

Arnold KEAN
Member

Jean HARDY
Executive Secretary

Geneva, 10 May 1982

Judgement No. 286

(Original: English)

Case No. 271:
Pattillo

Against: The Secretary-General
of the United Nations

Non-renewal of a fixed-term appointment.

The Respondent does not deny that the Administration should have granted the Applicant a two-year fixed-term appointment.—The Applicant is entitled to compensation for such injury as she may have suffered by reason of the wrongful denial of such an appointment.—Date on which the appointment would have taken effect.—Assessment of the injury sustained by the Applicant.—Award to the Applicant of compensation in the amount of \$4,000.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Samar Sen, Vice-President; Mr. Herbert Reis; Mr. T. Mutuale, alternate member;

Whereas at the request of Martha Lee Pattillo, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 15 September 1981, 15 October 1981, 10 November 1981 and 17 November 1981 the time-limit for the filing of an application to the Tribunal;

Whereas, on 30 November 1981, the Applicant filed an application in which she requested the Tribunal to order:

“1. The rescission of the administrative decision of 28 April 1978 which denied the Applicant extension of service in the form of a two-year contract from 30 April 1978.

“2. Should the Secretary-General decide under Art. 9 of the Statute of the Tribunal that the Applicant shall be compensated without further action being taken in her case, compensation for the injury sustained, and costs as follows:

“(a) *Compensation for injury sustained*
\$76,466.00

“This sum is explained as follows:

- “(1) \$46,203.31—Two years’ salary plus the post adjustments minus staff assessment 30 April 1978-1 May 1980. It includes accelerated within-grade increments to which Applicant was entitled and progressive post adjustments;
- “(2) \$8,210.96—Organization’s contribution to pension on basis of increases in salary;
- “(3) \$257.14—Medical subsidies on same basis as (2) above;
- “(4) \$45.11—Dental subsidies on same basis as (2) and (3) above;
- “(5) \$21,750.00—Valuation of losses due to delays caused by the administration in resolving the case. 30 April 1978-31 October 1981 (to be extended in calculation until implementation of grant of claim).
- “(b) *Costs*
\$958.98
- “This sum is explained as follows:
- “(1) \$560.11—Medical insurance (Blue Cross Blue Shield). Hospitalization only which Applicant paid personally, August 1978-September 1979;
- “(2) \$267.00—Medical fees which Applicant paid personally for lack of full medical coverage;
- “(3) \$160.00—Dental fees which Applicant paid personally because she was obliged to give up dental insurance coverage;
- “(4) \$71.87—Postal charges in connexion with correspondence concerning Applicant’s case”.

Whereas the Respondent filed his answer on 8 January 1982:

Whereas, on 8 March 1982, the Applicant filed written observations in which she added the following plea to her application:

“3. An official retraction of the defamation the Applicant has endured of her professional character and quality and a complete redress of her records in the files of the UN Secretariat Offices”.

Whereas the Respondent submitted an additional statement on 15 March 1982:

Whereas additional statements and documents were submitted by the Applicant on 31 March, 14 April, 26 April and 3 May 1982 and by the Respondent on 5 April 1982;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 14 February 1977 as an Associate Librarian under a three-month fixed-term appointment. On 9 August 1977, 3 January 1978 and 24 February 1978 respectively, her appointment was retroactively extended to 30 September 1977, 31 January 1978 and 30 April 1978, at which time she was separated from the service.

On 12 May 1977, the day before the expiration date of the initial appointment, the Director of the Library, in a memorandum to the Chief of the Secretariat Recruitment Service of the Office of Personnel Services, recommended a two-year extension of the Applicant’s appointment on the basis of her good performance. On 29 September 1977 the Secretary of the Appointment and Promotion Board sent the following memorandum to the Secretariat Recruitment Service:

“The Appointment and Promotion Board, at its Meeting No. 965, held on 8

September 1977, recommended, and the Assistant Secretary-General, Personnel Services, on behalf of the Secretary-General has now approved, the appointment of Miss Martha Lee Pattillo (USA) as a Librarian at the Associate Officer (P-2) level on a fixed-term basis for a period of two years.”

