

nature could properly have been considered by the Secretary-General as "acts obviously incompatible with continued membership of the staff" which accordingly justify the summary dismissal of the official concerned.

8. Now, therefore, the Tribunal rejects the Applicant's claim.

9. As to costs, the Tribunal has nothing to add to the terms of its Judgement No. 28 on this matter.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Mani SANASEN
Executive Secretary

Paris, 29 May 1954

Judgement No. 54

Case No. 56 :
Mauch

**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. Jacob Mark Lashly, alternate member;

Whereas Marie-Madeleine Mauch, former member of the Library staff of the United Nations European Office, filed an application to the Tribunal on 21 January 1954 requesting:

(a) The rescission of the decision of 25 February 1953, confirmed by the Secretary-General on 21 October 1953, whereby the Applicant was separated from the service of the United Nations;

(b) The rescission of the decision by the Assistant Secretary-General in charge of Administrative and Financial Services taken on 1 December 1953 whereby the Applicant was refused a new medical examination;

(c) Compensation and costs;

(d) as preliminary measures

(i) The communication of the Applicant's administrative file;

(ii) The communication of the file containing the various documents

in the light of which the Appeals Board reached its conclusions and made its recommendations and, in particular, of the testimony heard by the Board ;

(iii) The communication of the Applicant's medical file ;

(iv) The order for an expert medical opinion and report ;

Whereas the Respondent filed his answer to the application on 16 March 1954 ;

Whereas the Applicant submitted a supplementary memorandum on 15 April 1954 ;

Whereas the Tribunal heard the parties in public session on 26 May 1954 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 11 October 1951 under a Mission appointment as a secretary in the Field Operations Service, Department of Administrative and Financial Services, and was assigned to the United Nations Tribunal in Libya. In September 1952 the Applicant received treatment in hospital in Libya. On 22 September 1952, she returned for further treatment to Geneva where her condition was examined by the Medical Officer of the European Office. On 22 October 1952, she was orally informed by the Medical Officer that the state of her health would not permit her return to Libya. On 31 October 1952, the Medical Officer stated in a memorandum to the Chief of the Personnel Division in Geneva that the Applicant would be fit for work only after having been restored to health and then only on short-term appointments and subject to periodical examinations. On the other hand, the Applicant's own physician had, on 30 October 1952, certified that she was well enough to perform normal work. On 1 November 1952, the Chief of the Personnel Division informed the Applicant that he had "now heard from our Headquarters that your appointment with the United Nations Mission in Libya has been terminated". He also informed her that as soon as she was completely recovered, he would see what could be done to find her a suitable post in Geneva.

On 6 November 1952, the Applicant protested against this decision and declared that if her termination were not rescinded she would submit her case to the Joint Appeals Board. No direct reply was immediately given to this request, but on 12 November, the Chief of the Personnel Division invited the Applicant to fill in a form with a view to appointment to a post in Geneva. On 14 November 1952, the Applicant returned the form, at the same time applying for a post in the Library and stating that she had had previous experience "in this line". On 29 November 1952, the Applicant advised the Chief of the Personnel Division that she wished to make a formal appeal against the termination of her appointment with the United Nations Mission in Libya. Thereupon the Chief of the Personnel Division, on

11 December 1952, informed the Applicant that the Administration was prepared to grant her advance sick leave to 31 October 1952 and two months' leave without pay ending on 1 January 1953, and offered her an assignment in Geneva, assuming that she would be prepared to return to work. If she were not prepared to accept these terms, the case would be considered as having been duly submitted to the Joint Appeals Board. In a letter of 15 December 1952 the Applicant accepted the offers contained in the letter of 11 December. The letter of 15 December also contains the following phrase: "I have also asked, if feasible, that the medical examination be maintained for January." In accordance with the letters exchanged, the Applicant's appointment in Libya was thereafter terminated on 1 January 1953 and on 2 January 1953 she was transferred under a temporary-indefinite appointment to an established post as a clerk in the Library of the European Office of the United Nations. On 5 January 1953, the Applicant withdrew her appeal from the order of termination of her appointment in Libya.

