

Judgement No. 287*(Original: English)***Case No. 265:
Harkins****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.

Staff Rule 104.3 (a).—No legal expectancy of further employment of the Applicant had been created.—Discretionary power of the Respondent in the matter.—There was no prejudice of any kind on the part of the Respondent.—The Applicant's challenge with respect to the composition of the Joint Appeals Board.—The Tribunal concludes that there was no miscarriage of justice or biased proceedings because of the composition of the Board.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Arnold Kean; Mr. Luis de Posadas Montero;

Whereas, on 17 June 1981, Adrian I. Harkins, 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:

“The Applicant alleges non-performance on behalf of the Agency of the terms of his contract and requests the payment of salary for five years in compensation therefor.”

Whereas the Respondent filed his answer on 14 October 1981;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 10 October 1976 under a fixed-term appointment of one year with an initial assignment as an Administrative and Protective Services Officer at the P-3 level in the Department of Personnel and Administration at UNRWA Headquarters at Beirut, Lebanon, but initially on temporary duty at Amman, Jordan; 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 9 October 1978, if not converted to a temporary indefinite appointment under the provisions of paragraph (c) of Staff Rule 104.3. On 13 April 1977 the Applicant was informed that his appointment had been extended to 9 October 1978. On 20 September 1978 he was offered a one-year extension of his appointment “in the same terms and conditions stated therein, with the understanding that the post you are now occupying will be reviewed after another six months to determine whether it will be needed on a continuing basis after Headquarters moves to the Vienna International Centre”; the Applicant accepted the offer on 3 October 1978. On 4 April 1979 the Director of Personnel

informed you of the unsatisfactory aspects of the Periodic Report by your supervisors on your performance during the past 12 months. The Commissioner-General's Periodic Reports Review Committee, having carefully considered this report and having discussed it exhaustively with the Director of Administration, Relief and Information, has recommended and the Commissioner-General has decided that the annual increment due to you on 1 October 1979 be withheld and that your fixed-term appointment be allowed to expire rather than converted to an indefinite appointment.

"While no notice period is required upon the expiration of a fixed-term appointment, you would have little time to wind up your affairs by the expiration of your fixed-term appointment on 9 October 1979, and the Commissioner-General, therefore, has authorized me to offer you an extension of your current fixed-term appointment to close of business on 31 December 1979, in the same terms and conditions as in your current appointment.

“ . . . ”

On 28 September 1979 the Applicant accepted the offer to extend his appointment to 31 December 1979. In a letter dated 8 October 1979 the Applicant asked the Commissioner-General to reconsider the decision that his annual increment be withheld and that his fixed-term appointment be allowed to expire rather than converted to an indefinite appointment, on the following grounds:

"My reason for asking you to do so is because you may be unaware that at no time until 12 September 1979, when Mr. Defrates discussed my periodic report with me, had I been informed by my supervisors that they were generally dissatisfied with my performance. On the contrary, I had reason to believe my performance was satisfactory. If you refer to the attached correspondence concerning my employment (I have highlighted those parts I believe to be particularly relevant), you will note that not only did the Director of Personnel presumably believe that my performance was good (since he said nothing to the contrary), but I confirmed that understanding

