

**Judgement No. 16****Case No. 24 :  
Morrow****Against: The Secretary-General  
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed as follows : Madame Paul Bastid, Vice-President, acting as President ; Lord Crook, Vice-President ; Mr. Sture Petrón ; Mr. Hamed Sultan, alternate member ;

Having before it the application filed by George Andrew Morrow, formerly an official of the International Children's Emergency Fund, against a decision which the United Nations Secretary-General took on 6 May 1952, after receiving the opinion given by the Appeals Board of the European Office of the United Nations and in which he confirmed the termination of the Applicant ;

Having received the following documents :

1. Application filed on 8 July 1952 ;
2. Reply from the Respondent, submitted on 2 August 1952 ;
3. Reply from the Applicant, submitted on 8 August 1952 ;

Having deliberated in private on 6, 7, and 8 August 1952 ;

On 11 August 1952, rendered the following judgement :

1. The Applicant, a former UNRRA official, having applied for employment with the United Nations, was engaged on 9 December 1947 and attached to the field service of the International Children's Emergency Fund.

After representing the Fund at Milan, he was transferred to the seat of the Mission at Rome as Supply Officer. The terms of his contract varied with the policy adopted by the Fund in this matter ; after receiving a temporary-indefinite contract, he was given a fixed-term contract. As from 1 May 1949 he was again placed on a temporary-indefinite contract basis.

On 15 March 1951, after having, in fact, taken charge of the Mission in Italy for some time, he was appointed Acting Chief while continuing his former duties.

On 9 June 1951, the Director of the European Office of the Fund informed the Applicant that, with a view to a reduction of staff, the Mission in Italy was to be combined with the Mission in Greece. As the Chief of the latter Mission was to take charge of this combined Mission, the Fund could no longer retain the Applicant in his post in Italy.

In a letter of 19 September 1951 the Applicant was notified by Mr.

Canade, Chief of the Administrative Services of the Fund at Paris, that his appointment was to be terminated with effect from 20 October 1951. Having inquired the reasons for his termination, the Applicant was informed by Mr. Canade, on 25 September 1951, that owing to the reduction of staff resulting from the combination of the Missions in Greece and Italy, he was redundant.

2. On 7 November 1951, the Applicant appealed against this decision. The Appeals Board of the European Office of the United Nations, in a report adopted unanimously on 16 April 1952, considered that staff rule 104 had not been properly applied. It recommended that the Fund "re-examine the possibilities of the re-employment of Mr. Morrow considering all the posts within the organization as a whole suitable for his qualifications" (translation).

In a letter of 6 May 1952, the Secretary-General of the United Nations informed the Applicant that the Fund had reconsidered the possibility of finding him a post, but without success, and that in those circumstances the termination of his contract must stand.

The application is directed against this decision.

3. The Applicant criticizes the Administration's decision :

(a) In that it misinterprets staff rule 104 so as to limit its scope to the Fund's Italian Mission ;

(b) In that the Fund asserted before the Appeals Board that it had been proposed to the Applicant that he continue his work in Italy under the same conditions ;

(c) In that considerations not covered by the Staff Rules influenced the appointment of his successor in Italy and thereby caused the termination of his contract.

4. The Respondent replies :

(a) That the terms of appointment of the Applicant did not give him any legal right to consideration for posts elsewhere ;

(b) That neither staff rule 104 nor the findings of the Administrative Tribunal in Judgement No. 4 gave the Applicant any legal right to consideration for posts elsewhere ;

(c) That, although not legally required to do so, the Respondent made extensive efforts to place the Applicant elsewhere.

5. The Respondent maintains, first of all, that the terms of appointment of the Applicant did not give him any legal right to consideration for a post elsewhere.

According to the Respondent, the Applicant was selected for a mission in Italy in view of his particular aptitude for a special task. The letter of appointment of 24 February 1948 stipulated that the Applicant was attached to the Fund's Mission in Italy and the Respondent considers that the Applicant formally accepted the terms of this contract. Consequently, the Applicant's post in Italy having been

abolished, the Fund was under no obligation, according to the terms of the contract, to endeavour to place him elsewhere.

6. The Tribunal notes that the Applicant, who was recruited in Italy, where he had served since 1943 in the British Army and since 1946 with UNRRA, is of British nationality. From 1930 to 1942 he was an official in England. His presence in Italy was due to the war.

