

XI. The Tribunal therefore decides on the merits of the case that the Applicant has been denied the protection afforded by Administrative Instruction ST/AI/115 and thereby deprived of a fair and reasonable procedure before termination of his appointment. The application is therefore well founded.

XII. Article 9, paragraph 1, of the Statute of the Tribunal provides that:

“If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked.”

In the present case, rescinding the decision terminating the Applicant's appointment would provide no relief to the Applicant as the period of probation has expired. Nor is there on the part of the Respondent any obligation whose specific performance might be invoked. The Tribunal has held in similar cases (Judgements Nos. 68, *Bulsara*, and 92, *Higgins*) that compensation in lieu of specific performance may prove to be adequate and proper relief.

XIII. The Tribunal considers that in the circumstances of the case a sum equivalent to three months' net base salary will be adequate compensation for the injury caused to the Applicant by procedural defects, and awards accordingly.

XIV. The Tribunal rejects the Applicant's request for the correction of his Official Status file and other files as “there is no authority for the Tribunal to interfere with the notations and comments on files and documents intended for internal circulation within the Organization” (Judgement No. 107, *Miss B*).

XV. Since the Applicant had been represented by a member of the panel of counsel, the Tribunal rejects the claim for costs.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

F. A. FORTEZA
Member

Jean HARDY
Executive Secretary

New York, 30 October 1970

Judgement No. 139

(Original: English)

Case No. 138:
Rajappan

Against: The Secretary-General
of the United Nations

Non-renewal of the fixed-term appointment of a staff member of the United Nations Children's Fund.

Conversion of the initial probationary appointment of the Applicant into a fixed-term appointment.—The Applicant accepted this appointment and subsequent similar appointments.—Claim that the Fund was under the obligation to convert the probationary appointment into a regular appointment.—Such conversion would depend on the

consent of the Administration.—Decision not to renew the last fixed-term appointment.—Discretionary power of the Secretary-General in the absence of any commitment or circumstances creating an expectancy of renewal of the appointment of the staff member concerned.—The Applicant contests the reason, namely, abolition of the post, stated by the Administration.—Since the Applicant has not attributed any prejudice or any other extraneous factors to the contested decision, the Tribunal finds it unnecessary to pronounce on this matter.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Zenon Rossides;

Whereas, on 20 July 1970, P. V. Rajappan, a former staff member of the United Nations specifically recruited for the United Nations Children's Fund, hereinafter called UNICEF, filed an application against the non-renewal of his fixed-term appointment by UNICEF;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 1 October 1970;

Whereas the pleas of the application request the Tribunal to order the reinstatement of the Applicant or, in the alternative, the payment to him of an amount of compensation equivalent to 12 years' salary;

Whereas the Applicant, in his application, requested the Tribunal to designate a counsel to assist him in the presentation of his case;

Whereas, on 13 October 1970, the President of the Tribunal, in pursuance of Administrative Instruction ST/AI/163/Rev.1, designated as counsel Mrs. Rasil S. Basu, a staff member of the United Nations;

Whereas the Respondent filed his answer on 22 December 1970;

Whereas the Applicant filed written observation on 5 March 1971;

Whereas the facts in the case are as follows:

The Applicant, who was an official of the Government of Madras (India), entered the service of UNICEF on 11 September 1962 as Assistant Agriculturist under a probationary appointment for two years, on secondment from his Government. On 1 September 1963, his title was changed to that of Assistant Horticulturist. On 1 September 1964, the Applicant became Assistant Programme and Supply Officer and his probationary appointment was converted into a fixed-term appointment for a period up to 10 September 1966. This appointment was successively extended to 10 September 1967, 10 September 1968 and 10 September 1969. On 22 April 1969, the Regional Director of UNICEF informed the Applicant that his contract would not be renewed when it expired on 10 September 1969, the reason for this decision being the abolition of the Applicant's post as a consequence of other arrangements being made to administer the Applied Nutrition Programme in India. By letters dated 14 and 21 May 1969 the Applicant requested the Secretary-General of the United Nations to review that decision; he referred in particular to a letter dated 8 September 1961 in which the Acting Area Representative of UNICEF, offering him a probationary appointment with UNICEF, had stated *inter alia*:

“ . . .
“The appointment in accordance with UN regulations would be for a period of two years probationary service in the first instance. At the end of that period, subject to satisfactory service and mutual agreement, the probationary contract would be converted into a regular contract with the United Nations.”

On 30 June 1969, the decision contested by the Applicant was confirmed and, on 14 July 1969, the Applicant filed an appeal with the Joint Appeals Board, which submitted its report on 13 May 1970. The concluding section of the report read as follows:

“Conclusions and Recommendations

“26. The Board has concluded unanimously that since the non-renewal of the appellant’s fixed-term appointment was not motivated by prejudice and since in taking this decision UNICEF did not violate any Staff Regulation or Staff Rule or the terms and conditions of the appellant’s appointment, the Board would make no recommendation in support of the appeal.”

The Secretary-General having decided to maintain the UNICEF decision not to extend the Applicant’s fixed-term appointment beyond its date of expiration, the Applicant filed on 20 July 1970 the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The contract status of the Applicant is governed by staff rule 104.12 (a) (on probationary appointments) and not by staff rule 104.12 (b) (on fixed-term appointments). The conversion from a probationary to a fixed-term appointment was irregular and in clear violation of staff rule 104.12 (a). The contract status of the Applicant could not be changed as the result of such illegal conversion.

