

other emoluments and benefits otherwise payable under the Regulations and accrued as of the date of this judgement.

21. In the Applicant's reply to the Respondent's Rejoinder filed on 6 December 1954, the Applicant has requested that the decision of the Secretary-General refusing a rental allowance of \$1626.25 be reviewed and that the Tribunal order payment of this amount. The Tribunal finds that this item was not referred to the Appeals Board which did not pass upon it in its recommendation of 31 March 1954, and that therefore the request is not receivable.

22. The Applicant also requests the destruction of the memorandum of 3 November 1954 (Annex No. 24) and the prohibition of its communication to any agency which might consider engaging the Applicant's services. The Tribunal holds that it is not within its competence to decide upon the destruction of any administrative document. The Tribunal considers, however, that in view of the nature of the document, which was addressed to the Secretary-General, it was intended for internal Secretariat use and accordingly should not be brought to the notice of any third party.

(Signatures)

Suzanne BASTID
President

Sture PETRÉN
Vice-President

J. M. LASHLY
Member

Djalal ABDOH
Alternate Member

Mani SANASEN
Executive Secretary

New York, 14 December 1954

Judgement No. 57

Case No. 60 :
Hilpern

**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;

Whereas Walter Hilpern, former Manager of the Cairo Office of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, whose contract was terminated by decision of

15 April 1952, filed an application with the Tribunal on 18 October 1954, requesting that the Tribunal order the payment of :

(a) Three months' salary in lieu of sick leave . . .	£ E	450
(b) Three months salary as indemnity based on length of service	£ E	450
(c) Special indemnity for improper termination and vexatious delay in the treatment of his case	£ E	10,000
<hr/>		
TOTAL		£ E 10,900

(d) Costs, in addition to the above claims.

Whereas the Respondent, in his answer filed on 13 May 1955, raised the question of the Tribunal's competence to hear cases involving staff members of UNRWA ;

Whereas, in conformity with article 9 of the Rules of the Tribunal, the President requested from the Secretary-General of the United Nations additional documents, which she obtained on 16 June 1955 ;

Whereas the Tribunal heard the parties in public session, on the question of the Tribunal's competence, on 25 August 1955 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations Relief for Palestine Refugees in February 1949 in a voluntary capacity. On 1 May 1950 UNRPR was replaced by UNRWA (United Nations Relief and works Agency for Palestine Refugees) and an undated "Notice of Employment" indicated that the Applicant was employed by UNRWA from 1 May 1950 as "Admin. & Liaison Officer" in Cairo. On 8 March 1951, the Applicant received a mission contract, effective as of 15 January 1951, in which he was appointed Manager of UNRWA's Cairo Office. On 19 November 1951 the Administration Division of UNRWA notified the Applicant that :

"Now that the category of 'Assimilated Internationals' has been eliminated, incumbents belonging to this category have been granted either International or Area status depending on the criteria set out in the Administrative Instruction. Thus, inasmuch as you are from the Area, locally recruited and your salary established in local currency, you have been designated as an Area staff member."

On 15 April 1952, the Acting Personnel Officer of UNRWA notified the Applicant of the termination of his services effective as of 31 May 1952 on the ground that his post had become redundant. The Applicant was also informed, by the same letter, that "Payment of one month's salary in lieu of notice will be made for the month of June, 1952, which would otherwise have been the notice period to which you are entitled under the terms of your appointment with the Agency." On 30 May 1952 the Applicant wrote to UNRWA's Representative

