

Judgement No. 47**Case No. 49 :**
Carter**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 Roger P. Carter, former member of the Social Welfare Division, Department of Social Affairs, filed an application to the Tribunal on 30 June 1953, for rescission of the Secretary-General's decision of 29 October 1952, to terminate his employment, and if, after such finding the Secretary-General shall deem reinstatement of the Applicant impossible or inadvisable, for compensation for the injuries sustained;

Whereas the Respondent filed his answer to the application on 17 November 1953;

Whereas the Tribunal heard the parties in public session on 3 December 1953;

Whereas the facts as to the Applicant are as follows:

The Applicant entered the service of the United Nations on 23 November 1948 under a two-year fixed-term contract as a Social Affairs Officer in the Division of Social Activities, Department of Social Affairs. On 23 November 1950, the Applicant's contract was extended for two years. On 29 October 1952, the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided not to keep him on the staff after 31 January 1953, and since his contract expired on 22 November 1952, to offer him a new fixed-term appointment for two months and nine days. In so doing, the Secretary-General acted on the basis of a recommendation of the Walters Selection Committee which stated: "The Committee does not consider that Mr. Carter possesses the qualities of temperament and intellect required by a permanent international civil servant holding a high-level professional post." The Applicant accepted the extension of his appointment, but on 12 November 1952 he requested the Assistant Secretary-General in charge of Administrative and Financial Services to reconsider the decision.

In view of the refusal encountered, the Applicant filed an appeal with the Joint Appeals Board. The Board, in a report, subject to one

dissenting opinion, declared itself unable to make any recommendation in support of the appeal. On 29 April 1953, the Secretary-General communicated to the Applicant, through the Director of the Bureau of Personnel, the conclusions and recommendations of the Joint Appeals Board and informed him that the Secretary-General would see no objection to submission of his case to the Administrative Tribunal. On 30 June 1953, the Applicant filed an application with the Tribunal.

Whereas the Applicant's principal contentions are :

1. The separation of the Applicant was based on the statement of the Walters Selection Committee that the Applicant did not possess the qualities of temperament and intellect required by a permanent international civil servant. The Applicant's record of service in the United Nations shows that the Walters Committee totally lacked any factual or realistic basis for the conclusion which it reached. The Committee's indifference to or ignorance of recorded and objective facts deprived the Applicant of due process and fair treatment. Notwithstanding his termination on 21 January 1953, the favourable opinion held by his superiors was such as to cause him to be offered on 22 May 1953 a special service agreement for employment on work of a character similar to that previously performed.

2. The Respondent violated due process in discharging the Applicant without giving notice of any charges against him and without affording him a hearing or chance to answer such charges.

3. The destruction of all records by the Walters Selection Committee deprived the Applicant of his right of appeal and of his right of due process. The reasons and considerations that constituted the basis of the action of the Secretary-General must be available to permit appeal to the Tribunal. Procedural due process necessitates the revelation of evidence on which a disputed administrative order is based, an opportunity to explore that evidence and a conclusion based on reason and not merely arbitrary.

Whereas the Respondent's answer is :

1. The case does not involve termination of employment but the non-renewal of a fixed-term contract. The non-renewal was in conformity with Staff Rule 109.7 and the Applicant had previously received two express warnings which destroyed whatever expectancy of continued service he may have had.

2. Even if any expectancy of continued employment existed, the non-renewal of the Applicant's fixed-term contract 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.

3. There was no denial of due process ; the Secretary-General's resort to the Walters Selection Committee was a reasonable method of arriving at administrative determination of the qualifications of staff members. Its procedure was reasonable in view of the special nature of its task and was worked out with full regard to the interests of both the Organization and the temporary staff under review.

4. Any differences between the opinion of the Walters Committee and those of the supervisors concerned were more apparent than real. The Walters Selection Committee never questioned the qualifications of the Applicant for employment by the United Nations on a temporary basis. Its recommendation was limited to stating in effect that the Applicant failed to qualify for a permanent appointment.

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

1. The Tribunal is asked to order the rescinding of the decision taken on 29 October 1952 and notified to the Applicant by the Director of the Bureau of Personnel.

According to this notification :

(i) The Secretary-General had decided that the Applicant would not be kept on the staff after 31 January 1953 ;

(ii) Since the Applicant's fixed-term contract expired on 23 November 1952, a new fixed-term appointment for two months and nine days was offered to him.

2. The services of the Applicant ended at the expiration date of a fixed-term appointment and the decision of 29 October 1952 constitutes the formal notice of the intention of the Secretary-General not to give to the Applicant another appointment.

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 three months in advance of the action proposed and considers that it was a proper application of the appropriate staff rule.

3. Moreover, the reason for the decision of the Secretary-General was indicated in the communication made to the Applicant dated 29 October 1952.

The Secretary-General accepted the recommendation made by the Walters Selection Committee as to the Applicant.

This recommendation implied that the Applicant's appointment should be terminated and was in the following terms :

“The Committee does not consider that Mr. Carter possesses the qualities of temperament and intellect required by a permanent international civil servant holding a high-level professional post.”

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 Selection Committee to consider the matter and the Committee was competent to make recommendations as to the future employment of staff.

In accepting the Walters Committee recommendation and in so notifying the Applicant, the Secretary-General gave a valid reason for not granting a new appointment to the Applicant.

5. The Staff Regulations or Rules do not impose upon the Secretary-General any need to discuss with the interested staff member the reason for the non-renewal of his temporary contract before the final decision is reached. Under the Staff Regulations and Rules, the staff member has the right to avail himself of the appeals procedure set down.

6. As regards the argument alleging the absence of due process before the Walters Committee, 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 accept the recommendations of this body.

7. The Tribunal has considered the allegation that there were contradictions between the recommendation of the Walters Selection Committee and the opinion of the Applicant's supervisors, but does not consider that it is called upon to express any view on the conclusions reached by the Committee. That Committee, set up by the Secretary-General as an internal administrative advisory body, would naturally pay regard to various matters and considerations additional to the periodic reports in order to proffer its considered judgement. The Tribunal, therefore, can see no justification for a suggestion that it should substitute its own judgement for that of the Walters Committee.

8. The Tribunal is aware that the Applicant received an *ex-gratia* payment of the amount of a three months' indemnity on separation.

9. The Tribunal rejects the request for rescission of the decision of 29 October 1952 and all other subsidiary requests.

(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

Judgement No. 48

Case No. 47 :
Wang

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 Loufti, alternate member; Dr. Djalal Abdoh, alternate member;

Whereas Loretta Yichen Wang, former member of the Language Services Division, Department of Conference and General Services, filed an application with the Tribunal on 13 May 1953, requesting rescission of the Secretary-General's decision of 20 October 1952 to terminate her employment, reinstatement in her post and the award of compensation;

Whereas the Respondent filed his answer to the application on 18 November 1953;

Whereas further documents were produced by the Applicant during the proceeding;

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

Whereas the facts as to the Applicant are as follows:

The Applicant entered the service of the United Nations on 22 July 1946 under a temporary (later converted to temporary-indefinite) appointment as a Secretary in the Languages Division of the Department of Conference and General Services. On 13 November