

Judgement No. 76*(Original: French)***Case No. 73:**
Champoury**Against: The Secretary-General
of the United Nations**

Application for rescission of a decision of the Secretary-General refusing to reclassify the Applicant from P-1 to P-2 level.

Complaint regarding a circular relating to a new system of classification of staff members who under the former system had been in grade 10 or higher.—Inapplicability of the circular to the Applicant, who had been in grade 9 under the former system.

Complaint regarding the failure of the Secretary-General to reclassify the Applicant, as he would have been in a position to do pursuant to Staff Regulation 2.1.—Respective powers of the Secretary-General and the General Assembly as to the classification of posts and staff under Staff Regulation 2.1.

Power of the Secretary-General to make appropriate provision for the classification of posts and staff according to the nature of the duties and responsibilities required.—Evidence establishing that the duties and responsibilities of the Applicant, a staff member in the Professional category employed in Geneva, were of the same nature as those of his colleagues at Headquarters having posts at the P-2 level.—Obligation of the Secretary-General to grant staff members in the Professional category employed in posts carrying similar duties and responsibilities the same grading, regardless of the place where they are serving.

Power of the General Assembly under Staff Regulation 2.1 to lay down principles governing the classification of posts and staff.—Obligation of the Secretary-General to conform to such principles.

Question of the co-ordination as between the United Nations and the specialized agencies of the salary system applicable to staff members serving at Geneva.—Desire of the specialized agencies to maintain the type of post held by the Applicant at the P-1 level.—Absence of any decision of the General Assembly on the matter which would have had the effect of limiting the rights of the Secretary-General under Staff Regulation 2.1 with respect to the classification of the Applicant.

Refusal of the General Assembly to grant the appropriations requested by the Secretary-General to provide for the reclassification of posts in the category to which Applicant belonged to P-2 level.—Competence of the Tribunal to consider the significance of such refusal, under the terms of Staff Regulation 2.1.—Nature of the refusal as a measure limited to the financial year preceding the contested decision.—Absence of any principle which would limit the powers of the Secretary-General under Staff Regulation 2.1.

Rescission of contested decision.

Obligation of the Secretary-General to proceed to reclassify the Applicant to P-2 level with all speed consistent with the relevant procedures.

Award of monthly compensation if the Secretary-General should take the action open to him under article 9.1 of the Statute of the Tribunal.

Award of compensation in respect of injury sustained owing to the fact that the trial and disposition of the case had been delayed by reason of circumstances outside the Applicant's control.

Award of costs.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS

Composed of Madame Paul Bastid, President ; Mr. Francisco A. Forteza ; Mr. Harold Riegelman ;

Whereas Marcel Champoury, proof-reader, P-1 level, serving in the European Office of the United Nations, filed an application with the Tribunal on 10 March 1958 and amended the claims thereof on 7 August 1959 ;

Whereas the application as amended requests the Tribunal :

(a) to admit his application ;

(b) to rescind the decision of 25 March 1957, as well as the decision of 6 December 1957 by which the Secretary-General rejected the recommendation of the Joint Appeals Board, made on 8 August 1957, that the Applicant should be reclassified to the P-2 level ;

(c) to order that, if the Administration fails to reclassify the Applicant to the P-2 level with retroactive effect from the date of his request to the Secretary-General, *i.e.* 7 March 1957, there be granted to him from that date and until the date of his reclassification to the P-2 level, compensation in adjustment of the difference between the respective salary and benefits of levels P-1 and P-2 ;

(d) to order that the sum of 12,392.30 Swiss francs be paid to the Applicant as damages, in compensation for the material injury sustained by him, in particular from 1 March 1949 to 7 March 1957 ;

(e) to order that the sum of 1 Swiss franc be paid to the Applicant as compensation for the moral injury sustained by him ;

(f) to order the payment of legal costs ;

Whereas the Respondent delivered his answer on 7 May 1958 ;

Whereas oral statements were taken on 21 May 1958 at the European Office of the United Nations in accordance with article 9, paragraph 3, of the Rules of the Tribunal ;

Whereas, in addition, the parties submitted written statements on 16 March and 24 April 1959 ;

Whereas at public hearings held on 4 and 5 August 1959 the Tribunal heard one witness and the parties ;

Whereas the parties submitted, at the request of the Tribunal, additional written statements on 4, 5, 6, 7, 8 and 10 August 1959 ;

Whereas the Applicant, on 7 August 1959, amended as aforesaid the claims he had filed on 10 March 1959 ;

Whereas the facts of the case are as follows :

The Applicant is a proof-reader who has held a permanent contract since 1950. Upon entering the employment of the United Nations in 1947, he was assigned to duty at the European Office of the United Nations at Geneva. On 1 January 1951, when the system of classification of the staff was changed, the Applicant, who had been in grade 9, was placed in the P-1 level. At that time, the other proof-readers in the European Office were classified as follows: one at the P-2 level and seven at the P-1 level (ST/AFS/R.2). The proof-readers at Headquarters, on the other hand, were placed in the following levels: three in P-3, seventeen in P-2, one in P-1 and one in G-4 (ST/AFS/R.2). On