On 4 February 1953, the Applicant's supervisor in the Catalogue Department of the Library filed an official report based on the Applicant's work in the department for five half-days per week since her transfer to the post in the Library. The report pointed out various shortcomings in the Applicant's work and stated that the supervisor had twice spoken to the Applicant "urging her to make an effort if she really wants to have this position". On 10 February 1953 the Chief of the Personnel Division had a conversation with the Applicant recorded in a note for the Applicant's file where the following is stated: "I told her that as she was on a trial period, it was important that she do the work quickly and well, put all the interest in it that she could and make a success of the job. I repeated the importance of her doing the work well because of her trial period activity." By letter of 25 February 1953, the Chief of the Personnel Division thereupon informed the Applicant that the work she was doing in the Library must be brought to a close at the end of March 1953, and therefore it was necessary to terminate her appointment at that date. On the date of her termination, 31 March 1953, the Applicant wrote a letter to the Chief of the Personnel Division complaining of excessive demands as to her work made by her supervisor in the Catalogue Department.

On 29 May 1953, the Applicant informed the Chief of the Personnel Division that she had just learned that the ground upon which she had been terminated was erroneous and requested that the decision to terminate her appointment be rescinded. On 30 May 1953, Applicant applied to the Assistant Secretary-General in charge of Administrative and Financial Services for a further medical examination. By letter of 2 June 1953 the Director of the European Office informed the Applicant that "I must confirm that the decision to terminate your

services was based upon your work performance". On 10 June 1953, the Applicant filed an appeal with the Joint Appeals Board. In its report to the Secretary-General, the Board found that "in the circumstances the termination was not justified" and recommended that "Miss Mauch should be reinstated in a regular post suitable to her qualifications, provided that her work and conduct prove satisfactory". On 21 October 1953, the Secretary-General sent a copy of the conclusions of the Board's report to the Applicant and informed her of his decision to reaffirm the termination of her appointment effective 31 March 1953. On 17 November 1953, the Applicant wrote to the Assistant Secretary-General in charge of Administrative and Financial Services asking for action on her request of 30 May 1953 for a second medical examination. By letter of 1 December 1953, the Applicant was notified in effect that her request had been refused and by letter of 13 January 1954, from the Director of the European Office, she was informed that she was permitted to submit this matter directly to the Tribunal.

Whereas the Applicant's principal contentions are :

1. The Administration transferred the Applicant from a post in Libya to a post in Geneva for the purpose of concealing the invalidity of the termination procedure initiated in the Administration's letter of 1 November 1952.

2. The termination decision of 1 November 1952 had been taken by the Administration on medical advice based upon an incorrect diagnosis which also was governed by other than strictly medical considerations.

3. The Applicant had made it a condition of her acceptance of her transfer from her Libyan post to a post in Geneva that she be granted a second medical examination in January 1953. No second medical examination was accorded to her. Such a medical examination was of particular importance to the Applicant for obtaining other international assignments.

4. The decision to terminate the Applicant's appointment, taken on 25 February 1953, was marked by abuse of power because the Administration first gave the reason for the termination that the Applicant's work in the Library had to be brought to a close at the end of March 1953 and then later changed the position by stating that the termination was based upon the Applicant's work performance.

5. The second reason thus given to justify the decision to terminate the Applicant's appointment was based upon the performance of her catalogue work on which she spent one-half of her time and of which she knew nothing on taking up her duties. The other half of her work, viz., as a secretary, was recognized as entirely satisfactory. If her catalogue work was found to be unsatisfactory, the responsibility for assigning her to this duty lay upon the Administration since, under

Staff Regulation 1.2, she was not free to refuse the transfer. Therefore, even if all but the last reason given for the termination be ignored, the decision was still marked by abuse of power.

