

“contract” and “terms of appointment” including all pertinent regulations and rules in force at the time of alleged non-observance. The Tribunal is unable in this case to find any non-observance. The Tribunal awards no damages.

20. With regard to the request for the deletion from the Applicant's Periodic Report for 1950 of a certain paragraph and the changing of the rating and classification shown in this report, the Tribunal does not regard itself as entitled to intervene in this administrative matter appropriate for internal action within the Secretariat.

21. The Tribunal accordingly rejects the claims of the Applicant.

(Signatures)

Suzanne BASTID
*Vice-President and
Acting President*

CROOK
Vice-President

Sture PETRÉN
Member

Mani SANASEN
Executive Secretary

New York, 16 December 1952

Judgement No. 18

Case No. 26 :
Crawford

**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. Omar Loutfi, alternate member ;

Whereas Ruth E. Crawford, former member of the staff of the United Nations International Children's Emergency Fund, filed an application with the Tribunal on 17 February 1953, for the rescission of the decision to terminate her employment communicated to her by letter from the Secretary-General on 7 January 1953 ;

Whereas a memorandum was submitted to the Tribunal on behalf of the Applicant ;

Whereas the Applicant, on 23 July 1953, filed an application for compensation ;

Whereas the Respondent filed his reply to the application for

reinstatement on 20 March 1953 and his comments concerning damages on 10 August 1953 ;

Whereas oral information was obtained at Headquarters from 15 to 21 April 1953, under article 9 (3) of the Tribunal's Rules ;

Whereas the Tribunal heard the parties in public session on 22 and 23 July 1953 ;

Whereas the Tribunal has received from the Staff Council of the United Nations Secretariat a written statement of its views on the questions of principle involved in this case ;

Whereas the following are the facts as to the Applicant :

The Applicant entered the service of the United Nations on 15 December 1947, when she received a temporary (later termed "temporary-indefinite") appointment as Information Officer in the United Nations International Children's Emergency Fund. On 15 October 1952 she appeared before the Internal Security Sub-Committee of the United States Senate as a witness in an investigation into the activities of the United States citizens employed by the United Nations. At the Sub-Committee's public hearing she refused to answer three questions put to her, pleading privilege under the Fifth Amendment to the United States Constitution. On 16 October 1952 the Applicant submitted her resignation by telegram to the Executive Director of the Fund. No acknowledgment or reply to this telegram was received by her, and she later withdrew her resignation by letter dated 6 December 1952. In a letter dated 7 January 1953 the Secretary-General notified the Applicant that under the powers conferred upon him by staff regulation 9.1 (c), he had decided to terminate her appointment with effect from 8 February 1953. By letter of 23 January 1953 the Applicant protested against the Secretary-General's decision and requested that her case be submitted directly to the Tribunal. The Secretary-General replied by letter of 27 January 1953 that he agreed to this procedure being followed under article 7 of the Tribunal's Statute.

On 11 February 1953 Mr. McDiarmid, Acting Director of Personnel, informed the Applicant that if she wished to fill in the necessary forms, the Personnel Office would transmit them to the United States Government as forms of an Applicant the Personnel Office might be considering for employment. The Applicant replied that she had informed the United States Government more than a dozen years ago that she had been in the past a member of the Communist Party, that since the giving of that information she had been employed by the United States Government and that as recently as in the summer 1952 she had been the subject of an investigation by representatives of the F.B.I. in several of the places she had resided. Since she felt that the United States Government, and particularly the F.B.I., already had the most complete possible information about her, she was dubious

about the advantage of any investigation. On 17 February 1953 the Applicant filed an application with the Tribunal for reinstatement in her former post.

Whereas the Applicant's principal contentions are as follows :

(a) The Staff Regulations, as amended by the General Assembly at its sixth session, do not modify the legal principles applicable to staff members holding temporary-indefinite appointments, as laid down by the Administrative Tribunal in its Judgement No. 4 (Howrani et al.). It follows that the Secretary-General, in terminating the Applicant's appointment without stating the reason, committed an infringement of the provisions of staff regulation 9.1 (c), properly interpreted.

(b) The termination of the Applicant's appointment was effected by the Secretary-General on the basis of fear of what the United States Government might say and constitutes a breach of Article 100 of the Charter and is not in accordance with the spirit of Article 101.

(c) The conduct and services of the Applicant having been satisfactory, the conclusion to be drawn is that the Respondent based his decision on one of the following grounds :

(i) The Applicant refused to answer certain questions before the Internal Security Sub-Committee of the United States Senate, pleading privilege under the Fifth Amendment ;

(ii) She expressed sympathy with certain organizations ;

(iii) She belonged to the Communist Party in 1935 ;

(iv) She is at present a member of the Progressive Party.

Termination of employment on any of these grounds conflicts with the provisions of the Charter, the Staff Regulations, particularly regulation 1.4, the Staff Rules and the Universal Declaration of Human Rights.

Whereas the Respondent's answer is that :

(a) The Secretary-General is not required under staff regulation 9.1 (c) to give reasons for the termination of temporary-indefinite appointments.

(b) Termination was not decided upon on the ground of the Applicant's political beliefs.

(c) One of the reasons for the Secretary-General's decision was that the Applicant had pleaded privilege before the Senate Sub-Committee under the Fifth Amendment. By so doing the Applicant infringed the provisions of staff regulation 1.4, which requires of United Nations staff members the reserve and tact incumbent upon them by reason of their international status.