18 April 1951, the Applicant asked the Reclassification Committee for a change of level, on the grounds (among others) that he had the same duties and the same responsibilities as proof-readers at Headquarters at the P-2 and P-3 levels. On 13 August 1951, the Reclassification Committee denied the request for a change of level. On 12 November 1953, the Applicant and his colleagues in the European Office holding the post of proof-reader, P-1, requested the Director of the Office to re-examine the situation with a view to their reclassification to the P-2 level. After an exchange of correspondence, the Director informed them by letter dated 8 July 1954 that "the Secretary-General agrees that it is difficult in the long run to maintain the difference in grading between the proof-readers in Geneva and those at Headquarters." The Director of the Office added, however, that the Secretary-General was of the opinion that he ought to consult the specialized agencies before reclassifying the proof-readers at the European Office. On 7 October 1954, the Applicant and his colleagues requested the Secretary-General to continue his consideration of the question without awaiting the results of the consultation with the specialized agencies. Early in 1955, the Secretary-General instructed a Survey Group to undertake a review of the functions and organization of the external offices of the United Nations. In the course of its review, the Survey Group considered the question of the classification of proof-readers at the European Office and made the following recommendation concerning them in paragraph 104 of its report:

"In connexion with the review of the Printing Service, special attention was given to the problem posed by the fact that proof-readers at Geneva are graded at P-1 whereas at Headquarters their grading is P-2. The decision having earlier been taken to classify proof-reader's work as professional and subject, therefore, to international recruitment, it is impossible, in the Survey Group's opinion, indefinitely to deny to the six Geneva staff members concerned, equality of grading with their opposite numbers at Headquarters, particularly if posts and staff are to be regarded as freely interchangeable. In spite, therefore, of possible local repercussions, it is recommended that the claim for upgrading be conceded with effect from 1 January 1956."

In order to finance a number of the Survey Group's recommendations, including the recommendation quoted above, the Secretary-General, on 23 November 1955, submitted to the General Assembly revised budget estimates for the year 1956, one of the proposals in which was that the Assembly should make an additional appropriation of \$30,000 in respect of chapter I of section 18 of the budget. Among the personnel actions for which this additional appropriation would be used the revised budget estimates mentioned the six proof-reader posts at the European Office which "would be upgraded from assistant [P-1] to associate [P-2] officer level". After studying the budget estimates submitted in respect of section 18 as a whole, the Advisory Committee on Administrative and Budgetary Questions recommended a reduction of the funds requested by the Secretary-General in respect of chapter I. One of the considerations put forward by the Advisory Committee in explanation of this recommendation relates to the proof-readers at the European Office. It is contained in paragraph 16 of the Committee's twenty-fourth report and reads as follows:

"As regards the proposed reclassification of six posts of proof-reader from assistant officer to associate officer level, the Advisory Committee has

taken note of the Survey Group's opinion that 'it is impossible . . . indefinitely to deny to the six Geneva staff members concerned equality of grading with their opposite numbers at Headquarters, particularly if posts and staff are to be regarded as freely interchangeable.' While there is force in this argument from the standpoint of the uniform classification of posts subject to international recruitment, the Advisory Committee finds difficulty in recommending what it regards as a clear case of over-grading, and the more so since it is informed that the proposed upward reclassification is opposed by one of the largest specialized agencies at Geneva."

During the first reading of section 18 by the Fifth Committee, at its 520th meeting on 2 December 1955, the representative of Belgium "moved formally, as an amendment to the Advisory Committee's recommendations, that the Advisory Committee's recommended total appropriation for chapter I of section 18 of the budget should be increased by \$14,000". At the same meeting, the Controller of the United Nations "explained that the additional \$14,000 requested by the Belgian delegation for chapter I . . . included \$3,000 which represented the extra-budgetary costs of upgrading six proof-readers [of the European Office] from P-1 to P-2". On being put to the vote, the Belgian proposal was adopted by the Fifth Committee by 20 votes to 13, with 11 abstentions. However, during the second reading of the draft budget, at the 530th meeting of the Fifth Committee on 13 December 1955, the United States representative proposed "the deletion of the amount of \$3,000 provided under chapter I for the up-grading of six proof-reader posts [at the European Office] from P-1 to P-2". On being put to the vote, the United States proposal was adopted by 17 votes to 10, with 14 abstentions. As a result, the Fifth Committee reduced by \$3,000 the sum it had recommended for section 18 of the budget on first reading. When the General Assembly in plenary meeting considered the draft budget submitted by the Fifth Committee, the question of the reclassification of the proof-readers of the European Office was not raised, and the sum of \$3,000 needed for that reclassification was not included in the 1956 budget. On 7 March 1957, the Applicant and the other proof-readers at the European Office at the P-1 level submitted a new request for reclassification to the Secretary-General, under chapter XI of the Staff Rules. Replying to that request, the Director of the European Office in a letter dated 25 March 1957 suggested to the Applicant and his colleagues that a solution of the problem might be sought in the possible establishment of an extended General Service category which would include the proof-readers. On 5 April 1957, the Applicant and his colleagues informed the Director of the European Office that they considered the letter of 25 March 1957 as constituting a reply in the negative and that they were bringing the case before the Joint Appeals Board. On 8 August 1957, the Joint Appeals Board submitted a unanimous recommendation that "the Secretary-General should take the necessary measures to reclassify the appellants to the P-2 level as soon as possible . . . and, in particular, should consider the possibility of reclassifying the appellants to the P-2 level retroactively from 1 January 1957". By letter dated 6 December 1957, the Director of the European Office informed the Applicant and his colleagues that the Secretary-General took the view that he had to "conform with the recommendations of the Fifth Committee as approved by the General Assembly", and that, in consequence, he rejected the recommendation of the Appeals Board. By a telegram dated 6 March 1958, the Applicant and his colleagues notified

