

Judgement No. 81

*(Original: English)*Case No. 65:
Miss X*Against:* The Secretary-General
of the United Nations

Termination of the employment of a staff member holding a permanent appointment, on the ground of unsatisfactory service.

Decision extending the time-limit for filing an application in the case of an Applicant incapable of managing her own affairs and lacking a qualified trustee.—Ex officio appointment by the Tribunal of a counsel selected from a list of staff members drawn up for that purpose by the Secretary-General.

Initial examination of case.—Communication informing the Tribunal that the Secretary-General had submitted to the Joint Staff Pension Board a request for payment of disability benefits to the Applicant.—Decision to adjourn consideration of the case.

Award of disability benefits by the Joint Staff Pension Board.

Re-examination of case.—Motion for dismissal by Respondent on the ground of counsel's refusal to acquaint Applicant with any documents regarding the psychiatric aspect of the case, notwithstanding her explicit request.—Observation by the Tribunal that the Applicant had not requested that counsel should be relieved of his functions.—Motion rejected.

Request for rescission of the decision of the Respondent terminating the appointment of the Applicant on the ground of unsatisfactory service, on the recommendation of the Review Board responsible for the five-yearly review of contracts.

Absence of evidence establishing that the Applicant's real mental condition was known to the Respondent at the time of her separation, and that the Applicant was already incapacitated from service at that time.

Complaint regarding the failure to communicate a document concerning the medical classification of the Applicant to the Review Board which had recommended her termination.—Observation by the Tribunal that that document could not have provided the Board with any information regarding the Applicant's mental condition.

The Secretary-General's subsequent action motivated by sympathetic consideration cannot be treated as a reversal of the grounds for termination.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; the Honourable Mr. R. Venkataraman; Mr. James J. Casey, alternate;

Whereas Miss X filed a preliminary application to the Tribunal on 21 December 1955 directed against the termination of her permanent appointment and expressing the intention to submit in due course a proper application with the assistance of counsel;

Whereas the Applicant was granted for this purpose several extensions of the time-limit laid down in article 7.4 of the Tribunal's Statute;

Whereas no proper application had been submitted by the date of expiry of the last extension on 1 September 1956;

Whereas on 22 February 1957 counsel appointed by the Applicant requested:

(a) a further extension of the statutory time-limit for the submission of an application ;

and on 2 August 1957 requested:

(b) the Tribunal to appoint experts to determine whether the Applicant was suffering from a mental illness attributable to her service with the United Nations ;

Whereas the Tribunal, by a decision dated 19 August 1957, rejected the first request on the grounds, *inter alia*, that there was nothing to show that the Applicant was not in a position to manage her own affairs and the second request on the grounds that it was premature ;

Whereas, on 15 April 1959, the Applicant requested the Tribunal to rescind its decision of 19 August 1957 ;

Whereas the Tribunal, after receiving written and oral statements, decided on 17 August 1959 that it was "clear from information obtained at Geneva in August 1959 and unknown to the Tribunal at the time of the aforesaid decision [on 19 August 1957] that in 1956 and 1957 Miss X was unable to manage her own affairs and that she had no qualified trustee to file an application on her behalf" ;

Whereas the Tribunal, pursuant to that decision of 17 August 1959, decided to set 15 October 1959 as the time-limit for the submission of an application ;

Whereas the Tribunal designated, in accordance with the terms of the Secretary-General's circular ST/ADM/SER.A/360, Mr. Gregory Meiksins, a staff member of the United Nations, as counsel to represent the Applicant ;

Whereas, on 1 October 1959, the Applicant addressed a letter to the President stating that: "I deeply appreciate the Tribunal's action in designating a counsel for me, but I accept his appointment subject to the condition that he neither sends any official papers nor takes any steps on my behalf unknown to me or without my consent" ;

Whereas counsel designated by the Tribunal informed the President in writing on 2 October 1959 that, despite the conditions laid down by the Applicant, he believed that he could not bring to her knowledge the documents and the arguments in the case in view of her state of health, adding, however, that: "I am of the opinion that, in view of the decision of the Tribunal [of 17 August 1959], it would be my moral and legal duty nevertheless to present on my own to the Tribunal an application in due form with all the pertinent documents. Unless I receive instructions from you to the contrary, I will do so before 15 October" ;

Whereas counsel, having received no instructions to the contrary from the President, filed an application on 14 October 1959, which, as subsequently amplified in a written statement submitted on 16 November 1959, requested the Tribunal:

