

UNITED NATIONS
ADMINISTRATIVE TRIBUNAL

Judgement No. 87

(Original : English)

Case No. 85 :
Carson

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

Request for interpretation of Judgement No. 85.

Meaning of the words " were terminated " in paragraph 12 (b) of the operative part of Judgement No. 85.—Tribunal competent to rule on the matter by means of interpretation.—Respondent's obligation, if he opts for payment of compensation, to apply all the financial provisions of Staff Regulation 9.3 in the Applicant's favour.—Definition of " termination " in Staff Rule 109.1 (b).

Ruling by the Tribunal that the Applicant is entitled to three months' notice and that the termination indemnities should be calculated on that basis.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; the Honourable Mr. R. Venkataraman ;

Whereas, on 30 March 1962, Edna May Carson, a former staff member of the United Nations, specifically recruited for the United Nations Children's Fund, filed an application against the termination of her permanent appointment ;

Whereas, by Judgement No. 85 delivered on 14 September 1962, the Tribunal ordered the rescinding of the administrative decision terminating the Applicant's appointment ;

Whereas paragraph 12 of Judgement No. 85 specified that in the " event that the Secretary-General exercises his option under article 9, paragraph 1, of the Statute of the Tribunal and decides not to reinstate the Applicant... the Tribunal orders :

" (a) The payment of full salary to the Applicant, from 1 August 1961 till the date of the decision of the Secretary-General under article 9, paragraph 1, of the Statute of the Tribunal, less the amounts paid to the Applicant in lieu of notice and less also the amount of termination indemnity and

" (b) The payment of an amount equal to that which would be payable under Staff Regulations and Rules if the Applicant's appointment were terminated on the date of such decision by the Secretary-General. " ;

Whereas, on 19 September 1962, the Director of Personnel informed the Applicant in writing that, in pursuance of article 9, paragraph 1, of the Statute of the Tribunal, the Secretary-General had decided not to reinstate her ;

Whereas, on 18 December 1962, the Applicant received from the United Nations the sum of \$8,880.25 as compensation payable under Judgement No. 85 ;

Whereas, on the same day, the Applicant addressed a letter to the Director of Personnel drawing attention to the fact that that sum did not include three months' salary in lieu of notice ;

Whereas, on 10 January 1963, the Director of Personnel informed the Applicant in writing that, in his view, paragraphs 12 (a) and (b) of Judgement No. 85 did not provide for payment of salary in lieu of notice ;

Whereas, after further correspondence, the Deputy Director of Personnel informed the Applicant, by a letter dated 19 February 1963, that the Administration had no objection to her requesting the Administrative Tribunal to give an interpretation of Judgement No. 85 " concerning payment of salary in lieu of notice " ;

Whereas, on 18 April 1963, the Applicant filed a motion for the interpretation of Judgement No. 85, requesting the Tribunal to rule that the amount referred to in paragraph 12 (b) of the Judgement included, *inter alia*, salary in lieu of notice ;

Whereas, on 9 May 1963, the Respondent delivered his observations on the motion for the interpretation of Judgement No. 85 ;

Whereas, on 5 June 1963, the Applicant submitted comments on the Respondent's observations ;

Whereas the Applicant's main contentions are :

1. By rescinding the termination of the Applicant's permanent appointment, Judgement No. 85 restored the situation which existed before the termination of the appointment. The Judgement specified, in particular, that the Applicant was entitled to full salary to the date of the decision to be taken by the Secretary-General in pursuance of article 9, paragraph 1, of the Statute of the Tribunal.

2. In exercising the option granted to him by article 9, paragraph 1, of the Statute, the Secretary-General in effect decided to terminate the Applicant's permanent appointment for a second time. The termination entitlements under the Staff Regulations and Rules included three months' salary in lieu of notice since the Applicant was not allowed to resume her work.

3. Judgement No. 85 stated that it was reasonable to expect that the Applicant would be able to secure employment within one year. It did not state, however, that one year's salary would be an adequate compensation for the injury sustained.

Whereas the Respondent's main contentions are :

1. Staff Rule 109.1 (b) defines a termination as a separation initiated by the Organization. The Respondent, therefore, assumed from the wording of Judgement No. 85 that the date of the Secretary-General's decision under article 9, paragraph 1, of the Statute of the Tribunal was to be considered, for the purpose of terminal settlements, as the date of separation. He could not assume that the Tribunal intended the date of the Secretary-General's decision to correspond not to a termination but to a notice of termination.

2. No reference is made in Judgement No. 85 to payment of salary in lieu of notice. Such payment cannot be automatically regarded as part of termination entitlements since it requires a special authorization by the Secretary-General under Staff Rule 109.3 (c).

