

Judgement No. 49

Case No. 48 :
Carruthers

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 Ben F. Carruthers, former member of the Human Rights Division, Department of Social Affairs, filed an application to the Tribunal on 19 June 1953, requesting reinstatement in his post or one of similar competence in the United Nations Secretariat ;

Whereas the Respondent filed his answer to the application on 19 November 1953 ;

Whereas the Tribunal heard the parties in public session on 7 December 1953 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 1 December 1948 on a one-month fixed-term appointment as Information Officer in the Press and Publications Division, Department of Public Information. On 7 February 1949 he received a three-month fixed-term appointment as Social Affairs Officer in the Human Rights Division, Department of Social Affairs, and on 7 May 1949 this appointment was extended for a period of one month. On 7 June 1949 the Applicant received a temporary-indefinite contract. On 20 October 1952 the Director of the Bureau of Personnel notified the Applicant that the Secretary-General had decided to terminate his appointment with effect on 21 December 1952, on the basis of a recommendation of the Walters Selection Committee stating that "In recommending termination in this case, the Committee wishes to explain that this recommendation derives from the fact that the work upon which Mr. Carruthers is at present engaged will end in about two years and that he is not considered to possess the qualifications and versatility required for a career in the Secretariat. In the circumstances, the Committee feels that, if the Secretary-General decided to continue Mr. Carruthers in his present employment, a fixed-term appointment of two years would be appropriate." On 7 November 1952 the Applicant wrote to the Assistant Secretary-General in charge of administrative and financial services to protest against this decision. His protest was rejected on 21 November 1952 and on 8 December 1952 the Applicant filed an appeal with the Joint Appeals Board. On 16 March 1953, after having given consideration to the Board's suggestion that the Applicant should be employed on a fixed-term

contract if the functions to which he was previously assigned were to be continued as a full-time task for a reasonable period, the Secretary-General informed the Applicant that no such possibility existed and that he reaffirmed the termination of employment. However, the Secretary-General followed the Board's suggestion that the Applicant be given one more month's termination indemnity by changing the effective date of the Applicant's termination from 21 December 1952 to 8 February 1953. On 19 June 1953, the Applicant filed an application with the Tribunal.

Whereas the Applicant's principal contentions are :

1. The termination was improper. The Secretary-General first purported to base his decision solely on the Walters Selection Committee's report and on its allegations as to the Applicant's lack of qualifications. When the error of his reliance on the Committee's report was established, the Secretary-General changed his ground by purporting to abolish the Applicant's post. Neither ground on the facts of the case can furnish a proper basis for termination.

2. The procedure of the Walters Selection Committee was arbitrary. The Applicant was unable to ascertain how the Committee reached its conclusions because of the destruction of its records. The Applicant's superior officer had informed the Walters Selection Committee that he recommended the granting of a permanent contract to the Applicant. No evidence was presented to the Selection Committee which might in any way impugn the quality of the Applicant's work.

3. The Secretary-General's second ground for termination, viz: abolition of post, is also not valid. The Secretary-General is seeking, by public advertisement and otherwise, to obtain personnel for the type of work performed by the Applicant. The purported abolition of the post is an after-thought serving only to disguise the Administration's improper termination of the Applicant's employment.

4. The Respondent violated the Staff Rules and the provisions of the Administrative Manual by failing to make any effort to find a post elsewhere for the Applicant.

The Administrative Manual (Chapter 6, Section 6) provides that "normally, the selection of staff to be terminated shall be proposed by the Department concerned whose choices shall be approved by the Bureau of Personnel".

No such procedure was followed in the Applicant's case.

5. There has been a persistent and stubborn refusal to comply with Staff Rules regarding certificates of service.

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.

This is the consequences of the wide discretionary powers vested in the Secretary-General under Staff Regulation 9.1 (c).

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.

2. 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 has been recognized by the Tribunal in Judgement No. 14.

3. 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.

4. There was no improper motive in this case.

The Respondent did not, as alleged by the Applicant, change his ground by purporting to abolish the post but merely clarified his position, nor did he override the findings of the Joint Appeals Board. The Applicant's allegations regarding his difficulty in obtaining a certificate of service are unfounded.

5. No effort was made by the Respondent to place the Applicant in another post because both the General Assembly and the Secretary-General had recognized the need of reaching a final decision regarding the future of all staff in the Applicant's category and had agreed that, subject to certain exceptions, the decision in each case must be either that the appointment of the staff member concerned be terminated or that the staff member be granted a permanent appointment.

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

1. Staff 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 his 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.

5. The Walters Committee's recommendation as to the Applicant was that he be terminated as the work upon which he is "at present engaged will end in about two years and that he is not considered to possess the qualifications and versatility required for a career in the Secretariat." But the Committee expressed no opinion on the quality of the work of the Applicant in his present post, adding: "In the circumstances, the Committee feels that if the Secretary-General decided to continue Mr. Carruthers in his present employment, a fixed-term appointment of two years would be appropriate."

The Secretary-General decided to terminate the Applicant's appointment and not to give him a fixed-term appointment of two years.

6. It is not for the Tribunal to make any statement on the decision taken by the Secretary-General which is under his administrative competence.

7. The Tribunal notes that the Joint Appeals Board, in a report adopted unanimously, after hearing the Director of the Division of Human Rights, was of the opinion "that if the functions carried out by Appellant are to be continued as a full-time task of an Officer (Grade P-3) for a reasonable period, then it would advise the Secretary-General that Appellant should be employed for this purpose on a fixed-term contract in view of the high commendation presented by the Director of the Division of Human Rights as to Appellant's past services."

8. The Secretary-General decided that no such possibility existed and that he must reaffirm the termination of the Appellant's appointment.

9. According to Staff Rule 111.1 *et seq.*, the Joint Appeals Board is established to "advise the Secretary-General" regarding appeals filed by staff members and the "final decision" is taken by the Secretary-General. In so doing in respect to the Applicant, the Secretary-General used the discretionary powers which had been granted to him by the General Assembly in respect to temporary appointments. Moreover, no evidence has established improper motivation for the termination of the Applicant.

10. 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 render 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 in certain respects the recommendations of this body.

11. As regards the contention of the Applicant concerning his certificate of service, the Tribunal notes that Rule 109.10 states:

“Any staff member who so requests shall, on leaving the service of the United Nations, be given a statement relating to the nature of his duties and the length of his service. On his written request, the statement shall also refer to the quality of his work and his official conduct.”

The certificate of service which was sent to the Applicant at his request dated 6 April 1952 gives the following reference to his work:

“During the period of his employment, Mr. Carruthers’ work performance and official conduct were satisfactory.”

The Tribunal is of the opinion that the best way to refer to the quality of the work and official conduct of a staff member is to use the very words which have been put in the periodic reports by the superior which comment as to over-all rating.

The Tribunal notes that in the Applicant’s periodic reports for 1949, 1951, 1952, the comments of the Director of the Division of Human Rights were “very good” and “good”. So to refer to the quality of the work and conduct of the Applicant as “satisfactory” was not in conformity with the terms used in the official documents dealing with the Applicant’s work and conduct and is not in accordance with Staff Rule 109.10.

12. Accordingly the Tribunal decides that the certificate of service given to the Applicant on 6 April 1952 was not in conformity with Staff Rule 109.10 and must be redrafted.

13. The Tribunal rejects the claim for reinstatement.

(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