

Judgement No. 171

(Original: French)

**Case No. 167:
Champetier**

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

Request submitted by a former technical assistance expert holding a fixed-term appointment for compensation for injury said to have been caused by an allegedly defamatory letter addressed by the UNDP Resident Representative to the authorities of the assisted State.

No dispute between the Applicant and the Respondent as to the facts or as to the application of the Staff Regulations and Rules in connexion with the termination of the Applicant's appointment.—Applicant's contention that the wording of the letter in dispute was defamatory and that its contents and the manner in which it was dispatched and circulated were injurious to his professional reputation.—Consideration of the terms of that letter and the circumstances of its dispatch.—The Tribunal does not have to determine whether the terms of the letter were defamatory in the legal sense but whether the letter and the circumstances of its dispatch were of such a nature as to be prejudicial to the Applicant professionally.—Unusual and inept conduct of the Respondent in this connexion.—Objections to which the text of the letter itself is open.—Conclusion of the Tribunal that the drafting and dispatch of the letter were capable of causing the Applicant embarrassment and distress.—Consideration of the question whether such embarrassment and distress were in fact caused and, if so, whether the Applicant's professional standing was adversely affected.—Conclusion of the Tribunal that the terms of, and the circumstances surrounding the dispatch of, the letter did not cause the Applicant serious or lasting prejudice but that the ineptitude with which the letter was drafted and delivered may have caused him embarrassment and that some personal and professional hurt may have resulted.—Question of the possible satisfaction that could be accorded to the Applicant.—Requests submitted by the Applicant to the Joint Appeals Board and the Tribunal respectively.—Request for rescission of the contested decision.—Such rescission would have no practical effect.—Request rejected.—Request for award of an indemnity equivalent to two years' salary.—No evidence to suggest that the damage, if any, caused to the Applicant's reputation was so widespread or lasting as to justify financial indemnity of any kind.—Request rejected.—Moral reparation the only reparation to which the Applicant is entitled.—The substance of the Judgement represents suitable satisfaction.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Mutuale-Tshikantshe; Sir Roger Stevens;

Whereas, on 26 July 1972, Raoul Champetier, a former technical assistance expert of the United Nations, filed an application with the Tribunal, which did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, after making the necessary corrections, the Applicant filed his application again on 2 October 1972;

Whereas, the pleas of his application, the Applicant requested the Tribunal:

“ . . . to annul the decision of the Secretary-General and to award him the indemnity which he sought as compensation for the injury caused, namely, the equivalent of two years' salary”;

Whereas the Respondent filed his answer on 16 November 1972;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 12 February 1969 as

a mining engineer on a one-year appointment. He was assigned to the National Mining and Geological Research Centre (*Centre National de Recherche Minière et Géologique*) at Conakry (Guinea), a Special Fund project with a staff of six—the project manager, a mining engineer, three geologists and an administrative officer. On 4 August 1969 the Applicant, who had been entrusted with the interim management of the project, addressed to the Guinean Director for Mines and Geology, who was the co-manager of the project, a progress report allegedly prepared at the request of the latter, in which he criticized the management of the project and recommended that the project manager should be replaced; a copy of that report was addressed to the Resident Representative of UNDP (United Nations Development Programme) in Guinea. On 17 November 1969, the Chief of the Technical Assistance Recruitment Service wrote the following letter to the Applicant:

“According to the information we have received, you are alleged to have transmitted a progress report to the Guinean Government on 4 August 1969 without going through the normal administrative channel. As you know, you should have consulted the project manager, who had given you his address before leaving on vacation, or, if that was impossible, you should have consulted the Office of Technical Co-operation in New York.

“Moreover, this report, which you drew up apparently without being fully conversant with the background of the project and its management since October 1968, contained criticisms of the project manager and created a delicate situation.

“We should therefore be very grateful if you would send us your comments on the two preceding points so that we may clear up this matter.”

