

**Judgement No. 83***(Original: English)***Case No. 82:**  
**Miss Y***Against:* **The Secretary-General  
of the United Nations**

*Termination of the permanent appointment of a staff member for health reasons.*

*Determinating role of the psychiatric factor in the decision to terminate.—Examination of the Applicant by a psychiatrist four months prior to the notice of termination.—Information communicated by the Respondent concerning the results of the examination.—Observation by the Tribunal that the psychiatrist had not concluded that the Applicant was incapacitated for further service.*

*Obligation of the Secretary-General to terminate a permanent appointment only upon a decision which has been reached by means of a complete, fair and reasonable procedure.—Failure to observe the appropriate procedure in that there was no psychiatric examination immediately prior to the issuance of the notice of termination.*

*Application of article 9.2 of the Statute of the Tribunal.—Remand of the case for correction of procedure and payment of compensation to the Applicant for the loss caused by the procedural delay.*

**THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,**

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; the Honourable Mr. R. Venkataraman; Mr. James J. Casey, alternate member;

Whereas, on 3 July 1961, Miss Y, the Applicant herein, a former staff member of the United Nations Secretariat, requested that the Tribunal appoint counsel to assist her in the preparation and submission of an application to the Tribunal;

Whereas, in accordance with the terms of Secretary-General's Information Circular ST/ADM/SER.A/360 and of a memorandum dated 19 July 1961 from the Chief of the Rules and Reports Section, the President of the Tribunal designated as counsel Mr. Shukri Salameh, a staff member of the United Nations;

Whereas, at the Applicant's request, the President extended the time for filing of an application to 8 October 1961;

Whereas, on 29 September 1961, the Applicant filed an application requesting that the Tribunal:

(a) rescind the decision of the Secretary-General, the Respondent herein, under which her permanent appointment was terminated for health reasons;

(b) order her reinstatement in the United Nations Secretariat in an appropriate post;

(c) order, in the event that the Respondent exercises the option given under article 9.1 of the Statute of the Administrative Tribunal, the payment of compensation in an amount equal to two year's net base salary of the Applicant, in addition to the other monetary benefits already received by the Applicant;

Whereas the Respondent filed his answer on 27 October 1961;

Whereas, on 31 November 1961, the Applicant submitted written observations on the Respondent's answer;

Whereas, on 17 and 20 November 1961, the parties filed additional written statements ;

Whereas, on 24 November 1961, the President put a question to the Respondent who replied in writing on 27 November 1961 ;

Whereas, on 27 November 1961, the Tribunal heard the parties in public session in the course of which the parties replied to questions put by the Tribunal and submitted additional arguments ;

Whereas, on 28 November and 5 December 1961, the Respondent submitted in writing further information with respect to questions put by the Tribunal in the course of the public session ;

Whereas, on 29 November 1961, the Tribunal put two additional questions to the Respondent who replied in writing on the same day ;

Whereas, on 29 November 1961, the Applicant submitted written comments on the Respondent's answers to the Tribunal's questions ;

Whereas, on 30 November 1961, the Tribunal indicated to the Respondent that this might be a case for the application of article 9, paragraph 2, of the Statute of the Tribunal ;

Whereas, on 1 December 1961, the Respondent requested the Tribunal that, with a view to remedying any such procedural omissions as may have occurred, the Tribunal would, prior to determining the merits of the case, order the case remanded for institution or correction of the required procedure, under the provisions of article 9, paragraph 2, of the Tribunal's Statute ;

Whereas a copy of this request was conveyed, on 1 December 1961, to the Applicant ;

Whereas, on 4 December 1961, the Applicant sent to the Tribunal a memorandum submitting ;

(a) that it was too late for the Respondent to apply for an opportunity to institute or correct the errors in his former measures to terminate the Applicant, since when the case had been appealed (i) to the Respondent, (ii) to the Joint Appeals Board and (iii) in written and oral proceedings to the Tribunal, the Respondent did not apply for or even consider a correction of the said procedure ;

(b) that, therefore, the Applicant reserved "to herself the right of refusing any measures which may diminish, reduce or prejudice her rights" ; and

(c) that, in the event that the Tribunal orders the case remanded, an order be made, under article 9, paragraph 2, of the Statute, for payment to the Applicant of compensation equivalent to three month's net base salary for the loss which would be caused to her by the procedural delay ;

Whereas the facts of the case are as follows :