the Secretary of the Tribunal of their applications instituting proceedings, which were received in New York on 10 March 1958.

Whereas the Applicant's principal contentions are:

1. The essence of the international character of the Professional category in which the Applicant belongs is its international recruitment and free interchangeability which makes the officials in that category available to perform their duties at Headquarters or any other station where their services are required. The identity of duties and responsibilities in that category, regardless of station, requires identical classification.

2. The volume of copy-preparation accomplished by the Applicant and his colleagues, while this consideration is not controlling, is not significantly less than that accomplished by the Headquarters proof-readers. At Headquarters and at the European Office the same skills are required for the preparation of copy and the correction of proof.

3. The classification of the Applicant at the P-1 level constitutes a violation of Information Circular No. 309 issued on 15 February 1951 by the Director of the European Office. This circular assigns to the P-1 level staff members "with . . . little or no working experience", whereas at the time of his classification the Applicant had had a great deal of working experience as a proof-reader.

4. Furthermore, the classification of the Applicant at the P-1 level is a violation of Staff Regulation 2.1, which embodies the principle that staff members having the same duties and responsibilities should receive equal pay. The Respondent himself has admitted that the duties and responsibilities of the Applicant and those of the proof-readers at Headquarters classified at the P-2 level are the same.

5. For the reasons indicated above, the classification of the Applicant at the P-1 level is, in addition, a violation of the principle of "equal pay for equal work" laid down in article 23 of the Universal Declaration of Human Rights.

6. The fact that the Applicant's request for reclassification was well founded was admitted by the Respondent in the letter of the Director of the European Office dated 8 July 1954 and in the proposal for reclassification of 23 November 1955.

7. Lastly, the only reason given for the contested decision of 6 December 1957, *viz.* that the Respondent considers himself bound to conform with the recommendation of the Fifth Committee as approved by the General Assembly, is not enough to shield it from judicial review. The competence of the Tribunal is determined by the nature of the case at issue, not by the nature of the organ which made the contested decision. Moreover, this particular decision of the General Assembly is of a strictly budgetary character. It is commonly accepted that a budgetary decision cannot compel a court responsible for ensuring the observance of regulations to declare itself incompetent to try a violation of those regulations which results from the budgetary decision. Finally, as the International Court of Justice has held, the function of approving the budget does not mean that the General Assembly has an absolute power to approve or disapprove the expenditure proposed to it; for some part of that expenditure arises out of obligations already incurred by the Organization and to this extent the General Assembly has no alternative but to honour those commitments. In

the present case, the power of the General Assembly was limited by obligations under Staff Regulation 2.1, which the Assembly itself had adopted and which it is therefore bound to observe.

Whereas the Respondent's principal contentions are:

1. The classification of the Applicant at the P-1 level is not a violation of Information Circular No. 309, for that Circular related only to staff members who, under the former classification system, were in grades 10 to 16. Under that system, the Applicant's classification was only grade 9.

2. The classification of the Applicant at the P-1 level is not a violation of Staff Regulation 2.1. The General Assembly, in adopting that Regulation, did not intend to establish absolute equality in salaries for posts of the same nature involving similar responsibilities. What it did decide on another occasion was that, in the fixing of a salary, not only the nature of the post and its responsibilities should be taken into account, but also other factors, such as local conditions and the salary practices of the government services of Member States. The operation of these other factors would be enough to justify the existing difference between the salaries of proof-readers at Headquarters and those of proof-readers at the European Office of the United Nations, even if the Applicant's contention that the proof-readers at the European Office and those at Headquarters classified at the P-2 level had the same duties and responsibilities were accepted.

3. While the Respondent originally accepted that view, he is now obliged to consider a recent statistical study made by the Administration which reveals that the duties and responsibilities of the proof-readers at the European Office more closely resemble those of their Headquarters colleagues at the P-1 level than those of their Headquarters colleagues at the P-2 level.

4. The classification of the Applicant at the P-1 level is not a violation of the principle of "equal pay for equal work" in the Universal Declaration of Human Rights. That principle can only be interpreted in the light of the conditions prevailing in the place where the work is done. It is not, therefore, necessary to consider the binding effect of the Universal Declaration of Human Rights in this case.

5. As regards the Applicant's contention that the Respondent has admitted that his claim is well founded, the fact that the Secretary-General submitted a proposal for reclassification to the Assembly does not create any right to reclassification.