in Egypt stating that he could not “accept termination under prevailing circumstances” and that he would take sick leave. By letter of 6 June 1952, UNRWA’s Acting Representative in Egypt advised the Applicant that he would have to undergo the usual terminal physical examination at Headquarters. The Applicant, by letter of 9 June 1952, protested against the termination of his services and requested payment for sick leave until recovery of health, for accrued annual leave, for overtime, for termination indemnity for length of service and for a special indemnity for unjustified termination. On 3 July 1952, the Administration Division replied that the termination decision must stand and that he would receive payment for accrued annual leave. It was also stated that “assuming that you are a refugee from Palestine you would not be entitled to an *ex gratia* payment in lieu of terminal indemnity”. On 14 July 1952, the Applicant again requested the Administration Division for payment of indemnity on separation and indemnity for unjust termination. In August 1952 the Applicant underwent his terminal medical examination at Beirut. The physician who examined him recommended, in a report dated 15 August 1952, “I therefore strongly urge that he is granted another two months’ sick leave”. On 29 August 1952, the Administration Division advised the Applicant that he would be paid two months’ salary in lieu of sick leave. The Applicant’s counsel, by letter of 1 September 1952, rejected this offer and maintained the Applicant’s previous claims. On 10 November 1952 the Applicant received one month’s salary in lieu of notice, two months’ salary in lieu of sick leave and payment for accrued leave. On 11 November 1952 the Applicant claimed a further three months’ salary in lieu of sick leave, as well as termination indemnity and special indemnity. The Applicant subsequently instituted proceedings in the local courts but the recognition of UNRWA’s immunity by the Egyptian Government was requested by the Secretary-General of the United Nations. The Applicant’s counsel, having withdrawn his case before the Egyptian courts, then suggested in a letter to UNRWA dated 29 January 1953 that the case should be referred to arbitration. He addressed further communications to UNRWA on 9 April, 11 May and 18 September 1953. On 26 September 1953, the Acting Director of UNRWA wrote to the Applicant’s counsel proposing that the dispute should be referred to an Appeals Board to be set up in accordance with United Nations practice. He also stated that if the Director’s final decision should be unfavourable to the Applicant, it would be “open to him to appeal to the Administrative Tribunal in New York.” On 20 January 1954 the Chairman of the Appeals Board notified the Applicant of the Board’s rules including the following provision: “(e) Appeals against such decisions may be submitted to the Administrative Tribunal in accordance with the rules of this Tribunal.” On 22 February 1954 the Applicant submitted a written statement to the Joint Appeals Board and on 23 June 1954

the Board recommended rejection of the appeal. On 30 June 1954, the Applicant's counsel cabled to the Chairman of the Board requesting a copy of the decision and on 13 July he cabled a similar request to the Director of UNRWA. On the following day, the Applicant's counsel was handed a copy of the Board's recommendation by General Counsel for UNRWA. On 19 July the Applicant's counsel cabled to the Director of UNRWA "Please send decision Hilpern officially." By letter of 2 August 1954 to the Applicant's counsel, General Counsel for UNRWA confirmed the Director's acceptance of the recommendation of the Joint Appeals Board of 23 June 1954. On 18 October 1954, the Applicant instituted proceedings before the Administrative Tribunal.

Whereas the Respondent in his answer contested the competence of the Tribunal to hear and pass judgement on this case ;

Whereas the Applicant and the Respondent agreed together to request the Tribunal to render judgement first on the question of its competence in the present case and, if it decides that it is competent, to defer to a later session the consideration of the substance of the application ;

Whereas the Tribunal decided to accede to this request by the two parties ;

Whereas the Applicant's principal contentions on the competence of the Tribunal are as follows :

1. The Acting Director of UNRWA clearly recognized the jurisdiction of the Tribunal in his letter to the Applicant's counsel dated 26 September 1953 (document 43) in which he informed him that "If your client is not satisfied with the decision adopted, it is open to him to appeal to the Administrative Tribunal in New York."

2. The Chairman of the Joint Appeals Board set up by UNRWA to consider the Applicant's case informed the Applicant's counsel, by letter dated 20 January 1954, of the rules of the Board.

These rules (Section C, Procedures (e)) provided that decisions taken by the Director of the Agency, after consideration of the Board's recommendation, "may be the subject of appeal to the Administrative Tribunal."

3. In view of these considerations the Applicant submitted that the Respondent had to prove his contention that the Tribunal lacked jurisdiction in the present case.

Whereas the Respondent's contentions are :

1. The Respondent draws the attention of the Tribunal to the failure on the part of the Applicant to comply with the terms of article 7, paragraph 4 of the Statute of the Tribunal. He contends that the Applicant filed his application after the expiration of the time-limit of 90 days prescribed by the Statute.

2. The Respondent prays the Tribunal to declare itself without competence to hear, and pass judgement upon, the present application on the following grounds :

(a) Under article 2, paragraph 1 of the Statute, the jurisdiction of the Tribunal extends only to the staff members of the Secretariat of the United Nations. Such members of the Secretariat are appointed by the Secretary-General under the terms of article 101, paragraph 1 of the Charter. The staff employed by UNRWA are appointed by the Director and cannot be regarded as members of the United Nations Secretariat. Similarly, the staff of the Registry of the International Court of Justice are appointed by the Court and are not regarded as members of the United Nations Secretariat.