On 5 December 1977 the Chief of the General Reference Section of the Library addressed to the Director of the Library a memorandum in which he criticized some aspects of the Applicant's "work performance and working habits" since the date on which she had entered on duty. On 6 December 1977, in a memorandum to the Director of the Division of Recruitment of the Office of Personnel Services, the Director of the Library withdrew her recommendation of 12 May 1977 that the Applicant's appointment be extended for two years on the grounds that her "performance had deteriorated" in various specified ways, adding that a periodic report covering the period 14 February 1977 to 30 November 1977 would follow. In the periodic report, prepared on 12-14 December 1977, the Applicant received mixed ratings from the first reporting officer—the Chief of the General Reference Section—while the Chief of the Library Services Division, as second reporting officer, rated her overall performance as "very good"; in her comments, dated 20 December 1977, the Director of the Library noted the inconsistency in the ratings and concluded that the Applicant's performance had been inconsistent. On 23 December 1977 the Applicant sent to the Chief of the General Reference Section a response to his memorandum of 5 December 1977. On 3 January 1978, in a memorandum to the Director of the Library, she requested as a minimal arrangement the granting of a further contract of three months from 31 January 1978. Her request was supported by the Chief of the Library Services Division and by the Director of the Library herself and was subsequently granted. On 20 January 1978 the Applicant submitted a rebuttal to her periodic report. In accordance with Administrative Instruction ST/AI/240, this rebuttal was investigated by a departmental panel which, in a report dated 30 March 1978, agreed with the Applicant's basic objections to the periodic report, expressed the opinion that the report contained enough positive elements to hold out promise that the potential discerned in her by the first reporting officer could have been developed later on, and considered that regular and frequent discussion on work performance and future work expectations would have been useful. On 27 April 1978 the Under-Secretary-General for Conference Services noted the conclusions of the panel and sent copies of its report to the Director of the Library, the Chief of the General Reference Section and the Applicant. On 25 May 1978 the Applicant requested the Secretary-General to review the decision denying her a two-year appointment and on 15 November 1978, having received no reply, she lodged an appeal with the Joint Appeals Board. The Board submitted its report on 10 July 1980. The Board's conclusion and recommendation read as follows:

“Conclusion and recommendation

“25. The Board finds that the appellant not only had a legitimate expectancy of the granting of a two-year fixed-term appointment commencing on 1 February 1978 but that an agreement for a two-year appointment from 1 February 1978 to 31 January 1980 had constructively been reached between her and the respondent. The Board recommends that the appellant should either be reinstated in terms of that agreement and be paid the full salary and emoluments flowing therefrom, less the

amounts mentioned in paragraph 24 above,* or, should the respondent choose not to so reinstate, that she be paid compensation in an equivalent amount by reason of the respondent's failure to fulfill the agreement and/or realize the legitimate expectation of the appellant."

On 12 May 1981 the Assistant Secretary-General for Personnel Services advised the Applicant that

"The Secretary-General having re-examined your case in the light of the Board's report has taken note of the report and has decided to pay you compensation in an amount equivalent to the net salary and allowances which you would have received had your appointment been renewed for two years from 1 October 1977 to 30 September 1979, less the salary and allowances actually received by you in respect of the period 1 October 1977 to 30 April 1978 and less any other remuneration which you might have received in return for services to the Organization during the presumed contract period."

On 30 November 1981 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. There was not only a definite and legitimate expectancy of continued employment, but an anticipation of continued employment: an agreement already existed between the Respondent and the Applicant.

2. A two-year contract was to be granted as of 30 April 1978. Should the Secretary-General decide that the Applicant shall be compensated without further action being taken in her case, the full equivalent of salary and other emoluments for two years should be paid from that date.

3. The Respondent has sought to escape his own responsibilities at every turn. This is compounded by the arrangements for compensation he has put forward.

4. The Applicant has endured severe professional defamation for which neither exoneration nor reparation has been offered and she has suffered acute moral damages.

Whereas the Respondent's principal contentions are:

1. The two-year fixed-term appointment which the Administration should have granted the Applicant ought to have commenced on the expiration of the Applicant's short-term appointment in force on 29 September 1977, which expired by 1 October 1977.

2. Entitlement to damages for loss of salary for failure to receive a promised fixed-term appointment is subject to set-off by the amount of salary actually earned during the promised appointment period.

3. The principle that damages for breach of an employment contract may not compensate remote or indirect losses precludes punitive damages.

The Tribunal, having deliberated from 28 April to 11 May 1982, now pronounces the following judgement:

* "... there should be set off against the total amount payable the sums which the appellant actually received by way of salary and emoluments in respect of the period 1 February 1978 to 30 April 1978, during which she actually served. There should be set off at the same time any other income which she might have received in return for services to the Organization during the actual or presumed contract period, in particular the amount of \$5,000 which the Board observed from the official status file had been paid to her by UNITAR as an individual contractor during the latter half of 1978."