In his application for employment addressed to the United Nations, he placed no restriction on the location of his duty station and agreed to travel frequently. At the time of his appointment he received an expatriation allowance.

In accordance with the regular practice of the United Nations, his letter of appointment specifies his duty station, namely, the Mission in Rome, but contains nothing which would make his presence in Rome a condition of employment. Although his knowledge of Italy was certainly taken into consideration when he was engaged, the Applicant does not on that account come within the category of locally recruited personnel (staff rule 190, category D).

The Tribunal therefore considers that, in the absence of any express provision, the Applicant's contract did not exclude the possibility of a post elsewhere. Special knowledge of Italian conditions acquired during a sojourn of several years cannot be regarded, for a British official having acquired administrative experience in his own country, as limiting the rights deriving from a contract which conformed with those issued by the United Nations.

7. The Respondent maintains, moreover, that neither staff rule 104 nor the Administrative Manual give the Applicant any legal right to consideration for a post elsewhere.

The Respondent considers that these provisions could, in any case, only have applied to the Mission in Italy, and that in point of fact the official appointed as Chief of the Mission was better qualified than the Applicant. In his reply, the Applicant points out that since his successor is not a "Supply Officer", this argument is irrelevant.

Although not called upon to give an opinion on this question, the Tribunal considers that both staff rule 104 and the "Interpretation and Conditions" of the Administrative Manual are quite general in effect. Rule 104 provides that :

"(a) 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.

"(b) This rule shall not apply to personnel specifically engaged for conferences and other short-term service and personnel engaged as consultants."

The Administrative Manual comments on these two paragraphs as follows :

*“ 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 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 ; ”

The above text clearly shows that, in the case of an official who can adduce rule 104, the Bureau of Personnel has the duty to consider whether there is a “ suitable vacancy elsewhere.”

8. Inasmuch as General Assembly resolution 57 (I) establishing the International Children’s Emergency Fund stipulates that :

“ 4. (a) Staff and facilities required for the administration of the Fund shall be provided to the Board by the Secretary-General.”

It follows that the staff of the Fund, although serving in a department of the Secretariat having a special legal status and its own budget, is not employed by a body distinct from the United Nations, but forms part of the Secretariat staff.

This principle was explicitly recognized by the Legal Department of the United Nations in a memorandum of 17 January 1952, concerning the legal status of the Fund. The memorandum states that all decisions concerning the staff of the Fund must be taken in accordance with the Staff Regulations and Rules and any special rules approved by the Secretary-General.

In the present case, the Applicant was attached to the field service, *i.e.*, he was appointed for duty away from an established office (staff rule 190). According to staff rule 196 (f), rule 104 is applicable to the field service. No restriction or limitation having been prescribed by a special provision, the Bureau of Personnel was required, before terminating the Applicant’s contract, to consider whether there was a suitable vacancy anywhere, without confining itself to a specific geographical area.

9. Having reached this conclusion from an examination of the provisions cited by the Applicant, the Tribunal does not consider it necessary to express any opinion on the applicability of Judgement No. 4 to this case.

10. Finally, the Respondent seeks to establish that, despite the

absence of any legal obligation, extensive efforts were made to find the Applicant another post.

The Respondent contrasts this attitude with that of the Applicant who, it is alleged, never replied to a letter from the Fund asking whether he would accept a post outside Italy.

11. The Tribunal notes that the Respondent no longer refers to an offer alleged to have been made to the Applicant to continue his duties in Italy for an unspecified period, under the orders of his successor. This offer, which was mainly dealt with before the Appeals Board, does not appear to have materialized. The Tribunal notes that the Respondent has not maintained this assertion.

12. The Tribunal observes that the European Office of the Fund took various measures in the Applicant's favour :

On 6 June 1951, a letter was written to the United Nations Relief and Works Agency for Palestine Refugees in the Near East and on 19 June 1951 another letter was written to the Food and Agriculture Organization. The latter merely referred to the good service rendered by the Applicant during his sojourn in Italy and anticipated the difficulties which might arise owing to his nationality.

But the European Office admitted that it was not acquainted with re-employment possibilities outside Europe and that the means at its disposal were limited (letter of 5 September 1951 from the Chief of the Administrative Services).

When the Applicant was notified of his termination, he was told that :

“ In so far as outplacement is concerned, UNICEF has never been properly staffed to perform a real outplacement function . . . EMRO has always made an attempt to assist terminated staff in finding new positions within the means at its disposal.”

