



E. Wallach, and Mr. A. Weinstein for the annulment of the decision of the Administration of the United Nations as formulated in its communications to the Applicants of 23 March and 21 April, 1950 ;

And of the request for intervention by Mrs. Frances Hall ;

Having heard Mr. R. Harpignies, Counsel for the Applicants ; Mr. W. W. Cox, Counsel for the Administration ; and Mr. Telford Taylor, representing the Staff Association of the United Nations ;

Pronounced, in public hearing of 30 June 1950, the following judgement :

The Applicants have requested the Tribunal to make a series of rulings which would invalidate the action of the Defendant on a number of grounds. The most important of these are first, that the Administration did not, having regard to regulation 21 of the Staff Regulations and the provisions of the 1950 budget, have power to effect the abolition of posts proposed by it ; second, that the abolition of posts and the creation of a new category of posts were steps in an artificial manoeuvre motivated, not by the necessities of the service, but by a desire to terminate the services of certain individual officials ; and third, that the Administration has violated a specific clause of the contracts of employment of the Applicants in that it varied without their consent the duties for which they had been hired and which form the basis of their contracts.

The Tribunal is not able to accept the contentions of the Applicants on these points. As to the first, it holds that the Administration must have authority to make any reductions in posts, including abolition of posts, which may be necessary in order to observe due economy while providing adequately for the service of the United Nations ; and that that power cannot in any way be regarded as affected by provisions of the budget, which must be regarded as conferring authority but not as imposing an obligation to spend the whole of the credit provided in the budget.

As to the second ground advanced, the Tribunal, while accepting the view that it would be a misuse of power to effect a fictitious substitution of one class of post for another with the sole object of affecting the position of individual officers, is not satisfied that this is in any way a true representation of what has taken place in the present instance. Evidence has been produced to show that the Administration desired to bring about a change in the methods of reporting proceedings and while it is not part of the functions of the Tribunal to express any view as to the administrative advantages of that change or as to the wisdom of the particular measures proposed to effect it, the Tribunal is satisfied that there were adequate grounds upon which the Administration could properly have come to the conclusion that these measures were right and that therefore the change can be considered a *bona fide* and not a fictitious one.

As to the third principal ground, the Tribunal cannot accept the implicit contention of the Applicants that the Administration can in no circumstances vary the duties of officials under contracts. On the contrary, it is implicit in the terms of staff rule 104, to which further reference is made later, that it is right and proper for the Administration, where individual officials are affected by reduction or abolition of posts, to propose the transfer of such officials to other duties as an alternative to the termination of their contracts.

The Tribunal, while convinced on these grounds of the right of the Administration, when necessity arises to effect reductions of posts and, if appropriate, to abolish either individual posts or categories of posts and substitute others more suitable for the carrying out of necessary duties in the changed circumstances, is none the less deeply impressed by the necessity of effecting such reductions or changes in a manner which minimizes the sacrifices consequently inflicted upon individual officers and which preserves as far as may be possible in the circumstances the principle of security of tenure in accordance with the contracts applicable to individual cases. The Tribunal has therefore examined the procedure actually followed in the cases under examination from this point of view. It has paid particular regard to the provisions of staff rule 104, which appears to have been made precisely in order to regulate procedure in such cases, and which, in the view of the Tribunal, expresses accurately the principles which should be followed in dealing with them. This rule and the authorized interpretation of it are as follows :

“ Staff rule 104 — In the termination of appointments due to reduction in force or abolition of posts, due consideration shall be given to the terms of the appointments, competence and integrity, nationality from the point of view of over-all geographical distribution, and length of service.”