3. Judgement No. 85 explicitly stated that it was reasonable to expect that the Applicant would be able to find other employment within one year. Actually, on the date of the Secretary-General's decision not to reinstate her, the Applicant had been separated from service for more than thirteen months, for which she had been awarded full salary by the Tribunal. It therefore seemed groundless to include in the amount payable under paragraph 12 (b) of the Judgement compensation in lieu of an additional three months' salary.

The Tribunal, having deliberated from 17 September to 3 October 1963, now pronounces the following judgement :

I. In its Judgement No. 85, the Tribunal decided that the administrative decision terminating the appointment of the Applicant should be rescinded and, in accordance with article 9, paragraph 1, of the Statute of the Tribunal, the Tribunal also fixed the amount of compensation payable to the Applicant should the Secretary-General decide not to reinstate the Applicant.

The Judgement was delivered on 14 September 1962 and the Secretary-General decided on 19 September 1962 that the Applicant should be compensated instead of being reinstated.

II. The Applicant contends that the letter of the Director of Personnel dated 19 September 1962 should be considered equivalent to a decision to terminate her, entitling her to payment of various amounts provided for in the Staff Regulations and Rules ; she therefore considers that she is entitled to three months' salary in lieu of notice of termination, as well as to the termination indemnities.

The Respondent contends that, according to the Judgement, the Applicant's appointment should be deemed to have ceased on 19 September 1962, i.e., when the Secretary-General exercised his option not to reinstate the Applicant. Consequently, he considers that the Applicant is entitled to the payment of her salary only until 19 September 1962, without compensation in lieu of notice of termination.

III. The question that arises concerns the interpretation of the words " were terminated " in paragraph 12 (b) of the Judgement which reads as follows :

" The payment of an amount equal to that which would be payable under Staff Regulations and Rules if the Applicant's appointment were terminated on the date of such decision by the Secretary-General. "

The Tribunal notes that there is disagreement concerning the meaning of the operative part of the Judgement. Its competence to rule on the matter by means of interpretation has been established in Judgement No. 61.

IV. As a result of the Judgement No. 85, the Applicant legally stood restored to her position as a staff member with a permanent contract. Her entitlements should therefore be related to the Staff Regulations and Rules applicable to her. In fixing the compensation, the Tribunal ordered in paragraph 12 (b) that the Applicant should be paid her entitlements under the Staff Regulations and Rules as if the Applicant's appointment were terminated by the Secretary-General on the date of his decision not to reinstate the Applicant. The Tribunal thereby implied that the original termination of appointment having been rescinded, the entitlements as in a fresh termination by the Secretary-General on the date of his decision not to reinstate, should be paid to the Applicant.

V. The term used in the Judgement is the actual word used in Staff Regulation 9.3 (" terminates "), thus all the consequential financial provisions of

Regulation 9.3 must be applied in the Applicant's favour in accordance with that text.

The Respondent's contention in effect deprived the Applicant of her right to notice of termination both under the rescinded order and under the new decision of the Secretary-General not to reinstate. Such an interpretation would have been possible only if the Tribunal had specified, when fixing the amount of compensation due, that the Applicant's connexion with the United Nations ceased on the date of the new decision.

VI. The Respondent argues that, according to the definition of "termination" contained in Staff Rule 109.1 (b), the date of termination and the date of separation are identical and therefore, when the term "termination" was used by the Tribunal, the Respondent treated it as the actual date of separation.

The Tribunal observes that, in the first place, the definition of "termination" merely distinguishes several forms of separation from the United Nations, such as superannuation, retirement owing to disability, summary dismissal, etc., and does not warrant a conclusion that the date of termination and separation are identical. Secondly, Regulation 9.3 clearly specifies that in case of termination of an appointment by the Secretary-General, the staff member shall be entitled to notice. Since, according to the Judgement, the Applicant's situation is considered equivalent to a decision by the Secretary-General to terminate, the Applicant should be entitled to notice and indemnity under the relevant Staff Rules.

VII. The Respondent contends that the compensation offered is adequate and that it approximated to the one year's salary which the Tribunal had in view when it indicated in the Judgement that the Applicant should be able to secure other employment in a period of one year. The Tribunal desires to point out that it had not fixed one year's salary as compensation payable to the Applicant, but, on the other hand, had stated that the amount payable should be such as the Applicant would be entitled to had the Secretary-General terminated the appointment.

VIII. The Tribunal therefore interprets its Judgement No. 85 and rules :

- (a) That the Applicant is entitled to three months' notice and
- (b) That the termination indemnities should be calculated on that basis.

(Signatures)

Suzanne BASTID

President

CROOK

Vice-President

New York, 3 October 1963.

R. VENKATARAMAN

Member

N. TESLENKO

Executive Secretary