6. Existing machinery provides adequate opportunities for the Applicant's promotion in keeping with the nature of his service and subject to the similar rights of other staff members.

7. Lastly, so far as the Tribunal's competence is concerned, the Respondent submits the following comments:

(a) The case submitted to the Tribunal concerns directly the organization of the Secretariat. In other cases of this nature, the Tribunal has refused to substitute its opinion for that of the competent organs.

(b) Staff Regulation 2.1 contains a general principle. It does not confer contractual rights on the staff, but only formulates guiding principles to be followed by the Secretary-General in the classification of the staff. Consequently, the only question is whether or not the contested decisions were made in

conformity with the powers vested, respectively, in the Secretary-General and in the General Assembly. Since the contested decisions constitute an expression of the will of the General Assembly and since the Assembly exercises supreme authority in the matter of the classification of posts, they are unassailable.

(c) The decision whereby the General Assembly rejected the proposal for reclassification constitutes a legitimate exercise of the right to consider and approve the budget of the Organization, conferred upon the Assembly by Article 17 (1) of the Charter, and of the General Assembly's power to establish regulations applicable to the staff, under Article 101 of the Charter. If it were suggested that the Tribunal should overrule the decision of the General Assembly, that would be asking the Tribunal to exceed its powers by interfering in the exercise of functions expressly reserved by the Charter to the Assembly.

(d) Lastly, the reclassification of the Applicant to the P-2 level would be contrary to the principles governing the co-ordination of the activities of the United Nations and the specialized agencies. The proof-readers of a specialized agency having its Headquarters at Geneva are classified at the P-1 level, and this agency is opposed to the reclassification of United Nations proof-readers posted at Geneva.

The Tribunal, having deliberated from 5 to 17 August 1959, now pronounces the following judgement:

I. The Applicant's principal plea to the Tribunal is for the rescission of the contested decisions of 25 March and 6 December 1957.

On 25 March 1957, the Director of the European Office replied to his request and that of his proof-reader colleagues for reclassification by inviting them to present him with suggestions concerning a possible transfer of their posts from the Professional category to a new extended General Service category. This letter in effect rejected the Applicant's request for reclassification, and the Applicant appealed to the Joint Appeals Board.

On 6 December 1957, after the Joint Appeals Board had unanimously recommended that the Secretary-General take the necessary steps to enable the appellants to be reclassified to the P-2 level as soon as possible, the Deputy Director of the European Office stated in his communication to the Applicant and his colleagues that the Secretary-General rejected the recommendations of the Appeals Board. He further stated that the Secretary-General's "view as to the classification of proof-readers in Geneva is as set out in his budget proposals for the year 1956." However, he added that the Secretary-General was of the opinion that "any action by him on the classification of proof-readers in Geneva has to conform with the recommendations of the Fifth Committee as approved by the General Assembly (A/3103)."

Thus, the Secretary-General invokes a situation which, in his view, would prevent him from proceeding to the reclassification requested by the Applicant and his colleagues and recommended by the Joint Appeals Board. The question before the Tribunal is whether this refusal on the grounds stated in the decision of 6 December 1957 is lawful.

II. In support of his request for the rescinding of the contested decisions, the Applicant relies on two documents, *viz.* Staff Regulation 2.1 and Circular No. 309 issued by the Director of the European Office.

Circular No. 309 was issued at the time when a new system of staff classifi-

cation was introduced in 1951. It indicated the new levels to be assigned to staff members who under the former system had been in grade 10 or higher. Inasmuch as the Applicant had been in grade 9, the circular is not applicable to him, and he cannot base a claim on it before this Tribunal, even on the assumption that the circular has the force of a regulation.

III. The second provision cited by the Applicant is Staff Regulation 2.1, which governs the "classification of posts and staff". This Regulation provides:

"In conformity with principles laid down by the General Assembly, the Secretary-General shall make appropriate provision for the classification of posts and staff according to the nature of the duties and responsibilities required."

In support of his right to reclassification, the Applicant contends, first, that he is entitled to claim the reclassification by reason of the nature of his duties and responsibilities and, secondly, that the Secretary-General was in a position to make appropriate provision pursuant to Staff Regulation 2.1.

These two points will be examined successively.

IV. The Tribunal has received full particulars from the parties, both concerning the organization of the service to which the Applicant belongs and concerning the nature of his duties and responsibilities.

The printing service, to which the Applicant belongs, is an important activity of the United Nations Secretariat. It is responsible not only for the reproduction of the official records of the meetings of United Nations bodies but also for various publications issued in pursuance of the Charter (treaty series) or of special provisions (technical conference documents, year-books, etc.). The expenditure on printing is considerable and there is no question of the importance of these various publications in the scheme of the Organization.

The printing is entrusted by the Organization to private printers, but the copy-preparation and proof-reading are done by United Nations staff members.

The choice of printers and the place of printing largely depend on the costs in the various countries. Actually, part of the printing has always been done in Europe, and the staff of the European Office of the United Nations has always included staff members responsible for copy-preparation and proof-reading. According to a report by the Secretary-General on the staff of the Secretariat submitted to the General Assembly in 1957 (A/C.5/L.456), the European Office then had seven proof-readers. Two of these were at the P-2 level and five at the P-1 level. At that time, Headquarters had twenty-five proof-readers at the following levels: three at the P-3 level, thirteen at the P-2 level and nine at the P-1 level.

