

Judgement No. 46

Case No. 53 :
White

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 ; Dr. Djalal Abdoh, alternate member ;

Whereas Lyman Cromwell White, former member of the Economic and Social Council Secretariat, Department of Economic Affairs, filed an application to the Tribunal on 4 August 1953 asking the Tribunal to decide (1) the Applicant's reinstatement in his post together with pay, allowances and other benefits, within-grade salary increment, reimbursement for expenses, (2) that he be given an indeterminate contract ;

Whereas the Respondent filed his reply to the application on 10 November 1953 ;

Whereas the Tribunal heard the parties in public session on 2 and 4 December 1953 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 1 April 1946 under an "indefinite" appointment as an International Affairs Specialist in the Social Affairs Division of the Department of Social Affairs. On 3 October 1948 the Applicant received a one-year fixed-term contract which was extended for the following periods : one year on 3 October 1949, one year on 3 October 1950, six months on 3 October 1951, four months on 3 April 1952 and four months and 29 days on 3 August 1952. On 28 October 1952, the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided to accept a recommendation of the Walters Selection Committee that the Applicant's temporary appointment be terminated and informing him that this would constitute formal notice that the Applicant would not be offered another appointment at the expiration of his present contract — i.e., 31 December 1952.

The recommendation of the Walters Selection Committee in so far as it relates to the Applicant's appointment was as follows :

"Recommended for termination

"Mr. Lyman C. White ;

"The Committee considers that Mr. White does not possess the qualities of reliable judgement required by a permanent civil servant

and particularly so in the special function which he has been performing.”

On 14 November 1952, the Applicant requested the Administration to reconsider its decision and, in view of the refusal encountered, filed an appeal with the Joint Appeals Board on 1 December 1952. On 29 April 1953, after receiving the report of the Joint Appeals Board, deciding that it could not support the appeal of the Applicant, the Secretary-General informed the Applicant, through the Director of the Bureau of Personnel, that he would see no objection to his submitting now his case to the Administrative Tribunal.

Whereas the Applicant's principal contentions are :

1. The Applicant's contractual status invests him with all the rights inherent in expectancy of continued employment. The work performed by the Applicant had all the indications of permanency. No criticism made of the Applicant's performance was of such great or serious consequence as to eliminate the acquired rights of expectancy of continued employment. The Applicant was entitled to be offered other employment.

2. The Administration is bound to substantiate its charge against the Applicant in a manner sufficient to enable him to test it before the Administrative Tribunal. The notification to the Applicant of termination of his appointment does not contain a statement sufficiently specific to be a "statement of cause". There is no evidence of any single incident of defective judgement on the part of the Applicant nor has the Respondent supplied any definition of "qualities of reliable judgement".

3. In testing the sufficiency of the reason given for termination, the Tribunal must examine "the record as a whole" including any evidence of prejudice. The procedure before the Walters Selection Committee amounts to a denial of due process. The Applicant was given no opportunity to test the charges made against him by his superiors in his absence or to present his own case in a manner sufficient to familiarize the Committee with the record as a whole. Furthermore, there is substantial evidence "in the record" tending to show that the Applicant's superiors became resentful of him, and thus the recommendation of the Walters Committee was motivated by prejudice.

4. In the later stage of the oral proceedings, the Applicant submitted that hidden political motives interwoven with personal motives of resentment were a contributory factor leading to his dismissal.

Whereas the Respondent's answer is :

1. The case does not involve termination of appointment but the non-renewal of a fixed-term contract. The non-renewal was in conformity with former Staff Rule 115 and with present Staff Rule 109.7.

2. The Applicant did not have a reasonable expectancy of continued

employment. In his periodic reports the unfavourable comments effectively destroy any expectancy of continued service.

3. Even if any expectancy of continued employment existed, the non-renewal of the Applicant's appointment was an act of administrative discretion which the Administrative Tribunal will not review in this case.

The scope of review of acts of administrative discretion is limited to determining whether they are in conflict with the Staff Regulations or Rules or have an improper motive.

4. There was no denial of due process; the Secretary-General's consultation of the Walters Selection Committee was a reasonable method of arriving at administrative determination of the qualifications of staff members. This Committee was established with the approval of the General Assembly and its procedure was reasonable in view of the special nature of its task.

5. The determination that the Applicant lacked the qualities of reliable judgement was reasonable. Apart from his periodic reports, the Applicant's suitability for employment was questioned as far back as 1947 and the matter of his separation from the United Nations came under most serious consideration in 1951.

