

10. Whereas the Tribunal has received claims as follows :

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

(b) For additional remedial relief to the extent of \$6,085 ;

(c) For reimbursement of legal costs amounting to \$2,095 ;

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

Statement by Mr. Petrén

On the question of acquired rights, I have reached the same conclusion as the majority of the Tribunal, as the General Assembly, in adopting the new Regulations, did not contemplate a transitional stage for contracts in force at the time of its decision, and as the Applicant's contract contained no provision prohibiting the immediate application of the new Staff Regulation 9.1 (c).

(Signature)

Sture PETRÉN

Judgement No. 28

Case No. 36 :
Wallach

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 Eugene Wallach, former member of the Language Services Division, Department of Conference and General Services, filed an application to the Tribunal on 17 February 1953, for rescission of the Secretary-General's decision of 20 June 1952 to terminate his employment, for reinstatement in his post and for compensation ;

Whereas a memorandum was submitted to the Tribunal in his 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 17 and on 23 July 1953 ;

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

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations as a verbatim reporter in the Editorial Division of the Department of Conference and General Services on 20 August 1946. After serving on a temporary (later, temporary-indefinite) contract, the Applicant received a permanent contract on 21 August 1947. At the time of his dismissal, the Applicant held the post of editor-verbatim reporter. The Applicant appeared as a witness before a Federal Grand Jury on several occasions between 9 and 19 June 1952. Arising out of press reports that at these meetings the Applicant had 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 him, the Applicant was questioned on 17, 18 and 20 June 1952 by the Administration as to the accuracy of statements on the application form submitted by him in 1946 with a view to employment by the United Nations. The Applicant having refused to answer certain of the Administration's questions, the Secretary-General, by letter of 20 June 1952, notified the Applicant that this refusal constituted serious misconduct and that he was therefore summarily dismissed under the terms of staff regulation 10.2. On 30 June 1952, the Applicant requested the Administration to cancel its decision of summary dismissal or, if the request was not granted, that the Secretary-General waive any procedure before the Joint Appeals Board

and that he agree to a hearing directly before the Administrative Tribunal. On 9 July 1952, it was answered that the summary dismissal stood and that the Secretary-General did not approve the Applicant's request to waive the Appeals Board's hearing. The Applicant was thus obliged to follow the regular procedure and filed his appeal with the Secretary of the Appeals Board. After receiving the Board's report on the case, the Respondent informed the Applicant, on 23 October 1952, that he reaffirmed his decision of summary dismissal. On 9 December 1952, the Applicant filed an application to the Tribunal which was returned to him for completion in accordance with the new Rules. On 17 February 1953, the Applicant filed his completed application to the Tribunal requesting reinstatement in the post previously held by him.

Whereas the Applicant's principal contentions are that :

(a) The procedure employed by the Secretary-General prior to dismissal of the Applicant was irregular and his failure to refer the case to the Joint Disciplinary Committee violated the terms of Staff Rule 140 (c) of the Staff Rules issued in July 1951 which the Applicant claims are applicable to him.

(b) The dismissal resulted from an illegal agreement between the Secretary-General and the United States State Department to eliminate staff members on political grounds and was therefore in violation of the Charter and the Staff Regulations.

(c) The dismissal resulted from pressure improperly exercised by United States agencies upon the United Nations in violation of the Charter.

(d) The dismissal violated the Applicant's right to independent political convictions as guaranteed to staff by the Staff Regulations and infringed the rights set forth in the Universal Declaration of Human Rights.

(e) The Applicant denies conduct which is unsatisfactory and contends that in any case summary dismissal cannot be justified under the Staff Regulations unless the misconduct is of an obviously flagrant and reprehensible nature.

(f) The decision of the Joint Appeals Board was basically jurisdictionally irregular by reason of the fact that the third representative—the staff representative—was not present consequent upon his withdrawal from the case and no steps were taken to summon the alternate representative under Article 146 (e) of the Staff Rules.

(g) The Secretary-General's action constituted denial of due process of law.

(h) The Secretary-General's action constituted an infringement of the Applicant's acquired contractual rights.

Whereas the Respondent's answer is that :

(a) The Secretary-General was obliged to inquire into the question whether the Applicant had deliberately withheld material information in his application for employment by the United Nations.

