointment made before expiry of the same.—Acceptance of the offer by the Applicant creating an obligation on the part of the Respondent to renew the appointment.—Non-fulfilment of the obligation following the Respondent's discovery of the fact that, upon his initial recruitment, Applicant had knowingly given erroneous answers to medical questionnaires.—Validity of the ground for non-fulfilment of the obligation.*

*Complaint on the ground that the Respondent failed to apply the procedure laid down in Staff Regulation 9.1 (a).—This procedure applicable only to the termination of appointments.—Its non-applicability in the case of failure to fulfil an obligation to renew an appointment.*

*Observation by the Tribunal that the Applicant had been paid the sums of money accruing to him in virtue of his appointment as well as a sum equivalent to a termination indemnity.—No entitlement to additional compensation.*

*Rejection of the application.*

**THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,**

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; the Honourable Mr. R. Venkataraman ; Mr. James J. Casey, alternate member ;

Whereas on 9 June 1962, Mr. A. a former Principal Officer in the secretariat of the United Nations Special Fund, filed an application requesting that the Tribunal :

(a) rescind the decision of the Managing Director of the Special Fund not to extend the Applicant's fixed-term appointment beyond 3 January 1962 ;

(b) rescind the determination by the Secretary-General that the expiry of the Applicant's appointment on 3 January 1962 did not violate the terms of the appointment including the Staff Regulations and Rules ;

(c) order the Secretary-General to perform and complete the formalities of extending the Applicant's appointment to 3 January 1963 ;

(d) declare that the Applicant's appointment continues in force until 3 January 1963 ;

(e) order the Secretary-General of the United Nations and the Managing Director of the Special Fund to pay to the Applicant, with interest on delayed payment, the full salary and other emoluments which have become due between 3 January 1962 and the date of the judgement of the Tribunal ;

(f) order the Secretary-General and the Managing Director to pay to the Applicant his salary and other emoluments in monthly instalments from the day of the judgement of the Tribunal to 3 January 1963 ;

(g) order, in the event that the Respondent exercises the option given under article 9.1 of the Statute of the Tribunal, the payment of compensation in an amount equal to three years' net base salary of the Applicant ;

(h) order the reimbursement of expenses incurred by the Applicant totalling an amount of \$2,570 as follows :

	\$
Refund as to rent . . . . .	1,750
Medical expenses . . . . .	250
Legal advice by lawyer in Applicant's home country in November 1961 . . . . .	70
General legal advice (prior to assumption of representation by counsel, being a member of the Secretariat) . . . . .	500
	2,570

Whereas, on 18 June 1962, the Respondent requested the President, under article 9 of the Rules of the Tribunal, to call upon the Applicant to sign forms of release of medical information in which he would ask three medical practitioners who had examined him in October 1961 to furnish the Tribunal with copies or abstracts of the records concerning the state of his health ;

Whereas the Applicant agreed to sign the forms of release of medical information ;

Whereas, on 29 June 1962, the President ruled that article 9 of the Rules of the Tribunal was applicable and that the requested copies or abstracts of medical records should be produced ;

Whereas, on 2 July 1962, the Applicant addressed to the three medical practitioners concerned the forms of release of medical information duly signed by him ;

Whereas the Tribunal received the information requested from the three medical practitioners referred to above ;

Whereas the Respondent filed his answer on 20 July 1962 ;

Whereas, under article 9 of the Rules of the Tribunal, the President requested the Respondent on 15 August 1962 to submit additional documents ;

Whereas, on 23 August 1962, the Respondent submitted the additional documents requested ;

Whereas the Applicant submitted further written information on 27 August 1962 ;

Whereas the Tribunal heard the parties in public session on 28 August 1962 ;

Whereas, on 29 August 1962, the Respondent submitted written answers to questions put to him by the Tribunal in the course of the public session ;

Whereas, on 30 August 1962, the Applicant submitted written comments on the Respondent's answers ;

Whereas the facts in the case are as follows :

