

before the Applicant was given any knowledge of the decision taken on the recommendation of the Appeals Board.

6. Finally, the Tribunal must determine whether the decision of termination was vitiated by improper motive resulting from the animosity of the Applicant's supervisors.

The record shows that there were certain difficulties between the Applicant and his supervisors, but it appears that these difficulties arose as a result of differences of opinion on questions concerning the transaction of business within the Office. Before taking the decision of termination, the Secretary-General had at his disposal a full statement of the Applicant's point of view. The Tribunal finds that the decision of the Secretary-General was not vitiated by improper motive.

7. Accordingly the Tribunal rejects the claim.

*(Signatures)*

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

Sture PETRÉN  
*Vice-President*

Jacob M. LASHLY  
*Alternate*

Mani SANASEN  
*Executive Secretary*

*Geneva, 9 September 1955*

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## Judgement No. 59

**Case No. 63 :**  
**Bertrand**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of the Lord Crook, Vice-President, presiding ; Mr. Sture Petré, Vice-President ; Mr. Jacob Mark Lashly ;

Whereas Elisabeth Bertrand, former member of the Languages Division of the European Office of the United Nations, filed an application to the Tribunal on 6 June 1955 requesting :

(a) The rescission of the Secretary-General's decision of 3 January 1955 terminating her temporary-indefinite appointment ;

(b) Reinstatement in her former post ;

(c) Alternatively, in the event that the Secretary-General avails himself of the option given to him under article 9 of the Statute of the Tribunal, the award to two year's gross salary (\$13,600) and a further \$5,000 for special damages ;

Whereas the Respondent filed his answer to the application on 11 July 1955 ;

Whereas the Tribunal heard the parties and witnesses in public session on 26 August 1955 ;

Whereas the facts as to the Applicant are as follows :

The Applicant first entered the service of the United Nations on 12 March 1948 under a temporary-indefinite contract as clerk-typist in the Secretariat of the Economic Commission for Europe, in Geneva. On 7 November 1948, she was transferred to the World Health Organization under a two-year appointment as an auxiliary editor. In 1950 she passed an examination for translator/précis-writers and on 1 July 1950 was transferred back to the European Office as a translator on a short-term appointment on the understanding that she would be later transferred to Headquarters at New York if her services proved satisfactory. The Applicant subsequently decided not to accept transfer to New York and left the service of the United Nations on the expiration of her appointment on 31 January 1951. On 19 March 1951, the Applicant returned to the European Office on a short-term appointment for the period of a conference and remained, with successive renewals of her appointment, until 30 November 1951. From 1 December 1951, the Applicant served under a temporary-indefinite appointment. On or about 4 October 1954, the Applicant appeared before the Review Board which on 11 October 1954 reported to the Secretary-General. On 7 December 1954, the Secretary-General, through the Deputy Director of the Bureau of Personnel at Headquarters, asked the Chairman of the Review Board to reconsider informally the Applicant's case. On 15 December 1954, the Chairman of the Review Board, having consulted three of the four other members of the Board, replied that "in order to avoid any possibility of misunderstanding, our final recommendation should consist only of the original first paragraph and that the second paragraph should be omitted entirely." On 3 January 1955, the Director of the European Office of the United Nations notified the Applicant of the Secretary-General's decision to terminate her temporary appointment with effect from 28 February 1955. On 5 January 1955, the Personnel Division at Geneva communicated to the Applicant the first paragraph of the recommendation of the Review Board. On 24 January 1955, the Applicant submitted her appeal to the Joint Appeals Board at Geneva and on 26 February 1955, the Board recommended

"that all the particulars relating to Mrs. Bertrand should be re-submitted to the Review Board for consideration and that, until these have been so considered and until the Secretary-General can give his decision on the basis of this further consideration, the termination which was to have become effective on 28 February 1955, should be inoperative and Mrs. Bertrand should be retained in her post".