On 9 December 1969, the Applicant replied:

“I was very surprised to receive your letter of 17 November concerning a matter which I thought had been definitively disposed of after the visits in this connexion by Headquarters representatives in August and September.

“I do not know whether the Government saw the memorandum to which you refer and, if so, in what circumstances since, upon inquiry, I found no evidence of the transmission of this document, which I submitted only to the Resident Representative.

“Moreover, this text did not create a delicate situation, it was simply the consequence of that situation, for as early as July the Government’s violent criticisms concerning the progress of the project had placed the Resident Representative and me in a very disagreeable position.

“For the sake of the future of the project, which has experienced and which is still experiencing great difficulties—which I am endeavouring to solve with the assistance of the UNDP Office—I think that it is not advisable for Headquarters to stir up further complications.”

On 15 December 1969 the Guinean Secretary of State for Foreign Affairs informed the UNDP Resident Representative a.i. that the Government of Guinea wished the Applicant to be appointed project manager. On 30 January 1970, the Resident Representative a.i. addressed the following reply to the Secretary of State for Industry, Mines and Power, with copies to the Ministry of Economic Affairs and the Directorate General of Technical Co-operation of the Ministry of Foreign Affairs:

“I have the honour to refer to the letter dated 5 [15] December 1969 in which the Secretary of State for Foreign Affairs informed us of the wish of your Department that Mr. R. Champetier should become manager of the SF/UN (Special Fund/United Nations) project “National Mining and Geological Research Centre”.

“I regret to inform you that, after a careful study of this request and of Mr.

Champetier's dossier, United Nations Headquarters considers that his skills do not qualify him for the post of project manager. Nevertheless, to ensure the sound operation of the project, Mr. Champetier's contract has been extended for two months in the post for which he was recruited, until such time as the name of an adequate candidate can be submitted for your approval with a view to his replacement in that post.

"Furthermore, the United Nations intends shortly to propose to you a competent candidate for the post of project manager. In the meantime, Mr. Jaquenoud, a geologist assigned to the same project, has been appointed project manager a.i. with effect from 12 February 1970."

The Applicant and Mr. Jaquenoud apparently also received copies of that letter. On 5 February 1970, the Applicant, whose contract had been extended for two months, wrote a letter of complaint to the Commissioner for Technical Co-operation in which he alleged that the terms of the said letter of 30 January 1970 were defamatory to him and the contentions therein lacking in substance. On 3 March 1970, the Commissioner for Technical Co-operation stated in reply that the United Nations had seen fit not to agree to the Government's request because it had a duty to satisfy itself as to the competence of its project managers and that the requirements of the post were for a geologist-economist rather than a mining engineer. The Commissioner further assured the Applicant that nobody was questioning his professional competence as a mining engineer and added:

"Moreover, you are not unaware of the events which have taken place since the beginning of this project. After a thorough study of all the pertinent facts, we came to the conclusion that it was in the interest of the project and of the Government itself to make some changes in the staff. You should know that the United Nations, as the Executing Agency for this project, is responsible for making, at any time, any change deemed necessary for the proper functioning of the project."

On 12 March and 11 April 1970, the Applicant again wrote to the Commissioner for Technical Co-operation seeking compensation for the moral and material injury which he considered himself to have sustained as a result of the letter complained of, which, he said, had been drafted with the obvious intention of harming him. On 5 August 1970, the Director for Policy Co-ordination, Office of Personnel, informed the Applicant that the United Nations considered that it was not under any legal or moral obligation to grant his request for indemnity but was prepared to send him, at his request, a certificate which would not only indicate the nature of his duties and the length of his service but would also mention the quality of his work and his official conduct. On 26 December 1970, the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 11 January 1972. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations

"25. The Board finds that the respondent was negligent in the manner in which he announced his decision to replace the appellant as mining engineer in the National Mining and Geological Research Centre, and that this negligent use of authority has morally injured the appellant and may have brought some discredit to him.

"26. The Board accordingly recommends that the respondent should make every effort to open the way for further employment of the appellant by the United Nations or the specialized agencies, and that he should assure the appellant in writing that there is no impediment to his future employment by the United Nations and that the Administration is ready to assist him in securing such employment.