The Applicant entered the service of the United Nations on 27 August 1946 as a monolingual stenographer on a temporary-indefinite contract. In 1952, she was classified as a monolingual secretary. In 1953 her temporary contract was submitted for review to the Personnel Selection Committee. After examining the facts, the Committee recommended that she be given a permanent contract. At the same time, however, the Committee drew the Secretary-General's attention to her medical history and record of sick leave and left it to him to decide what health standard should be applied in the case. On 18 February 1954, she was informed that the Secretary-General has decided to terminate her

appointment. On 1 March 1954, the Applicant requested the Secretary-General to reconsider that decision. Having received no reply four weeks later, she submitted an appeal to the Joint Appeals Board. Before the case was heard, however, the Secretary-General rescinded his previous decision and extended her contract for a probationary period of one year. On 1 April 1955, the Applicant received a permanent contract. From 1955 to 1959, the Applicant suffered from various illnesses and, on at least two occasions, exhausted her sick leave entitlement. At a date prior to 13 December 1957, she was reclassified for medical purposes to category 2 defined as referring to:

“Staff members with defects such as hernia or pulmonary tuberculosis which can be treated and corrected, before reclassification to 1-a or 1-b ; pending reclassification, each such case for changes in work assignment or transfers will have to be considered on its merits.”

In the first half of 1960, the Applicant underwent two major and one minor surgical operations and was absent on sick leave with full pay from 25 January to 15 July. In a memorandum dated 15 July 1960, the Medical Director of the United Nations Health Service informed the Acting Director of Personnel and the Executive Officer concerned that the Applicant was unfit to resume her duties. On 16 July 1960, having exhausted her entitlement to sick leave with full pay, she was granted sick leave with half-pay. On 19 July 1960, the Medical Director addressed the following memorandum to the Office of Personnel:

“Further to my memorandum of 15 July, Miss Y was seen again by Dr. Torre and me today.

“We believe that the best course is termination on medical grounds together with the awarding of a disability benefit from the Pension Fund. Hitherto she has been wholly unreceptive to this suggestion, but today she seemed a little more receptive and we believe there may be a chance of her agreeing to such a termination if the exact financial details involved could be understood by her.

“Even if she is physically able in one or two months’ time to return to work, the long history of her past inability to work with other colleagues and to adjust to normal working conditions contraindicates her being retained on the staff.”

On 8 November 1960, the Director of Personnel issued a notice of termination under the provisions of Staff Rule 109.3 (a) informing the Applicant that the Secretary-General had decided to terminate her permanent appointment for reasons of health and that her case was being submitted to the Joint Staff Pension Board for determination of eligibility for a disability benefit. As a result of this action, the Board granted the Applicant a disability benefit of \$1,589.28 net per annum. On 21 November 1960—two weeks after the issuance of the notice of termination—the Medical Director addressed a memorandum to the Office of Personnel stating *inter alia* that:

“Even though staff member is now physically recovered, she is mentally unfit to resume duties. We therefore maintain our recommendation for termination on health grounds and for granting of a disability benefit.”

On 26 November 1960, the Applicant requested the Secretary-General to reconsider the decision to terminate her appointment. Following the refusal of that request, the Applicant took her case to the Joint Appeals Board. According

to the Summary of the Hearing, which took place on 7 April 1961, the Applicant explained *inter alia*:

“That a back condition made it impossible for her to work as a typist, but that otherwise she felt able to continue working for the United Nations, as long as it did not involve constant typing.”

On 19 April 1961, the Board adopted unanimously the following conclusions and recommendations:

“1. In view of the fact that the Appellant has not denied the presence of disabling illness, and since a full disability pension has actually been granted, the Board does not recommend rescinding the administrative decision appealed.

“2. Due to the history of the case, the Board recommends that an *ex gratia* payment be made to Miss Y in order to supplement her disability pension.

“3. It is the opinion of the Board that such an *ex gratia* payment could amount to \$2,250, calculated on the basis of a supplementary \$75 a month for a period of two and a half years, preferably to be paid in instalments.

“4. In examining this case, the Board formed the opinion that the procedure followed in cases of termination ‘for reasons of health’ would be considerably improved for the benefit of the Administration as well as for that of staff members, if recommendations for termination on health grounds were supported by a joint presentation of the Medical Director of the United Nations Health Clinic and a doctor designated by the staff member. If both doctors are unable to agree upon the ‘reasons of health’ under consideration, a third doctor who might be nominated jointly by the doctors concerned or, upon their request, by the New York County Medical Society, should participate in the final medical consideration of the case.”