The Applicant entered the service of the United Nations on 4 January 1960 as a Principal Officer in the secretariat of the Special Fund. He had previously completed various questionnaires required from candidates to posts in the United Nations Secretariat and, in particular, the Medical History Form and Supplementary Questionnaire which he signed in his home country on 8 November 1959. In completing this form, the Applicant answered in the negative question (k) which read: "Have you consulted a neurologist, a psychiatrist or a psycho-analyst ?" In completing the Supplementary Questionnaire,

the Applicant indicated no hospitalisation for a nervous or mental disorder in his reply to question (7) which read: "Have you ever been in a hospital, sanatorium, rest home or spa for any physical, nervous or mental disorder ? Specify." He answered in the negative question (8) which read: "Have you ever been treated outside a hospital, sanatorium, rest home or spa for any physical, nervous or mental disorder ? Specify." At the bottom of the form the Applicant signed the following declaration:

"I certify that the statements made by me in answer to the foregoing, as well as the attached supplementary, questions are true, complete and correct to the best of my knowledge and belief. I understand that any misrepresentation or material omission made on a Medical History form or other documents requested by the Organization renders a staff member of the United Nations liable to termination or dismissal."

On 20 January 1960 the Applicant received a fixed-term appointment for the period of 4 January 1960 to 3 January 1962 at the D-1 level. On 22 June 1961—more than six months before the date of expiration of the appointment—the Applicant (following earlier verbal intimation) was informed in writing by the Director of the Joint Administrative Services Division of the Special Fund that:

"The Special Fund will offer you a one-year fixed term extension of your present appointment dating from 4 January 1962. The formalities will be completed in due course in the normal way by the Office of Personnel, but you may take this as a final communication of the intentions of the Special Fund."

In July 1961 the Applicant was examined by the Resident Physician of the United Nations Health Clinic at the request of the Director of the Bureau of Operations of the Special Fund who had expressed concern about the state of the Applicant's health and behaviour. On 13 September 1961, the Applicant had an interview with the Medical Director of the United Nations Health Service. In the course of the interview he agreed to take a week's vacation at the Medical Director's suggestion. He also indicated that he had recently consulted Dr. B., a psychiatrist, member of the New York Office of the Public Health Service of the Applicant's home country. In a subsequent memorandum to the Deputy Director of Personnel, dated 28 December 1961, the Medical Director explained that, after his interview with the Applicant:

"I [the Medical Director] spent the next few days checking with as many doctors and colleagues as possible who might provide information regarding [the Applicant's] past and present health. It seemed to be generally known that [the Applicant] had a past history of two or three previous nervous breakdowns going back some 8 to 10 years ; he had been a patient in the psychiatric ward of Hospital No. 1\* and the treatment had included electro-shock therapy ; he had also been under the care of an American psychiatrist in Washington"

when he was attached to his country's Embassy eight years ago. The Medical Director added that both he and Dr. B. had tried without success to persuade

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\* A hospital in the Applicant's home country.

the Applicant to go on sick leave to his home country for further medical treatment. On 27 September 1961, the Medical Director informed the Applicant in writing that he was faced with the following two alternatives:

“The first alternative is that I will have to recommend immediate termination, based on the fact that on your pre-employment medical examination you omitted material medical information which, according to your signed statement on the forms at that examination, would render a staff member of the United Nations liable to termination or dismissal.

“The second alternative is that, after having studied any reports which we can get regarding the treatment you received on previous episodes of mental illness, you should be put on sick leave to undergo such further treatment as may be necessary to restore your health.”

In the memorandum of 28 December 1961, referred to above, the Medical Director explained that, in the meantime, the Applicant's condition of health was rapidly deteriorating and that:

“In order to avoid any further deterioration in the situation wherein he [the Applicant] might become a danger either to himself or to others, we decided to effect his repatriation to [the Applicant's home country] for treatment, by first committing him to a hospital for observation and treatment. This decision was taken in consultation with and on the advice both of Dr. Torre, the U.N. psychiatric consultant, and of Dr. B., his own psychiatrist. Faced with the alternative of being taken to Hospital No. 2,\* he agreed to go to a private hospital, Hospital No. 3,\* on 5 October. He went willingly and no physical force at all was used.”