From the particulars submitted by the parties to the Tribunal it appears that the Headquarters and European printing sections co-operate closely and share common tasks. An example is the publication of the documents of the two International Conferences on the Peaceful Uses of Atomic Energy held respectively in 1955 and 1958. The French and Spanish versions of those documents were entrusted to Geneva staff members while the English version was entrusted to New York staff members sent to Europe for that purpose.

While the parties have differed concerning the percentage of time devoted to copy preparation and proof-reading respectively at New York and at Geneva as well as concerning variation from year to year in this regard, they are in

agreement that the Applicant and his colleagues at Geneva at the P-1 level were required as part of their duties to prepare copy as well as to read proofs.

V. The Tribunal finds that the tasks entrusted to United Nations proof-readers call for a skill which is not normally required of proof-readers elsewhere.

The Tribunal has examined the comparison made by the parties between the work of the P-1 proof-readers at Geneva and that of the P-2 proof-readers in New York. The Tribunal has noted that the Advisory Committee found, in its report of 16 November 1953 (paragraph 49), that, though performing identical functions, the New York group was classified one or two levels higher than the Geneva group. In 1955 the Secretary-General made the same finding and when, in 1957, he rejected the request for reclassification he did not modify or amend that conclusion.

The Tribunal notes, as an additional consideration, that the official job description used by the Administration in 1957 specifies that a proof-reader at the P-2 level: "Reviews copy to ensure proper layout, style, etc.; makes notations as to kind of type, type-sizes to be used . . ." The job description for the same year of proof-readers at the P-1 level omits this specification. The duties of the Applicant and his colleagues, apart from those common to both job descriptions, conform to this specification.

The Tribunal finds that the nature of the duties and responsibilities of the Applicant and his colleagues is the same as that of Headquarters staff members at the P-2 level.

VI. The Tribunal has considered the length of service of the Applicant and his seniority in the P-1 level. He was born in 1908, and entered the printing service of the League of Nations in 1929. He remained in that employment until 1940. In 1947, he was recruited by the United Nations in grade 9, step 1. He was employed under fixed-term contracts, renewed or extended until 26 November 1950, at which time he was given a permanent contract. On 1 January 1951, he was placed in the P-1 level, step 5. The Applicant has been at the ceiling of the P-1 level since 1 February 1955.

The Tribunal has noted, in this connexion, the information furnished by the Secretary-General regarding twenty-six proof-readers now employed at Headquarters. According to this information, nine of these proof-readers, placed in the P-2 and P-3 levels, never served at the P-1 level; three others, now at the P-2 level, remained at the P-1 level for an average period of three years and two months; the fourteen others have been at the P-1 level for an average period of two years and eleven months. By contrast, the average period of service of the Geneva P-1 proof-readers at the P-1 level exceeds seven years.

VII. The Tribunal notes that the proof-readers have been classified in the Professional category which, in the United Nations Secretariat, constitutes a body of staff members who are internationally recruited and governed by uniform rules. Their position is independent of the place at which they perform their duties. They may be transferred wherever they may be required. Their base salary at a given level and step is the same, irrespective of the place of work. Differences in living costs at different posts are dealt with in Annex I, paragraph 9, of the Staff Regulations, which provides:

"In order to preserve equivalent standards of living at different offices, the Secretary-General may adjust the basic salaries set forth in paragraphs 1,

3 and 4 of this Annex by the application of non-pensionable post adjustments, the amounts of which shall be determined on the basis of relative costs of living, standards of living and related factors at the office concerned as compared to Geneva on 1 January 1956 . . .”

It follows that staff members in the Professional category in posts carrying similar duties and responsibilities should have the same grading, irrespective of the place where they are serving. The salary of a staff member in the Professional category may, of course, be higher than that of a local national civil servant doing similar work or of a comparable employee in private business. But this circumstance is explained and warranted by the fact that the staff member has been placed in the Professional category and not in the General Service category.

So far as the proof-readers are concerned, the Tribunal recognizes that the question of the category in which they should be placed has been a matter of discussion within the United Nations and in relations with the specialized agencies, in particular in the 1956 report of the Salary Review Committee (paragraphs 62 to 71), but the Tribunal must note that no decision has been made changing the assignment of the proof-readers to the Professional category and that, in the circumstances, the Applicant cannot be denied the advantages to which staff members in the Professional category are entitled. If by some other system of recruitment the United Nations could obtain comparable services at less expense, it would be quite legitimate to make use of such a system. However, so long as the Applicant's post remains in the Professional category, the Tribunal is required to determine the legal effect of that status.

VIII. Lastly, the Respondent has argued that the obligations which flow from the principle of co-ordination between the United Nations and the specialized agencies should be taken into consideration in any decisions affecting the classification of United Nations staff members. The specialized agencies having their headquarters at Geneva are anxious (he said) to maintain proof-readers at the P-1 level, and he took the view that the staff members of the European Office should be graded accordingly.

