

STATEMENT BY THE LORD CROOK

I have participated in the consideration of the case and in the drafting of the judgement and I would have signed the judgement with other members had I not been obliged to leave Geneva earlier.

(Signature)

CROOK

Geneva, 15 April 1971.

Judgement No. 145

(Original: English)

Case No. 149:
de Bonel

Against: The Secretary-General
of the United Nations

Request for payment of termination indemnity to a former staff member whose fixed-term appointment was not renewed.

Since separation as a result of the expiration of a fixed-term appointment is not regarded as termination, a claim under the Staff Regulations and Rules does not arise.—The Applicant's letter of appointment restricts her claims to those available under the Staff Regulations and Rules and pertinent administrative instructions.—Claim based on a reference to national law in the Field Administration Handbook.—The Field Administration Handbook is not binding in nature as is the Administrative Manual.—In the absence of any stipulation regarding the applicability of the local law which would create a contractual obligation between the Administration and the staff, the claim based on local law fails.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Zenon Rossides;

Whereas on 15 October 1970 the Tribunal, at the request of Mrs. Maruja de Bonel, a former staff member of the United Nations and the Applicant herein, extended to 3 January 1971 the time-limit for filing an application to the Tribunal;

Whereas, at the Applicant's request and with the Respondent's agreement, the President of the Tribunal extended successively to 15 February 1971 and to 15 May 1971 the time-limit for filing an application;

Whereas the Applicant filed the application on 17 May 1971;

Whereas the pleas of the application request the Tribunal "to declare that the Applicant is entitled to termination indemnity to be paid by the Administration";

Whereas the Respondent filed his answer on 23 July 1971;

Whereas the facts in the case are as follows:

The Applicant was transferred from the Mission of the Food and Agriculture Organization of the United Nations (FAO) in Bolivia to the United Nations Information Centre at La Paz, Bolivia, on 24 July 1965 under a fixed-term appointment of one year as a locally recruited Information Assistant, with an *ad hoc* salary of pesos 47,150 gross per annum equivalent to that of level 6, step X of the local salary scale. On 24 July 1966 her appointment was extended for one year with the same *ad hoc* salary. On 1 December 1966 the local salary scale was revised and the Information Centre started paying the Applicant a salary of pesos 51,910 gross per annum which was equivalent to the salary of level 6, step X of the revised scale. As the Applicant was paid an *ad hoc* salary, the Administration at Headquarters later sought to recover from her the amounts of that increase, but eventually waived such recovery. In July 1967 the Applicant was offered a further extension of her appointment for one year at a new *ad hoc* salary of pesos 48,790 gross per annum, which provided for the equivalent of a within-level increment, but she refused to sign the letter of appointment on the ground that its terms meant an actual reduction in her salary. While the negotiations for the signature of a new letter of appointment were going on, the Applicant's appointment had expired but the Applicant continued to work for the Information Centre. She was separated from service on 30 November 1967 and the period of employment from 24 July 1967 to 30 November 1967 was subsequently covered by a Personnel Action dated 2 February 1968 which extended the Applicant's fixed-term appointment for that period at an *ad hoc* salary of pesos 51,910 gross per annum.

In a letter of 23 November 1967 addressed to the Resident Representative a.i. and in a letter of 25 July 1968 addressed to the Secretary-General of the United Nations, the Applicant contended that her services had been terminated by the United Nations and that she was therefore entitled to the indemnities provided for in the Labour Law of Bolivia. On 16 August 1968 the Applicant lodged an appeal with the Joint Appeals Board. On 10 September 1968 the Acting Director of Personnel, in reply to the Applicant's letter of 25 July 1968, confirmed on behalf of the Secretary-General the decision not to pay her upon completion of her service any benefits or allowances except those provided in the United Nations conditions of service. On 3 July 1969 the Joint Appeals Board submitted its report, the concluding section of which read as follows:

"Conclusions and Recommendations:

"44. The Board finds that in accordance with Staff Rule 109.7 (b) separation as a result of the expiration of a fixed-term appointment shall not be regarded as a termination within the meaning of the Staff Regulations and Rules. Since the fixed-term appointment of the appellant had expired she was not entitled to termination indemnity.

"45. The Board has no hesitation in concluding that it was entirely for the Secretary-General to decide whether to apply local laws or not in connexion with the conditions of service of local staff members. Consequently, despite the fact that the Secretary-General has followed Bolivian legislation in several other cases of separation of staff, it does not compel him to do so in this case.

