

Judgement No. 281*(Original: English)***Case No. 267:
Hernández de Vittorioso****Against: The Secretary-General
of the United Nations**

Request by a former staff member of the Office of the United Nations High Commissioner for Refugees that she should be recognized as having been a staff member for the period of her service under special service agreements.

Clause included in special service agreements stipulating that the contractor shall not be considered in any respect as being a staff member of the United Nations.—Difference from the Teixeira case, since the special service agreements concluded with the Applicant specified that she would work on a ‘full-time basis’.—Basic contradiction inherent in such an arrangement, which accords more fully with the status of a staff member.—The application is time-barred under Staff Rule 103.15 and article 23 of the Pension Fund Regulations.—Application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Herbert Reis; Mr. Luis de Posadas Montero;

Whereas at the request of Mrs. Lidia Hernández de Vittorioso, a former staff member of the Office of the United Nations High Commissioner for Refugees, hereinafter called UNHCR, the President of the Tribunal, with the agreement of the Respondent, extended to 4 September 1981 the time-limit for the filing of an application to the Tribunal;

Whereas, on 12 August 1981, the Applicant filed an application the pleas of which read as follows:

“3. The decision that Applicant is hereby contesting is embodied in a letter dated 17 March 1981 from the Assistant Secretary-General for Personnel Services. . . . It was taken on a report of the Joint Appeals Board dated 22 December 1980. . . .

“4. The aforementioned letter of 17 March 1981 . . . embodies two decisions, namely (1) not to extend Applicant’s last fixed-term appointment beyond retirement age and (2) not to recognize Applicant as a staff member for the period of her service (1 June 1973 to 31 January 1975) with UNHCR under special service agreements.

“5. It is only against the latter of the two decisions that Applicant is hereby appealing.

“6. Applicant respectfully requests the Tribunal to rescind the decision she is contesting and to adjudge and declare that (1) during the aforementioned period of service under special service agreements her status was, in law, that of a staff member of the United Nations, that (2) her grade as such was the one at which she was recruited . . . as a staff member of UNHCR, namely P-2, and that (3) Respondent is under a duty to take all the actions necessary to place applicant in the situation in which she would now find herself had she, instead of serving during that period under special service agreements, served as a staff member of UNHCR at the P-2 grade.”

Whereas the Respondent filed his answer on 4 September 1981;

Whereas the Applicant filed written observations on 4 December 1981;

Whereas the facts in the case are as follows:

The Applicant served with the UNHCR Branch Office for Southern Latin America at Buenos Aires from 1 June 1973 to 31 January 1975 under three consecutive special service agreements. On 1 February 1975 she received a fixed-term appointment for one year which was subsequently extended for another year. On 1 February 1977 this appointment was extended for five months. On 24 June 1977 the Applicant reached the age of 60. On 1 July 1977 her appointment was extended "for a period of six months beyond retirement date" i.e. until 31 December 1977, the last two extensions being covered by a single letter of appointment for eleven months.

In letters exchanged between the Applicant and various officials of UNHCR during 1977, the Applicant had expressed a desire for a further extension of appointment and had been advised that no such extension could be envisaged. On 16 September 1977 she addressed to the Secretary-General a letter reading in part:

“ . . .

“I wish to continue working with the United Nations (or one of the organizations of the United Nations system), not only because I feel eager and fit to continue serving the noble purposes of the Organization, but also in order to complete the minimum period of service required for a pension benefit from the United Nations Joint Staff Pension Fund.

“In support of my request I wish to draw your attention to a number of circumstances. If during the initial period in which my association with the United Nations was based on special service agreements, as distinct from letters of appointment, I had, instead, served as a staff member, I would be only six months short of the minimum period required for the pension benefit. Since, as pointed out earlier, the conditions in which I performed my duties were, to all intents and purposes, performed exactly as if I had been a staff member, I cannot help feeling that if I cannot, by continuing my service, qualify for a pension, I shall have been, to a considerable degree, the victim of a technicality. I would further observe that paragraph 5 of the Administrative Instruction relevant to my case (ST/AI/213 of 20 June 1972) includes, among the factors to be taken into account in dealing with a request such as this, 'the performance record of the staff member', and 'the amount of pension the staff member has already earned'. For in my case my performance has been characterized by the High Commissioner as 'outstanding' and, if I am not allowed to continue working for the United Nations or an affiliated organization during at least two years and one month after my separation from service with the High Commissioner, I shall never receive, by way of a pension, an income larger than the pension I am now receiving by virtue of my service with national institutions. And this pension is, even though many of my retired countrymen have to manage with no more, pitifully low. (I attach a slip showing the amount of my pension, which is the equivalent in Argentine pesos of little more than \$US 100 per month).

“For all these reasons I am requesting that you kindly conduct a survey of the vacancies existing at present in the United Nations Secretariat, to ascertain whether a suitable opening could be found for me and that you use your discretion under the

On the case similar to mine, namely that of a technical assistance expert, United Nations Secretariat *motu proprio* applied the principles I have quoted by taking action along the lines of that which I have requested.

“ . . . ”

On 30 December 1977 the Applicant reiterated her request for an extension of appointment in a letter addressed to the Director of Administration of UNHCR. In a reply dated 19 January 1978 to the Applicant's letter of 28 November 1977, the Assistant Secretary-General for Personnel Services advised her that the Secretary-General, having reviewed her case, had decided to take no further action on her request; he added:

“The possible implications of the ILO Administrative Tribunal judgements cited by you were considered despite the lack of direct relevance. The two judgements in question referred to the duration of fixed-term appointments for staff below retirement age are not relevant to the case of staff extended beyond retirement age.