The Applicant was offered support for any applications he might make to other organizations on his own initiative.

13. In addition, the European Office informed the New York Offices of the Fund of the Applicant's position, on various occasions.

On 15 November 1951, the New York Offices of the Fund forwarded the Applicant's name, for possible recruitment, to the United Nations Korean Relief Agency and, on 15 January 1952, to the Director of the Fund's Asia Regional Office.

On 15 June 1951, the Director of the Fund's Administrative Services at New York informed the Bureau of Personnel of the United Nations Secretariat of the impending termination of several officials, including the Applicant, and added : “ It would be appreciated if you could give consideration to these candidates for suitable vacancies within United Nations and specialized agencies.”

On 20 June 1951, the Assistant Director of the Secretariat Bureau

of Personnel asked to see the file of the Applicant and other officials, saying : " I do not want to make any promises at this stage, because I know that we shall find it difficult to place any of them."

14. The documents in the file, however, contain no indication of any action taken by the Bureau of Personnel in conformity with the provisions of the Administrative Manual.

In the letter sent to him on 26 October 1951 in reply to his protest, the Applicant was informed on behalf of the Assistant Secretary-General in charge of Administrative and Financial Services that : " the UNICEF headquarters did the only thing they could well do — tried to find a post for you in the relevant specialized agencies. I feel that in doing so they have met any obligation they may have had with regard to staff in a temporary agency."

Hence there appears to have been a firm belief that this was a special legal situation involving only limited obligations for the Administration, since it concerned an official of the Fund who had been attached to its services.

15. The Tribunal notes that the Applicant's file gives no indication of any further action between 16 April 1952, when the Appeals Board gave its opinion, and the date of the contested decision.

It was not until 14 July 1952, after the filing of the application to the Tribunal, that the New York Offices of the Fund again informed the Asia Regional Office of the Applicant's position.

This letter from the Fund gives only a brief account of the Applicant's competence and character as recognized by his superiors and of the length of his international service. It is couched in terms which could not have much chance of success.

The Tribunal cannot take into consideration certain approaches mentioned by the Respondent : there is nothing in the Applicant's file to show that an approach was made to the World Health Organization. The offer of employment in Korea dates from August 1950, before the question of terminating the Applicant had arisen.

16. In these circumstances, the Tribunal notes that certain efforts were made to find the Applicant a post. But owing to misinterpretation of the Respondent's obligations, those efforts were made by a service which was ill-equipped to take effective action and admitted the fact. On the other hand, there is no evidence to show that the United Nations Bureau of Personnel made the inquiries prescribed in the Administrative Manual or that it was exempted from that duty by a special provision approved by the Secretary-General.

17. With regard to the complaint that the Applicant did not reply to a letter of 26 June 1951 from Dr. Egger, Director of the Fund's European Office, asking whether he would accept a post outside Italy or probably outside Europe, the Tribunal notes that on 14 June the Applicant, who had been asked to familiarize his successor with his

duties, during a period of three months, had already informed Dr. Egger that :

“ The question can be resolved of two simple headings : (1) am I guaranteed continued employment with UNICEF after handing over the Italian Mission and if so in what capacity and for what duration or (2) will my termination simply be postponed until such time as Canon Edwards is able to carry on alone ? ”

This clearly shows that the Applicant was considering employment outside Italy, since he explicitly refers to the time when he would have handed over the Mission and to continued employment with UNICEF, which obviously implied that such employment would be outside Italy.

Moreover, the impressions of his superiors regarding the Applicant's possible desires should not have prevented consideration of other posts likely to suit him, in accordance with the provisions of the Staff Rules and the Administrative Manual.

18. For these reasons, the Tribunal considers that in spite of the measures taken, the Applicant was terminated without due observance of staff rule 104.

Since the Applicant desires either the rescinding of the contested decision or an indemnity, the Tribunal, taking into account the fact that re-employment was hypothetical, awards the Applicant the sum of \$400 as compensation.

Judged and pronounced at Geneva on 11 August 1952 by the members of the Administrative Tribunal indicated above who have affixed their signatures hereto, together with Mani Sanasen, Executive Secretary of the Administrative Tribunal.

*(Signatures)*

Suzanne BASTID  
*Vice-President and  
Acting President*

CROOK  
*Vice-President*

Sture PETRÉN  
*Member*

Hamed SULTAN  
*Alternate Member*

Mani SANASEN  
*Executive Secretary*

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