(b) UNRWA is a subsidiary organ, created by the General Assembly under article 22 of the Charter to deal with an emergency situation. It is an autonomous and operational organ with a separate budgetary and financial organization, which distinguishes it from the United Nations Secretariat.

(c) The Agency has always been of a temporary nature. The General Assembly recognized the necessity of granting the Director wide discretionary powers to deal with all aspects of the work of such an agency, including the control of the staff. Thus no permanent or long-term contracts have been given to the staff of UNRWA.

(d) Practically all of the 8,000 staff members of UNRWA are refugees and recruited in the general area of operations. Only about 140 have been recruited outside the area and are designated "international" staff.

(e) Even if Articles 97 and 101, paragraph 2 of the Charter could be interpreted as assimilating the status of the staff of subsidiary organs to that of members of the United Nations Secretariat, paragraph 1 of Article 101 of the Charter clearly provides, however, that the staff of the Secretariat must be appointed by the Secretary-General. The Staff of UNRWA is selected and appointed by the Director of the Agency.

(f) The General Assembly, when setting up UNRWA, recognized the special position of the Director and the Staff of the Agency in resolution 302 (IV) of 8 December 1949. Paragraph 8 of the resolution provided that :

“The General Assembly . . .

“Requests the Secretary-General to appoint the Director of the United Nations Relief and Work Agency for Palestine Refugees in the Near East in consultation with the Governments represented on the Advisory Commission ;

“(a) The Director shall be the chief executive officer of the United Nations Relief and Works Agency for Palestine

Refugees in the Near East responsible to the General Assembly for the operation of the programme ;

- “(b) The Director shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable, and to the extent possible to utilize the facilities and assistance of the Secretary-General ;
- “(c) The Director shall, in consultation with the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions, establish financial regulations for the United Nations Relief and Works Agency for Palestine Refugees in the Near East.
- “(d) Subject to the financial regulations established pursuant to clause (c) of the present paragraph, the Director, in consultation with the Advisory Commission, shall apportion available funds between direct relief and works projects in their discretion, in the event that the estimates in paragraph 6 require revision.”

(g) In accordance with the above resolution, an agreement regarding the staff of the Agency was concluded by exchange of letters between Mr. Byron Price, Assistant Secretary-General in charge of Administrative and Financial Services, United Nations (letters of 28 June and 16 August 1950) and Major-General Kennedy, Director of UNRWA (letter of 15 September 1950). This Agreement provided that Chapter 15 of the United Nations Staff Rules, and the interpretations and conditions thereof, as prescribed in the draft Mission Manual issued on 19 January 1950, should, except when otherwise specified, be generally applicable to the staff of UNRWA. Chapter 15 of the Rules contained a reference to another chapter (Chapter 10) which provided for access to the Administrative Tribunal (Staff Rule 149). The Respondent points out that, when the Director of the Agency gave his consent on 15 September 1950, the right of appeal to the Tribunal for mission staff had, since 17 August 1950, been deleted from the Rules and that, although this right was reestablished on 1 July 1951, the fact remains that the Applicant's contract of 8 March 1951 was made at a time when the Staff Rules did not provide him with any right of appeal to the Tribunal.

(h) The Respondent contends that the Director never had any intention of granting to the staff of the Agency the right of appeal to the Administrative Tribunal. The Staff Rules issued by the Director on 23 January 1952 contained no reference to the right of appeal to the Tribunal and it must be presumed that the body of rules then issued were agreed to by the Secretary-General. The mere statement

made by the Acting Director of UNRWA in his letter of 26 September 1953 to the Applicant's counsel indicating the possibility of appeal to the Tribunal was not of itself sufficient to confer jurisdiction upon the Tribunal.

(i) It is contended that the Applicant never enjoyed the status of an internationally recruited staff member, either in fact or in law. The fact that he was regarded for a time as an "assimilated international" gave him only certain benefits in connexion with leave and indemnities.

(j) The General Assembly evidently intended to set up an independent organization and not a sub-unit of the Secretariat as it decided that no United Nations Staff Regulations and Rules could be applied to the Agency's staff without the consent of the Director (paragraph 9 (b) of resolution 302 (IV) above).

(k) The Respondent contends that, even if it were admitted that the Secretary-General had delegated the power of appointing staff members to the Director of the Agency, it did not follow that the status of staff members of the United Nations Secretariat could be extended to the staff members of UNRWA.