While the Applicant was in Hospital No. 3, he received a letter dated 18 October 1961 in which the Managing Director of the Special Fund stated that he had accepted the Medical Director's opinion that the Applicant was not fit to resume his work with the Fund. The Managing Director also informed the Applicant that:

“In completing your medical history questionnaire at the time of your employment, you failed to include information of a material nature concerning your medical history, and, according to the certification which you signed on the questionnaire, omission of material information can be grounds for dismissal. The Director of the U.N. Health Service indicated that had you provided full information you would have been classified by that Service as ‘unemployable’, and would not in fact have been offered an appointment with the Special Fund.”

The Managing Director went on to say that, having weighed all the circumstances of the case, and after discussions with officials of the United Nations Office of Personnel, he had decided not to terminate the Applicant's present appointment, if the Applicant returned to his home country for further medical treatment and accepted full treatment by approved physicians in that country. “In this event,”—the Managing Director continued—“you will be carried on sick leave with full pay throughout the period of your appointment, which expires on

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\* Hospital No. 2 is a public hospital and Hospital No. 3 is a private hospital. Both are in New York City.

3 January 1962. Your appointment will expire on that date." The Managing Director added that, since the Fund had previously expressed the intention of extending the Applicant's appointment for a period of one year, he would receive on his separation from service, in addition to the benefits provided for in the Staff Rules, a sum equal "to an amount which would have been payable had you received a one year fixed-term appointment as from 4 January 1962 and been terminated immediately thereafter." The Managing Director specified, however, that these arrangements were contingent upon the Applicant agreeing to return to his home country at an early date to receive further medical treatment. On 19 October 1961, the Applicant was permitted to leave Hospital No. 3. Four days later he travelled by air to his home country at United Nations expense. Dr. B. accompanied him on the journey, also at United Nations expense. On 5 December 1961 the Applicant returned to New York. On 8 December 1961, after further correspondence on the matter, he requested in writing the Managing Director of the Fund "to reconsider the whole case". On 13 December 1961, he addressed under Staff Rule 111.3 (a) a communication to the Secretary-General requesting a review of the decision conveyed to him by the letter of the Managing Director dated 18 October 1961. In reply to the letter of 8 December 1961 to the Managing Director, the Officer-in-Charge of the Special Fund informed the Applicant on 22 December 1961 that:

"The Managing Director has ... decided to confirm the decision conveyed to you in his letter of 18 October 1961 that your present appointment will not be extended. The reason for this decision is that it is considered that your conduct of work and behaviour for some time after June and before your departure in October were unsatisfactory. Another factor in this decision is the state of your health to which we have been advised the problems which have arisen at work may largely be attributed. The Managing Director is also aware that you have refused to give certain information bearing upon your previous medical history or to permit the Medical Director to obtain such information although it has been brought to your attention that this information bears directly upon the truthfulness of your representations on your medical history form."

On 27 December 1961 the Deputy Director of the Office of Personnel acknowledged on behalf of the Secretary-General the Applicant's communication of 13 December and waived the time-limits provided in Staff Rule 111.3 in order to permit the Applicant to submit further information or statements. On 12 January 1962, the Applicant submitted through counsel a written statement on his case. On 8 February 1962, at the Applicant's suggestion, the Deputy Director of Personnel requested Dr. Hugh McHugh, a Diplomat of the American Board of Psychiatry and Neurology, to give his "professional assistance with respect to a determination to be made by the Secretary-General on the question of [the Applicant's] capacity or incapacity for reasons of health for further service" in his post. On 27 February 1962, Dr. McHugh submitted a psychiatric report on the Applicant. On 12 March 1962, the Director of Personnel informed the Applicant that, after reviewing the decision of the Managing Director of the Special Fund, the Secretary-General "has determined that the expiry of your appointment on 3 January 1962 did not violate the terms of your appointment including the Staff Regulations and Rules." On 28 March 1962, the Acting Director of Personnel informed the Applicant that the Secretary-General agreed that the Applicant's case should be submitted directly to the

Administrative Tribunal. On 9 June 1962, the Applicant filed the application referred to above. The Applicant also mentioned that he had other claims against the Organization on which the administrative decisions had not yet been taken. On 27 August 1962, the Tribunal was informed in writing that the Applicant had resumed employment in the Civil Service of his home country as from 1 June 1962.

