

XIII. As the Applicant's main contention fails, his consequential pleas also fail and are hereby dismissed.

XIV. The application is rejected.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Zenon ROSSIDES
Member

Roger STEVENS
Alternate member

Jean HARDY
Executive Secretary

Geneva, 18 April 1972

Judgement No. 155

(Original: French)

Case No. 155:
Belaineh

Against: The Secretary-General
of the United Nations

Request by a former staff member of the United Nations Children's Fund for the rescission of a decision refusing to grant a special post allowance.

The facts are not disputed and the Respondent is simply justifying his decision by reference to the discretion which he may exercise in the granting of such allowances.—Staff Rule 103.11.—The Secretary-General was not legally bound to grant a special post allowance to the Applicant.—Claim that the contested decision was motivated by prejudice.—The argument is rejected, as the Applicant has not proved the existence of prejudice.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Zenon Rossides; Mr. Vincent Mutuale;

Whereas, on 22 November 1971, Hailu Belaineh, a former local staff member of the Office of the United Nations Children's Fund, hereinafter called UNICEF, at Addis Ababa, Ethiopia, filed an application against a decision not to grant him a special post allowance;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 4 January 1972;

Whereas the Applicant, in the pleas of his application, requests the Tribunal

“to reconsider and approve [his] entitlement to a special post allowance” under Staff Rule 103.11;

Whereas the Respondent filed his answer on 4 February 1972;

Whereas the Applicant filed written observations on 10 April 1972;

Whereas the facts in the case are as follows:

The Applicant entered the service of the UNICEF Office at Addis Ababa on 18 July 1963 as a Clerk/Typist under a fixed-term appointment for one year. This appointment was subsequently extended for one year and, on 18 July 1965, the Applicant received a probationary appointment which was converted to a regular appointment on 1 January 1966. By that time he had reached the GS-6 step IX level and had become a Programming Clerk. In February 1966 the Applicant was assigned to the Finance and Administrative section and on 1 July 1966 his functional title was changed to Administrative Assistant. The periodic report covering the Applicant's services from 1 July 1965 to 30 June 1966 contained the following statement, dated 24 June 1966:

“Mr. Hailu Belaineh was transferred last February to the Finance and Administrative section of this office with a view to his taking over from Ato Abate. His direct training will be completed at the end of this month.”

In the periodic report covering the period from 1 July 1966 to 30 June 1968, it was stated: “Mr. Hailu Belaineh is now a fully fledged Administrative Assistant working satisfactorily.” On 20 March 1968, in a letter addressed to the UNICEF Area Representative, the Applicant requested that he be promoted to the level (GS-9) authorized for the post of which he had been performing the duties since July 1966 and that his functional title be accordingly changed to “Assistant Finance and Administrative Officer”. On the same day the Area Representative replied that the Applicant's promotion could not be considered until the situation resulting from the over-staffing of the Office improved. On 18 November 1968 the Applicant unsuccessfully reiterated his request for promotion in a letter to the UNICEF Director for Africa. On 19 February 1969 seven staff members of the UNICEF Office at Addis Ababa, including the Applicant, were informed that in view of the reduced programme activities in Ethiopia and Somalia it had been decided by Headquarters to reduce the staff and accordingly to terminate their services on 30 April 1969. On 6 March, 28 March and 4 April 1969 the Applicant requested, in letters addressed to the Executive Director of UNICEF and to the Secretary-General of the United Nations, that he be paid retroactively for the work he had performed at a higher level and that his termination indemnity be recalculated accordingly. On 29 April 1969 the Applicant was notified of the rejection of his claims. In the meantime he had, on 21 April 1969, lodged with the Joint Appeals Board an appeal which he confirmed on 12 May 1969. In his appeal he claimed payment under Staff Rule 103.11 (b) of the difference between his salary and that of the post of which he had assumed the duties, recalculation of his termination indemnity on the basis of the salary of the higher post, and compensation for the injuries sustained as a result of the termination of his appointment. The Joint Appeals Board submitted its report on 9 August 1971. The Board's conclusions and recommendations read as follows:

“Conclusions and recommendations

“21. The Board finds that the respondent has no statutory obligation to grant the appellant a special post allowance, and that, therefore, there is no non-observance of the pertinent Staff Rule.

"22. The Board finds that the appellant's termination indemnity was correctly calculated on the basis of his actual base salary according to Staff Rule 109.4.

"23. The Board finds that the appellant was unable to prove that the termination of his appointment was motivated by prejudice, and considers his claim of compensation on this ground unfounded.

"24. Accordingly, the Board is unable to make any recommendation in support of the appeal."

The Alternate Member elected by the Staff appended to the report a dissenting opinion reading as follows:

"I fully concur with the Board's findings on the two issues of the calculation of the termination indemnity and the compensation claimed for termination of appointment. Concerning the claim of a special post allowance, I wish to put on record the following dissenting opinion under Staff Rule 111.3 (j) *in fine*.

"Conceding the discretionary character of the Secretary-General's power under Staff Rule 103.11, I consider that this discretion is supposed to be exercised with due regard to all the relevant considerations, specially those of fairness to staff members.

"Having assumed satisfactorily and for an unusually long time the duties of a higher post, the appellant's claim that his case is an exceptional one justifying the grant of a special post allowance is worthy of serious consideration.

