

Judgement No. 11**Case No. 17 :
Howrani****Against: The Secretary-General
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Rowland Andrews Egger, Vice-President, presiding; Dr. Emilio N. Oribe; Dr. Hamed Sultan; Madame Paul Bastid, Vice-President, alternate member;

Having rendered judgement on 4 September 1951 (Judgement No. 5) ordering the rescinding of the decision terminating Applicant's temporary-indefinite employment contract with the United Nations;

Having been notified by the Secretary-General on 12 September 1951 that, in accordance with the provision of article 9 of the Statute of the Tribunal, it was, in his opinion, inadvisable to reinstate the Applicant;

Having therefore been seized of the question, under the aforesaid article 9 of the Statute, of fixing the amount of damages sustained by the Applicant in consequence of the non-observance of his contract;

Having received the documentation with respect to such damages on the following dates:

Statement of Claim, 16 October 1951;

Statement by Respondent, 2 November 1951;

Applicant's answer, 6 November 1951;

Respondent's comments, 9 November 1951;

Having conferred from 8-12 November 1951 upon said claims;

Pronounced in closed session on 12 November 1951 the following judgement:

The original claim of Mr. Howrani for damages resulting from the decision of the Secretary-General not to reinstate his employment contract with the United Nations was in the total amount of \$182,328.02. A supplementary claim, filed with his reply of 6 November 1951, aggregated \$989.70. The total claim is therefore \$183,317.72. Of this amount \$2,843.28 is for back pay, \$2,121.70 is for costs involved in litigation, etc., \$9,994.50 is for removal and travel expenses as well as repatriation allowance which are not in the nature of damages, and the remaining \$168,358.24 is a calculation of the total he might have earned in salary, children's allowance, rental allowance, education grant, annual leave, home leave, and pension benefits if he had remained in the employment of the United Nations until retirement.

With respect to Applicant's claims based upon the prospect of continued employment by the United Nations until retirement, including the receipt of basic net salary, children's allowance, rental allowance, education allowance, annual leave, home leave, and pension benefits, the Tribunal is of the opinion that Applicant has imputed a certainty with respect to contingencies under a temporary-indefinite contract which the obligations of such a contract do not warrant. What applicant has attempted to value is a problematical chance, rather than anything approaching a firm expectancy. As has been pointed out by Professor Charles T. McCormick in his *Handbook on the Law of Damages*, at page 117, "Where the damage claimed by the plaintiff is the deprivation of an opportunity (not amounting to a reasonable certainty) to gain a specific prize, award, or profit, the courts have been slow to allow recovery of the value of a mere chance." The Tribunal is of the opinion that the Applicant's chances of receiving the sums claimed in these categories are not fairly calculable on a reasonable estimate of probabilities, in view of the nature of his contract. The Tribunal accordingly disallows the claim of \$168,358.24 of Mr. Howrani based upon these expectancies.

Applicant's claims in the amount of \$9,994.50 for repatriation grant, travel and removal expenses are not in the nature of damages for the non-observance of his contract, are fully covered by the staff regulations of the United Nations, and are not in litigation in this case. The Tribunal therefore disallows this amount as a claim for compensation for injuries sustained in consequence of the decision of the Secretary-General not to reinstate him, without prejudice to the right of Applicant to receive whatever sums may be due him for these purposes under the staff regulations and rules.

Applicant's claims in the amount of \$2,121.70 for costs of litigation, etc., include \$1,850.00 for legal fees, in connexion with the prosecution of his case before the Tribunal, and \$271.70 for stenographic, mimeographing, telegrams, and other expenses. The Tribunal is of the opinion that the case of Mr. Howrani satisfies none of the conditions in which the Tribunal has indicated, in its Statement of Policy of 14 December 1950 (A/CN.5/R.2) that costs might in some circumstances be granted. The Tribunal therefore disallows Applicant's claim for \$2,121.70 in respect of costs.