(1) *As preliminary measures:*

(a) to order that the Applicant's medical file should be produced so that the accuracy of the conclusions which the Respondent has drawn from certain parts of that file may be assessed ;

(b) to hear as a witness, should the Tribunal decide to hold oral proceedings, the United Nations Staff Counsellor in order to establish the real meaning of the opinion which the Staff Counsellor gave on the Applicant's behaviour at the time of the latter's termination ;

(2) *As to the merits of the case :*

(a) to rescind the decision, notified to the Applicant on 11 May 1955, whereby the Secretary-General terminated the Applicant's appointment for unsatisfactory services ;

(b) to order payment of full salary with all benefits and increments, from the date of termination to the date of reinstatement, less the amount of termination indemnity ;

(c) should the Respondent feel obliged, after the Applicant's reinstatement, to terminate her appointment for reasons of health, to order, in addition to the amount requested in (b), payment of an annual sum equivalent to the full disability pension to which the Applicant would then be entitled and estimated provisionally at \$1,500, this payment to cease if and when the Joint Staff Pension Fund commenced payment of a disability pension in the same amount ;

(d) to order, in the event that the Respondent avails himself of the option given to him under article 9.1 of the Statute, payment of :

(i) two years net salary plus,

(ii) the annual sum requested under (c), on the grounds that the Respondent, by his action at the time of the Applicant's termination, jeopardized her right to a disability pension ;

Whereas, under article 17.2 of the Rules of the Tribunal, the application was transmitted to the Chairman of the Joint Staff Pension Board on 15 October 1959 ;

Whereas the Respondent filed his answer to the application of 9 November 1959 and submitted additional written statements on 11, 25 and 27 November 1959 ;

Whereas counsel for the Applicant filed additional written statements on 16 and 30 November 1959 ;

Whereas the Tribunal convened in New York on 30 November 1959 to consider the case ;

Whereas, during its deliberations, the Acting President received from the Secretary-General the following communication dated 2 December 1959 :

"I have reviewed the documents on the X case which is pending before the Administrative Tribunal. Having regard to the history of Miss X's condition following the termination of her appointment with the United Nations and in the light of information which was not known at the time, I have formed the opinion that she should be entitled to disability benefits under the terms of the Regulations of the United Nations Joint Staff Pension Fund. Arrangements are now being made to submit urgently the matter to the Standing Committee of the Joint Staff Pension Board for decision and it is hoped that the Standing Committee will meet for this purpose on Thursday, 10 December."

Whereas, on 4 December 1959, the Tribunal decided to adjourn *sine die* the consideration of the case "in view of the procedure instituted by the

Secretary-General before the Standing Committee of the Joint Staff Pension Board” ;

Whereas, on 11 December 1959, the Respondent informed the Tribunal that “the Standing Committee of the United Nations Joint Staff Pension Board decided to grant disability benefits to Miss X under the terms of article V of the Pension Fund Regulations” ;

Whereas, on 31 January 1960, the Applicant requested the Tribunal to order payment of compensation in addition to the disability benefits granted to her ;

Whereas, on 24 February 1960, the President requested the Respondent, under article 9 of the Rules of the Tribunal, to supply additional information with respect to the disability benefits granted to the Applicant ;

Whereas, on 4 March 1960, the Respondent supplied the information requested ;

Whereas, on 9 March 1960, counsel for the Applicant submitted written comments on the information supplied by the Respondent ;

Whereas, having decided to put the case on the list for the next session of the Tribunal, the President requested on 29 August 1960 the Respondent and counsel for the Applicant to submit written observations ;

Whereas, on 15 September 1960, counsel for the Applicant submitted written observations requesting the Tribunal to order on the basis of article 9.1 of the Statute :

(a) the payment of compensation equal to the difference between the amounts requested in the application and the disability benefits granted to the Applicant by the Joint Staff Pension Board ;

(b) the payment of compensation equal to the disability benefits granted to the Applicant if, at any time in the future, these benefits were discontinued for reasons other than the Applicant's re-employment by the United Nations or her demise ;

Whereas, on 3 October 1960, the Respondent submitted written observations ;

Whereas, on 31 October 1960, the Tribunal put several questions to the Respondent and to counsel for the Applicant ;

Whereas, on 1 November 1960, the Tribunal held public oral proceedings in the course of which counsel for the parties replied to the questions put by the Tribunal and submitted additional arguments ;