6. The Applicant further contends that the Administration committed certain irregularities in arriving at the decision to terminate the appointment as follows :

(a) The report on the Applicant on which the Administration based its decision was made within 30 days of the assumption of her duties whereas the normal period for judging a staff member's work is between three and six months.

(b) The reports of her superiors on the Applicant's work were not communicated to her. They were not discussed with her nor was she permitted to submit written observations.

(c) The supervisor's report was wrongfully communicated to the Medical Officer who, besides, exceeded his functions in pronouncing upon the Applicant's professional work.

(d) The Administration failed to give the Applicant a trial in any post for which she was qualified, although numerous vacancies for secretarial posts existed at the time.

Whereas the Respondent's answer is :

1. The Administration's decision of 1 November 1952 to terminate the Applicant's Libyan appointment was solely based on a medical diagnosis of the Applicant's state of health. Previous judgements of the Tribunal indicate that the Tribunal will not wish to enter into the questions of the correctness of the diagnosis or the Applicant's fitness for service in Libya.

2. In view of the Applicant's performance of her work in Libya, the Administration decided to give her a trial in some other branch of the Organization and therefore offered her a post in the Library of the European Office for which she seemed to be qualified by her previous experience.

3. The letter of termination of 25 February 1953, with respect to the Applicant's post in the Library, was purposely phrased in an ambiguous way in order not to affect the Applicant's chances of obtaining employment elsewhere.

The Administration explicitly stated the real reason, viz., unsatisfactory service, when the Applicant asked for the rescinding of the termination decision. The Applicant had, however, received warnings from her superiors prior to termination and must have been aware of the situation.

4. The Administration was under no obligation to find another post for the Applicant as the termination of 25 February 1953 was for unsatisfactory service. On humanitarian grounds, however, and in compliance with Staff Regulation 4.4, the Administration did consider

the Applicant's qualifications for other posts. She was invited to sit for an examination for a stenographer's post but she admitted her inability at that time to meet the required standard or even a reduced standard and declined to take the examination. There was therefore no vacancy for which she was qualified.

5. The Applicant cannot claim that the satisfactory performance of one-half of her work precluded her termination for the unsatisfactory performance of the other half. The Administration was not to blame for assigning part-time library work to the Applicant as she claimed to have had experience in that field.

6. The Applicant's request for a revision of the decision to refuse her a second medical examination was apparently made for the purpose of obtaining a possible mission post. This, however, is an "administrative matter appropriate for internal action within the Secretariat" in which the Tribunal does not intervene. Staff members have no right under the Staff Regulations and Rules to claim such an examination nor did the Applicant, as she alleges, specify that acceptance of her transfer to the European Office was dependent upon the granting of a second medical examination.

7. The Applicant's request to the Tribunal for an expert medical opinion as a preliminary measure should be denied since no opinion given at this date could confirm or rebut the diagnosis which justified the termination action of 1 November 1952. Moreover, the Tribunal is not concerned with the correctness of that diagnosis which, in any case, is irrelevant to the termination of 25 February 1953.

8. The Applicant has requested communication of her entire administrative file, the file containing the various documents on which the Joint Appeals Board reached its conclusions, and the Applicant's medical file. The first of these two files were placed at the Tribunal's disposal. The Respondent claimed that the medical file was privileged and declined to produce the same.

The Tribunal having deliberated until 2 June 1954, now pronounces the following judgement :

1. In order first to dispose of the Applicant's request for preliminary measures in the proceedings, the Tribunal states that the Applicant's administrative file as well as the documents on which the Joint Appeals Board reached its conclusions have been placed at the Tribunal's disposal. As regards the Applicant's demand for production of her medical file, the Respondent declined to produce or expose the same upon the ground of privilege. The medical facts concerning the Libyan termination are not involved in this case and the Tribunal therefore does not regard this information as necessary to its decision.