“27. The Board, having considered the appellant’s claims for monetary compensation, concludes that the most equitable redress that may be given to the appellant is re-employment in a post appropriate to his qualifications and experience.”

In letters dated 25 May and 16 June 1972, the Director of Personnel informed the Applicant that, having re-examined the case in the light of the Board’s report, the Secretary-General had decided not to implement the recommendations contained in that report, for the following reasons:

“The Board considered that your appeal was directed against the administrative decisions transmitted in the letter of 30 January 1970, namely, the decision not to accede to the request of the Guinean Government that you should be appointed project manager, the decision to extend your contract for two months only, and the decision to relieve you of the duties of acting project manager two months before the expiry of the period for which your contract had been extended.

“The Board found that the decisions impugned had not been taken arbitrarily. It nevertheless considered that a sentence in the letter addressed to the Guinean authorities was such that it might have caused you moral injury. Having re-examined your case in the light of the Board’s report, the Secretary-General concluded that, as the impugned decisions were in no way arbitrary, the interpretation given by the Board to the sentence in question was not sufficient to create an obligation, either legal or moral, for the Organization to assist you to find another post within the Organization or one of the specialized agencies, which in any case you did not request.”

On 26 July 1972, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The letter of 30 January 1970 is injurious and defamatory by reason of its wording and the equivocal terms used, particularly as the Applicant could not be accused of any professional shortcoming and completed his mission to the satisfaction of all.
2. The publicity given to the letter, the disclosure of whose contents the author should have endeavoured to prevent, in view of their strictly confidential nature, was a personal affront to the Applicant and had the effect of preventing him from finding employment.
3. The decision to demote the Applicant and to place him under the orders of one of his subordinates during the two months by which his contract was extended was as odious as it was vexatious.
4. The Joint Appeals Board, the Director of Personnel and the Director for Policy Co-ordination recognized that the Applicant’s complaint was justified. The injury caused to the Applicant was in no way offset by the conciliatory letters which he received from Headquarters.

Whereas the Respondent’s principal contentions are:

1. The decisions of the Secretary-General contained in the letter of 30 January 1970 were in full conformity with the Applicant’s contract and terms of appointment.
2. Neither the fact that those decisions were communicated to the appropriate authorities of the Government of Guinea and to the Applicant’s successor, nor the form of their communication, violated any of the Applicant’s rights. The dispatch of the letter complained of was a normal and necessary administrative procedure. Written in reply to a communication from the Guinean Government, that letter was in no way intended to harm the Applicant. The information about the Applicant was neither

untrue nor malicious, was communicated not gratuitously but to inform authorities and persons with a legitimate interest in it, and it was not publicly divulged.

3. That being so, there was no violation of the Applicant's rights which would make the Respondent liable to pay any compensation to him.

The Tribunal, having deliberated from 27 March to 3 April 1973, now pronounces the following judgement:

I. The Tribunal notes that there is no dispute between the Applicant and the Respondent either as to the facts or as to the application of the Staff Rules and Regulations in connexion with the termination of the Applicant's appointment. It is common ground that the Applicant was appointed as mining engineer to a Special Fund project in the Republic of Guinea for a period of one year from 12 February 1969; that from 15 July 1969, the date on which the project manager went on leave, until 12 February 1970, the date on which Mr. Jaquenoud was named project manager a.i., the Applicant served as project manager a.i.; that on 2 February 1970 the Applicant was offered an extension of his appointment as mining engineer for two months, from 12 February 1970 to 11 April 1970, and that he accepted this extension on 20 February 1970. The Tribunal notes furthermore that the Applicant in his submission specifically states that he never protested against the refusal of the Respondent to appoint him project manager, against the refusal to renew his contract or against his replacement (by Mr. Jaquenoud) as project manager a.i.