Whereas, during the oral proceedings and on 3 November 1960, the Tribunal put additional questions to the Respondent ;

Whereas, on 4 and 7 November 1960, the Respondent replied to the additional questions put to him ;

Whereas the facts in the case are as follows :

The Applicant entered the service of the United Nations on 12 September 1947 as a monolingual clerk-stenographer on a General Assembly appointment which, before its expiry, was converted into a temporary-indefinite appointment. On 28 November 1949, the Applicant was given a permanent appointment with effect from 30 October 1949. In 1952 she was classified as a bilingual secretary. Early in 1955, on the first five-yearly review of her permanent contract, the

Review Board came to the conclusion that "her performance and conduct taken as a whole must be assessed as unsatisfactory". The Board consequently recommended that her appointment should be terminated. By a letter dated 11 May 1955, the Office of Personnel informed the Applicant that the Secretary-General had decided to follow the recommendation of the Review Board and to terminate her appointment. On 10 June 1955, the Applicant requested the Secretary-General to reconsider his decision. Following the refusal of that request, the Applicant took her case to the Joint Appeals Board on 30 June 1955. On 22 September 1955, the Board, while finding that it had "no recommendation to make in favour of the appeal", submitted the following suggestion to the Secretary-General:

"The Board has noted the relatively long service to the United Nations rendered by the Applicant, the difficulties which seem to have arisen in connexion with finding suitable assignments, and the existence of some personal misfortunes . . . the Board feels that the Secretary-General will wish to deal as generously as possible with the Appellant in connexion with her termination."

On 27 September 1955, the Secretary-General reaffirmed the termination of the Applicant's appointment. On 3 October 1955, the Director of Personnel, referring to the Board's suggestion, proposed in writing that the Secretary-General should grant the Applicant an *ex gratia* payment of \$1,500. On 5 October 1955, the Secretary-General approved the proposal of the Director of Personnel and the sum of \$1,500 was subsequently paid to the Applicant. On 10 December 1959, at the Secretary-General's reference, the United Nations Joint Staff Pension Fund decided to grant the Applicant disability benefits with effect from the date of her separation from service.

Whereas, in 1959, the main contentions of counsel for the Applicant were:

1. *As to the receivability of the application*

As regards the Respondent's contention that the application is not receivable since it does not comply with the conditions laid down by the Applicant in her letter of 1 October 1959, counsel for the Applicant points out that his client did not request the Tribunal to discharge him. Since he has been appointed by the Tribunal, it will be his duty to represent the Applicant and to submit all the pertinent documents for the preparation of the case unless and until he is discharged by the Tribunal.

2. *As to the merits of the case*

(a) In the opinion of several psychiatrists, who examined the Applicant in 1956, her behaviour during the period immediately prior to her termination was caused by a disabling mental affliction ;

(b) The Respondent was aware of the pathological nature of the Applicant's behaviour, as is clear from the opinion expressed at that time by the Staff Counsellor and the views of the Director of Personnel, as set out in a letter to the Secretary-General dated 3 October 1955 ;

(c) At the time of the five-yearly review of the Applicant's permanent contract, the Respondent was remiss in failing to communicate to the Review Board the information in his possession concerning the pathological nature of the Applicant's behaviour. Being unaware of the true causes of that behaviour,

the Board recommended that the Applicant's appointment should be terminated for unsatisfactory services instead of setting in motion a completely different procedure, which could have led to the granting of a disability pension ;

(d) By approving the Review Board's recommendation and terminating the Applicant's appointment for unsatisfactory services instead of taking a decision based on her state of health, the Respondent violated the provisions of Staff Regulation 9.1 (a) and Staff Rule 109.1 (b). These provisions set out distinct grounds for termination which are not interchangeable and which involve materially different consequences ;

(e) The Respondent did not transmit to the Joint Staff Pension Fund the information in his possession concerning the Applicant's mental state. By that omission, he also violated provision D.12 of the Administrative Rules of the United Nations Joint Staff Pension Fund.

Whereas, in 1959, the main contentions of the Respondent were:

1. *As to the receivability of the application*

Although the Applicant had stated that she accepted counsel's appointment subject to the condition that no documents should be submitted unknown to her, counsel filed the application without her authorization and knowledge. Moreover, the application adduces arguments entirely different from those put forward by the Applicant in the statement which she filed with the Tribunal on 21 December 1955. The action taken by counsel is accordingly *ultra vires* and the application which he has submitted is not receivable.