"In judgement No. 133 the Administrative Tribunal notes that 'the Secretary-General in recognition of the level of performance granted the Applicant appropriate relief (in the form of a six months' special post allowance followed by a promotion) and the adequacy thereof cannot be determined by the Tribunal'. I find nothing of the sort in the appellant's case, where no relief whatsoever was granted him. The Tribunal's ruling in the above case may well have been influenced by the particular circumstances of that case, none of which exists in the present case.

"Also, the Secretary-General, in declining to act on the favourable recommendation of the Joint Appeals Board in the same above-mentioned case, informed the staff member, that he finds no basis in law *or in equity* for granting his request. If equity is a consideration, and I maintain that it is, I believe that the Secretary-General may, in the exercise of his discretion, wish to reconsider the appellant's case and grant him a sum equivalent to the special post allowance he could have received."

On 27 August 1971 the Applicant was informed that the Secretary-General had decided to take no further action in the case, and on 22 November 1971 he filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. When the Applicant was assigned to the Finance and Administrative section in February 1966, he was verbally promised that as soon as he took over the finance and administrative work he would be promoted to the GS-9 level authorized for the post, a promise which was not kept since he remained at the GS-6, step IX level for 3½ years.

2. After the completion of his training period, the Applicant assumed on 1 July 1966 the full duties and responsibilities of the post of Finance and Administrative Officer—a post at a clearly recognizable higher level than his own—and he performed them with competence and efficiency for 33 months; his case is therefore an exceptional one justifying the grant of a special post allowance.

3. Staff Rule 103.11 was not, should not, and cannot be conceived as giving the Secretary-General an arbitrary or capricious power to obtain services at a higher level, and pay a staff member at a lower level of remuneration, beyond the strictly limited period of six months provided in the Rule.

Whereas the Respondent's principal contentions are:

1. A staff member does not acquire any right to additional salary or allowances by virtue of increased responsibility or assignment to higher level functions. However deserving of advancement, he does not acquire thereby a legal right to promotion. By invoking Staff Rule 103.11 concerning special post allowance, the Applicant does not render the contested decision any more subject to the Tribunal's review than a decision against promotion since, like promotion, special post allowances are entirely a matter within the Secretary-General's discretion.

2. The Tribunal has acknowledged in Judgement No. 133 the Secretary-General's discretion to grant or withhold special post allowances for General Service staff assigned to professional posts.

3. The special post allowance is an exceptional measure and no issue of abuse of discretion can be raised if the Secretary-General simply refrains from exceptional action in a given case.

The Tribunal, having deliberated from 11 to 19 April 1972, now pronounces the following judgement:

I. The application is directed against the decision of the Secretary-General not to grant the Applicant a special post allowance.

II. The Applicant invokes Staff Rule 103.11 as a basis for his claim that he was entitled to the special post allowance. In the present case, the facts are not disputed and the Respondent is simply justifying his decision by reference to the discretion which he may exercise in the granting of such allowances.

III. The Tribunal notes that, in accordance with paragraph (a) of the above-mentioned rule, staff members shall be expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts. In the conditions specified in paragraphs (b) and (c), a special post allowance may be granted; the granting of this allowance is, however, entirely within the discretion of the Secretary-General, who may grant or not grant it.

IV. Consequently, the Secretary-General was not legally bound to grant a special post allowance to the Applicant because the latter had assumed the duties and responsibilities of a higher level post.

V. The Applicant claims that the contested decision was motivated by prejudice; he bases his case on the fact that he assumed the duties and responsibilities with undisputed ability and for a period of 33 months.

VI. The Tribunal acknowledges that the length of time during which the staff member assumed these increased responsibilities and the manner in which he discharged them could legitimately be included among the criteria for determining the existence of the exceptional cases mentioned in paragraph (b) of Staff Rule 103.11. The Tribunal is of opinion, however, that these factors cannot on their own be considered as decisive and that in any event the Applicant has not proved the existence of prejudice in the case under consideration.

VII. For these reasons the application is rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding
Zenon ROSSIDES
Member

Vincent MUTUALE
Member
Jean HARDY
Executive Secretary

Geneva, 19 April 1972

Judgement No. 156

(Original: English)

Case No. 152:
Garnett

Against: The Secretary-General
of the United Nations

Request for the rescission of a decision that the salary of a staff member who was promoted should be calculated solely at the time of promotion, without regard to changes in the salary scales during the following year.

Staff Rule 103.9.—Claim by the Respondent that the calculation called for by this provision should be made solely on the basis of the salary scale prevailing at the time of promotion.—The claim is rejected, as it is contrary to the wording of the aforementioned provision and inconsistent with its obvious purpose.—Question of retroactivity.—Administrative hardship and how to deal with it.—Rescission of the contested decision and obligation of the Respondent to recompute the Applicant's salary in accordance with the judgement.—Award to the Applicant, should the Respondent decide to exercise the option given him under article 9.1 of the Statute of the Tribunal, of compensation at a sum equal to the net amount of additional compensation she would have received if Staff Rule 103.9 had been properly complied with in accordance with this judgement.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francis T. P. Plimpton, Vice-President; Mr. Mutuale-Tshikantshe Vincent;

Whereas, on 6 October 1971, Miss Betty Garnett, a staff member of the United Nations, filed an application requesting the Tribunal: