

Judgement No. 26

Case No. 34 :
Zap, Marjorie

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 Marjorie L. Zap, former member of the Division of Economic Stability and Development, Department of Economic Affairs, filed an application to the Tribunal on 17 February 1953, for rescission of the Secretary-General's decision of 16 October 1952 to terminate her employment, for reinstatement in her post and for compensation ;

Whereas a memorandum was submitted to the Tribunal in her name and in the name of other Applicants ;

Whereas documents were produced on 23 and 29 July 1953 in justification of the amount of compensation claimed and substituting a request for compensation for the request for reinstatement ;

Whereas the Respondent filed his reply to the application 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 in accordance with article 9 (3) of the Tribunal's Rules ;

Whereas the Tribunal heard the parties in public session on 20, 21, 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 facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 5 May 1947 when she was appointed on a temporary (later, temporary-indefinite) contract as an economic affairs officer in the Division of Economic Stability and Development, Department of Economic Affairs. On 14 October 1952, the Applicant appeared as a witness before the Internal Security Sub-Committee of the U.S. Senate which was investigating the activities of U.S. citizens employed by the United Nations. At the hearing of the Senate sub-committee, the Applicant invoked the privilege under the Fifth Amendment to the Constitution of the United States and refused to reply to certain of the questions put to her. On 16 October 1952, the Director of the Bureau of Personnel notified the Applicant of the termination of her appointment

with effect on 21 November 1952 on the basis of a recommendation of the Walters Selection Committee. On 22 October 1952, the Secretary-General placed the Applicant on special leave for the remainder of the notice period. On 12 November 1952, the Applicant requested the Administration to reconsider its decision to terminate her appointment. On 8 January 1953, the Secretary-General agreed to the submission of the application directly to the Tribunal in accordance with Article 7 of the Statute. On 17 February 1953, the Applicant filed an application to the Tribunal requesting reinstatement in the post previously held by her.

Whereas the Applicant's principal contentions are that :

(a) The termination resulted from pressure exercised upon the Secretary-General by the Senate Sub-Committee and the State Department of the United States in violation of the Charter and the Staff Regulations.

(b) The termination violated the Applicant's right to independent political convictions as guaranteed to staff by the Staff Regulations and infringed the rights laid down in the Universal Declaration of Human Rights.

(c) Staff regulation 9.1 (c) does not grant absolute discretion to the Secretary-General in terminating temporary-indefinite contracts as such an interpretation would conflict with the tenor of the entire body of Staff Regulations.

(d) The Respondent wrongfully based his decision to terminate Applicant's appointment on the findings of the Selection Committee and violated recognized standards of due process.

(e) The Respondent displayed prejudice against the Applicant on account of her activities as an officer of the Staff Association and thereby violated her right of association in contravention of staff regulation 8.1.

Whereas the Respondent's answer is that :

(a) The Respondent is entitled without doubt to receive information as to staff members from member governments.

(b) The Respondent denies that matters of opinion or belief were the cause of the termination of the Applicant's appointment.

(c) The Applicant's termination was properly based upon the recommendation of the Selection Committee which was made at a date prior to the Applicant's appearance before the Internal Security Sub-Committee of the U.S. Senate.

(d) There was no denial or right of association since the Respondent furnished a valid reason for termination.

(e) The Respondent asserts that there is no evidence produced that he acted from prejudice or for unlawful purposes.

(f) In the alternative, invocation of the constitutional privilege by

the Applicant would in any case have justified termination of her appointment.

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

1. Under the terms of its Statute, the Tribunal is not competent to pass judgement on the validity, in relation to the Charter, of an agreement made between the Secretary-General and a Member State, whatever influence this agreement might actually have had on the decision taken in respect of the Applicant. It is part of the Tribunal's function, however, to consider whether the termination of the Applicant's employment is in conformity with the provisions of the Staff Regulations and the Staff Rules.

2. The discussions in the Fifth Committee show that the intention of the authors of the United Nations Staff Regulations approved by General Assembly resolution 590 (VI) on 2 February 1952 was to invest the Secretary-General with discretionary powers in the termination of temporary appointments.

3. Article 9.1 (c) provides that the Secretary-General may terminate temporary appointments, if, in his opinion, such action would be in the interest of the United Nations.

4. Such discretionary powers must be exercised without improper motive so that there shall be no misuse of power, since any such misuse of power would call for the rescinding of the decision.

5. With regard to the case under consideration, the Applicant was informed that the reason for the termination of her appointment was a recommendation of the Walters Selection Committee.

The function of the Walters Selection Committee was to make recommendations to the Secretary-General as to which temporary staff (a) should be granted permanent appointments, or (b) should be placed on a further probationary period of one year, or (c) should be terminated.

On 8 October 1952 the Walters Committee made a recommendation jointly as to this Applicant and four other staff members, concerning whom it recommended as follows :

"The committee is reluctant to recommend termination in the case of staff members who have given, and are giving, honourable service within the limit of their capacities, and whom it would have recommended for permanent appointment at a high level in the General Service category. Nevertheless, in view of the necessity of sparing no effort to raise the average professional in the professional category to the highest possible level, it is not prepared to recommend permanent appointment in any of these cases. Nor can it recommend a period of probation.

"Accordingly, it recommends termination of these five staff

members and proposes that, if termination is decided upon, favourable consideration should simultaneously be given to the possibility of reclassification so as to enable the staff members concerned to continue in his or her present work."

6. As a result of the Committee's recommendation, the Director of the Bureau of Personnel sent a memorandum to the Applicant stating :

"The Secretary-General has given the most thorough consideration to this report [Walters Committee] and in view of the recommendation of the Committee, has decided to terminate your temporary appointment. He has further decided not to reclassify, at least for the time being, the post you presently occupy.

"This letter will constitute formal notice that your appointment will be terminated as of 21 November 1952. At the same time, I wish to inform you that you may apply for any posts in the general service category which are vacant, but with no assurance whatever of reappointment."

7. The Tribunal finds that the grounds alleged by the Respondent for the termination of the Applicant's employment appear to be such as might cause the Secretary-General to reach the opinion that the termination was in the interest of the United Nations under article 9.1(c) of the Staff Regulations.

Moreover no evidence has established improper motivation for the termination of the Applicant.

Accordingly, the Tribunal rejects the claim.

8. Whereas the Tribunal has received claims as follows :

(a) For full salary up to reinstatement, less amount paid at termination in lieu of notice ;

(b) For additional remedial relief to the extent of \$4,325 ;

(c) For reimbursement of legal costs amounting to \$1,450 ;
and has considered Respondent's reply ;

the Tribunal awards

(a) Since reinstatement is not ordered, there can be no amount for full salary payment to date ;

(b) No amount for remedial relief ;

(c) No amount for costs ;

and so orders.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Omar LOUTFI
Alternate Member

Mani SANASEN
Executive Secretary

Geneva, 21 August 1953