The Tribunal having deliberated until 9 September 1955, now pronounces the following judgement:

1. The competence of the Tribunal to hear this case has been challenged upon two grounds, first, that it was not receivable because filed too late and, second, that the Tribunal has no jurisdiction to hear the appeal because the Applicant was not a member of the staff of the Secretariat of the United Nations and hence not entitled to appeal to the Tribunal.

2. The Respondent contends that the unfavourable recommendation of the Joint Appeals Board of UNRWA was communicated to the Applicant on 14 July 1954, and that, by filing his application to the Tribunal on 18 October 1954, the Applicant exceeded the time limit of 90 days prescribed in paragraph 4 of Article 7 of the Statute of the Tribunal.

The Respondent draws the attention of the Tribunal to the failure on the part of the Applicant to comply with the procedural requirement and offers to leave it to the Tribunal to decide whether to apply the provisions of paragraph 5 of article 7 of the Statute, which states:

"In any particular case the Tribunal may decide to suspend the provisions regarding time limits."

The record shows that the Applicant, through his counsel, received the recommendation of the Appeals Board on the date indicated, but did not receive the decision of the Director of UNRWA thereon until some time after 2 August 1954, which was the date of the letter in which the Director confirmed the original decision. In accordance with the Staff Rules and practices of the United Nations on which the rules of the UNRWA Board were modelled, the Board does not take a

decision but merely advises the Head of the Organization who then communicates his final decision to the staff member concerned. Accordingly, the Tribunal rules that the application was made within the time limit required by article 7 of the Statute of the Tribunal.

3. The Respondent has argued at length that the Administrative Tribunal of the United Nations is not competent to hear the application submitted to it by a former staff member of UNRWA for the reason that the Statute of the Tribunal does not give it jurisdiction in such cases.

This application is against the decision of the Director of the Agency of which the Applicant was informed by letter dated 2 August 1954. The Director accepted the recommendation of the Joint Appeals Board, rejecting the Applicant's requests for additional sick leave, for a termination indemnity and for a special indemnity for unjustified termination.

The Applicant has sought the Tribunal's decision on this question, pointing out that, in a letter dated 26 September 1953, the Acting Director of the Agency had informed Applicant's counsel that he could appeal to the "Administrative Tribunal in New York". Furthermore, the Applicant relies upon the fact that the Agency's rules concerning the Joint Appeals Board, communicated to Applicant's counsel by letter of 20 January 1954, specifically mentioned under Section C, Procedures (e), that appeals against decisions taken by the Director of the Agency after consideration of the Board's recommendation may be submitted to the Administrative Tribunal in accordance with the rules of this Tribunal.

Article 2, paragraph 3 of the Statute of the Tribunal provides that "In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal."

4. In challenging the Tribunal's competence, the Respondent first maintained that under the provisions of its Statute the Tribunal can pass judgement only upon applications from staff members of the United Nations Secretariat.

The Respondent made a lengthy and detailed statement in support of his contention that the staff of the Agency, while attached to the United Nations, nevertheless could not be regarded as staff members of the United Nations Secretariat.

It was furthermore argued that, even if it could be claimed that those members of the Agency's staff who were recognized as internationally recruited under the terms of the Agency's Administrative Instruction 106 were staff members of the United Nations Secretariat, in no event would it be possible to assimilate locally recruited staff to staff members of the United Nations Secretariat. The Respondent contends that the Applicant has never, either in fact or in law, enjoyed the status of an internationally recruited staff member; the fact he

was regarded as an "assimilated international" until 19 November 1951 gave him only certain benefits in connexion with leave and indemnities.

5. The Respondent bases his argument on the premise that the Tribunal is competent to hear applications from staff members of the United Nations Secretariat only, and that a person who cannot legally be regarded as a member of that Secretariat has no right to appeal to the Tribunal. It is clear, however, that it was not the General Assembly's intention to limit the jurisdiction of the Administrative Tribunal in this way.

The Tribunal observes that the jurisdiction of the Tribunal may be extended under article 12 of the Statute to any specialized agency, upon the terms established by a special agreement to that effect between such agency and the Secretary-General of the United Nations.

Again, article 2 of the Statute provides that the Tribunal is competent to hear disputes concerning the non-observance of staff pension regulations. As the pension scheme covers both the staff of the Secretariat of the United Nations and the staffs of certain specialized agencies, the General Assembly in resolution 678 (VII) of 21 December 1952 recommended that "the appropriate governing organs of the specialized agencies concerned accept the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of Pension Fund regulations". Thus the General Assembly has recognized that in certain situations staff members who are not members of the United Nations Secretariat may have access to the Tribunal.