The Tribunal is mindful of the importance assumed in this case by the proper concern for co-ordination with the specialized agencies at Geneva which apply the United Nations salary system, such as the International Labour Organisation. The Tribunal finds, however, that the understandings among the administrations of international organizations cannot limit the rights which Secretariat staff have under the Staff Regulations, unless the understandings are in a legal form which is binding on such staff.

In the matter under examination, the rights relating to the classification of posts under Staff Regulation 2.1 can be altered only by an agreement in the form of a “principle laid down by the General Assembly”.

After the report of the Salary Review Committee in 1956, the General Assembly took certain action to implement that effort at co-ordination, with regard in particular to post adjustments (resolution 1095 B (XI)). Apart from that, it merely expressed the view that it was “desirable that . . . staff serving the United Nations and specialized agencies in the same centres should be governed, as a general rule, by similar standards of salary and related benefits”.

But it has not been brought to the knowledge of the Tribunal that a formal

agreement approved by the General Assembly has been concluded on the subject of the classification of staff.

The report of the Secretary-General of 14 December 1956 confines itself to expressing support in principle for the idea that greater uniformity is required in the application of grading standards among the organizations and to planning a joint study and future co-ordinated action (paragraph 19).

Accordingly, there is not now any "principle laid down by the General Assembly" which is binding on the Secretary-General in this matter.

Consequently, mere requests by the administrative services of other international organizations could not have the effect of limiting the rights of United Nations staff members under the Staff Regulations.

IX. The Tribunal notes that the contested decision states that "the Secretary-General's view as to the classification of proof-readers in Geneva is as set out in his budget proposals for the year 1956".

This view was expressed after a careful investigation of conditions at the European Office carried out by a Survey Group in 1955 ; this investigation was part of a general review of the organization of the Secretariat which had been ordered by the Secretary-General with the approval of the General Assembly.

The Survey Group recommended the reclassification of the Geneva proof-readers, and the Secretary-General included the necessary provision in his revised budget estimates. However, the Advisory Committee opposed that provision, on the following grounds :

"As regards the proposed reclassification of six posts of proof-reader from assistant officer to associate officer level, the Advisory Committee has taken note of the Survey Group's opinion that 'it is impossible . . . indefinitely to deny to the six Geneva staff members concerned equality of grading with their opposite numbers at Headquarters, particularly if posts and staff are to be regarded as freely interchangeable'. While there is force in this argument from the standpoint of the uniform classification of posts subject to international recruitment, the Advisory Committee finds difficulty in recommending what it regards as a clear case of over-grading, and the more so since it is informed that the proposed upward reclassification is opposed by one of the largest specialized agencies at Geneva." (paragraph 16).

On first reading, a proposal by the Belgian delegation that the funds necessary for the reclassification of the Geneva proof-readers should be restored was adopted by 20 votes to 13, with 11 abstentions, but on second reading the United States delegation proposed that the appropriation be reduced, and it was this proposal which the Committee finally adopted by 17 votes to 10, with 14 abstentions. During the discussion the representatives of the Secretary-General in the Fifth Committee, first Mr. Pelt, Director of the European Office (520th meeting, paragraph 20) and later Mr. Turner, Controller (530th meeting, paragraph 20), supported the reclassification in reliance, *inter alia*, on "the system of uniform grading in salary scales regardless of duty stations". They stated that the proof-readers "were specialists and usually received the salary of Officers at the P-2 level" and stressed that the specialized agency which opposed the reclassification "had no proof-readers in overseas offices and was not facing any problem comparable to that before the United Nations".

At the date of the contested decision, two years later, these considerations in favour of the reclassification of the proof-readers continued to be reflected in the Secretary-General's view, as expressed in that decision.

Nothing of importance having changed in the organization of the Applicant's service or in his duties and responsibilities, the Tribunal considers that the substantive conditions for a reclassification continue to be met.

X. In rejecting the advice of the Joint Appeals Board for reclassification, the contested decision relies on the claim that the Respondent, in any action by him on the classification of proof-readers in Geneva, is obliged to conform to the recommendations of the Fifth Committee as approved by the General Assembly. The decision refers expressly to document A/3103, the report submitted in 1955 by the Fifth Committee on the budget estimates for the year 1956. It is this document, therefore, which contains the provisions that determined the Respondent's attitude.

The Tribunal, in order to test the validity of the contested decision, must necessarily consider the significance of a document coming from the General Assembly. The problem of the Tribunal's competence in this case has been raised by the Respondent. He has stated that the United Nations Administrative Tribunal is a judicial body of limited jurisdiction and would exceed its powers if it ruled on the validity of an action taken by the General Assembly in the exercise of its powers to approve a budget or to establish staff regulations.

XI. The Tribunal notes that under its Statute it is competent to hear and pass judgement upon applications alleging non-observance of the Staff Regulations. The application alleges non-observance of Staff Regulation 2.1. Consequently the Tribunal is competent to interpret and apply Regulation 2.1. Under this Regulation, the General Assembly expressly reserved for itself, in respect to general principles affecting classification, certain powers which, to the extent to which they are exercised, limit the power of the Secretary-General. In interpreting this provision with reference to a particular decision, the Tribunal must consider whether or not, in the case in question, the Assembly exercised its power under Staff Regulation 2.1 and, consequently, whether or not the Secretary-General's freedom of action was reduced by such exercise. As in the case of the other provisions of the Staff Regulations, the Tribunal, in applying this provision, is competent to say whether Respondent's interpretation is legally valid.