2. *As to the merits of the case*

(a) None of the psychiatrists on whose opinion the application relies had examined the Applicant before November 1956. Moreover, their opinion runs counter to that given in 1959 by the United Nations Medical Director on the basis of the Applicant's medical file. According to that opinion, the Applicant was not medically incapacitated from service by any mental illness at the time of her termination in 1955 ;

(b) The Respondent had no grounds for supposing that the Applicant's behaviour during the period previous to her termination was of a pathological nature. The opinion of the Staff Counsellor and the views of the Director of Personnel quoted by counsel for the Applicant are couched in "non-technical" terms and "cannot be regarded as having any medical connotation" ;

(c) Evaluation of the health of staff members is not the responsibility of the Review Board, but of the Secretary-General acting on the advice of the Medical Director. The Respondent was accordingly not under any obligation to communicate to the Board any medical information concerning the Applicant and the fact that no such information was communicated did not in any way prejudice the Applicant's rights ;

(d) The Review Board recommended the termination of the Applicant's appointment for unsatisfactory services after a thorough review of her record, performance and conduct, and after interviewing her supervisors. There would have been no justification for a recommendation of termination for reasons of health. Consequently, the termination of the Applicant's appointment was entirely proper. In particular, it does not constitute a violation of Staff Regulation 9.1 (a) or of Staff Rule 109.1 (b) ;

(e) Neither did the Respondent violate provision D.12 of the Administrative Rules of the United Nations Joint Staff Pension Fund. As he knew no fact which could entitle the Applicant to a disability pension, he had no information to communicate to the Fund.

Whereas counsel for the Applicant submitted the following additional arguments:

1. The Respondent violated an established administrative procedure by failing to include in the file transmitted to the Review Board any information on the Applicant's medical classification.

2. The decision of the Joint Staff Pension Fund to grant a disability benefit under provision D.15 of the Administrative Rules of the Fund constitutes a finding that, at the time of the Applicant's termination, she was unable to perform her duties satisfactorily due to a serious mental condition.

Whereas the Respondent submitted the following additional arguments:

1. The failure of the Respondent to include in the file transmitted to the Review Board any reference to the Applicant's medical classification did not prejudice her rights.

2. The decision of the Secretary-General in 1959 to refer the matter to the Joint Staff Pension Fund was taken in the light of information not known in 1955 and in a humanitarian approach.

3. The existence at the time of the Applicant's termination of a serious mental condition—diagnosed some years later—did not render the termination for unsatisfactory services wrongful under the relevant Staff Rules and Regulations and there is therefore no basis under article 9.1 of the Statute of the Tribunal for any such award of compensation as claimed by the Applicant's counsel.

The Tribunal, having deliberated until 10 November 1960, now pronounces the following judgement:

I. A first application requesting the rescission of the termination decision of 11 May 1955 was filed by the Applicant herself on 21 December 1955. However, the application did not fully comply with the requirements of article 7 of the Rules and thus could not be transmitted to the Respondent nor considered by the Tribunal.

Having been seized, on 22 February 1957, of a request from counsel acting on Applicant's instructions, the Tribunal considered that, according to the information available, there was nothing to show that it should waive the provisions of the Statute relating to time-limits for the submission of an application, and this decision was notified to the Applicant on 19 August 1957.

A new request for the reopening of the time-limit was submitted by the Applicant herself on 15 April 1959. New information having been received by the Tribunal, it was decided, on the basis of article 7.5 of the Statute of the Tribunal, to suspend the application of the provisions regarding time-limits in this particular case and this decision, of 17 August 1959, was notified to the parties.

II. Having regard to the particular circumstances of the case, in view of:

Article 12 of the Rules which enables an Applicant to be represented by a staff member of the United Nations ;

Article 22 of the Rules, which authorizes the Tribunal to deal, by a decision

taken in each particular case, with all matters which are not expressly provided for in its Rules ;

the Secretary-General's circular ST/ADM/SER.A/360 ;

the Tribunal appointed a staff member of the United Nations as counsel for the Applicant.

On the basis of the contents of a letter from the Applicant dated 1 October 1959 addressed to the President of the Tribunal, the Respondent has maintained during the written proceedings that the application submitted by Applicant's counsel "was *ultra vires* and cannot be regarded as a proper application".

