

VIII. For these reasons, the Tribunal decides that the contested decision was improper but that the compensation paid by the Respondent constituted adequate compensation for the injury sustained by the Applicant.

IX. All other requests are rejected.

(Signatures):

Suzanne BASTID
Vice-President, presiding

F. A. FORTEZA
Member

Geneva, 26 March 1973

MUTUALE-TSHIKANTSHE
Member

Jean HARDY
Executive Secretary

Judgement No. 170

(Original: English)

Case No. 163:
Sule

Against: The Secretary-General
of the United Nations

Non-renewal of a fixed-term appointment.—Non-conversion of that appointment to an indefinite appointment.

Request for the rescission of the decision not to renew the appointment or to convert it to an indefinite appointment and for payment of compensation for the injury sustained.—Provision in the letter of appointment stating that the appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.—Staff Rule 104.12 (b).—Paragraph 3 (a) of the Conditions of Service for Locally Recruited Staff Members of the UNDP Office in Nigeria.—Interpretation of the Applicant, who argues that by virtue of the clause of that paragraph relating to indefinite appointments he was entitled to receive either another fixed-term appointment or an indefinite appointment.—This clause is applicable only if the staff member's services are to continue.—It is not applicable to the Applicant, because the decision regarding his latest fixed-term appointment was that his services were not to continue.—Acceptance of the Applicant's interpretation would be inconsistent with the terms of his letter of appointment and of the Staff Rules and would negate the very concept of a fixed-term appointment.—Request rejected.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Stevens;

Whereas on 27 April 1972, at the request of Samuel B. Sule, a former local staff member of the Office of the United Nations Development Programme, hereinafter called UNDP, at Lagos, Nigeria, the Tribunal decided, under article 7, paragraph 5 of its Statute, to fix at 1 July 1972 the time-limit for the filing of an application to the Tribunal;

Whereas, on 16 May 1972, the Applicant filed an application which 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 25 July 1972;

Whereas the pleas of the application read as follows:

"1. Renewal and simultaneous conversion of my fixed term appointment plus payment of my salary and allowances.

"2. Rescission of the Secretary-General's decision to the effect that there was no contractual obligation on the part of UNDP to renew my fixed term appointment or to convert it to an indefinite appointment.

"3. Adherence to Para. 3 (a) of the Local Staff conditions of service for Nigeria.

"4. £N 25,000 compensation in respect of injuries sustained.

"5. Miscellaneous—£300."

Whereas the Respondent filed his answer on 30 August 1972;

Whereas the Applicant filed written observations on 2 October 1972;

Whereas the Applicant filed an additional statement on 23 February 1973;

Whereas the facts in the case are as follows:

The Applicant entered the service of the UNDP Office at Lagos on 9 September 1963 as Indexing Clerk and Shorthand-Typist. After a trial period, he received a succession of fixed-term appointments, the last of which became effective on 1 February 1967 and was due to expire on 31 January 1968. On 29 May 1967 the Applicant was suspended indefinitely from duty without pay on the grounds of misconduct and insubordination. On 6 September 1967 he submitted to the Chief of the Personnel Branch of UNDP a request for an international appointment. On 11 September 1967 the Applicant's appointment was terminated on the ground of unsatisfactory services under Staff Regulation 9.1 (b). On 21 September 1967, in reply to the Applicant's request for an international appointment, the Chief of the Personnel Branch wrote him:

"...
"I regret to inform you that it is not the policy of UNDP to consider for re-employment staff members who have been terminated for unsatisfactory service."

