

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 Petrén, 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

1946, the Applicant was reclassified from Secretary to Translator. On 20 October 1952 the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided to terminate her appointment, with effect on 31 December 1952, on the recommendation of the Walters Selection Committee, and gave as a reason for the termination that "The Committee considers that Mrs. Loretta Yichen Wang is not able to maintain the high standard required in the translation services of the United Nations." On 2 November 1952, the Applicant requested the Administration to reconsider its decision and, in view of the refusal encountered, asked permission to appeal directly to the Administrative Tribunal. By letter of 29 December 1952, the Secretary-General agreed to this request. On 6 April 1953, the Applicant presented an application to the Tribunal which was returned to her for completion in accordance with the revised rules of the Tribunal. On 13 May the Applicant filed the completed application with the Tribunal. On 22 July 1953, the Secretary-General informed the Applicant that he would submit her case for reconsideration by the Selection Committee presided over by Sir A. Ramaswami Mudaliar. On 21 October 1953, after receiving the report of the Selection Committee, the Secretary-General advised the Applicant of his decision to reaffirm the termination of her appointment.

Whereas the Applicant's principal contentions are :

1. The Respondent violated due process in terminating the Applicant's appointment without giving notice of any charges against her and without affording her a hearing.

2. The destruction of all records by the Walters Selection Committee deprived the Applicant of her right of appeal and her right to due process. The reason 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.

3. Termination for failure to "maintain the high standard" required in her position is contrary to fact since the Applicant's rating was "satisfactory" in all her periodic reports.

4. The Applicant's appointment was terminated "because of prejudice and other extraneous factors". The Applicant's refusal to subscribe to the policy of loans, gifts, and advances required by her supervisor after 1949 was fatal to her career.

5. Staff Regulation 9.1 (c) has not been observed in the case in that the phrase "The Secretary-General may at any time terminate the appointment if, in his opinion, such action would be in the interest of the United Nations" has been misinterpreted as though "opinion" read "uncontrolled discretion."

6. Whereas in the course of proceedings the Applicant contended that the Administration having previously acted in her case under the authority of the Walters Committee, could not later change its ground and invoke dismissal, before the Tribunal, under the Mudaliar Committee's recommendation.

Whereas the Respondent's answer is :

1. The Secretary-General's reasons for terminating temporary appointments are not reviewable by the Tribunal except for improper motive.

(a) They are not reviewable because of the wide discretionary powers vested in the Secretary-General under Staff Regulation 9.1 (c). The Applicant's temporary appointment was terminated under Staff Regulation 9.1 (c) and Staff Rule 109.3 (c). Staff Regulation 9.1 (c) makes it quite clear that the temporary staff of the United Nations is subject to termination when such action is in the interests of the Organization and that the Secretary-General and he alone is the judge as to whether or not the interests of the Organization require a termination.

The intention of the General Assembly in this regard is quite clear and is reflected in the findings of the Tribunal in Judgement No. 21.

(b) The legislative history of the Tribunal's Statute and the jurisprudence of the Tribunal show that the Tribunal must not substitute its judgement for that of the Secretary-General in matters falling within the Secretary-General's administrative discretion.

At the discussions at the fourth session of the General Assembly, the statements of the Secretary-General and the Advisory Committee concerning the Secretary-General's exclusive rights to decide on professional competence were not questioned. The broad scope of the Secretary-General's discretionary powers have been recognized in Judgement No. 14.

2. The reasons for termination were sound and not prompted by improper motive.

(a) Resort to the Selection Committee was a reasonable method of determining the qualifications of staff members. The Committee was established with the knowledge and approval of the General Assembly. The Committee was in no sense a court and its procedure being informal, it decided that it was unnecessary to keep records of its proceedings.

(b) The Secretary-General's determination that the Applicant was not qualified for a permanent contract is corroborated by the personnel records.

(c) There was no improper motive in this case. The Applicant's supervisor was not solely responsible for the appraisal of her work but shared such responsibility with a group of supervisors. When

certain information came to light involving the Applicant's supervisor, the Secretary-General resubmitted the case to the Selection Committee which confirmed its previous decision with respect to the Applicant. This Committee was the same Selection Committee previously presided over by Mr. Walters and now under the new chairmanship of Sir. A. Ramaswami Mudaliar. The action taken in no way represented a change of ground.

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

1. Regulation 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.

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. 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.

4. 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.

The Walters Committee's recommendation as to the Applicant was that she be terminated as she was "not able to maintain the high standard required in the translation services of the United Nations."

5. As a result of the Committee's recommendation, the Director of the Bureau of Personnel sent a memorandum to the Applicant on 20 October 1952 stating that the Secretary-General had given the most thorough consideration to the report of the Walters Committee and had decided to accept the recommendation of the Committee that the Applicant's temporary appointment be terminated as of 31 December 1952. When certain information came to light involving the Applicant's supervisor, the Secretary-General resubmitted the case to the Selection Committee which, under new chairmanship, confirmed its previous decision with respect to the Applicant on 26 September 1953 after having considered the Applicant's record as a whole.

6. The Tribunal considers that the Secretary-General is entitled to set such standards for recruitment to permanent appointments as appear to him to be appropriate. Accordingly, the Tribunal finds that

the ground alleged by the Respondent for the termination appears 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. Furthermore, the Tribunal considers that the Applicant's contention that she was dismissed because of prejudice and other extraneous factors has not been established. Taking into account the review of the Applicant's case by the Mudaliar Selection Committee which reached the same conclusion as the Walters Committee, the Tribunal cannot believe that appraisal of her work had been affected by improper motivation. Accordingly, the Tribunal rejects the claim.

7. Whereas the Tribunal has received claims as follows :

(a) Full salary from the date of termination to the date of reinstatement, including all benefits and within-grade increases ;

(b) All reasonable costs and expenses of this appeal, including travel expenses ;

(c) Such damages for loss of position and reputation as are deemed fitting and proper by the Tribunal, including reasonable compensation for the period during which Applicant must search for new employment, bearing in mind that opportunities for the position of Chinese translator are strictly limited in the United States ;

the Tribunal decides

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

(b) No amount for costs or expenses ;

(c) No amount for damages or compensation ;
and so orders.

(Signatures)

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President

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