

UNITED NATIONS
ADMINISTRATIVE TRIBUNAL

Judgement No. 71

(Original: English)

Case No. 78:
De Ungria

Against: **The Secretary-General
of the United Nations**

Termination of employment of a staff member holding a probationary appointment.

Decision to terminate appointment based on the recommendation of a Review Board responsible for examining the suitability of temporary staff for permanent employment.

Right of the Board under Staff Rules to examine conduct as well as performance of staff members.

Absence of evidence establishing that the Board acted hastily or that its recommendation was based on an error of law or on other facts the nature of which would vitiate the procedure before the Review Board.

Validity of the termination under Staff Regulation 9.1 (c).

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. Harold Riegelman;

Whereas José de Ungria, former staff member of the Bureau of Social Affairs, Department of Economic and Social Affairs, filed an application to the Tribunal on 28 May 1958 against the Secretary-General's decision of 9 July 1957 terminating his temporary appointment;

Whereas the Applicant seeks relief as follows:

(a) reinstatement in his former post as from the date of his termination, *i.e.* 15 August 1957;

(b) deletion from his record of the charge of unsuitability;

(c) award of a permanent contract;

(d) alternatively, in the event that the Secretary-General avails himself of the option given to him under article 9, paragraph 1, of the Statute of the Tribunal, the Applicant requests payment of compensation in the amount of \$12,000, one-half of this sum representing earnings for a year from the date of termination and the remainder covering loss in career opportunities, personal suffering and legal expenses; in the course of the oral proceedings this amount was reduced to \$8,000;

Whereas the Respondent filed his answer to the application on 18 August 1958 ;

Whereas the Tribunal heard the parties in public session on 21 November 1958 ;

Whereas the facts as to the Applicant are as follows ;

The Applicant was first employed by the United Nations from 18 September to 31 December 1950 as a bilingual typist during the session of the General Assembly in the Department of Public Information. On 4 January 1951, the Applicant was engaged as a clerk-typist in the Department of Conference and General Services for the period ending 28 February 1951. On 1 March 1951, the Applicant received a temporary-indefinite appointment as clerk-typist, grade G-2, in the Technical Assistance Administration. On 1 March 1952, the Applicant was promoted to grade G-3 as secretary. His functional title was then successively changed to clerk, computer and finally to statistical clerk. On 1 July 1954, he was transferred to the Department of Economic and Social Affairs where he held various assignments in the Statistical Office, the Bureau of Economic Affairs and the Bureau of Social Affairs. On 14 February 1955, the Office of Personnel advised the Applicant that the Secretary-General had decided, on the recommendation of the Review Board, not to grant him a permanent appointment but to extend his period of probation for one year in order to permit him to demonstrate his suitability as an international civil servant. Consequently, on 15 February 1955, the Applicant's temporary-indefinite appointment was converted to a one-year probationary appointment. On 28 September 1955, the Applicant received a written reprimand from the Bureau of Personnel for having engaged, in violation of Staff Rule 101.6, in an outside business enterprise called "Living", without prior authorization of the Secretary-General, and was warned that a repetition of the offence would lead to serious consequences. In 1956, the Office of Personnel received a letter dated 28 March from counsel for Applicant's former business associate alleging that Applicant was engaged in a new business venture. In a memorandum dated 10 April 1956, the Applicant assured the Office of Personnel that he had no financial interest in the new business firm, called "New Living", but admitted that he gave advice and assistance to the owner of the business. On 25 April 1956, the Office of Personnel withdrew the Applicant's case from the Review Board in order to give consideration to certain new factors. On 29 January 1957, the Applicant was recommended for permanent appointment by the acting head of his division. In April 1957, the Review Board again took up the Applicant's case but deferred its decision for two months in order to permit the Administration to examine new information regarding the Applicant's outside activities. In June 1957, the Review Board reported that "in the conduct of his affairs, both in the community outside the United Nations and also in connexion with his position as a member of the Secretariat *vis-à-vis* the Staff Regulations and Rules, Mr. de Ungria has not approached a reasonable standard of good order and responsibility". It concluded that he did not meet the standards required for permanent appointment and recommended termination. On 9 July 1957, the Office of Personnel notified the Applicant of the termination of his temporary appointment, with effect on 15 August 1957. On 6 August 1957, the Applicant asked the Secretary-General to reconsider his decision of termination. In view of the refusal encountered, the Applicant submitted an appeal to the Joint Appeals Board on 27 August 1957. On 27 February 1958, the Board unanimously

recommended rejection of the appeal and on 6 March 1958, the Applicant was notified of the Secretary-General's acceptance of the recommendation. On 28 May 1958, the Applicant instituted proceedings before the Tribunal and on 2 July 1958 completed the submission of his application.