The Tribunal notes that the Applicant has not requested the Tribunal to relieve counsel of his functions. The Tribunal further notes that, in accordance with its Rules, it possesses the broadest powers to request from the parties any documents and information necessary for the consideration of a case. The Tribunal therefore reaches the conclusion that the assistance given by the duly designated counsel, far from lacking authority, is in accord with the Statute and Rules of the Tribunal.

III. The case before the Tribunal concerns the dismissal of a staff member, holder of a permanent appointment. As the Tribunal has stated in Judgement No. 29 :

"This type of appointment has been used from the inception of the Secretariat to ensure the stability of the international civil service and to create a genuine body of international civil servants freely selected by the Secretary-General. In accordance with the regulations established by the General Assembly, permanent appointments cannot be terminated except under staff regulations which enumerate precisely the reasons for and the conditions governing the termination of service.

"The Secretary-General thus can act only under a provision of the Staff Regulations. He must indicate the provision upon which he proposes to rely, and must conform with the conditions and procedures laid down in the Staff Regulations."

According to article 9.1 (a) of the Staff Regulations :

"The Secretary-General may terminate the appointment of a staff member who holds a permanent appointment and whose probationary period has been completed, if the necessities of the service require abolition of the post or reduction of the staff, if the services of the individual concerned prove unsatisfactory, or if he is, for reasons of health, incapacitated for further service."

At the time of the review of the Applicant's permanent appointment, Staff Rule 104.13 (I) (c) provided that: "Permanent Appointments shall be subject to review every five years." (ST/SGB/94/Amend. 1). A Review Board established under paragraph (a) of Staff Rule 104.13 (III) was entrusted with this review. Paragraph (b) of the Rule defined its functions as follows :

"(i) To consider the suitability of staff members for Permanent Appointment, except those at the Director level and above, 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.

“(ii) To review every five years the appointments of staff members holding Permanent Appointments and, where necessary, of staff members holding Regular Appointments and to inform the Secretary-General, after consideration of the conduct and performance of each staff member, whether it is of the opinion that during the period under review the staff member concerned has maintained the standards of efficiency, competence and integrity established in the Charter.”

The Review Board which reviewed the work of the Applicant in 1955, after interviewing her and discussing with her all aspects of her case, “came to the over-all conclusion that during the five years under review, her performance and conduct taken as a whole must be assessed as unsatisfactory. Termination is therefore recommended.” In pursuance of the said report, the appointment of the Applicant was terminated by the Respondent.

IV. The issues for determination in this case are: (1) whether the termination of the appointment of the Applicant in 1955 on the ground of unsatisfactory service is valid and justified and (2) if not, to what relief is the Applicant entitled ?

The Applicant contends that the termination of the appointment, notified on 11 May 1955, is invalid for the following reasons :

The recommendation of the Review Board to terminate the Applicant's appointment was vitiated by the non-disclosure to the Review Board of the medical condition of the Applicant which was known to the Respondent at that time ;

The Applicant's medical classification in which she was downgraded from I-a to I-b was not placed before the Review Board and if this information had been made known to the Review Board, different procedures might have been set in motion and the recommendation in question might not have been made.

In order to evaluate the validity of these arguments, the Tribunal has to consider the following questions :

(i) What was the medical condition of the Applicant prior to and at the time of the review of her case by the Review Board ?

(ii) Was the medical condition of the Applicant fully known to the Administration ?

(iii) Was there any irregularity attributable to the Respondent in the procedures adopted by the Review Board ?

V. The documentary material concerning Applicant's medical condition, relied upon by Applicant in Annexes 7, 8, 9, 9a, 10, 11 and 12, was not based on an examination of her condition in or before 1955. They were all based on the examination of the medical condition of the Applicant more than a year after her separation from the United Nations. Though these documents indicated a view that the Applicant had suffered from certain mental abnormality, it is difficult to assess with any reasonable degree of certainty the medical condition of the Applicant in or about 1955. On the other hand, it is seen from the report dated 29 October 1959 of the United Nations Medical Director (Annex 44)—based on the relevant information from the Applicant's medical file—that she was treated for some trouble in the left wrist which was dealt with surgically but there was no record of any indication of psychiatric disorder. The Medical Director has stated in Annex 44 as follows: “We must conclude from her

medical file that at the time of her separation in September 1955, she was not medically incapacitated from service." This is further strengthened by the fact that the Applicant continued in service with the United Nations Organization for more than four months after the recommendation of the Review Board and subsequently obtained employment in the International Labour Organisation. There was therefore no evidence in 1955 regarding the medical condition of the Applicant when her case was considered by the Review Board to support the conclusion that the Applicant was under any grave or disabling illness.