*“ Interpretation and conditions*

*“ Order of termination :*

“ When it is necessary to terminate staff members because of abolition of posts or budgetary cuts, the following considerations shall be applied ;

“ the holder of an indeterminate appointment or a fixed-term appointment which has more than three months to run shall be terminated only if it is impossible to find a suitable vacancy elsewhere in which his skill and experience can be used to the fullest extent. To make room for such a person, a staff member holding temporary indefinite appointment shall be terminated. Holders of indeterminate appointments have priority over holders of fixed-term appointments ;

“ the holder of a temporary indefinite appointment or a fixed-term appointment with less than three months to run shall be terminated unless there is a thoroughly suitable vacancy elsewhere in which the Bureau of Personnel can place him without prejudice to the possibility of filling it with a holder of a higher priority appointment or with a better qualified external candidate ;

“ terminations of all types of appointments shall take into account the following in the order named :

“ competence and integrity ;

“ nationality from the point of view of overall geographical distribution, in cases where staff members have not completed five years of service ;

“ length of service.”

In the view of the Tribunal, the action of the Administration was in conflict with the rule and with what appear to the Tribunal to be fair and equitable principles of procedure, in that the Administration gave notice of termination of contract before fully examining the possibilities of transferring the individuals expected to be affected by the changes in contemplation to other posts of any kind to which they might be suited in the United Nations organization. One part of that procedure of examination of suitability for transfer to other posts, and the most suitable although not necessarily the only such procedure was, of course, the examination held for the new posts of editor-verbatim reporter. In the view of the Tribunal, the proper procedure would have been for the Administration to have invited all those affected to sit for this examination before serving notice of termination of their contracts, at the same time intimating that the results of the examination, as well as all other factors relevant under staff rule 104, would be reviewed before a decision was taken with regard to termination of the contract of particular individuals. Accordingly, the Tribunal finds that the notices of termination were invalid and rules that the contracts are still in force without derogation to the right of the Administration at a later date to give to individual officials notice of termination on grounds of abolition or reduction of post after full examination of the possibilities of transferring such individuals to any new posts which have been created, or to other posts in the service of the United Nations and after consideration of all other circumstances which are prescribed as relevant under staff rule 104.

This ruling applies to the Intervener, Mrs. Frances Hall, equally with the original Applicants.

The Tribunal has also been asked to make rulings in respect of the contractual position of certain individuals, Mrs. M. Visser, Mr. R. Proth, Mr. G. Trombert, Mr. M. Pesch, whose precise situation is different from that of the majority of the Applicants. The effect of the main ruling is to place all the individuals concerned in the same

position, with regard to their contract, which they respectively occupied immediately prior to the giving of notice of termination by the Administration on the 23 March 1950, and on that basis the existence of any differences in status will not have resulted in any prejudice to particular individuals. Therefore it has seemed to the Tribunal unnecessary to make any such rulings.

On the request of the Applicants for an order for payment of costs, the Tribunal decides that actual costs shall be awarded to the Applicants in the amounts to be fixed by the President on submission of claims by the Applicants.

Judged and pronounced in public hearing on 30 June 1950, by Lieutenant-General His Highness Maharaja Jam Saheb of Nawanager, President ; Madame Paul Bastid, Vice-President ; Sir Sydney Caine, Vice-President, who have affixed their signatures hereto together with Mani Sanasen, Executive Secretary of the Administrative Tribunal.

*(Signatures)*

Sydney CAINE

Digvijaysinhji of NAWANAGAR

Suzanne BASTID

Mani SANASEN

### **Judgement No. 3**

#### *Costs in Judgement No. 2*

**Cases Nos. 1 to 15 :**

**Aubert and 14 others  
and**

**Intervention No. 1 : Hall**

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

To the Secretary-General of the United Nations:

The judgement rendered by the Administrative Tribunal on 30 June 1950, A/CN.5/Decisions/Cases 1-15/2, contains the following paragraph :

“ On the request of the Applicants for an order for payment of costs ; the Tribunal decides that actual costs shall be awarded to the Applicants in the amounts to be fixed by the President on submission of claims by the Applicants.”

In conformity with the above decision and after consultation with the Members of the Tribunal who heard the cases referred to above, the President has given due consideration to the claims submitted and has decided to award costs to Applicants Nos. 1 to 15 in the following amounts :