2. The Applicant's principal claim is directed against the decision of 25 February 1953 with effect from 31 March 1953 by which the

Chief of the Personnel Division acting on behalf of the Secretary-General terminated the Applicant's temporary-indefinite appointment as clerk in the Library of the European Office. Even if it be assumed that the granting of this appointment included a condition that the Applicant's complaint against the termination of her earlier appointment with the United Nations Mission to Libya would be withdrawn, this could not affect the Secretary-General's power under Staff Regulation 9.1 (c) to terminate at any time a temporary-indefinite appointment if, in his opinion, such action would be in the interest of the United Nations.

3. The discussions in the Fifth Committee before the General Assembly's adoption on 2 February 1952 of the aforesaid Staff Regulation show that the intention was to invest the Secretary-General with discretionary powers in the termination of temporary appointments.

4. The Applicant contends that the decision to terminate her appointment, taken on 25 February 1953, was marked by misuse of power for the reason that the Administration had assigned conflicting reasons for her termination; that at first she was told that her work in the Library had to be brought to a close at the end of March 1953, and this position was reversed or at least changed at a later time when it was stated that the termination was based upon the Applicant's unsatisfactory work performance.

5. It should be noted that Staff Regulation 9.1 (c) does not require the Secretary-General to state a specific reason or follow any particular procedure for termination of temporary-indefinite appointments. It is sufficient that the termination be found by him to be in the interest of the United Nations. While the measure of power here was intended to be left completely within the discretion of the Secretary-General, this would not authorize an arbitrary or capricious exercise of the power of termination, nor the assignment of specious or untruthful reasons for the action taken, such as would connote a lack of good faith or due consideration for the rights of the staff member involved.

It is true that the notice of dismissal given to the Applicant under date of 25 February, effective 31 March 1953 (Annex No. 14), contains an ambiguity in phrasing. The testimony before the Appeals Board reveals a claim on the part of Respondent that it was deliberately prepared in this manner out of consideration for the Applicant in connexion with her future employment problems.

If that were the purpose, it did not meet with success, for the Applicant, by her own demand, elicited a clarification of the stated reason, which was supplied to her on 2 June 1953 by letter from the Director of the European Office, representing the Secretary-General (Annex No. 17). The letter stated: "I must confirm that the decision

to terminate your services was based upon your work performance.” It cannot be seen how this incident could have prejudiced the position of the Applicant, if the proceedings in her case leading to her termination otherwise were regular and in accord with approved methods. The report of her immediate superior, of 4 February 1953 (Annex No. 42) and the memorandum of 10 February 1953 (Annex No. 43) disclose that the work performance of Applicant was under critical study and that these studies culminated in the termination notice. The evidence is that the Chief of the Personnel Division had cautioned her about her work on 10 February 1953, and reminded her that she was then in a trial period. The final letter of Applicant of 31 March 1953, written to the Chief of the Personnel Division upon the day of her leaving the service (Annex No. 45) permits no doubt that the unfavourable action taken in her case was based upon dissatisfaction of her superiors as to her work performance, and that she then understood this to be the case.

6. There was no evidence to establish improper motivation in the termination of the Applicant. In particular, there was no evidence supporting the Applicant’s contention that the transfer of the Applicant to her temporary-indefinite appointment in Geneva was arranged with an ulterior view of terminating the new appointment, in order to cover or conceal the alleged invalidity of the earlier decision terminating her appointment in Libya.

7. As to the Applicant’s request that the Tribunal revise the Secretary-General’s decision to refuse her a second medical examination, the evidence does not establish the claim that such an examination was agreed to by the Administration as a condition of the Applicant’s transfer to her post in Geneva and in consideration of the withdrawal of her exceptions to the termination of her Libyan Mission appointment. Moreover, the existing rules on medical examinations laid down in Staff Regulation 4.6 and Staff Rule 104.14 leave the arrangement of such examinations to the Secretary-General’s discretion.

8. In the light of the foregoing considerations, the Tribunal rejects the claims made.

As to costs, the Tribunal makes no award.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Jacob Mark LASHLY
Alternate Member

Mani SANASEN
Executive Secretary

Paris, 2 June 1954