" . . . "

The Secretary-General having decided "to maintain the decision of [her] separation on expiration of appointment giving [her] no entitlement to termination indemnity", the Applicant filed on 17 May 1971 the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. According to a clause contained in all the contracts between the Applicant and the United Nations, the Applicant was not entitled to any benefits or allowances *except* those provided in the United Nations conditions of service; assuming that this clause is applicable to the legal relations between the Applicant and the United Nations from 24 July 1967 to 30 November 1967, the issue is whether a termination indemnity was provided in the "United Nations conditions of service".

2. The Field Administration Handbook—which is binding upon the Administration and the staff in the same manner as the Administrative Manual—provides that the terms of appointment of local staff shall not normally permit payment of a termination indemnity, *unless the national law of the country in which the field office is established provides for the payment of such indemnity*.

3. Therefore, a termination indemnity is provided in the "United Nations conditions of service" if the local law provides for the payment of such indemnity.

4. The Bolivian Labour Legislation provides for the payment of a termination indemnity in the Applicant's circumstances.

Whereas the Respondent's principal contentions are:

1. The Applicant, having been separated from service upon expiration of her fixed-term contract, was not entitled to a termination indemnity under the terms of her United Nations appointment; the irregular continuation of her services after the expiration of her last letter of appointment constituted tacitly agreed extensions of her fixed-term appointment.

2. The Applicant's conditions of employment were governed solely by the United Nations conditions of service, to the exclusion of any provision of the local labour law; unlike the Administrative Manual the Field Administration Handbook does not purport to be the official medium for the issuance of administrative policies, instructions and procedures designed to implement the Staff Rules, and it does not in itself give rise to contractual obligations between the Organization and its staff members; and the particular statement in the Handbook on which the Applicant relies does not go beyond indicating the possibility of including in the terms of appointment of local staff members a provision for termination indemnities if the local law provides for such indemnities.

The Tribunal, having deliberated from 20 to 23 September 1971, now pronounces the following judgement:

I. The Applicant's only plea to the Tribunal is for a declaration that she is entitled to termination indemnity to be paid by the Administration.

II. According to Staff Rule 109.7 (b), separation as a result of the expiration of a fixed-term appointment shall not be regarded as a termination within the meaning of the Staff Regulations and Rules. The Applicant's fixed-term appointment having expired, a claim for termination indemnity under the Staff Regulations and Rules does not arise.

III. In the letter of appointment of the Applicant it is stated that "the conditions of service for the appointment offered to you have been fixed under United Nations Staff Regulations and Rules on the basis of the best prevailing conditions of employment in La Paz, Bolivia, with full account being taken of the benefits normally accorded herein. Accordingly, you are not entitled to any benefits or allowances except those provided in the United Nations conditions of service". This provision clearly restricts claims to those available under the Staff Regulations and Rules and pertinent administrative instructions.

IV. The Applicant, however, claims that under paragraph 2 of page B-77 of the Field Administration Handbook "the terms of appointment of local staff shall not normally permit payment of a termination indemnity, unless the national law of the country in which the field office is established provides for the payment of such indemnity", that the Bolivian Labour Legislation provides for such indemnity and that the Field Administration Handbook is binding on the Administration. She relies on Judgement No. 15 (Robinson).

V. In its Judgement No. 15 the Tribunal was concerned with the binding nature of the Administrative Manual. The Tribunal noted that, as provided in the Manual itself, "The Administrative Manual shall be the official medium for the issuance of administrative policies, instructions and procedures designed to implement the Staff Rules . . .". On the other hand, the introduction to the Field Administration Handbook explains its scope in the following terms:

"It is designed to assist United Nations field offices, particularly special missions and information centres, for which the Field Operations Service is the channel of administrative communication at Headquarters, in the application of (a) Staff Regulations and Rules, and (b) Financial Regulations and Rules, and to provide brief explanations of administrative policies, procedures and practices affecting them."

A comparison of the Administrative Manual with the Field Administration Handbook shows that the Field Administration Handbook is in the nature of a guide to the field offices and does not create or give rise to any contractual obligations between the Administration and the staff.

VI. In the absence of any stipulation regarding the applicability of the local law in the letter of appointment or in the Staff Regulations and Rules or in pertinent administrative instructions creating a contractual obligation between the Administration and the staff, the Tribunal holds that the Applicant's claim for termination indemnity based on local laws fails.

VII. The application is accordingly rejected.

(Signatures)

R. VENKATARAMAN

President

CROOK

Vice-President

New York, 23 September 1971

Zenon ROSSIDES

Member

Jean HARDY

Executive Secretary

Judgement No. 146

(Original: English)

Case No. 134:
Touhami

Against: The Secretary-General
of the United Nations

Request for revision of Judgement No. 135.

The competent committee rejected an application for review of Judgement No. 135.—Powers of revision of the Tribunal under article 12 of its Statute.—Consideration of the pleas of the Applicant by the Tribunal in its Judgement No. 135.—In the absence of