

## Judgement No. 94

(Original : English)

Case No. 95 :  
Pappas

Against : The Secretary-General  
of the United Nations

*Non-renewal of a short-term appointment.*

*Nature of short-term appointments governed by Staff Rule 301.1 et seq.—No recognizable basis for the Applicant's expectancy of permanent employment.—Fact that on the expiry of a contract the vacant post is filled by another person cannot constitute an abuse or deviation of power.—No extraneous motivations or prejudice.*

*Application rejected.*

### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of the Lord Crook, Vice-President, presiding ; the Honourable Mr. R. Venkataraman, Vice-President ; Mr. Héctor Gros Espiell ;

Whereas, on 2 December 1964, Angelo Pappas, a former staff member of the United Nations and the Applicant herein, requested the President of the Administrative Tribunal, under Administrative Instruction ST/AI/153, to designate a counsel to assist him in drawing up and submitting an application to the Tribunal ;

Whereas, on 14 December 1964, the President designated as counsel Mr. Bedrich Syrový, a staff member of the United Nations ;

Whereas, at the Applicant's request, the President extended to 15 April 1965 the time-limit for the filing of an application ;

Whereas, on 9 April 1965, the Applicant filed an application which he amended on 24 May 1965 ;

Whereas the application, as amended, requested the Tribunal :

(a) To examine eight witnesses on the quality of the Applicant's work and on the question whether his immediate supervisors had been motivated by prejudice and favouritism ;

(b) To rescind the decision not to renew the Applicant's temporary short-term appointment upon its expiration on 18 May 1964 ;

(c) To order the Applicant's reinstatement in his former or a similar post ;

(d) To order, in the event that the Respondent exercises the option given to him under article 9.1 of the Statute of the Tribunal, the payment to the Applicant of a year's net base salary as compensation for the injury sustained ;

Whereas the Respondent filed his answer on 10 May 1965 ;

Whereas, on 17 May 1965, the President of the Tribunal requested the Applicant to submit the text of the questions which should be put to the witnesses whose examination he had proposed ;

Whereas, on 24 May 1965, the Applicant submitted the text requested by the President and expressed the wish that the witnesses should be heard under the procedure laid down in article 10, paragraph 3, of the Rules of the Tribunal ;

Whereas, on 25 May 1965, the Respondent filed written observations on the text of the questions submitted by the Applicant ;

Whereas the President designated Lord Crook and Mr. James W. Barco to hear the witnesses under the procedure laid down in article 10, paragraph 3, of the Rules ;

Whereas Mr. Barco heard seven of the witnesses on 29 June 1965 and Lord Crook heard the eighth witness on 9 September 1965 ;

Whereas, on 21 July 1965, the Applicant filed a document relating to the deposition of one of the witnesses heard by Mr. Barco ;

Whereas the facts in the case are as follows :

The Applicant entered the service of the United Nations on 4 December 1963 as an office labourer on a temporary short-term appointment for a period of three months. On 19 February 1964, the Applicant's supervisor submitted to the Office of Personnel through the Chief of the Division a " Report on Short-Term Staff " in which the Applicant's proficiency was rated as " below standard " and a negative answer was given to the question " If the staff member were to apply for re-employment, would you consider having him or her under your supervision ? " On 4 March 1964, the Applicant received a further temporary short-term appointment as an office labourer for a period of one month expiring on 3 April 1964. On 30 March 1964, the Applicant addressed a letter to the Secretary-General complaining of unfair treatment and stating that, in January 1964, his former employer had offered him a job by telegram but that he had refused the offer since he had been led to believe that the United Nations would give him a two-year contract. The letter added :

" I don't think it's fair that I was made to refuse a good job and now I'm losing this job for no real reason. "

At the expiration of his appointment on 3 April 1964 the Applicant remained in the service of the United Nations and received two successive temporary short-term appointments as a gardener. The first appointment covered the period 4 April to 3 May 1964 ; the second, the period 4 to 18 May 1964. On 18 May 1964, he was separated from the service of the Organization. On 8 July 1964, the Applicant again wrote to the Secretary-General and received in reply the following letter dated 14 July 1964 from the Acting Director of Personnel :

" I acknowledge receipt of your letter dated 8 July 1964, addressed to the Secretary-General. You commenced your letter by stating that you were discharged from the employ of the United Nations on 18 May 1964. I wish to clarify the point that your employment with the United Nations came to an end on that date which was the expiry date of your short-term appointment. In accordance with Staff Rule 304.4, a short-term appointment is a temporary appointment for a fixed-term, the period of which is specified in the letter of appointment ; a short-term appointment does not carry any expectancy of renewal or conversion to any other type of appointment.