Whereas the Applicant's principal contentions are:

1. Before the date of expiration of the Applicant's two-year appointment with the Special Fund, the Applicant accepted an offer by the Fund to extend the appointment for a period of one year. The acceptance of this offer should be considered as having completed a valid contract under which the appointment was extended for one year.

2. Even if it were held that additional formalities required to complete a valid contract were lacking, the offer by the Special Fund and its acceptance by the Applicant constituted a promise binding upon the Fund and vested with all the legal effects of a valid contract.

3. Whether the offer and the acceptance are considered as a valid contract or as a binding promise, the subsequent decision of the Fund not to extend the Applicant's appointment upon its expiration must be construed in law as a termination of a fixed-term appointment in the meaning of Staff Regulation 9.1 (b). Under that provision, such appointments may be terminated only for the reasons specified in the contract itself or laid down in Staff Regulation 9.1 (a).

4. Two reasons for not extending the Applicant's appointment were given by the Managing Director of the Special Fund in the letter informing the Applicant of the Fund's decision. The first was the alleged failure by the Applicant to include information of a material nature in the United Nations Medical History Form and Supplementary Questionnaire which he completed before his employment. The second was the Applicant's state of health at the time of the decision.

5. As regards the first reason, Staff Regulation 9.1 (a) specifies that no termination based on facts anterior to the appointment of a staff member shall take place until the matter has been considered and reported on by a special advisory board appointed for that purpose by the Secretary-General. Since no such board was appointed to consider the Applicant's case, the decision taken with respect to him cannot be justified on the basis of facts anterior to his appointment.

6. As regards the second reason, Staff Regulation 9.1 (a) specifies that the appointment of a staff member may be terminated if he is, for reasons of health, incapacitated for further service. No finding that the Applicant was incapacitated for further service was made by any of the practitioners who examined him, in particular, the Medical Director of the United Nations Health Service and an independent medical expert appointed by the Secretary-General.

7. Nor can the termination of the Applicant's appointment be justified on the ground of unsatisfactory services since that ground was invoked for the first time in the course of the review provided for in Staff Rule 111.3 (a). Moreover, the determination by the Respondent of the unsatisfactory nature of the Applicant's services was irrational and inconsistent with the opinion

previously expressed by the Managing Director and other officials of the Special Fund.

Whereas the Respondent's principal contentions are:

1. The promise to extend the Applicant's appointment was made by an official of the Special Fund in a letter which purported to be a final communication of intention and not a communication of the fact of extension.

2. The acceptance of the promise by the Applicant did not complete a valid contract and did not extend the appointment since, under the Staff Regulations and Rules, the power of appointment rests with the Secretary-General or an official acting in his name.

3. Regardless of the binding nature of the promise, Staff Regulation 9.1 would have been applicable to the failure to fulfil the promise only if specific performance could have been ordered. In view of the authority of the Secretary-General under the Charter, no specific performance of a promise of appointment can be ordered. Therefore the Applicant's separation from service on the expiry date of his appointment cannot be characterized as a termination to which either the grounds or the special procedure prescribed in Staff Regulation 9.1 would be applicable.

4. After the promise of extension of appointment, the Respondent discovered that, in completing the United Nations Medical History Form and Supplementary Questionnaire, the Applicant had misrepresented material facts for the purpose of securing an appointment. The discovery of the misrepresentation rendered the promise legally unenforceable and deprived the Applicant of any right for damages which might have otherwise resulted from the breach of promise of appointment.

5. The decision not to extend the Applicant's appointment was based on reasons relating to his behaviour and work, medical history and condition of health. The Applicant was fully apprised of these reasons and received the opportunity to comment on them. Accordingly, there has been no violation of the Applicant's procedural and substantive rights with respect to any expectancy he may have had to further United Nations employment after the expiry of his appointment.