I. The Respondent does not deny that the Administration should have entered into a contract with the Applicant for a two-year fixed-term employment as a Librarian at the Associate (P-2) level at the Dag Hammarskjold Library. An administrative memorandum of 29 September 1977 records the approval of the Assistant Secretary-General for Personnel Services of the recommendation of the Appointment and Promotion Board in these terms. The Applicant's file shows that the necessary papers had been prepared in contemplation of the granting of a two-year contract that would have taken effect about 1 October 1977, a fact that is confirmed by a memorandum of the Medical Director referring to the Administration's intention in October 1977 to extend the Applicant's fixed-term appointment "immediately". The file does not show the reasons why the contract was not concluded; the Tribunal considers that the management of the Dag Hammarskjold Library did not pursue the matter with sufficient care and attention. The Tribunal therefore holds that the Applicant had a legitimate expectancy to an appointment at the P-2 level under a contract that would have entered into effect on 1 October 1977 and terminated on 30 September 1979. She was denied this appointment but continued to work until 30 April 1978 at the Hammarskjold Library under successive short-term extensions of her original appointment of 14 February 1977. Thus, the Applicant is entitled to compensation for such injury as she may have suffered by reason of the wrongful denial of the two-year appointment.

II. The Tribunal is aware that dates other than 1 October 1977 have been suggested to mark the commencement of the term of the two-year contract. In its report of 10 July 1980, the Joint Appeals Board concluded that the date of the commencement of the contract should be fixed as of 1 February 1978. The Board gave as its reason the fact that 31 January 1978 marked the end of the short-term extension of appointment under which the Applicant was serving when her supervisor withdrew an earlier recommendation for a two-year appointment. However, had a decision to withhold the appointment not been taken, a two-year contract would have taken effect from 1 October 1977. In the circumstances the Tribunal also cannot support the contention of the Applicant that compensation should be paid to her for a two-year period commencing 30 April 1978, that being the date of the termination of her last short-term extension as well as the day on which she left the Hammarskjold Library. As stated, her entitlement was to a two-year contract commencing 1 October 1977 and terminating 30 September 1979.

III. In order to assess the extent of the injury sustained, the Tribunal notes that the Applicant obtained certain employment at the United Nations during the period in which the two-year contract should have been in effect. She continued at the Hammarskjold Library on successive short-term extensions of appointment from 1 October 1977 through 30 April 1978; she thereafter entered into a contract as a consultant with UNITAR from 12 June through 31 July 1978 and again from 14 August to 2 October 1978; and from 16 October 1978 she was employed by UNDP, where she continued to work beyond 30 September 1979, the date on which the two-year contract would have come to an end.

IV. In determining the injury sustained by the Applicant, account must be taken of both the period of employment with and the remuneration she obtained from these various bodies of the United Nations during the time the contract should have been in force. The Applicant was without employment for some two months during that two-year period. Moreover her remuneration from the United Nations during that period was approximately one thousand dollars less than she would have earned under the contract. Further, during that time she lacked the security of employment that she would have

enjoyed arising from the execution of the contract to which she was entitled and she was obliged to look for work. Considering all these factors, especially the two months of unemployment, and the fact that the contract would have been at the P-2 level, the Tribunal considers that an award of four thousand dollars would be just in the circumstances of this case.

V. The Applicant makes a number of additional claims which the Tribunal addresses as follows: First, a request for rescission of the decision to deny the two-year contract; a request for retraction of "the defamation" suffered by the Applicant, which has not been sustained in view of the employment with UNITAR and UNDP speedily secured by the Applicant; and a claim for postal charges in pursuance of this case. The Tribunal considers that these claims are covered by this judgement. Second, a claim is made for the amount of the Organization's contributions to the United Nations Joint Staff Pension Fund during the period the two-year contract should have been in effect; for the Organization's contributions to medical and dental insurance during the two-year period; for the Applicant's contributions for medical insurance for a portion of the two-year period; and for medical and dental fees paid by her because of lack of medical and dental coverage. The Organization's contributions to the Pension Fund are not payable to an employee upon separation from service; the other claims concern insurance, medical and dental expenses that the Applicant incurred on her own account. Third, the Applicant claims "losses due to delays caused by the administration in resolving the case . . .". The Tribunal finds that the only substantial delay in this proceeding arose between the delivery of the report by the Joint Appeals Board on 10 July 1980 and the communication of the decision of the Secretary-General by the Assistant Secretary-General for Personnel Services on 12 May 1981. While not condoning this delay, the Tribunal considers that inasmuch as the Applicant continued in the service of the United Nations during those ten months, she is not entitled to additional compensation on that ground.

VI. The Tribunal orders the Respondent to pay four thousand dollars to the Applicant.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Samar SEN
Vice-President

Herbert REIS
Member

Geneva, 11 May 1982

T. MUTUALE
Alternate Member

Jean HARDY
Executive Secretary