On 8 June 1961, the Director of Personnel informed the Applicant that the Secretary-General had accepted paragraphs 1, 2 and 3 of the Board’s conclusions and recommendations. On 29 September 1961, the Applicant filed the application referred to above.

Whereas the Applicant’s principal contentions are:

1. The Respondent terminated the Applicant’s permanent appointment for reasons of health upon the unilateral recommendation of the Medical Director of the United Nations Health Service instead of submitting her case for review to the Appointment and Promotion Board in accordance with the staff rules governing the five-year review of permanent contracts. The Applicant was thus deprived of the guarantees of due process offered by the procedure before the Board.

2. The Respondent erred in acting upon the recommendation of the Medical Director to the effect that the Applicant’s permanent appointment be terminated for reasons of health inasmuch as the Medical Director himself subsequently recognized that she had recovered from two major surgical operations which occasioned her extended absence from her post at the United Nations, and his observations on her mental condition were not within his field of competence.

3. The Medical Director’s recommendation was not founded on competent medical evidence but was largely based on extraneous information concerning

her alleged inability to co-operate with other staff members and to adjust to changes in working conditions.

4. The comments of the Medical Director concerning the Applicant's mental health should have been disregarded by the Respondent since they were based not on a scientific diagnosis of her condition but on the results of an interview between the Applicant and a psychiatrist who, instead of carrying out a proper medical examination, attempted to induce her to accept an agreed termination.

5. The Respondent terminated the Applicant's permanent appointment without the required scientific evidence since there was no examination or conclusive diagnosis by a specialist in mental diseases of the Applicant's condition at the time of the issuance of the notice of termination.

6. The Medical Director exceeded his competence in (a) attempting to persuade the Applicant to accept termination of her permanent appointment for reasons of health and, after failure of his attempts, (b) recommending termination of the Applicant's permanent appointment on the grounds of her mental condition and "the long history of her past inability to work with other colleagues and to adjust to normal working conditions", rather than confining his report to the facts concerning the status of her health.

7. The Respondent erred in considering the alleged unsatisfactory character of the Applicant's services as assessed in two periodic reports which were shown to the Applicant only after termination and to which the Applicant was afforded no opportunity to reply. Since the Applicant's permanent appointment was terminated for reasons of health, the Respondent in arriving at his decision to terminate should not have considered references to the alleged unsatisfactory character of the Applicant's services.

8. The Joint Appeals Board erred in failing to distinguish between partial and total disability of the Applicant and in its conclusion that the Applicant's statement as to her inability to do constant typing work was an admission by the Applicant that she was incapacitated for further service with the United Nations.

9. The Joint Appeals Board erred in merely giving its opinion to the effect that the procedure followed in future cases of termination for reasons of health could be considerably improved, while at the same time giving its tacit approval to the procedure followed in this case.

Whereas the Respondent's principal contentions are:

1. The Applicant's appointment was not submitted for review to the Appointment and Promotion Board since it was clear at the time that the condition of her health was the main issue in her case.

2. It was clearly the duty of the Medical Director to make an evaluation of the Applicant's state of health at a time when it was known that she had undergone two major surgical operations. The conclusions reached by him were based, not on extraneous information, but on his own observations and, as regards the Applicant's mental condition, on the opinion of the Consultant Psychiatrist to the United Nations Health Service with whom the Applicant had had a recent consultation. The Medical Director also took into account the fact that the Applicant had refused to accept psychiatric observation and treatment.

3. It was also the Medical Director's duty to transmit to the Office of

Personnel his conclusions on the Applicant's condition together with a recommendation for administrative action.

4. It was entirely proper for the Medical Director to try and induce the Applicant, in her own interest, to accept termination of her permanent appointment for reasons of health.

5. The Respondent acted entirely correctly and lawfully in deciding to terminate the Applicant's permanent appointment. The decision was reached by the Secretary-General, in the exercise of his exclusive authority, after receiving the advice of the officials concerned, in particular the Medical Director and the Director of Personnel, and on the basis of internal communications which have not all been divulged in view of the privileged and confidential nature of some of the matters dealt with therein. Though the mental condition of the Applicant was the main reason for her termination, the Secretary-General also took into account the periodic reports of unsatisfactory services on the part of the Applicant, which in themselves would have warranted the termination of her appointment under Staff Regulation 9.1 (a).