II. The Application is accordingly based not on the substance of the decision taken by the Respondent in January 1970, but on the manner in which it was executed. The Applicant maintains that the wording of the letter sent on 30 January 1970 by the Resident Representative a.i. to the Secretary of State for Industry, Mines and Power of the Republic of Guinea was defamatory and that its contents and the manner in which it was sent and circulated were injurious to his professional reputation and have proved prejudicial to his future career. It is on this account and not because of any alleged transgression of the Staff Rules and Regulations that the Applicant requests that the decision of the Secretary-General be annulled and he be awarded an indemnity equivalent to two years' salary. In reaching its judgement on this application, the Tribunal has accordingly had regard in the first instance to the terms of the letter of 30 January 1970 and to the circumstances of its dispatch.

III. The letter in question was derived from a letter of 20 January 1970 from Mr. Sager, Head of the African Section of the Office of Technical Co-operation, to Mr. Jerkovic, Resident Representative a.i., in which the latter was informed that United Nations Headquarters could not accede to the request made by the Secretary of State for Foreign Affairs of the Republic of Guinea on 15 December 1969 that the Applicant should be given a substantive appointment as project manager. In terms somewhat similar to (though not identical with) those of Mr. Sager's letter, Mr. Jerkovic informed the Government of the Republic of Guinea on 30 January 1970 that, *inter alia*, the Applicant's skills did not qualify him for the post of project manager; that his current appointment was being extended for two months until the name of an "adequate candidate" could be submitted to the Guinean Government for approval, and that, in the interval until the name of a "competent candidate" was presented, Mr. Jaquenoud would be named project manager a.i. from 12 February 1970. There was also a reference to the careful study of the Applicant's dossier. This letter was addressed to the Secretary of State for Industry, Mines and Power and copied to the Ministry of Economic Affairs and to the Directorate General of Technical Co-operation in the Ministry of Foreign Affairs. It was not marked "confidential". A copy of the letter sent to the Applicant, and also to Mr. Jaquenoud, was the first intimation that the former had received from the Respondent of the decisions taken regarding his future.

IV. The Tribunal does not have to determine whether the terms of the letter quoted above were defamatory in the legal sense. It has addressed itself rather to the question of whether the letter and the circumstances of its dispatch were of such a nature as to be prejudicial to the Applicant professionally. It is the view of the Tribunal that the matter was handled by the Respondent in an unusual manner and with considerable ineptitude. It seems surprising that the Applicant was not informed personally by the Resident Representative a.i., either before or when the letter was dispatched, of the decisions which it contained, and that he first learned of them through receiving a copy of the letter. The Tribunal, moreover, finds little substance in the Respondent's view that, because the Respondent had neither the authority nor the possibility of instructing the Government of Guinea in such matters, it was immaterial whether or not the letter carried the word "confidential" or any similar warning.

The text of the letter itself appears to the Tribunal to be open to a number of objections. The references to future candidates for the post of project manager, while not directly relating to the competence or other qualifications of the Applicant, could nevertheless be construed as carrying critical implications and were of such a nature that they might well cause embarrassment to the Applicant during the remainder of his stay in the Republic of Guinea. It was not made clear that the references to the Applicant's competence related only to the post of project manager and that they did not bear on his professional qualifications as a mining engineer. It could surely have been stated that, as the Applicant was later informed, the requirements of the project manager's post were for a geologist-economist rather than for a mining engineer. The statement that the Applicant's dossier had been carefully studied was ambiguous. The terms of the letter made clear, moreover, that the Applicant was being downgraded almost immediately from his occupancy of the post of project manager a.i., which he had held for several months, and the Guinean Government was notified of the two months' extension of his appointment before the Applicant himself had been informed, let alone given the opportunity to indicate whether he was willing to accept this offer of an extension. Taking all these factors into account, the Tribunal cannot escape the conclusion that the drafting and dispatch of the letter were undertaken with little or no regard for the Applicant's position and were capable of causing him embarrassment and distress.