On 17 May 1968 the Applicant appealed the termination decision. On 17 March 1969 the Joint Appeals Board submitted its report (case No. 159). The Board's conclusions and recommendations read as follows:

"Conclusions and Recommendations

"33. In view of the considerations set forth above, the Board is not convinced that the administrative decision terminating the appellant's fixed-term appointment was justifiable on the ground of unsatisfactory services. As the case was presented to the Board, no sufficient cause has been shown to sustain the finding of unsatisfactory services. The finding was neither supported by any formal appraisal of the appellant's performance and conduct on record, nor did it appear to the Board to be warranted by the disciplinary charges initially brought against him. The Board is further of the opinion that the UNDP Administration's decision of termination has been rendered untenable by reason of its failure to observe and apply, in respect of the appellant, proper administrative procedures provided for in the Staff Regulations and Rules. For these reasons, the Board unanimously decides to recommend to the Secretary-General that, in the interest of good administration, the decision of termination be withdrawn to allow the appellant's fixed-term appointment to run its course and that consequently the appellant be granted the payment of salary and allowances which he would have received up

to the date of expiration of his fixed-term appointment, subject to deduction of the amounts of termination indemnity and compensation in lieu of the 30-days' notice already paid him. As the proposed measure would have the effect of fulfilling the UNDP's contractual obligations towards the appellant, the Board makes no recommendation in support of his claim for indemnification."

On 24 April 1969 the Director of Personnel informed the Applicant of the Secretary-General's final decision as follows:

" . . .

"The Secretary-General has examined your case in the light of the report of the Joint Appeals Board and has decided to rescind the termination decision and to order that your fixed-term appointment be allowed to run its course. Consequently he has also decided that you be paid full salary and allowances for the period of your contract, less the amount of termination indemnity and compensation in lieu of notice already paid to you.

"The Secretary-General has taken note of the Board's decision to make no recommendation in support of your claim for indemnification."

On 9 May 1969 the Applicant advised the Resident Representative of UNDP that his contract was "due for renewal covering the period of February 1968 to February 1969" and that "by September 1968 [he had] become eligible for indefinite appointment". On 18 June 1969 the Chief of the Personnel Division replied that the Applicant's fixed-term contract had been allowed to run its course through 31 January 1968, that UNDP had met its obligations to him in full under the terms of that fixed-term contract, and that there was no intention to enter into any further employment contractual arrangements with him. On 16 January 1970 the Applicant lodged with the Joint Appeals Board an appeal against the decision not to renew his fixed-term appointment. The Board submitted its report (case No. 188) on 19 July 1971. The Board's conclusions and recommendations read as follows:

"Conclusions and Recommendations

"24. The Board finds that the respondent has no contractual obligation to renew the appellant's fixed-term appointment or to convert it to an indefinite appointment. The Board finds further that it cannot be determined with certainty that the respondent would have renewed the appellant's appointment if the termination had not intervened, and that the appellant has no rights arising out of a contract that was never made.

"25. Accordingly, the Board makes no recommendation in support of this appeal."

On 12 August 1971 the Applicant was advised that the Secretary-General, having accepted the conclusions of the Joint Appeals Board, had decided to take no action in favour of the appeal. On 16 May 1972 he filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. For the purposes of paragraph 3 (a) of the Conditions of service for locally recruited staff members of the UNDP Office in Nigeria, the Applicant's contract is a contract awarded after successful completion of a probationary appointment, which is subject to renewal and conversion at the appropriate stages depending on performance. Therefore, the Applicant is entitled to renewal and simultaneous conversion of appointment following appraisal.

2. Section IV-C, chapter 3 of the UNDP Field Manual as mentioned by the Board indeed cautions Resident Representatives not to consider indefinite appointment as an automatic reward for two years' satisfactory service. It does not caution Resident Representatives on its award to those who have served for 3, 4, 5 or more years. Neither

does it remove the other part of the obligation on the part of UNDP on the basis of the series of fixed-term appointments as authorized by the above provision.

3. Judgement No. 97 is not relevant to the case. While Staff Rule 112.6 which should have provided a part of the permanent cumulative record was being ignored by UNDP, the Applicant has a record of satisfactory service and conduct attested to by the Board.

Whereas the Respondent's principal contentions are:

1. The Applicant's fixed-term appointment as provided for in Staff Rule 104.12 (b) and as stipulated in the Applicant's letter of appointment carried no expectancy of renewal or of conversion to any other type of appointment.