6. The memorandum submitted by the Medical Director two weeks after the issuance of the notice of termination to the effect that "even though staff member is now physically recovered, she is mentally unfit to resume duties" cannot be construed as a favourable evaluation of her state of health.

7. The Joint Appeals Board did not misconstrue the Applicant's statement concerning her inability to do constant typing work. In any case, the matter is irrelevant since a termination for reasons of health does not require an admission on the part of the staff member concerned that he or she is incapacitated for further service with the United Nations. Neither did the Joint Appeals Board err in failing to find that the internal procedures followed by the Respondent in the case were contrary to Staff Regulation 9.1 (a). The requirements of that staff regulation have been fully observed and applied by the Respondent. Internal procedures of this nature, moreover, are matters which fall within the Secretary-General's exclusive authority.

8. The Applicant demonstrated (a) a long history of extended absences from work because of sickness over a period of ten years, (b) inability to get on with many of her colleagues and supervisors and refusal to accept certain reasonable work assignments. The Respondent believes that this is due to her deteriorating physical and mental conditions.

The Tribunal having deliberated until 8 December 1961, now pronounces the following judgement:

1. At the time of the separation from service, the Applicant held a permanent appointment as G-3 with the United Nations since 1955. According to Staff Regulation 9.1 (a), the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment "if the necessities of the service require abolition of the post or reduction of the staff, if the services of the individual concerned prove unsatisfactory, or if he is, for reasons of health, incapacitated for further service."

2. Though the Respondent in his answer referred to the general physical health of the Applicant, her long periods of absence on sick leave, her mental health and her inability to work with other colleagues and her unsatisfactory work performance, the Respondent rested his case during his oral statement to

the Tribunal on the psychiatric factor as the decisive factor in the decision that the Applicant was incapacitated for service (AT/PV.84, p. 38).

3. Notwithstanding this, in the notice of termination dated 8 November 1960, the Respondent did not disclose that the appointment was terminated for reasons of mental health, but merely stated that "the Secretary-General has decided to terminate your Permanent Appointment for reasons of health under Staff Regulation 9.1 (a)".

4. Following the examination of the Applicant by the Medical Director, the Applicant was examined by Dr. Torre, a Consultant Psychiatrist to the United Nations Health Service, on 18 July 1960, that is, nearly four months prior to the notice of termination of her appointment.

5. The Tribunal put the following questions to the Respondent regarding the examination of the Applicant by Dr. Torre:

"Did the statement signed by Dr. Torre on 18 July 1960 of his psychiatric conclusions and diagnosis:

"1. Indicate the positive existence of mental illness, and

"2. If so, that such mental illness would persist permanently?"

In reply, the Respondent stated as follows:

"The statement signed by Dr. Torre on 18 July 1960, of his psychiatric conclusions and diagnosis, did indicate the positive existence of mental illness. The Respondent's answer to the Tribunal's first question is therefore 'yes'.

"With regard to the Tribunal's second question, the entry by Dr. Torre referred to above did not state that such mental illness would persist permanently. This entry included *inter alia* the following statement: 'She is not receptive to psychotherapy at present. The prognosis is guarded.'"

The Tribunal notes that the psychiatric conclusions of Dr. Torre did not indicate that the Applicant was incapacitated for further service with the United Nations.

6. The Applicant's contention that, at or about the date of the notice of termination, there was no examination and no conclusive diagnosis of the Applicant's mental condition by a specialist in mental diseases, appears well founded.

7. Having in mind the very substantial rights given by the General Assembly to those individuals who hold permanent appointments in the United Nations Secretariat, the Tribunal considers that such permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision.

8. The Tribunal notes that the Staff Rules and Regulations do not specify the exact procedure to be followed in the case of termination of a permanent appointment for reasons of health. Nor do they provide for a procedure, in case a staff member contests the findings of the Medical Director. However, in the event of a difference between a staff member and the Secretary-General regarding sick leave, Staff Rule 106.2 provides that, upon the request of the staff member, the matter shall be referred to an independent practitioner or a medical board acceptable to both the Secretary-General and the staff member. The Tribunal observes that a similar rule relating to termination of appointment on health grounds might be appropriate.

