

Judgement No. 248*(Original: English)***Case No. 231:
Segerström****Against: The United Nations Relief
and Works Agency for
Palestine Refugees in
the Near East**

Non-renewal of the fixed-term appointment of a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

Applicant's contention that the Respondent was not able to assess his performance because of his short assignments.—Nature of the Applicant's functions.—Performance reports prepared by the Respondent.—Contention rejected.—Applicant's contention that the Respondent judged his performance by standards higher than those applicable to the level to which he belonged.—Contention rejected.—Applicant's contention that the Respondent violated the terms of the contract by denying him an automatic extension for a second year.—The clause in the letter of appointment providing that such an extension shall be dependent on the satisfactory nature of the Applicant's services.—Contention rejected.—Extensions of the Applicant's probationary period.—Applicant's contention that the Respondent violated the terms of his contract by such extensions.—Contention rejected.—The Applicant contests the Respondent's evaluation of his performance.—In the absence of prejudice, the Tribunal cannot interfere with that evaluation.—Applicant's allegation that he was never advised that the result of his further probationary service was unsatisfactory.—Allegation rejected.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. T. Mutuale; Mr. Endre Ustor;
Sir Roger Stevens, alternate member;

Whereas, on 7 December 1978, Karl-Henrik Segerström, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), filed an application the pleas of which read:

“(A) The Tribunal is requested, before proceeding to consider the merits of my case, to order an independent examination of the work I have done in different functions and hear the comments of my supervisors.

“(B) The Tribunal is requested to order the rescission of the decision not to extend my one-year fixed-term contract by a second year.

“(C) The Tribunal is requested to order my reinstatement as an Administrative Officer and in that actual function in accordance with my contract.

“(D) If the above is not possible the Tribunal is requested to order the payment of one year's salary, post adjustment and allowances including the assignment allowance in accordance with the Beirut and Vienna rates (the latter from the date the Department of Personnel moved to Vienna) which would have been paid had I not been separated from the Agency and the payment of a *further year's* salary and allowances (as above) in recognition of the damage to my future career, either in the UN or outside of it, which the premature separation is likely to have involved and costs in relation to the composition of my application including the cost of travel

to Vienna for consultation with the former Chairman of the UNRWA International Staff Association, estimated to be approximately \$1,000.”;

Whereas, on 23 March 1979, the Respondent filed his answer in which he stated that he was prepared to make the Applicant’s performance reports available at the Tribunal’s request;

Whereas, on 4 April 1979, the Tribunal requested the Respondent to make the Applicant’s performance reports available to it;

Whereas, on 9 April 1979, the Respondent submitted the Applicant’s performance reports to the Tribunal under a memorandum reading in part:

“Applicant’s confidential periodic report file (which contains Applicant’s performance reports) is accordingly transmitted herewith for the Tribunal’s own information only, in view of the applicable UNRWA rules regarding the confidentiality of these reports. If the Tribunal considers, despite Respondent’s contention to the contrary, that the text of these reports themselves is essential to the Tribunal’s determination, the Respondent will give consideration, in consultation with the appropriate UNRWA officials, to waiving their confidentiality.”

Whereas, on 12 April 1979, the Applicant requested that his performance reports be made available to him in accordance with article 10, paragraph 2, of the Rules;

Whereas, on 1 May 1979, the Respondent informed the Tribunal that:

“ . . . in view of the apparent misunderstanding of paragraph 57 of Respondent’s Answer, and in an effort to expedite these proceedings, Respondent will exceptionally submit the confidential material to the Tribunal as requested without any special limitation as to the Applicant’s access.”;

Whereas the Applicant, having had access to his performance reports, filed written observations on 16 July 1979;

Whereas the Respondent submitted one additional statement on 13 August 1979;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 2 July 1977 under a fixed-term appointment of one year with an initial assignment as an Administrative Officer at the P-2 level in the Department of Personnel at UNRWA headquarters at Beirut, temporarily relocated to Vienna; the letter of appointment specified that after the completion of six months of satisfactory service the appointment should automatically be extended to two years with an expiry date on 1 July 1979, if not converted to a temporary indefinite appointment under the provisions of paragraph (c) of Staff Rule 104.3. From 5 July to 16 September 1977 the Applicant was temporarily assigned to the Budget Division and from 17 September to 1 October 1977 he was temporarily assigned to the Department of Personnel. On 2 October 1977 the Applicant, who until then had been on “extended temporary duty” at UNRWA temporary headquarters (Vienna Office), was sent to UNRWA temporary headquarters (Amman Office) for “extended temporary duty” until 27 November 1977; from 8 to 25 October 1977 he served as Acting Administrative and Protective Services Officer. On 28 November 1977 he joined UNRWA headquarters at Beirut, his official duty station. From 5 December 1977 to 7 March 1978 the Applicant was temporarily assigned to the Gaza Field Office; from 28 December 1977 to 7 February 1978 he served as Officer-in-Charge of the Department of Relief Services. On 18 February 1978 the Director of Personnel informed the Applicant that the Periodic Reports Review

“The decision of the Periodic Reports Review Committee to extend your probationary period was not based on any specific ‘failings’ but rather was based on a general impression gained from the comments of the four supervisors under whom you have worked that you have not yet demonstrated to the satisfaction of the members of the Committee that your work is at and will continue to be at an acceptable level. This impression results not so much from any negative comments made by supervisors as by their failure to make positive comments. In large part the supervisors were non-committal which in the view of the Committee required a further period of evaluation before a decision is reached concerning the extension of your fixed-term appointment.”

On 28 April 1978 the Director of Personnel notified the Applicant that the Periodic Reports Review Committee had decided to extend his probationary period again from 1 May to 30 June 1978 as it had felt that additional time was required for him to demonstrate whether his performance was at an acceptable level. On 29 April 1978 the Applicant asked the Director of Personnel to give evidence of his weak performance during his four-month extended probationary period. On 5 May 1978 the Director of Personnel replied:

“ . . . I am writing to confirm for the record that when we recently discussed the matter, we agreed that I would not give you a substantive *written* reply.”

On 3 June 1978 the Applicant requested the Director of Personnel to confirm that his contract had been extended. On 9 June 1978 the Officer-in-Charge of the Department of Personnel replied in part:

“With regret I am obliged to inform you that the Agency has decided not to renew your current fixed-term appointment for one year which expires on 1 July 1978. There is no obligation on the Agency’s part to give any notice in the case of expiry of a fixed-term contract but in view of the short time between now and the expiry of your contract I am exceptionally authorizing an extension to 15 July 1978