" Having carefully examined your file once again, I have come to the conclusion that the non-continuation of your employment with the Organization was determined by the needs of the service and I am satisfied that in making this recommendation, the appropriate Department was solely concerned with such needs and that no prejudice or discrimination influenced the decision arrived at. I am therefore convinced that no injustice has been done to you and I regret to inform you that there is no possibility of offering you another job with the United Nations at the present time. "

After writing two more letters to the Secretary-General, the Applicant took his

case to the Joint Appeals Board. On 17 September 1964, the Board submitted a unanimous report to the Secretary-General concluding that it could make "no recommendation in support of the appeal". By a letter dated 29 October 1964, the Acting Director of Personnel transmitted a copy of the Board's report to the Applicant and informed him that: "The Secretary-General has accepted the decision of the Joint Appeals Board to make no recommendation in support of the appeal." On 9 April 1965, the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are :

1. The Applicant's first two Letters of Appointment specified that his functional title was "Office Labourer". He was, however, employed in another capacity and was never given the opportunity to work as an office labourer.

2. The following circumstances gave rise to the Applicant's expectancy of continuation of service :

(a) The Applicant was placed in an established post. His performance was very satisfactory and his co-workers and supervisors assured him that he would be retained in the service of the United Nations ;

(b) The Applicant approached the Office of Personnel to find out whether the fact that he had omitted certain information in his Personal History form would be held against him when the time came to consider him for a further appointment with the Organization. He was told that the omission of information would not bar his continuous service with the United Nations, provided that all other conditions were favourable ;

(c) The Applicant informed the Office of Personnel that he had received an offer of employment from a corporation for which he had worked previously. The Office failed to warn him that there was no assurance that he would be retained in the service of the United Nations at the expiration of his appointment, and he rejected the corporation's offer of employment.

3. Although the Applicant's supervisors expressed satisfaction with his work, they gave him an unfavourable rating in the "Report on Short-Term Staff" issued on 19 February 1964. The report, moreover, was never shown to the Applicant and he did not receive an opportunity to submit a rebuttal.

4. In recommending that the Applicant's appointment should not be renewed, his supervisors were motivated by extraneous reasons and favouritism since they were seeking to create a vacant post for a former staff member with whom they were on friendly terms.

Whereas the Respondent's principal contentions are :

1. The very nature of the short-term appointments under which the Applicant served, as well as the terms of his Letters of Appointment and the applicable Staff Rules, clearly precluded expectancy beyond the end of the specified time. There may, perhaps, have been some reason for the Applicant to hope for further employment with the United Nations, but the application does not and could not allege a basis for any legally cognizable right with respect to further employment beyond the explicit terms of the written contract.

2. A renewal of a fixed-term appointment is within the discretion of the Secretary-General, who is responsible for the selection of staff.

3. Even if the favouritism alleged by the Applicant had actually existed, it would not constitute an abuse of power vitiating the contested decision. A fixed-

term appointment may be permitted to expire, and someone else be recruited, without any implications of impropriety based on the fact that the new recruit was a former staff member on friendly terms with his supervisors.

The Tribunal, having deliberated from 9 to 23 September 1965, now pronounces the following judgement :

I. The Applicant was at all times the holder of a temporary short-term appointment. He received Letters of Appointment as follows : for three months as office labourer as far as 3 March 1964, for one month as office labourer as far as 3 April 1964, for one month as gardener as far as 3 May 1964 and for two weeks as gardener as far as 18 May 1964.