In the consideration of the injuries sustained by Applicant as a consequence of the decision of the Secretary-General not to reinstate him in his employment in the United Nations, the Tribunal is of the opinion that two basic factors must be taken into account: (1) the injury sustained by Applicant as a consequence of the original decision of the Secretary-General to terminate his contract; (2) the injury sustained by the Applicant in consequence of the decision of the Secretary-General not to rescind his original decision in accordance with the judgement of the Tribunal, which resulted in the

definitive termination of the Applicant's connexion with the United Nations Secretariat.

With respect to the first injury, in view of the fact that the Applicant was not legally able to engage, and has not in fact engaged, in other gainful employment during the period of time consumed in the consideration of his case by the Joint Appeals Board, the Secretary-General, and the Tribunal, the Tribunal is of the opinion that a proper measure of the injury sustained is the total amount which the Applicant would otherwise have received from the date of his original termination to the day of the Applicant's notification of the Secretary-General's decision not to reinstate him in his employment, less payments hitherto made to him as indemnity for termination. From information received from the Bureau of Finance on 10 November 1951, the Tribunal understands this amount is \$3,288.41.

With respect to the second injury referred to, the Tribunal is of the opinion, as it has previously indicated, that the damage sustained by the Applicant in consequence of the Secretary-General's decision not to reinstate him cannot be precisely calculated, in view of the nature of his contract. The Tribunal's decision of 4 September 1951, ordering the rescinding of the decision to terminate Applicant's contract, moreover, was based upon inadequacies in the procedure by which he was terminated, and not upon any inadequacy in the statement of cause assigned by the Secretary-General. On the other hand, there can be no doubt that Applicant did sustain an injury by reason of his definite separation from the United Nations Secretariat in consequence of the Secretary-General's refusal to reinstate. The Tribunal has given consideration to the equity and justice of equating Applicant's position, as a minimum provision, with that of employees who have been terminated in a manner satisfying the full requirements of the law. It has given consideration also to the spirit of the Staff Rules and Regulations, and it has taken fully into account the circumstances surrounding the case.

The Tribunal, in view of all of the above considerations, fixes the damages for injuries sustained by Applicant as follows :

In respect of injuries sustained in consequence of the original decision of the Secretary-General to terminate his contract	\$3,300.00
In respect of injuries sustained in consequence of the decision of the Secretary-General not to reinstate him in his employment in accordance with the judgement of the Administrative Tribunal	\$4,200.00
	\$7,500.00

Judged and pronounced in closed session on 12 November 1951, at Paris, by the Administrative Tribunal composed of the members indicated above.

(Signatures)

Rowland EGGER

Vice-President, presiding

Mani SANASEN

Executive Secretary

Judgement No. 12

Case No. 18 :
Keeney

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Rowland Andrews Egger, Vice-President, presiding ; Dr. Emilo N. Oribe ; Dr. Hamed Sultan ; Madame Paul Bastid, Vice President, alternate member ;

Having rendered judgement on 4 September 1951 (Judgement No. 6) ordering the rescinding of the decision terminating Applicant's temporary-indefinite employment contract with the United Nations ;

Having been notified by the Secretary-General on 12 September 1951 that, in accordance with the provision of article 9 of the Statute of the Tribunal, it was, in his opinion, inadvisable to reinstate the Applicant ;

Having therefore been seized of the question, under the aforesaid article 9 of the Statute, of fixing the amount of damages sustained by the Applicant in consequence of the non-observance of her contract ;

Having received the documentation with respect to such damages on the following dates :

Statement of Claim, 16 October 1951 ;

Statement by Respondent, 2 November 1951 ;

Applicant's answer, 6 November 1951 ;

Respondent's comments, 9 November 1951 ;

Having conferred from 8-12 November 1951 upon said claims ;

Pronounced in closed session on 12 November 1951 the following judgement :

The original claim of Mrs. Keeney for damages resulting from the decision of the Secretary-General to terminate her employment contract