By letter dated 7 March 1955, the Director of the European Office notified the Applicant that the Secretary-General had decided to maintain the decision of termination. On 6 June 1955, the Applicant instituted proceedings before the Tribunal.

Whereas the Applicant's principal contentions are :

1. The termination of the Applicant's appointment was based on the statement of the Review Board that the Applicant lacked the necessary professional qualifications, whereas her efficiency had been unanimously recognized by all her supervisors. The action of the Secretary-General, being unsupported by any inadequacy on the Applicant's part, was evidently based on reasons unrelated to the justification given and thus constituted an abuse of authority.

2. The Review Board's unfavourable decision was incompatible with the high opinions expressed by the Applicant's supervisors and the Board was therefore under an obligation to state the specific reasons for its action. The Board's failure to do so vitiated the application of the Staff Regulations and made it impossible for the Applicant to exercise her right to conduct an effective defence of her case.

3. The Applicant contends that her professional competence was never really at issue in the assessment of her suitability for permanent employment in view of the high ratings given by her supervisors and the fact that the Review Board questioned her at length on matters unrelated to her technical ability. She points out that after the hearing her supervisors were so unaware of the Board's intentions that they proposed the Applicant's promotion.

4. While the Review Board's unfavourable recommendation could not have been based on the Applicant's lack of professional capacity, it was clear from the way in which the hearings were conducted and the recommendation drafted in its two different versions that the recommendation was inspired by prejudice against the Applicant.

5. The Applicant's status and rights were violated by the use made by the Review Board of a secret file containing matter against which the Applicant, being ignorant of its contents, had no means of defence.

Whereas the Respondent's answer is :

1. In terminating the Applicant's temporary-indefinite appointment, the Secretary-General made use of his power under Staff Regulation 9.1(c) to terminate any such appointment, if, in his opinion, such action would be in the interest of the United Nations. The more specific reason why the Secretary-General found the termination of the Applicant's appointment to be in the interest of the United Nations was that her technical professional capacity was not sufficiently high to meet the requirements for permanent appointment.

2. The Tribunal will not wish to substitute its own judgement for that of the Secretary-General but will wish to consider only the

questions whether the decision contested was based on an improper motive and whether the reasons were arbitrary, capricious or untruthful. A mere showing that the Applicant's supervisors considered her qualified for employment would be irrelevant in any attempt to prove that the decision was not proper.

3. The Review Board's recommendation of termination on the ground that the Applicant's "performance and efficiency are not up to the high standard required for permanent appointment" has not been shown to be unreasonable. This is clearly drawn out by such of the Board's evidence as is before the Tribunal.

4. The Respondent denies any improper motive in reaching the decision. In its original report, the Review Board made two separate adverse conclusions: the first on the Applicant's performance and efficiency, and the second on her integrity. The second conclusion was founded solely upon the Applicant's statements and demeanour when questioned about certain allegations which had been made against her. These allegations were subsequently withdrawn and, in order to avoid any impression that the Board had arrived at its second conclusion upon a finding concerning the said allegations, the Board eventually decided to eliminate its second conclusion from its report. Thus it is contended that the allegations referred to have no bearing whatsoever on the present case.

The Tribunal having deliberated until 9 September 1955, now pronounces the following judgement:

1. The Applicant's claim is based upon a notice of termination given by the Secretary-General to her on 3 January 1955, effective 28 February 1955. The action is not the ordinary one under Staff Regulation 9.1(c) for the termination of a temporary-indefinite appointment, but arises under Staff Regulation 4.5(b), by which the Secretary-General is to decide which staff members are suitable for permanent appointment or must be terminated. The Applicant, from 1 July 1950, except for a short period in 1951, was a member of the staff (Languages Division) continuously until the separation order from which she has appealed.