(b) The Applicant's refusal to answer questions put by his superior officers gave rise to the inference of fraud and constituted serious misconduct justifying summary dismissal.

(c) The Secretary-General is empowered to decide upon summary dismissal for serious misconduct without reference to the Joint Disciplinary Committee under the powers given him by the new Staff Regulations. The Applicant cannot in any case invoke the protection of acquired rights with respect to matters of procedure.

(d) There was no improper connexion between the action taken by the Secretary-General and the investigation by the Federal Grand Jury with respect to the Applicant nor did the Applicant's political opinions constitute grounds for his dismissal.

(e) The Applicant was given a full opportunity to present his case to the Joint Appeals Board to which he had submitted a written brief. The Applicant, when he received the Board's report, failed to make any protest against the absence of the staff representative's signature on the report.

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

1. The first matter for decision by the Tribunal was its competence to proceed to final judgement in the light of

(a) the claim that the appropriate procedure of the Joint Appeals Board was not utilized in accordance with staff rule 145 (a) (of the Staff Rules issued on 6 July 1951), viz.:

“A Joint Appeals Board shall be established to advise the Secretary-General in case of any appeal by staff members against any administrative decision alleging the non-observance of contracts of appointment or regarding the application of rules and regulations and established administrative practices or against disciplinary action.”

and

(b) article 7 of the Statute of the Tribunal in paragraph 1 as follows:

“An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the Applicant have agreed to submit the application directly to the Administrative Tribunal.”

2. The provisions of rule 146 are clear, namely:

“(a) The Joint Appeals Board at Headquarters shall consist of three members as follows:

“1. One member appointed by the Secretary-General;

“2. One member elected annually by ballot of the staff;

“3. A chairman appointed by the Secretary-General after consultation with the Staff Committee.

“(b) Alternates shall be selected in the same manner as the three members; an alternate shall serve during the consideration of any case for which a member is unavailable, or disqualified under paragraph (e) below; provided that alternates to the member elected by the staff shall serve in the order in which they receive in such election.

“(c) The members of the Joint Appeals Board shall serve concurrently for one year and shall be eligible for re-election.

“(d) The member and the alternates appointed by the Secretary-General may be removed by the Secretary-General; the Chairman and the alternate Chairman may be removed by the Secretary-General after consultation with the Staff Committee; the member and the alternates representing the staff may be removed by a two-thirds majority vote of the full Staff Committee.

“(e) The Chairman of the Joint Appeals Board at the request of either party may disqualify any member or alternate member from the consideration of a specific case, if in his opinion such action is warranted by the relation of such member or alternate to the staff member whose case is to be considered.

“The Chairman may also excuse any member from the consideration of a specific case. No person who has served on the Joint Disciplinary Committee during consideration of a specific case shall serve on the Joint Appeals Board when it considers an appeal relating to the same case.”

3. The member elected by the annual ballot of the Staff, Mr. Bancroft, having himself been asked questions by the Internal Security Sub-Committee of the U.S. Senate, had withdrawn from further participation on the Joint Appeals Board in connexion with the appeal of the Applicant. The Chairman, in accordance with the Staff Rules relating to the Appeals Board, had excused him from consideration of this case but the next regular alternate appointed under rule 146(b), who was available, was not summoned or notified. The Joint Appeals Board proceeded to a conclusion with only the two members (the Chairman and the member appointed by the Secretary-General) present and in the absence of the third member (the representative of the staff).

4. The Tribunal reaches the conclusion therefore

(a) that the proceedings of the Joint Appeals Board were not valid,

(b) consequently, that the submission of the case to the judgement

of this Tribunal at this time was not in accordance with article 7 of the Statute of the Tribunal and

(c) that the case should now be the subject of proper and appropriate procedure through the Joint Appeals Board.

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

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

(b) additional remedial relief to the extent of \$7,500 ;

and considered the Respondent's reply ;

the Tribunal

makes no award in the light of the conclusion reached (referred to in paragraph 4 above).

6. Whereas the Tribunal having received from the Applicant a request for reimbursement of legal costs amounting to \$2,500 ; 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 LOUTFI
Alternate Member

Mani SANASEN
Executive Secretary

Geneva, 21 August 1953