Whereas the Applicant's principal contentions are:

(a) The Applicant was entitled, on the basis of his favourable periodic reports and appraisals, to more appropriate tenure than the probationary appointment given to him on 15 February 1955, on the recommendation of the Review Board. He points out that even after he received notice of termination, his department requested his retention in the service for a further month.

(b) The Applicant denies that he violated Staff Rule 101.6 which requires staff members not to engage in continuous or recurring outside occupations without prior approval by the Secretary-General. He alleges that a series of malicious attacks was directed against him from outside the Organization and that the Administration failed to give him the opportunity to reply to all of the charges made against him.

(c) The fact that his hobby involved him in becoming a partner in any business, in order to secure cover for the finance which he had advanced, did not mean that he was engaged in outside occupation of employment, since a partnership for purposes of investment does not necessarily create a partnership which is an outside occupation or employment.

(d) The decision of the Review Board recommending termination of Applicant's appointment was reached in haste without thorough investigations and without affording the Applicant a reasonable and just opportunity to defend himself; thus a conclusion was reached without complete investigation of the true facts and documentation. The Review Board thus failed to comply with the terms of Staff Rule 104.13 (c).

(e) Under the exceptional circumstances of the case, the Review Board should have recommended extension of the Applicant's probationary appointment as provided for in his letter of appointment of 15 February 1955, in Staff Regulation 4.5 (b) and Staff Rule 104.12 (a).

(f) The Applicant contends that while there was no question of his competence and efficiency, a careful review of the facts would demonstrate that he also met the high standards of integrity and general suitability required under Staff Rule 104.13 (a) (i).

(g) The denial of his permanent appointment in 1955 and the termination of his temporary appointment in 1957 constituted an infringement of Staff Regulation 4.2 and a violation of his rights as a staff member of the United Nations.

Whereas the Respondent's principal contentions are:

(a) The application is not receivable in so far as it relates to the plea for an award by the Tribunal of a permanent contract. The Applicant failed to contest the decision not to grant him a permanent appointment in 1955 and his present plea cannot therefore be considered to be in dispute in the sense prescribed by article 7.1 of the Statute of the Tribunal. It has been recognized by the Tribunal (Judgement No. 46) that the power of appointment of staff members and the determination of the nature of their appointments rest

exclusively with the Secretary-General under Article 101 of the Charter, Staff Regulation 4.1 and Annex II to the Staff Regulations.

(b) The Respondent denies that the Review Board failed to take account of the Applicant's favourable periodic reports in its consideration of his suitability for permanent appointment. The Tribunal has recognized (Judgement No. 47) that internal administrative bodies such as the Review Board would naturally pay regard to other considerations additional to the periodic reports in arriving at their conclusions. In the Applicant's case, the additional considerations were such as to cause the Review Board to reach the adverse conclusions stated in its recommendation.

(c) The decision of termination was properly arrived at and there is no evidence to show prejudice, error of law or improper motivation. It was clearly established that the Applicant violated Staff Rule 101.6, as proved by his own admissions and by the court papers submitted by the Applicant himself. The Applicant was given ample opportunity by the Administration to reply to the numerous charges made against him as is demonstrated by the evidence submitted by the Applicant himself.

(d) There is no basis for Applicant's contention that the Review Board acted hastily and without thorough investigation. The Board's review was protracted over a period of two months during which the Applicant was afforded full opportunity to clear himself of the charges. The Secretary-General's subsequent decision to terminate the appointment was not taken on the basis of the Review Board's recommendation alone but also in the light of all relevant circumstances.

(e) The Applicant's claim that his probationary appointment should be further prolonged cannot be entertained since his service on probation had already exceeded the normal period of two years.

(f) The reasons given for the termination were bona fide and adequate. Under Staff Regulation 9.1 (c), the Secretary-General is not required to base his decision on any reason other than that such action would, in his opinion, be in the interest of the United Nations. It is clearly established that the Applicant engaged in outside business activities without the Secretary-General's prior approval and that his unpaid debts, claims and litigation were a source of embarrassment and inconvenience to the Organization.

The Tribunal, having deliberated until 3 December 1958, now pronounces the following judgement:

1. The application is directed against a decision of the Secretary-General of the United Nations dated 9 July 1957 not to offer the Applicant a permanent contract and, consequently, to terminate his temporary appointment. This decision was taken after the Review Board has considered the Applicant's case in June 1957 and had recommended to the Secretary-General the termination of his services. The Review Board's report notes that it had examined the Applicant's case on several previous occasions. On 20 January 1955, the Board recommended a one-year probationary period "in order to see whether his performance and attitude reach the required standards". In 1956, the Office of Personnel had requested that the Applicant's case should not be examined immediately so that they could "give further consideration to certain new factors that have arisen in this case". In April 1957, the Review Board found that, although the Applicant's performance during the year of probation had been

“described as entirely satisfactory”, his file contained “a written reprimand concerning outside activities which were not in conformity with Staff Rule 101.6”. The Review Board itself decided to defer its consideration of the case until it received further information in the matter. It was only in June 1957 that the Review Board considered itself in possession of sufficient information to decide the Applicant’s case.