2. In 1954 some new and very important machinery had been established by the General Assembly at the recommendation of the Secretary-General, to aid in carrying out plans for reorganization of the service, it having been declared to be the policy to increase the number of permanent career appointments, or terminate those staff members holding temporary appointments who did not warrant permanent appointment. One significant body established for these purposes was the Review Board (Staff Rule 104.13(III)). Carefully chosen, its functions were described as follows:

"(b) The function of the Review Board shall be:

(i) To consider the suitability of staff members for Permanent

Appointment... and to recommend to the Secretary-General in each case the granting of a Permanent Appointment, the granting of one additional year of probation or separation from the service."

In reporting these preparations for progressive changes in the service affecting the personnel to the General Assembly on 7 December 1953 (Official Records, Annex (VIII) 51), the Secretary-General (pages 7 and 8) said, among other things :

"There is a special obligation on the part of the Secretary-General to apply them (the new measures) with restraint, as any decisions which are not based solidly on firm principles and a correct evaluation of facts would impair the necessary confidence in the Administration and would vitiate the basic purposes of the proposals."

On 6 July 1954, the Secretary-General issued an informational and instructional circular to the staff entitled "Principles guiding the Review of Staff" (see ST/ADM/SER.A/267) in which he set out with great particularity the duties and scope of the Review Board, saying, among other things of similar import :

"The quality of the United Nations staff will depend on the extent to which strict evaluations are made by the Board. In making their recommendations, the members of the Board will have in mind only the overriding interests of the Organization."

There is no room for doubt that the Secretary-General intended to place important and pivotal powers and responsibilities in the hands of the Review Board.

3. The Applicant was summoned to appear before the Review Board in the course of carrying out this programme.

The record reveals that the Review Board met in Geneva on or about 4 October 1954, had certain documents before it, and the Applicant as well as some of her supervisors appeared for oral interviews. The inquiries addressed to her at her interview were of such a nature as to lead her to believe that her loyalty to her country during the war and occupation were being drawn under scrutiny. Without any very clear idea of what the charges were, so far as the record discloses, the Applicant requested the Board by letter of 4 October to "postpone its decision until the question is definitely settled with the French Administration". At her instance, the Office of the Minister of National Education in Paris wrote to the Deputy Chief of Personnel, European Office of the United Nations, Geneva, on 7 October 1954, and certain other letters and statements were secured and sent to or were made available to the Review Board, all of which tended to refute any insinuation or charge that the Applicant had been engaged in activities during the war and occupation, which reflected upon her loyalty. The receipt of these documents was formally acknowledged by an inter-office memorandum delivered to the Applicant at Geneva on

11 October 1954. On the same day the Report of the Review Board was filed. It follows :

“After examining the file, hearing supervisors and interviewing Mrs. Bertrand the Board came to the unanimous conclusion that her performance and efficiency are not up to the high standard required for permanent appointment. The Board therefore recommends termination.

“It should be mentioned that during her interview the Board made certain inquiries about matters concerning Mrs. Bertrand’s employment and activities before her entry into the Secretariat. Her statements and demeanour during this interview convinced the Board that Mrs. Bertrand does not reach the high standard of integrity required for a career appointment in the United Nations Secretariat.”

4. After the unfavourable Report of the Review Board, a Minister Plenipotentiary for the Minister for Foreign Affairs of France, at the instance of the Applicant, addressed a letter dated 30 October 1954 to the Secretary-General which further tended to exonerate the Applicant from any suspicion of disloyalty to her country during the war and occupation (Annex No. 25). Following receipt of this document, the Secretary-General on 7 December 1954 requested the Review Board to informally reconsider the case of the Applicant. On 15 December 1954, the Chairman of the Review Board sent forward his report of the results of the reconsideration of the case at the request of the Secretary-General “in the light of the letter dated 30 October 1954 from Mr. Broustra of the French Foreign Office”. The meeting of the Board at which the matter was taken up for reconsideration was held in New York. Three of the five members of the Board who had participated in the original hearing were present. One member was absent on home leave. Both were communicated with by mail for the purpose of securing their approval of the negative result reached by the three members present (Annex No. 34). One portion of the report of the Chairman of the Board following the New York meeting seems significant :

“All three of us remember very well that in Geneva we decided formally to base the recommendation for termination solely and exclusively on Mme Bertrand’s lack of competence and efficiency (first paragraph of the recommendation).”