XII. Staff Regulation 2.1 provides that both the General Assembly and the Secretary-General have a part to play in the matter of the classification of posts and staff.

When, in 1951, the Staff Regulations were being drafted, the Secretary-General proposed the following text:

"Appropriate provision shall be made by the Secretary-General for the classification of posts and staff according to the nature of the duties and responsibilities required."

The Advisory Committee then recommended that the provision should begin with the following phrase: "In conformity with principles laid down by the General Assembly . . .", and added the following comment:

"The amendment recommended by the Committee is intended to show that authority in respect of the classification of posts and the salary scheme

rests with the General Assembly. The Secretary-General would not be precluded by the amendment from making at any time necessary reclassifications of duties and responsibilities within the categories of posts."

The amendment of the Advisory Committee having been adopted, the General Assembly expressly reserved its right to lay down "principles" in the matter of classification, principles to which the Secretary-General must conform in exercising his authority to classify posts and staff.

The term "principle" is clear: it is something that is explicit and general. Before it can be said that a "principle" has been laid down, the General Assembly must have adopted a definite expression of opinion on the matter of classification; there must have been agreement on a concept in that respect.

There is also the fact that classification problems come before the General Assembly by reason of its competence in budgetary matters. However, the Assembly's function in this respect is governed by the rules relating to the presentation and adoption of the budget.

This being so, the Tribunal must determine:

(1) whether in 1955 the General Assembly laid down a "principle" within the meaning of Staff Regulation 2.1 that thereafter was binding on the Secretary-General;

(2) whether in the absence of such a principle, the provisions governing the budgetary powers of the Assembly debarred any action by the Secretary-General.

XIII. The question of the reclassification of the Geneva proof-readers was raised in the Fifth Committee during its consideration of the 1956 budget of the European Office, in the circumstances described in paragraph IX above. In the Fifth Committee's recommendation referred to in the contested decision, the position of the Committee was reflected solely in the total amount of the appropriation recommended for the European Office. This amount appears in the draft resolution on the budget appropriations for the financial year 1956. It was the only resolution to be approved at that time by the General Assembly affecting this case.

The report of the Fifth Committee (A/3103) to which the contested decision expressly refers contains a summary of the views of the Advisory Committee but, while mentioning the motions of the Belgian and United States delegations, it contains no other justification of the rejection of the appropriation requested for the purpose of the reclassification.

The summary records of the discussion in the Fifth Committee cite various arguments in support of the rejection (519th meeting, paragraph 61; 530th meeting, paragraphs 3 and 7). While the arguments of the Advisory Committee were endorsed by some delegations, other delegations put forward different arguments (the Philippine delegation, 530th meeting, paragraph 22). Accordingly, since no text was adopted by the Fifth Committee and submitted to the plenary of the Assembly, all that is certain is the fact of the refusal of the appropriation necessary for the reclassification. No "principle" was approved by the Fifth Committee or by the General Assembly. Hence there is no principle binding on the Secretary-General in relation to reclassification of the European Office proof-readers.

As far as document A/3103 is concerned the Secretary-General consequently

retains the whole of his competence under Staff Regulation 2.1 with respect to the Applicant.

XIV. In the absence of any "principle" laid down by the General Assembly in 1955, to which the Secretary-General would have to conform, there are nevertheless budgetary powers vested in the General Assembly which should be taken into consideration.

It must be emphasized that in the case of an institution which uses the system of an annual budget, a decision regarding appropriations produces legal consequences only with respect to the budget to which the decision relates.

The refusal of an appropriation necessary for an administrative action cannot take away the right to re-submit the request on another occasion. The only case in which the situation would be otherwise would be that where the request conflicted with a "principle" laid down by the Assembly in the matter of the classification of posts and staff, but in that case Staff Regulation 2.1 would be involved and not the budgetary procedure alone.

The Secretary-General's opinion expressed in the contested decision to the effect that in any action on the reclassification of proof-readers the Secretary-General has to conform to "the recommendations of the Fifth Committee as approved by the General Assembly", is therefore without legal basis.

XV. The Respondent has informed the Tribunal that, at the time of the contested decision, a new budgetary procedure included the presentation of an overall picture of the staff by classifications with corresponding requests for appropriations. He said that under this new budgetary procedure the General Assembly approved the total number of P-1 and P-2 posts, leaving it to the Secretary-General to distribute them among the services of the Secretariat. This discretionary power was large enough to permit the Secretary-General to initiate at the time of the contested decision the reclassification of the Geneva proof-readers, and that discretion cannot be said to have been limited by earlier decisions concerning requests for appropriations.

XVI. However, in the matter of moving from the P-1 to the P-2 level a "principle" was approved by the General Assembly at its eleventh session:

"Staff recruited at the Assistant Officer (P-1) level into the Professional posts, other than those which the Salary Review Committee had contemplated transferring to the General Service category, should normally be promoted after two years' satisfactory probation." (Report of the Fifth Committee A/3558, paragraphs 30 and 33, and resolution 1095 A (XI)).