The Tribunal having deliberated until 21 August 1953, now pronounces the following judgement :

1. Article 9.1 (c) of the Staff Regulations provides that the Secretary-General may terminate temporary appointments, if in his opinion such

action would be in the interest of the United Nations. The discussions in the Fifth Committee show that the intention of the authors of this provision, approved by the General Assembly's resolution 590 (VI) on 2 February 1952, was to invest the Secretary-General with discretionary powers in the termination of temporary appointments.

2. The Tribunal, however, finds that such discretionary powers must not be exercised without improper motive so that there should be no misuse of power, since any such misuse of power would call for the revoking of the decision.

3. In this case, the Applicant's appointment was terminated through the Secretary-General's letter of 7 January 1953, in which the Applicant was told that the Secretary-General, acting under the authority granted to him by article 9.1 of the Staff Regulations, had decided not to continue the Applicant's employment with the Secretariat. The more specific reason why the Secretary-General thus made use of article 9.1 (c) was not stated at the time of the termination of the Applicant's appointment. During the proceedings before the Tribunal, the Respondent gave no other indication of the reason than letting it be understood that at least one reason was the Applicant's invoking of the privilege of the Fifth Amendment before the Internal Security Sub-Committee of the United States Senate on 15 October 1952.

4. The Tribunal has made a careful study of the pertinent facts and in particular has perused the documents contained in the Applicant's personnel file. The Tribunal is convinced that the decision to terminate the Applicant's appointment was taken only because of the circumstances relating to her appearance before the Sub-Committee on 15 October 1952.

5. The Tribunal is fortified in this opinion by the fact that the Secretary-General was so insecure in his own views that on 11 February 1953 he voluntarily caused her to be invited to complete forms with a view to submission to the United States Government as if she were a fresh applicant for employment with the United Nations.

The Tribunal reaches the conclusion that this indicated that the Secretary-General, in the light of later information, realized that his original decision to terminate the Applicant was not sufficiently considered, being open to the suggestion of misuse of power.

6. There was only one issue on which the Applicant had refused information in the proceedings of the Sub-Committee. Of the three answers refused in the public proceedings, the Applicant had given adequate answer to two questions in executive session, leaving only one question unanswered. This question was as to who in 1935 had asked her to join the Communist Party.

The Applicant already had refused to furnish the names of those who were in the Party with her, in the course of her affidavit to the

F.B.I. in 1939, prior to her eight years' service in the United States Government.

7. It is not clear to the Tribunal in what way the services of any staff member can be of less value in her employment with the United Nations, by reason of declining to name some one person who invited her, many years before the creation of the United Nations, to join the Communist Party, a membership which she had terminated within just over one year, particularly in the light of the fact that her previous refusal to give such information to the F.B.I. had not precluded her employment by the United States Government.

8. Moreover, in his statement to the Tribunal on 20 March 1953 the Respondent was at pains to point out that the pleading of the privilege of the Fifth Amendment was quite unnecessary because the person who recruited her for her membership of one year in the Communist Party did so in 1935 and any crime on which these matters could reasonably bear could not be prosecuted after the lapse of three years. The Respondent went on to point out that this is the usual statute of limitations applicable to federal crimes, quoting in support 8 *Wigmore on Evidence*, 3rd Ed., section 2279, to the effect that once the statute of limitations has run, the privilege no longer applies.

9. In the view of the Tribunal, this was a further reason for the decision of the Secretary-General to seek on the 11 February 1953 an arrangement with the Applicant whereby she would accept the dismissal and not submit her appeal to this Tribunal but instead would re-apply for employment with the United Nations.

10. The Tribunal feels therefore that the main motivation behind the decision of the Secretary-General on 7 January 1953 must have consisted only of his knowledge that in 1935 she had been, for just over one year, a member of the Communist Party.

11. Staff regulation 1.4 recognizes the right of staff members not to give up their political opinions. So that membership of any particular party would not, of itself, be a justification, in the absence of other cause, for dismissal.

12. In this case the staff member, as was given by her in evidence to the Sub-Committee, is registered as a member of the Progressive Party and the membership of the Communist Party which she freely admitted commencing in 1935, terminated in 1936.

13. A decision based on such premises is a violation of an inalienable right of staff members and represents a misuse of power.

For these reasons the Tribunal decides that the decision to terminate the Applicant's appointment is ultra vires and must be declared illegal.

14. Whereas the Tribunal has received claims in respect of the period up to date of reinstatement as follows :

- (a) For full salary up to date of reinstatement, less amount paid at

termination in lieu of notice and less also the amount of termination indemnity ;

(b) Additional remedial relief to the amount of \$7,050 ;

and has considered the Respondent's reply ;

the Tribunal awards

(a) Full salary up to the date of reinstatement less the amount paid at termination in lieu of notice and less also the amount of termination indemnity ;

(b) No remedial relief ;

and so orders.

15. Whereas the Tribunal having received from the Applicant a request for reimbursement of legal costs amounting to \$5,475.38, notes, with regard to its power to pronounce on such requests, that article 12 of its Rules authorizes applicants to be represented by counsel, and that accordingly costs may be incurred in submitting claims. It recalls that in a general statement of 14 December 1950 it pointed out that it could grant compensation for such costs if they are demonstrated to have been unavoidable, if they are reasonable in amount and if they exceed the normal expenses of litigation before the Tribunal. Recalling the case law of the League of Nations Tribunal (Judgements No. 13 of 7 March 1934 and No. 24 of 26 February 1946), " il n'y a aucune raison pour déroger au principe général de droit que les dépens, sauf compensation, sont payés par la partie qui succombe ", the Tribunal considers that it is competent to pronounce upon the costs.

The Tribunal awards an amount of \$300

and so orders.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Omar LOUFTI
Alternate Member

Mani SANASEN
Executive Secretary

Geneva, 21 August 1953