When the Chairman communicated the views of the three members attending the meeting to the two absent members, one only replied and his reply also seems important. It is in part as follows :

“My own view is certainly that Mr. Broustra’s letter to the Secretary-General does not change the facts upon which the Board’s recommendation was based. I should, however, be unwilling to change the Board’s recommendation so as to leave only a recommendation based on bad work. As regards that second part, my

opinion had nothing to do with the question of Madame Bertrand's loyalty, nor with the question whether she was connected with Fascism. It was based on the conviction that she had concealed certain facts in the application form and continued to try to conceal them in front of the Board."

The Applicant in due course was notified on 3 January 1955 that the Secretary-General, after considering carefully the report and all factors pertaining to her retention, had decided that he was unable to offer her a career appointment and therefore terminated her temporary appointment effective 28 February 1955.

5. The Applicant contends that the decision of the Secretary-General to terminate her employment was not arrived at in good faith, as that term is understood in reference to procedural validity, upon the part of the Secretary-General; that in reality it was taken as a result of extraneous considerations having no relation to any valid or lawful reason for her termination; that the real or true motive which prompted her termination was the effect of secret information concerning her past war record, which was never fully disclosed to her, either at the interview with the Review Board or at the hearing before the Tribunal, and which in consequence she has never been given an opportunity to meet; that in view of the fact that her superiors commended her abilities and performance with only slight reservations, and in one instance at least, expressed definite disagreement with the conclusions of the Review Board upon the basis of her efficiency; and that her qualifications for advancement having been so generally supported by her superiors, the inference is clear that the termination in reality was based upon some other, undisclosed, grounds.

6. The Respondent in his presentation by Counsel before the Tribunal stated that:

(i) The charge of disloyalty "could not possibly furnish the basis for any adverse action";

(ii) That "even though the Applicant's denials were eventually proved true, still those denials may have been made with such evasiveness and lack of candour as to reflect on her integrity, and the Board apparently decided that this was the case";

(iii) That the letter of 7 October 1954, received from the Office of the Minister of National Education of France, "amounted to a withdrawal of the allegations which had led to the investigation by the Review Board, but in no way affected the Board's impressions of the Applicant's statements and demeanour during the investigation, nor its right to report that impression to the Secretary-General";

(iv) That nevertheless the only reason for the decision to terminate the Applicant's appointment was that her technical professional capacity was not sufficiently high to meet the requirements for permanent appointment.

7. The Tribunal appreciates the fact that the Secretary-General cannot himself attend to all of the preliminary duties in the process of selection, hence the Review Board was set up to perform a very important function at a sensitive point in that process. In examining the case of a staff member whose suitability for a permanent appointment is in issue, the greatest care and sympathetic consideration would be required, and the results of its studies, upon which the action of the Secretary-General must be determined in large part, would be expected to be reported with the seriousness and gravity which the material and human values involved would merit.

8. The report of the Review Board gives evidence that the members found the Applicant's answers to their questions unsatisfactory and evasive. She seems not to have expected or been prepared for questions of the nature put to her concerning a period of her life remote from her present work. The unfavourable impression which she made was so profound that one member (Annex No. 34) upon the report of reconsideration, stated it as his "conviction that she had concealed certain facts in her application form and had continued to try to conceal them in front of the Board". This view he held so strongly that he stated that he would "be unwilling to change the Board's recommendation so as to leave only a recommendation based on bad work". It is to be noted that although the first report of the Review Board consisted of the two elements in two paragraphs, the three members reconsidering the matter in New York (Annex No. 34): "All three of us remember very well that in Geneva we decided formally to base the recommendation for termination solely and exclusively on Mme Bertrand's lack of competence and efficiency."