6. The Applicant failed to support his contention that the determination by the Respondent of the unsatisfactory nature of the Applicant's services was irrational and inconsistent with the opinion previously expressed by officials of the Special Fund. Moreover, the record in the case and the advice given by competent medical authority adequately support the Respondent's finding that the Applicant was, for reasons of health, incapacitated for further service. Accordingly, the reasons for the decision not to extend the Applicant's contract would have constituted valid grounds for termination under Staff Regulation 9.1 if that Regulation had been applicable to the case.

The Tribunal, having deliberated from 27 August to 14 September 1962, now pronounces the following judgement:

1. The Tribunal finds that the Respondent's letter of 22 June 1961 constituted an offer to the Applicant of appointment for one year from 4 January 1962 and that this offer was accepted by the Applicant thereby creating an obligation on the part of the Respondent to appoint the Applicant for a further period of one year.

2. The Respondent contends that he is not bound to fulfil the obligation by reason of the fact that the Applicant had withheld material information regarding his health condition at the time of his seeking employment at the United Nations.

3. The Tribunal places great importance on the evidence to the effect that the Applicant knowingly gave erroneous answers to certain questions in his Medical History Form and Supplementary Questionnaire.

4. A letter dated 8 August 1962 (Annex 52) addressed to counsel for the Applicant by the Medical Director of the Psychiatric Department of a hospital in the Applicant's home country and the references made by counsel for the Applicant during the oral bearing (AT/PV.86, pp. 45, 46, 47 and 48-49), indicate

(i) that the Applicant had been treated by the said Medical Director in 1954 and at unspecified times between 1954 and 1957.

(ii) had consulted the said Medical Director concerning these treatments in 1959, shortly prior to accepting his original appointment to the Special Fund, and

(iii) that the Applicant consciously omitted information concerning these matters from his Medical History Form and Supplementary Questionnaire.

5. The Tribunal considers that the Applicant was in error when he chose to answer the questions in the manner in which he did. The Applicant's actions in this regard would have provided justification for the institution of the necessary procedures for the termination of the Applicant's original appointment. It is the opinion of the Tribunal that these actions on the part of the Applicant, although discovered latterly, constitute valid grounds for the Respondent's decision not to fulfil the agreement to reappoint the Applicant for an additional one-year term beginning 4 January 1962.

6. The Applicant has urged that the provisions of Staff Regulation 9.1 should be applied here, and stresses the fact that Staff Regulation 9.1 (a) specifies that a termination based on facts anterior to appointment must be considered by a special advisory board appointed by the Secretary-General. The Tribunal finds that Regulation 9.1 can be applied only to the termination of appointments. In the instant case, the Tribunal finds that no appointment was terminated. The term of the Applicant's original appointment expired on 3 January 1962. The obligation assumed by the Respondent in his letter of 22 June 1961 did not operate as an appointment from 4 January 1962. Such appointment required a formal act of the Respondent by the issuance of a letter of appointment. The Respondent did not so act and in fact advised the Applicant by letter dated 18 October 1961 (Annex 9) that the Respondent would not so act.

7. The Tribunal therefore finds that the Applicant's claim for specific performance of the obligation undertaken by the Respondent in the letter of 22 June 1961 is not sustained.

8. The sums of money paid to the Applicant by the Respondent included the Applicant's full salary until the end of his original appointment plus the usual entitlements paid on the expiry of such an appointment. Further, although no new appointment was made in January 1962, the Respondent made an additional payment equal to that which would have been paid to the Applicant had he



received a one-year appointment commencing 4 January 1962 and then had it terminated immediately after that date.

9. In the light of all the circumstances, the financial arrangements made by the Respondent for the benefit of the Applicant were such that the Tribunal does not order any additional compensation.

10. By reason of the foregoing considerations, the Tribunal rejects the application.

11. In view of the circumstances of the case, the Tribunal orders that the name of the Applicant shall be omitted from the published versions of the judgement.

*(Signatures)*

Suzanne BASTID

*President*

CROOK

*Vice-President*

R. VENKATARAMAN

*Member*

James J. CASEY

*Alternate Member*

Nicholas TESLENKO

*Executive Secretary*

*Geneva, 14 September 1962.*

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