6. There is no evidence of prejudice against the Applicant. The record as a whole shows that the Applicant was treated with scrupulous fairness and humane consideration.

7. The testimony under oath of the superior concerned was to the effect that no ideological motives influenced the recommendation of the Walters Committee.

The Tribunal having deliberated until 11 December 1953, now pronounces the following judgement :

1. The Tribunal is asked to decide that the Applicant be reinstated in his post as a member of the Non-Governmental Organization Section of the Economic and Social Council Secretariat as of 1 January 1953 and that he be given an indeterminate contract.

On this latter request, the Tribunal observes the following in Staff Regulation 4.1, viz :

“as stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General”.

Annex II adds :

“the letter of appointment shall state :

“... (ii) the nature of the appointment”.

Therefore, it is not for the Tribunal to decide what kind of contract a staff member is entitled to receive.

2. On the request for reinstatement, the Tribunal notes that the Applicant had received since 1946 several fixed-term appointments.

The latest, effective 3 August 1952, had a tenure of four months and twenty-nine days and expired 31 December 1952.

On 28 October 1952, the Director of the Bureau of Personnel gave formal notice that the Applicant would not be offered another appointment at the expiration of his contract.

Staff Rule 115 then in force stated :

“A fixed-term appointment shall expire without prior notice on the expiration date specified in the letter of appointment but normally a staff member serving under such appointment shall be told well in advance what action is proposed on the expiration date.”

The Tribunal notes that the Applicant was notified two months in advance of the action proposed and considers that it was a proper application of the appropriate Staff Rule.

3. It is not necessary for the Tribunal to decide whether the Applicant had an expectancy to receive from the Administration a new contract and consequently was or was not entitled to know the reason why a new contract was not granted. The reason for the decision of the Secretary-General was indicated in the communication made to the Applicant and dated 29 October 1952, in the following terms :

“The Selection Committee, under the Chairmanship of Mr. F. P. Walters, which recently reviewed your temporary appointment in the Secretariat, has now made its report to the Secretary-General. The recommendation of the Committee to the Secretary-General, in so far as it relates to your appointment was as follows :

“ ‘ *Recommended for termination*

“ ‘ Mr. Lyman C. White ;

“ ‘ The Committee considers that Mr. White does not possess the qualities of reliable judgement required by a permanent civil servant and particularly so in the special function which he has been performing.’

“The Secretary-General has given the most thorough consideration to his report and has decided to accept the recommendation of the Committee that your temporary appointment is terminated.”

4. The Tribunal notes that, according to Staff Rule 61 then in force, fixed-term appointments were regarded as temporary appointments.

The Secretary-General having to take a decision on the future employment of the Applicant was entitled to ask the Walters Committee to consider the matter and the Committee was competent to make recommendations as to the future employment of staff.

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.

The Tribunal considers that the Secretary-General, by stating that he accepted the Walters Committee's recommendation, gave a valid reason for not granting a new appointment to the Applicant.

5. As regards the arguments of the Applicant that the conditions of functioning of the Walters Selection Committee in his case were such that the decision reached was vitiated:

(a) By lack of due process;

(b) By prejudice.

the Tribunal notes as follows:

As to lack of due process, the Tribunal notes that the Committee was an internal administrative body, established by, and functioning in the way approved by the Secretary-General in order to tender him advice. It is not for the Tribunal to express an opinion on internal administrative practices adopted by the Secretary-General.

The Tribunal notes that the Secretary-General was aware of the procedure of and the methods followed by the Committee and decided to follow the recommendations of this body. Any suggestion that the Tribunal should express a view as to the effective nature of the work or the procedure of the Walters Committee is ill-founded.

6. In the presentation of his allegations of bias and prejudice, the Applicant sought to suggest his superior officers acted against him because of resentment and political motives. These allegations were made by inference rather than supported by proof adduced. In the proceedings on the first day of hearing, the Applicant referred only to personal disagreement, resentment and friction but at the conclusion of the proceedings, on the second day, additional allegations of political prejudice were introduced. The Tribunal thought it well to receive evidence on oath from the senior officer in question. The Tribunal regrets the manner in which such allegations were made and having very carefully studied all the facts and documentation, finds the allegations unsubstantiated.

7. The Tribunal is aware that the Applicant received an *ex-gratia* indemnity of five months' salary.

8. The Tribunal rejects the claim.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Omar LOUFTI
Alternate Member

Djalal ABDOH
Alternate Member

Mani SANASEN
Executive Secretary

New York, 11 December 1953