Since the Salary Review Committee had contemplated the transfer of the proof-readers, they should not therefore have the benefit of quasi-automatic promotion from the P-1 to the P-2 level, but they nevertheless do retain the right to a classification in keeping with the nature of their duties and responsibilities.

XVII. The following conclusions arrived at by the Tribunal are based upon the circumstances peculiar to this case, where a thorough review of the facts has established that there exists in practice parity of duties and responsibilities of two groups of Professional staff members differently classified.

XVIII. The decision of 6 December 1957 is, in the opinion of the Tribunal, based on an erroneous interpretation of the Respondent's powers under Staff Regulation 2.1; it is therefore rescinded.

The decision of 25 March 1957 is rescinded to the extent that it might imply a similarly motivated rejection of the Applicant's claim.

In consequence of the rescission of the contested decisions and in view of the Tribunal's findings concerning the right of the Applicant to reclassification, the Respondent is bound to exercise his competence in the matter of reclassification in conformity with Staff Regulation 2.1.

XIX. The Tribunal recognizes that the Applicant's reclassification to the P-2 level may be subject to certain procedures now in effect or hereafter to be adopted in the interest of the sound administration of United Nations staff. The Tribunal therefore decides that the Respondent should proceed to reclassify the Applicant to the P-2 level with all speed consistent with the said procedures.

For the purposes of the preceding paragraph, the Tribunal considers that these proceedings remain open and that the Applicant may, if necessary, directly seize the Tribunal of any supplementary application.

XX. The Applicant requests the Tribunal to order that, if the Administration fails to reclassify him to the P-2 level with retroactive effect from the date of his request to the Secretary-General, *i.e.* 7 March 1957, there be awarded to him, as from that date and until the date of his reclassification to the P-2 level, compensation in adjustment of the difference between the respective salary and benefits of levels P-1 and P-2.

The Tribunal interprets this request as being made under article 9, paragraph 1, of its Statute and as contemplating the situation in which the Secretary-General should decide, within thirty days, that the Applicant shall be compensated without further action being taken in his case. The Tribunal decides that in that event the Applicant shall receive, as from the date of this judgement, a monthly compensation in an amount equal to the difference between the net monthly salary and benefits which the Applicant will be receiving in his present level and the net monthly salary and benefits to which the Applicant would be entitled if he were placed in the P-2 level on the date of this judgement. This monthly compensation shall be paid until the Applicant's employment by the United Nations in his present capacity and level ceases or until an agreement is reached between the Secretary-General and the Applicant. The total amount of the compensation so paid to the Applicant shall not exceed the equivalent of one year's net annual base salary of the Applicant at the rate existing on the date of this judgement.

XXI. As damages in compensation for the material injury sustained by him, in particular from 1 March 1949 to 7 March 1957, the Applicant requests the sum of 12,392.30 Swiss francs plus legal costs.

As regards the request for reparation of the material injury sustained, the Tribunal notes that in 1955 the Respondent took appropriate steps with a view to the Applicant's reclassification. Subsequently, he sought other means of rectifying the Applicant's position.

The Tribunal notes, however, that the trial and disposition of this case have been delayed by reason of circumstances outside the Applicant's control and by the Tribunal's acceptance of the Respondent's request for a postponement. In the normal course of events, the judgement ought to have been rendered in May 1958, or about fifteen months before the date of the present judgement. By analogy with article 9, paragraph 2, of its Statute, the Tribunal decides to

award to the Applicant compensation equal to the difference between the net salary and benefits received by the Applicant during the past fifteen months and the net salary and benefits which he would have received during the same period if he had been reclassified to the P-2 level on 1 June 1958.

XXII. As regards the request for costs, the Applicant indicated that his request was for the reimbursement of counsel's fees and expenses connected with these proceedings and asked the Tribunal to assess the sum to be reimbursed. The Tribunal, having regard to its resolution of 14 December 1950 and considering the nature and circumstances of the case, orders the Respondent to pay the sum of \$200 as costs.

XXIII. The Tribunal dismisses all claims and contentions of the Applicant other than those expressly admitted in this judgement.

(Signatures)

Suzanne BASTID
President

Francisco A. FORTEZA
Member

Harold RIEGELMAN
Member

Nicholas TESLENKO
Executive Secretary

Geneva, 17 August 1959.

Statement by Mr. Harold Riegelman

(Original: English)

I have read the final draft of the judgement in this case in English and I concur with the decision.

(Signature)

Harold RIEGELMAN

Geneva, 17 August 1959.

Judgement No. 77

(Original: French)

Case No. 74:
Coffinet

Against: The Secretary-General
of the United Nations

See note on Judgement No. 76 above.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Francisco A. Forteza ;
Mr. Harold Riegelman ;

Whereas Julien Coffinet, proof-reader, P-1 level, serving in the European Office of the United Nations, filed an application with the Tribunal on 10 March 1958 and amended the claims thereof on 7 August 1959 ;