II. In accordance with normal practice, the Letters of Appointment indicated that the temporary short-term appointment was for the fixed period stated and would expire without prior notice on the final day stipulated.

III. On each occasion, the Applicant signed the initial acceptance of the appointment " subject to the conditions therein specified and to those laid down in the Staff Regulations and in the Staff Rules governing temporary appointments for a short term ".

IV. Staff Rule 304.4 defines short-term appointments as " temporary appointments for a fixed term, the period of which is specified in the letter of appointment... A short-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment. "

V. From these facts, it is clear that the Applicant well knew that his employment did not indicate any expectancy of a permanent contract.

VI. The Applicant claims that his co-workers and supervisors assured him that he would be renewed in the service of the United Nations and that when he approached the Office of Personnel to consult as to an offer of employment elsewhere, that Office failed to warn him that there was no assurance that he would be renewed in the service.

VII. The Respondent states that perhaps there may have been some reason for the Applicant to hope for further employment with the United Nations but there was no legally enforceable right to continuation of employment beyond the time specified in the contract.

VIII. The eight witnesses, who were either supervisors or co-workers, nominated by the Applicant, questioned under the procedure laid down in article 10, paragraph 3, of the Rules of the Tribunal, spoke in terms of appreciation of the Applicant but had no material relevant evidence to adduce as to the Applicant's allegations of expectancy.

IX. The Tribunal cannot find, therefore, that there was any recognizable basis for the Applicant's expectancy of permanent employment.

X. The witnesses were further examined as to the Applicant's other allegations that his supervisors were motivated by extraneous reasons and favouritism and that they secured his separation from service in order to facilitate the return to the service of the United Nations of a former staff member.

XI. The Respondent has contended that, since the fixed-term appointment of the Applicant had expired, the question of the motive in this case did not arise. The Tribunal considers the contention well-founded and holds that if, on the expiry of the contract, the vacant post is filled by another person—whatever be the reason for such appointment—that cannot constitute an abuse or deviation of power.

XII. Certain of the witnesses examined provided no new information on this point, but one witness, who had worked side by side with the Applicant, said of the ex-staff member who was subsequently recruited, that this person "happened to be a trained operator and I guess he was more capable".

XIII. The Tribunal is not able to hold that extraneous motivations and prejudice led to the separation from the service of the Applicant.

XIV. Staff Rules 301.1 to 312.6 relating to short-term service issued in January 1962 govern the case under consideration and Rule 304.4 specifies that the short-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment. Staff Rule 309.5 provides that the short-term appointment shall expire automatically without prior notice on the expiry of the period specified in the Letter of Appointment and paragraph (b) of the same rule makes it clear that separation as a result of the expiration of the contract shall not be regarded as a termination within the meaning of the Staff Regulations and Rules. The Tribunal finds that there has been no non-observance of the contract of employment or terms of employment or the Staff Regulations and Rules in force applicable to the Applicant.

XV. The Tribunal accordingly dismisses the application.

*(Signatures)*

CROOK  
*Vice-President, presiding*

R. VENKATARAMAN  
*Vice-President*

*New York, 23 September 1965.*

H. GROS ESPIELL  
*Member*

N. TESLENKO  
*Executive Secretary*

## Judgement No. 95

*(Original : English)*

**Case No. 93 :**  
**Sikand**

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

*Termination of a permanent appointment on the grounds of unsatisfactory service, grant of fixed-term appointments.—Non-renewal of a fixed-term appointment.*

*Request for a ruling by the Tribunal that the Applicant's permanent appointment was not terminated.—Refutation of argument based on the fact that the Applicant's terminal benefits were held in escrow.—Request rejected.—Rejection of contention that, since the Applicant was detailed to the Technical Assistance Board after receiving his first fixed-term appointment, there was a secondment.—Applicant's appointment status changed by the second fixed-term appointment.*

*Request for a ruling by the Tribunal that the Applicant enjoyed the right to reinstatement with the United Nations.—Terms and conditions of employment of a staff member may be gathered from correspondence and surrounding facts and circumstances.*