6. The Tribunal notes that in resolution 302 (IV), paragraph 9 (b), the General Assembly provided that the Director of the Agency should select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General should agree to be applicable. In this resolution the General Assembly did not specify any particular form for such an agreement between the Secretary-General and the Director.

It would appear that the exchange of letters between Mr. Byron Price, Assistant Secretary-General in charge of Administrative and Financial Services, and Major-General Howard Kennedy, Director, UNRWA, dated 28 June 1950 and 15 September 1950, constituted a written agreement. The staff rules proposed by Mr. Price in the said letter included provision for access to the Administrative Tribunal. Even if serious doubts arose subsequently as to the exact rules applicable to the staff of the Agency, the Tribunal is not aware of any modification of para. 9 (b) of resolution 302 (IV), whereby any of the Staff Rules and Regulations agreed between the Director and the Secretary-General are of full effect.

7. The Tribunal notes that, in a telegram addressed to the Minister for Foreign Affairs of Egypt, the Secretary-General formally requested jurisdictional immunity for the Agency in the matter of a claim for damages which the Applicant had presented to the Egyptian courts in connexion with his termination by the Agency. The Secretary-General also stated in his telegram :

“Resort to local courts by Hilpern on internal question involving terms of his service with the United Nations not only violates principle of international employment but is further unjustified because internal appellate recourse is available to him.”

This was a clear indication of the Secretary-General's formal recognition of the existence of an appeals procedure to which the Applicant could have recourse.

Furthermore, the Acting Director of UNRWA wrote to the Applicant's counsel on 26 September 1953 in part as follows :

“Mr. Hilpern has asked that his case be considered in accordance with United Nations practice. I am sure that you will agree with me that in so doing, we cannot depart from the procedure which has been laid down by the United Nations for dealing with personnel matters, namely, that any dispute or complaint should in the first instance be considered by an Appeals Board, which, after considering the case, makes its recommendations to the Director. Should the decision adopted by the Director on the strength of those recommendations not prove acceptable to the appellant, he may appeal to the Administrative Tribunal...”

Near the end of the same letter the Acting Director added : “If your client is not satisfied with the decision adopted, it is open to him to appeal to the Administrative Tribunal in New York.”

Thus it appears to the Tribunal that the Acting Director of the Agency was at that time in no doubt that the entire appeals procedure established by the United Nations Staff Regulations and Rules was available to the Applicant.

Finally, the Tribunal notes that the Chairman of the Appeals Board informed the Applicant's legal counsel by letter of 20 January 1954 that the Agency's rules concerning the Board “are closely modelled on those of the United Nations”. The final paragraph of these rules provides as follows :

“Appeals against such decisions may be submitted to the Administrative Tribunal in accordance with the rules of this Tribunal.”

Thus the Director of the Agency, in drawing up the rules, provided to the Applicant the right of appeal to the Tribunal.

It is clear, therefore, that at this stage at least, the Secretary-General and the Director of the Agency were in agreement that the United

Nations Staff Regulations and Rules concerning the right of appeal to the Tribunal were available to the Applicant.

8. In view of the foregoing, the Tribunal, without making any findings on other issues, decides that it has jurisdiction to consider the merits of this case.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-Præsiednt

Jacob M. LASHLY
Alternate

Mani SANASEN
Executive Secretary

Geneva, 9 September 1955

Judgement No. 58

Case No. 61 :
Kamal Kumar Chattopadhyay

**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 ;

Whereas Kamal Kumar Chattopadhyay, former Deputy Director of the Information Centre of the United Nations at New Delhi, filed an application to the Tribunal on 26 February 1955 requesting :

(a) The rescission of the Secretary-General's decision of 25 July 1953 to terminate his temporary-indefinite appointment ;

(b) The award of \$28,380 as minimum compensation for wrongful dismissal ;

(c) Alternatively, in the event that the Secretary-General avails himself of the option given to him under article 9 of the Statute of the Tribunal, the award of \$28,900 as compensation for the injury sustained ;

Whereas the Respondent filed his answer to the application on 16 May 1955 ;

Whereas the Tribunal heard the parties in public session on 31 August 1955 ;

Whereas the facts as to the Applicant are as follows :