V. The Tribunal has had further to consider whether such embarrassment and distress was in fact caused and, if so, whether it can be said to have adversely affected the Applicant's professional standing. In this connexion it should be noted that, although the Applicant complained, in a letter addressed to the Commissioner for Technical Co-operation on 5 February 1970, that the terms of the letter complained of were defamatory, on 20 February 1970 he accepted the offer of a two-month extension of his appointment as mining engineer attached to the Guinean project and he remained in Guinea until 27 March 1970. The Tribunal notes, moreover, that:

- (i) The Applicant was told in a letter of 3 March 1970 from the Commissioner for Technical Co-operation that nobody was questioning his professional competence as a mining engineer and it was for this reason that he had been recommended for this post in the first place;
- (ii) In a letter dated 5 August 1970, the Director for Policy Co-ordination, Office of Personnel, offered to send the Applicant a certificate, at his request, which would not only indicate the nature of his duties and the length of his service but would also mention the quality of his work and his official conduct.

VI. The Applicant alleges that in the 30 months since he left his post in Guinea he has failed to secure employment either in the public or the private sector. But he produces no evidence in support of this allegation, nor any evidence that, even supposing the allegation were true, the situation he describes was attributable to any prejudice

created by the letter of 30 January 1970. If the Applicant believed that this was so, and needed material to refute it, the Tribunal considers that he could have used the passage from the letter of 3 March 1970 quoted above, or obtained the certificate offered in the letter of 5 August 1970. There is no evidence that he used the former and he has stated that he has deliberately not taken advantage of the offer in the latter. In the Tribunal's view, this attitude cannot readily be reconciled with the claim that his professional reputation has been severely prejudiced and his career prospects damaged. The Applicant does not appear to have taken advantage of the opportunities available to him to counter and correct the prejudice and damage which he maintains were inflicted. In these circumstances the Tribunal remains unconvinced that serious or lasting prejudice to the Applicant was caused by the terms of, or the circumstances surrounding the dispatch of, the letter of 30 January 1970, though it fully recognizes that embarrassment during the remainder of his stay in Guinea and some personal and professional hurt may have resulted from the extraordinary ineptitude with which that letter was drafted and delivered.

VII. Accordingly, the Tribunal has considered what satisfaction, if any, could appropriately be accorded to the Applicant, having regard to all the circumstances described above. In this connexion it notes that since the Applicant originally raised the matter with the Joint Appeals Board he has somewhat shifted his ground. In his appeal to the Board he made alternative requests: for one year's salary plus reinstatement, or for two years' salary. The Board considered that he did not qualify for indemnity but recommended that the Respondent should make every effort to open the way for further employment for him by the United Nations or one of the specialized agencies and should so inform him. The Respondent in effect rejected this recommendation, and informed the Applicant that the United Nations was not under any legal or moral obligation to help him to obtain employment in the Organization or in any of the specialized agencies. The Applicant has not repeated his request for reinstatement in his present Application, and asks only that:

- (i) the Secretary-General's decision be annulled;
- (ii) he be awarded an indemnity equivalent to two years' salary.

VIII. The Tribunal has considered each of these requests in turn. It fails to understand how the annulment of the decision impugned, at this stage, would have any meaning or practical effect. As to the indemnity demanded, the Tribunal, for the reasons set out in previous paragraphs, does not find any evidence to suggest that the damage, if any, caused to the Applicant's reputation as a result of the circumstances surrounding his termination was so widespread or lasting as to justify financial indemnity of any kind. The only reparation to which the Applicant would appear, in the Tribunal's view, to be entitled is a moral one and the Tribunal considers that the substance of this judgement should give him suitable satisfaction.

IX. With that reservation, the Tribunal rejects the Applicant's requests that the Secretary-General's decision be annulled and that he be awarded an indemnity equivalent to two years' salary.

(Signatures):

Suzanne BASTID
Vice-President, presiding
 MUTUALE-TSHIKANTSHE
Member
 Geneva, 3 April 1973

Roger STEVENS
Member
 Jean HARDY
Executive Secretary