In this connexion, the Tribunal notes that the Joint Appeals Board at paragraph 4 of its conclusions and recommendations observed as follows:

“4. In examining this case, the Board formed the opinion that the procedure followed in cases of termination ‘for reasons of health’ would be considerably improved for the benefit of the Administration as well as for that of staff members, if recommendations for termination on health grounds were supported by a joint presentation of the Medical Director of the United Nations Health Clinic and a doctor designated by the staff member. If both doctors are unable to agree upon the ‘reasons of health’ under consideration, a third doctor who might be nominated jointly by the doctors concerned or, upon their request, by the New York County Medical Society, should participate in the final medical consideration of the case.”

9. Taking into account all the circumstances of the case, the Tribunal concludes that the appropriate procedure of medical examination of the Applicant to ascertain her physical and mental health was not carried out by the Respondent immediately prior to the issuance of the notice of termination and that even the examination of the Applicant by Dr. Torre (which took place four months before the notice of termination) did not disclose that her mental illness would incapacitate her for service, Dr. Torre having noted: “The prognosis is guarded.”

10. Regarding the contention of the Applicant that the Respondent erred in not submitting the Applicant’s appointment for the five-year review provided for in the Staff Rules 104.13 and 104.14, the Tribunal considers that in the instant case the Secretary-General was not required to submit the appointment for such review.

11. The Tribunal has not reached any conclusion with regard to the physical and mental health of the Applicant on the date of issue of the notice of termination but finds that the Applicant has been denied due process in that a proper medical procedure was not followed by the Respondent.

12. The Tribunal has been requested by the Respondent, in accordance with the terms of article 9.2 of the Statute of the Administrative Tribunal, to remand the case for correction of procedure. Without determining the merits of the termination of the appointment, the Tribunal decides that the case should be remanded for the institution of proper procedure for medical examination of the Applicant.

13. Article 9.2 of the Statute of the Administrative Tribunal provides that “where a case is remanded the Tribunal may order the payment of compensation, not to exceed the equivalent of three months’ net base salary, to the Applicant for such loss as may have been caused by the procedural delay.”

14. The Tribunal considers that the Applicant has suffered loss owing to the procedural delay and that the Applicant should be compensated. The Tribunal however notes that the Applicant has been granted *ex gratia* payment in addition to her disability pension. Taking these facts into consideration, the Tribunal decides that the payment of compensation equivalent to two months’ net base salary is adequate in the circumstances of the case.

15. The Tribunal, without deciding the merits of the case, orders that:  
(a) the case be remanded for correction of the procedure used by the



Respondent in arriving at the decision that the Applicant is incapacitated for further service for reasons of health under Staff Regulation 9.1 (a); and

(b) the Applicant be paid as compensation an amount equal to two month's net base salary for the loss caused by the procedural delay.

16. In view of the circumstances of the case, the Tribunal orders that the name of the Applicant shall be omitted from the published versions of the judgement.

(Signatures)

Suzanne BASTID  
President

CROOK  
Vice-President

R. VENKATARAMAN  
Member

James J. CASEY  
Alternate Member

Nicholas TESLENKO  
Executive Secretary

New York, 8 December 1961.

### Judgement No. 84

(Original: French)

Case No. 84:  
Young

Against: The Secretary-General of  
the International Civil  
Aviation Organization

*Request by a former Technical Assistance official of ICAO for validation by the Joint Staff Pension Fund of service completed before his participation in the Fund.*

*The Provisional Regulations for Technical Assistance Personnel in force when the Applicant entered on duty on 2 November 1951.—Applicant's right under paragraph 19 of the Regulations to participate in the Fund after two years' service.—The replacement on 1 January 1952 of the Provisional Regulations by a Manual for Technical Assistance Personnel.—Absence from the editions of the Manual in force up to 31 December 1957 of any provision relating to pension rights.—Article 248 of the 1 January 1958 edition of the Manual and the Applicant's participation in the Joint Staff Pension Fund by virtue of this provision.—Refusal on the basis of the Regulations of the Fund to validate service completed between 2 November 1951 and 31 December 1957.*

*The Applicant's contractual status.*

*The clause in the initial letter of appointment reserving ICAO's right to amend the Provisional Regulations for Technical Assistance Personnel provided that amendments did not reduce or restrict the conditions set forth in the letter.—The proviso not applicable to the conditions set forth in the Provisional Regulations.—The abrogation on 1 January 1962 of the provisions of paragraph 19 of the Provisional Regulations could operate against the Applicant.*

*Successive extensions of the initial contract.—New contract resulting from the letter of appointment of 1 June 1955.*

*Lack of sufficient information with respect to the purport of the pertinent provisions of the Regulations of the Joint Staff Pension Fund and the scope of the "omnibus" clause*