9. It was noted that in the letter dated 7 October 1954 (Annex No. 19) there is a reference to an earlier letter dated 25 May 1954 from the Director of Education for the Department of Seine, which may have contained the material from which the suspicions of the Review Board were aroused and about which they sought to question her. The letter was not introduced at the hearing before the Tribunal and quite evidently was not shown to the Applicant by the Review Board. If, as the Tribunal is permitted to infer, the document contained statements which, if not refuted or explained, imputed conduct to the Applicant which seriously reflected upon her character and integrity, the substance of it could have been explained to her considerably and time afforded her to take such action as she may have been advised, to investigate the charges and to vindicate herself and her good name before the Board. Doubtless the document was privileged, but obviously, it would have been possible to inform her of its contents without revealing its author. Moreover, the evidence does not indicate that any effort was made to secure consent from the official agency from which it emanated, which would have removed it

from the privileged category (Circular, 1 February 1955, MUN/115/55—30 March 1955).

10. When later the matter came before the Joint Appeals Board, it was pointed out by that body that in its view the action of the Review Board had been below the level of procedure which ought to be expected, and the Appeals Board recommended that the entire matter be resubmitted to the Review Board in order that it might collect all the facts and make a full and faithful report to the Secretary-General for his further action.

11. While the Tribunal does not reach the conclusion that the final action of the Secretary-General was taken in bad faith, nevertheless it is convinced that, upon the whole record made, the Applicant has not been accorded due process, and that the case should be returned to the Review Board, as

(a) The Board was not itself clear as to the reason and content of its original report ;

(b) The Board which sat in the first instance did not sit as a whole to reconsider the matter.

12. The Tribunal has received the special request of the Secretary-General, according to the terms of article 9.2 of its Statute :

“Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. Where a case is remanded the Tribunal may order the payment of compensation, not to exceed the equivalent of three months’ net base salary, to the applicant for such loss as may have been caused by the procedural delay.”

Accordingly, the Tribunal must decide either on the basis of article 9.1 or on the basis of article 9.2.

The choice between these alternatives is not to be motivated by purely legal considerations ; but the practical possibility and the eventual effect of the correction of the procedure required must be taken into account.

13. In this instance it appears that the case should be returned to the Review Board for complete proceedings *de novo*, in order that the rules and directives promulgated by the Secretary-General may be carried out completely and effectively in the interests of the United Nations. Without determining the ultimate merits of this case, the Tribunal orders the entire file and all documents appertaining thereto remanded to the Review Board for reconsideration and further action in accordance with the views herein expressed.

14. Even if the Applicant should find employment, the delay in the final settlement of her case will have caused her some prejudice.

The Tribunal was informed during the hearing that, since her termination, she has been employed only for a limited term on a temporary basis.

Consequently, the provision for indemnity for prejudice sustained as a result of lack of procedure should be applied.

15. The Tribunal, without deciding the merits of the case, decides that :

(a) The case should be remanded to the Review Board for reconsideration and further action ;

(b) The Applicant is ordered payment of compensation equivalent to three months' net base salary for loss caused by the procedural delay.

(Signatures)

CROOK  
*Vice-President  
and Acting President*

Sture PETRÉN  
*Vice-President*

Jacob Mark LASHLY  
*Member*

Mani SANASEN  
*Executive Secretary*

*Geneva, 9 September 1955*

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## **Judgement No. 60**

**Case No. 64 :**  
**Ball**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; Mr. Sture Petré, Vice-President ; Mr. Jacob Mark Lashly, alternate ;

Whereas Elizabeth Ball, former member of the Industry Division of the Economic Commission for Europe at Geneva, filed an application with the Tribunal on 23 June 1955, requesting the Tribunal to order :

(a) The rescission of the Secretary-General's decision of 4 January 1955 terminating her appointment ;

(b) Reinstatement in her former post ;

(c) The award of compensation equivalent to her salary from the