Thus the probationary period in fact lasted more than two years.

2. In its observations, the Review Board has taken into account not only the Applicant’s performance but also “the conduct of his affairs, both in the community outside the United Nations and also in connexion with his position as a member of the Secretariat *vis-à-vis* the Staff Regulations and Rules”.

It is not claimed by the Applicant that the Review Board has exceeded the limits of its competence. The Review Board is required by Staff Rule 104.14 (f) (ii) to examine “the suitability for permanent or regular appointment of staff members serving on probationary appointments, as may be referred to it in accordance with the provisions of Rule 104.13 (c)”. Under Staff Rule 104.13 (a) (i) “the permanent appointment may be granted to staff members who are holders of a Probationary Appointment and who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the high standards of efficiency, competence and integrity established in the Charter”.

In examining the Applicant’s conduct in addition to his performance, the Review Board has acted in accordance with the Staff Rules.

The Applicant maintains that the Review Board has acted hastily and without affording him the opportunity to explain his situation fully. It appears, however, that the final recommendation was not taken until more than three months after the Supreme Court, New York County, rendered the decision which the Applicant considers to be of essential importance in his case. He therefore was in possession of all the elements necessary for the presentation of this case before the Review Board.

The Applicant’s personnel file indicates that he was heard by the Review Board and that he had personally discussed his case with the Legal Counsel who expressed his opinion on the Applicant’s various financial transactions which had been brought to the attention of the United Nations. Thus the Applicant’s complaint regarding the procedure of the Review Board is groundless.

3. Finally, the Applicant has contended that the Review Board’s recommendation is based on an error of law relating to the decision of the Supreme Court which had adjudged the Applicant’s partnership in the firm “Living”. The Applicant has stated that his being a partner does not mean that he devoted his time to the business of the partnership, and that a partnership for purposes of investment is not necessarily an outside activity breaching the terms of Staff Rule 101.6. The Tribunal notes that the Review Board did not base its conclusion on the Supreme Court’s decision and does not even cite it. There is no evidence, however, that the Review Board ignored that decision and its findings are consistent with it. It is the opinion of the Tribunal that the Review Board’s conclusions are not founded on a legally inexact interpretation of a local court judgement, an interpretation which would be of such a nature as to invalidate the Board’s findings. The Review Board stated that the Applicant, after having

been officially reprimanded for an outside activity, again engaged in an outside activity "of a nature similar", without having "discussed his undertaking with the Administration". In so doing, the Review Board did not express a legal opinion; therefore, the legal relationship between the Applicant and a partner or a person to whom he gave advice is not in issue. Finally, the Review Board observed that the whole history of the Applicant's business activities was "marked by claims, debts and litigation. Both the legal and financial complications have led to embarrassment of the United Nations, and may continue to do so for some time". It is possible for an international civil servant, however honest his intentions, to be placed in a position either by poor judgement or bad luck, where his usefulness may be sufficiently impaired to justify termination of his service. The Applicant's situation is a case in point.

4. The Tribunal therefore reaches the conclusion that it was not established that the observations on which the recommendation was based rest on a legal error or other facts the nature of which would violate the procedure before the Review Board, and that the record before the Tribunal, taken in its entirety, warranted the action of the Secretary-General in terminating Applicant's service. Under these circumstances, the decision to terminate the probationary appointment was properly taken by the Respondent in accordance with the terms of Staff Rule 104.12 and Staff Regulation 9.1 (c).

The Tribunal, accordingly, dismisses the claim.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Harold RIEGELMAN
Member

Mani SANASEN
Executive Secretary

New York, 3 December 1958.

Judgement No. 72

(Original: English)

Case No. 72:
Radspieler

Against: The Secretary-General
of the United Nations

Request for the rescission of the Secretary-General's decision regarding the place of entitlement of the Applicant, a United States citizen, for home leave.—Request for place of entitlement to be designated in accordance with Staff Rule 105.3.

Purpose of home leave.—Reference to personal and professional ties and associations identifying a staff member with a particular community.—Period to be taken into consideration.

Decision to designate Santa Monica (California) as Applicant's place of entitlement for home leave, in lieu of Grand Haven (Michigan).—Payment to Applicant, in respect of home leave already taken in 1957, of the difference between the amount already paid to him by the Administration and the amount which he would have received if the Secretary-General had designated Santa Monica as his place of entitlement for home leave.