VI. The Applicant contends that her medical condition was fully known to the Respondent ; that the Respondent had prejudiced the consideration of the Applicant's case by the Review Board by not presenting that information to the Board. Reliance is placed by the Applicant on Annex 15, dated 3 October 1955, in which the Director of Personnel stated: "Her whole attitude prior to and after termination is indicative of a somewhat unbalanced mentality." The Tribunal cannot draw from the above excerpt the conclusion that the Applicant was suffering from any mental disability. Reliance cannot be placed on the statement of a layman in the face of the positive statement of the United Nations Medical Director (Annex 44) quoted above. On the evidence available to the Tribunal, it is not possible to conclude that the medical condition alleged by the Applicant was known to the Respondent at the time of separation.

The Tribunal notes that there is some force in the contention of the Applicant that the medical classification of the Applicant, which usually forms part of the file of a staff member and is supplied to the Review Board, was not so presented in this case. Regrettable as it is, the Tribunal is unable to agree that the absence of the record of the medical classification before the Review Board could have affected the decision of the Board for the reason that the classification downgrading the Applicant from 1-a to 1-b would have disclosed only that the Applicant had limited eligibility for employment on some missions and would not have disclosed anything about her mental or other conditions (*vide* enclosures to Annex 16). The Tribunal therefore finds that the non-submission of the Applicant's medical classification to the Review Board did not affect the decision of the Board.

VII. The Applicant further contends that by submitting the case to the United Nations Joint Staff Pension Fund in 1959, the Respondent has admitted the invalidity of the termination of the employment of the Applicant in 1955 for unsatisfactory services and has substituted another ground for the termination, namely medical disability. Applicant argues that by forwarding the case to the Pension Fund, the Respondent has acknowledged that at the time of her separation, she was unable to perform her duties satisfactorily, due to health reasons (*vide* D.15 of the Administrative Rules of the United Nations Joint Staff Pension Fund). In a communication to the Acting President of the Tribunal, dated 2 December 1959, the Secretary-General stated that he had reviewed the documents in this case and that having regard to the history of the Applicant's condition following the termination of her appointment with the United Nations and in the light of information which was not known at the time, he has formed the opinion that the Applicant should be entitled to disability benefits under the terms of the Regulations of the United Nations Joint Staff Pension Fund. Applicant argues that this is a clear admission that the termination of the Applicant's appointment for unsatisfactory services was incorrect and that it should have been for health reasons.

The Tribunal notes that the decision to refer the Applicant's case to the Joint Staff Pension Fund was not made in pursuance of any order of the Tribunal under paragraph 2 of article 9 of its Statute. It was taken *suo moto* by the Secretary-General.

The Respondent contends that, though the services of the applicant were lawfully and properly terminated, yet in view of the subsequent developments in her condition and as "a humanitarian gesture", the case of the Applicant was referred to the Joint Staff Pension Fund. During the course of the oral presentation, the Respondent stated that "it was in an endeavour to be humanitarian about this unfortunate case that the Respondent considered, in all the circumstances, that it was only just and equitable to seek a disability benefit for this unfortunate person who found herself unable to provide for herself and, as the Tribunal is aware, the Respondent took a considerable initiative in suggesting and seeking this disability benefit." The Tribunal considers that the sympathetic action taken by the Respondent in the special circumstances in which the Applicant is placed—action which the Respondent was entitled to take—cannot be treated as a reversal of the grounds for termination of 1955. The Applicant cannot rely on a *post facto* act, as proof of the earlier condition. To concede to the Applicant's arguments might deprive staff members of any sympathetic or humanitarian considerations being exercised in the future.

The Tribunal holds that the order of termination of the Applicant's services in 1955 has not been established to be illegal or improper.

VIII. By reason of the foregoing considerations, the Tribunal rejects the application.

IX. The Tribunal, however, notes the statement of the Respondent that he has no intention of withdrawing any of the payments already made to the Applicant and that the Respondent would be prepared on an *ex gratia* basis to meet the cost of a second return journey to her home country.

X. In view of the circumstances of the case, the Tribunal orders that the name of the Applicant shall be omitted from the published versions of the judgement.

(Signatures)

Suzanne BASTID

President

CROOK

Vice-President

R. VENKATARAMAN

Member

James J. CASEY

Alternate Member

N. TESLENKO

Executive Secretary

New York, 10 November 1960.