2. The letter of 8 September 1961 addressed to the Applicant stated that the probationary contract would be converted into a regular contract subject to satisfactory service, and it appears from the periodic reports that the Applicant’s service was satisfactory during the probationary period.

3. Even if the initial appointment should have been for a fixed term and was mistakenly a probationary appointment, it was an error on the part of the Administration, for which the Applicant should not be penalized.

Whereas the Respondent’s principal contentions are:

1. The probationary appointment under which the Applicant served from September 1962 to September 1964 had no legal effect on his contractual status in 1969.

2. The Applicant had no right to UNICEF employment beyond the expiry date of his last fixed-term appointment. Inasmuch as that appointment governed the Applicant’s rights at the time of the contested decision and the terms of the appointment exclude any right or legal expectancy of service beyond expiry date, there is no basis for the Tribunal to examine the decision against the Applicant’s further employment.

The Tribunal, having deliberated from 30 March to 6 April 1971, now pronounces the following judgement:

I. The Applicant's contention that the conversion of his initial probationary appointment into a fixed-term appointment for two years on 1 September 1964 was contrary to the relevant Staff Regulations and Rules was not raised at the time when the change was made. On the contrary, the Applicant accepted four fixed-term appointments of varying duration, including the last fixed-term appointment for one year expiring on 10 September 1969. The plea that the Applicant made oral objections is not substantiated by any evidence.

II. The Applicant's claim that the letter dated 8 September 1961 from the Acting Area Representative contained a commitment to convert his probationary appointment into a regular contract is not tenable as the letter clearly stated:

"The appointment in accordance with UN regulations would be for a period of two years probationary service in the first instance. At the end of that period, subject to satisfactory service and *mutual agreement* [emphasis supplied], the probationary contract would be converted into a regular contract with the United Nations."

It is clear that the letter in question, far from giving an undertaking to convert the probationary appointment to a regular contract upon satisfactory service, specified that such conversion would depend on the consent of the Administration.

In Judgement No. 132 (*Dale*) the Tribunal has held that a "reference to 'mutual consent' implies that the Administration reserved the right to withhold its consent".

The Tribunal therefore holds that there was no commitment by UNICEF to convert the Applicant's probationary appointment into a regular appointment even though the Applicant's services were acknowledged to be satisfactory.

III. The legal position of the Applicant at the time of his separation from service was that of a holder of a fixed-term appointment without an element of expectation of renewal.

According to staff rule 104.12 (*b*)

"The Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment."

Interpreting the rule, the Tribunal stated in Judgement No. 101 (*Rau*) as follows:

"The final sentence of that rule is reproduced verbatim in the letter of appointment signed by the Applicant. It shows the intention to leave to the Secretary-General discretion to decide whether the staff member concerned should be retained in the service of the Organization at the expiry of the fixed-term appointment. The Tribunal notes furthermore that the Applicant has not established that the discretionary power of the Secretary-General in the present case had been limited by any commitment to retain her in the service of the Organization."

The Tribunal has earlier reached the conclusion that there has been no commitment by the Organization to retain the Applicant or to renew his fixed-term appointment. The claim for renewal therefore lacks substance.

IV. The Applicant also contests the reason, namely, abolition of the post, stated by the Administration for non-renewal of the Applicant's fixed-term appointment. Since the Applicant has not attributed "any prejudice or any other extraneous factors to UNICEF's action" and since renewal of a fixed-term appointment in the absence of any commitment or circumstances creating

an expectancy is within the discretion of the Secretary-General, the Tribunal finds it unnecessary to pronounce on this matter.

V. The application is rejected.

(Signatures)

R. VENKATARAMAN
President

CROOK
Vice-President

Geneva, 6 April 1971

Zenon ROSSIDES
Member
Jean HARDY
Executive Secretary

Judgement No. 140

(Original: French)

Case No. 140:
Seraphides

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

Request for the virtual reinstatement of a staff member who had passed an examination for a post reserved to staff members but whose status as a staff member had ceased prior to the date on which the vacancy occurred.

While holding a fixed-term appointment, the Applicant passed an examination that was open to a certain category of staff members.—The Applicant was informed that she would be assigned to a post when a vacancy arose.—The Applicant claims that she is entitled to fill the vacancy even though in the meantime she ceased to be a staff member.—Only staff members were eligible for both the invitation to take the examination and assignment to a post.—Expiry of the Applicant's appointment.—There is no legal obligation on the part of the Respondent to apply a procedure which would eventually result in reinstatement of the Applicant as a staff member.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Mr. Vincent Mutuale;

Whereas on 15 October 1970 the Tribunal, at the request of Mrs. Aneta Seraphides, a former staff member of the United Nations and the Applicant herein, extended to 29 October 1970 the time-limit for the filing of an application to the Tribunal;

Whereas, on 29 October 1970, the Applicant filed an application, the pleas of which she amended on 3 March 1971;

Whereas the pleas of the application, as amended, request the Tribunal:

“1. To order the application of the proper procedure to which Applicant became entitled as a result of having passed the qualifying examination