2. Paragraph 3 (a) of the Conditions of service cannot be interpreted as giving rise to such an expectancy. This text simply indicates the kinds of appointments which may be granted and does not itself create any right to receive any appointment. Neither is it concerned with particular terms and conditions governing appointments once granted. Moreover, the Applicant's interpretation of the provision regarding indefinite appointments ignores the opening words "if the staff member's services are to continue . . .".

3. In the absence of any legal expectation affected by the contested decision, the reasons or motives for it need not be examined by the Tribunal.

The Tribunal, having deliberated from 27 to 30 March 1973, now pronounces the following judgement:

I. The Applicant seeks in substance (1) rescission of the Secretary-General's decision not to renew his fixed-term appointment or to convert it to an indefinite appointment and (2) payment of compensation for the injury sustained.

II. The Applicant's letter of appointment contains a provision that a fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment. The pertinent paragraph is as follows:

"You are hereby offered the appointment described below in the Secretariat of this office of the UN Development Programme, subject to the terms and conditions specified herein as amended by or otherwise provided in the United Nations Staff Regulations and Staff Rules, together with such amendments as may from time to time be made to such Staff Regulations, Staff Rules and directives and subject to the Local Staff Rules established for locally recruited personnel in Nigeria. *This Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment in the Secretariat of the UNDP.*" [Emphasis supplied.]

III. The letter of appointment is in conformity with Staff Rule 104.12 (b) which reads as follows:

"The Fixed-Term Appointment, having an expiration date specified in the letter of appointment, may be granted for a period not exceeding five years to persons recruited for service of prescribed duration, including persons temporarily seconded by national governments or institutions for service with United Nations. *The Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.*" [Emphasis supplied.]

IV. The Applicant claims that, by reason of paragraph 3 (a) of the Conditions of service for locally recruited staff members of the UNDP Office in Nigeria, he became entitled, at the expiration of his latest fixed-term appointment on 31 January 1968, either to a further fixed-term appointment or to an indefinite appointment. Paragraph 3 (a) of those Conditions of service reads as follows:

“3. Appointment

“(a) On recruitment staff members may be granted one of the following types of appointment:

“Initial fixed-term appointment. If a staff member is recruited with an expectation of continuing service (as distinct from recruitment specifically for temporary or short-term duties) he normally is given initially a fixed-term appointment for a trial period of three months duration.

“Fixed-term appointment. If the staff member’s services have proved satisfactory during the trial period he normally receives on completion of that period an appointment for a fixed-term of one year.

“Indefinite appointment. If the staff member’s services are to continue after completion of the first year’s fixed-term appointment, he receives either a further fixed-term appointment or, alternatively, an indefinite appointment.

“Appointments for temporary assistance. Fixed-term appointments for temporary assistance may be authorized for brief periods.”

Relying on the words “he receives either a further fixed-term appointment or, alternatively, an indefinite appointment” in paragraph 3 (a) (Indefinite appointment) above, the Applicant argues that he was entitled to receive either another fixed-term appointment or an indefinite appointment and that he could not be denied both. But the Tribunal observes that the clause is applicable only “if the staff member’s services are to continue”. The Applicant had earlier received successive fixed-term appointments when the Administration had decided that his services were to continue. But as the decision regarding the Applicant’s latest fixed-term appointment was that his services were *not* to continue, the provision quoted above does not apply to him. There is nothing in this provision creating an obligation on the part of the Administration to continue the services of a staff member after the expiry of a fixed-term appointment.

V. Furthermore, to construe the provision as guaranteeing the Applicant at the end of a fixed-term appointment either a further fixed-term appointment or an indefinite appointment would be inconsistent with the terms of the Applicant’s letter of appointment and of the Staff Rules and would negate the very concept of a fixed-term appointment through in effect making such an appointment interminable.

VI. For the above reasons the Tribunal:

1. Rejects the Applicant’s claim for rescission of the Secretary-General’s decision denying the renewal of his fixed-term appointment or its conversion to an indefinite appointment;
2. Rejects the Applicant’s claim for compensation for the injury sustained;
3. Rejects the application.

(Signatures):

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

Geneva, 30 March 1973

Roger STEVENS
Member

Jean HARDY
Executive Secretary