

(g) The Applicant's present age is 49.

(h) Her base salary was \$9,460 per annum.

3. In the light of all the foregoing considerations, the Tribunal orders as compensation the payment of full salary until the date of this judgement and of further compensation to the amount of \$16,000.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Mani SANASEN
Executive Secretary

London, 13 October 1953

Judgement No. 40

Case No. 38 :
Svenchansky

**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;

Whereas the Tribunal ordered the rescinding of the Secretary-General's decision to terminate the Applicant's permanent appointment with the United Nations in Judgement No. 30 of 21 August 1953;

Whereas the Tribunal was notified by the Secretary-General in a communication dated 2 September 1953 that he had

“decided that it would be inadvisable, from the points of view which it is my duty to take into consideration, to reinstate”
the Applicant;

Whereas the Tribunal is required therefore, in accordance with article 9 of the Statute, to “order the payment to the Applicant of compensation for the injury sustained”;

Whereas the Tribunal has received documentation with respect to such compensation on the following dates:

Statement of Claim by the Applicant, 2 October 1953;

Statement by the Respondent, 2 October 1953;

Respondent's Comments, 12 October 1953 ;

Applicant's Answer to Respondent's Statement, 13 October 1953.

Whereas the Applicant's principal contentions are :

1. The true measure of compensation consists of the "salary and other related job benefits, allowances and emoluments which the terminated staff member could have reasonably expected to earn had he rightfully continued in the employment of the United Nations Secretariat."

2. The Secretary-General's decision not to reinstate the Applicant "further contributed to the Applicant's damage and to his unemployability."

3. The Applicant has been over 6 years in the service of the United Nations and has enjoyed a record of competence, integrity and devotion to duty. The nature of the Applicant's work in the United Nations was highly specialized as he was a broadcaster in the Russian language. It will be difficult for him to earn a livelihood without acquiring new skills and he would have to do so at the age of 44. His early studies in the fields of physics and mathematics, which had not been followed by practical experience, do not give him a professional standing.

4. The Applicant requests the Tribunal to compute his compensation on the assumption that in the event of his reinstatement, he held a reasonable expectation of receiving regular basic salary payments until the age of retirement at 60, taking into account normal within-grade salary increases, possible promotion in grade, income-tax reimbursement, and the payment of pension after the age of 60.

Whereas the Respondent's answer is :

1. The Tribunal ordered the rescinding of the decision to terminate the Applicant's appointment only on procedural grounds and did not determine whether the Applicant could have been dismissed legally if the proper procedure had been followed. The Applicant's continued employment, if he had been reinstated, would have been subject to this risk.

2. The proper measure of damages is prospective earnings under the Applicant's contract less such future earnings as the Applicant might have had if he had not damaged his future earning capacity by his own conduct.

3. The action of the Secretary-General, either in his decision to terminate the Applicant's appointment or in exercising his discretion not to reinstate the Applicant, does not affect his powers of gaining a livelihood whereas the Applicant's conduct is a matter of public record. The Secretary-General's exercise of his discretion with respect to the Applicant cannot therefore be a proper basis for an additional claim for compensation.

4. The Applicant's knowledge of the Russian language could

ordinarily render him suitable for employment by U.S. Government agencies but his lack of suitability for such employment is due to his own actions. In any case, the Applicant is an electronic engineer and should easily find employment for the exercise of the skill which is urgently in demand.

The Tribunal having deliberated on 12 and 13 October 1953, now pronounces the following judgement :

1. The injury to be indemnified is that which results from the Secretary-General's refusal to reinstate. To determine the injury suffered, the Tribunal must consider to what extent the Applicant has expectation of continued employment, taking into account the terms and nature of the contract, the Staff Rules and Regulations and the facts pertaining to the situation and must evaluate the Applicant's chances of earning a livelihood after separation from the United Nations.

2. The Tribunal has given consideration *inter alia* to the following factors :

(a) The Applicant entered the service of the United Nations in October 1946 and has held a permanent appointment since April 1947.

(b) The Applicant's periodic reports indicate that he has shown a high degree of professional competence and that his work has been above average.

(c) While he had pursued studies in physics and mathematics, he has never practised in that field.

(d) The Applicant's present age is 44.

(e) His base salary is \$10,540 per annum.

3. In the light of all the foregoing considerations, the Tribunal orders as compensation the payment of full salary until the date of this judgement and of further compensation to the amount of \$20,000.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Mani SANASEN
Executive Secretary

London, 13 October 1953
