

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

for editorial assistants given on 10 May 1968, and of which the first stage was the approval of the roster of eligible candidates in June 1968.

"2. To establish compensation to the Applicant based on the United Nations earnings for the grade she would have had between the date in February 1969 when the fifth place on the roster of eligible candidates for posts of editorial assistance should have been awarded to the Applicant and the date of the institution of the application of the proper procedure under which the Applicant might be offered the next available post of editorial assistant.

"3. To establish a fair sum of compensation for damage caused the Applicant by the loss of career due to the non-application of proper procedure.";

Whereas the Respondent filed his answer on 15 January 1971;

Whereas the Applicant filed written observations on 2 March 1971;

Whereas the Respondent, at the request of the President of the Tribunal, filed additional information on 31 March 1971;

Whereas the facts in the case are as follows:

The Applicant, who had served with the United Nations from 19 September 1960 to 31 May 1966, re-entered the service of the Organization on 7 September 1967 as Senior Clerk (G-4) in the Library under a fixed-term appointment for three months. This appointment was successively extended to 31 March 1968 and 31 August 1968.

On 3 April 1968 the Acting Director of Personnel issued an information circular (ST/ADM/SER.A/1235) announcing that an examination for Editorial Assistants would be held on 10 May 1968. The circular specified that the examination would be open to staff members at the G-4 level and to a selected number of specially qualified staff members at the G-3 level; that successful candidates would be eligible for assignment to posts of Editorial Assistants; and that assignments to these posts would be made, as vacancies occurred, from the panel of candidates who had been successful in the examination. The Applicant took the examination and her name was placed fifth on a roster of thirteen successful candidates. She was informed of the results of the examination by a letter dated 3 June 1968 in which the Chief of the Examinations and Training Section stated *inter alia*:

"Your assignment will be made as a vacancy arises according to the order of merit established in the roster. The roster will remain valid until 1 June 1971."

On 22 January and 13 March 1969 the Applicant, whose fixed-term appointment had not been extended beyond 31 August 1968, requested re-employment as an Editorial Assistant on the ground that she had passed the examination. Her request having been denied on the ground that posts of Editorial Assistants were invariably filled from within the staff, the Applicant, on 17 April 1969, requested the Secretary-General to review that decision. On 28 April 1969 the contested decision was confirmed and on 20 June 1969 the Applicant filed an appeal with the Joint Appeals Board, which submitted its report on 15 June 1970. The concluding section of the report read as follows:

"Conclusions and Recommendations

"36. The Board concludes that the United Nations had made no commitment to appoint anyone who is not a staff member to an Editorial As-

sistant post and that, since the appellant's status as a staff member ceased before her place on the roster was reached, there was no commitment to place her in such a post.

"37. At the same time the Board recognizes that the appellant may reasonably have acquired an expectation of appointment to a post, having shown herself to be technically qualified by passing the test. The Board therefore recommends to the Secretary-General, in the light of this circumstance and with due regard to the appellant's many years of service with the United Nations, that sympathetic consideration be given to her appointment as an Editorial Assistant as an opportunity arises, subject of course to her meeting all normal requirements for re-employment."

On 22 July 1970 the Applicant was informed that the Secretary-General had decided to maintain his earlier decision and on 29 October 1970 she filed the above-mentioned application to the Tribunal.

Whereas the Applicant's principal contentions are:

1. If competitive examinations are to be meaningful, procedural safeguards inherent in their application must be observed. Even non-staff members who have been successful in competitive examinations acquire the right to application of the proper procedure in their regard. *A fortiori* this right cannot be denied to a staff member who was successful in such an examination.

2. The filling of vacancies for posts from lists established through competitive examinations takes place according to an established procedure in which the approval of the lists constitutes the first and most important step in the designation of candidates.

3. In the case of successful candidates in examinations given to staff members only, it may be presumed that the list is established and approved by the Office of Personnel.

4. In the case of staff whose fixed-term appointments might expire in the near future and who were nevertheless permitted to take the examination, the only logical explanation of such permission is that, if successful, they were to have their employment extended.

5. Had the Applicant been processed for the post of editorial assistant in the usual way, there would have been no difficulty in giving the necessary administrative form to the matter of her further employment.

6. Pretended impossibility of overcoming the time-limit of 31 August 1968 does not withstand scrutiny in view of the administrative possibilities available.

Whereas the Respondent's principal contentions are:

1. The Secretary-General's decision against re-employment did not violate the terms of appointment of the Applicant's prior contract with the United Nations:

(a) Assignment to any particular post does not change a staff member's tenure of appointment, and the establishment of a roster of staff members for future assignments does not give rise to future rights to re-employment;

(b) United Nations terms of appointment do not include any provisions concerning future rights to re-employment after separation, and the Applicant,

as a former staff member, had no expectant right to another appointment. Nor does an applicant for United Nations employment, whether or not a former staff member, have a right, either to a medical examination or to consideration by the Appointment and Promotion Board.

2. In the absence of any prior contractual commitment, the disposition of an application for United Nations employment is outside the scope of the appeals procedure established in chapter XI of the Staff Rules and in the Statute of the Tribunal.

The Tribunal, having deliberated from 29 March to 8 April 1971, now pronounces the following judgement:

I. The Applicant, who had previously served with the United Nations, re-entered the service of the Organization on 7 September 1967 under a fixed-term appointment for three months. Subsequent appointments extended her service until 31 August 1968, on which date she ceased to be a staff member of the United Nations.

II. On 10 May 1968, during her last tour of duty, the Applicant took an examination for Editorial Assistants, which according to an information circular from the Acting Director of Personnel dated 3 April 1968 was open to a certain category of staff members. Subsequently, on 3 June 1968, she was informed by a letter from the Chief of the Examinations and Training Section that her name had been placed on a roster of successful candidates and that she would be assigned to a post as Editorial Assistant "as a vacancy arises according to the order of merit established in the roster". The roster included thirteen names and the Applicant was placed fifth.

III. On the basis of her success in the examination and of the above-mentioned letter dated 3 June 1968, the Applicant considers herself entitled to a post of Editorial Assistant, and requests the Tribunal "to order the application of the proper procedure" to that effect.

IV. The Tribunal must therefore consider whether, following the order of merit established in the roster mentioned above, the Respondent should have offered the Applicant a post as Editorial Assistant at the time when the vacancy corresponding to her position on the roster occurred.

V. The Tribunal notes that the information circular of 3 April 1968 was addressed solely to members of the staff of the Organization and that the examination which it announced was open only to a certain category of staff members. Moreover, the information circular indicated clearly that it concerned the assignment of staff members to posts of Editorial Assistants, and that only after a period of training of at least nine months on the job could those concerned be recommended for promotion. The information circular made no mention of appointments, but only of assignments and promotions, which implied that only staff members were eligible for both the invitation to take the examination and assignment to a post of Editorial Assistant. It might perhaps have been appropriate specifically to draw attention in the information circular to the fact that no one could be assigned to the duties for which the examination was being held who did not retain the status of a staff member of the Organization. While it feels that a statement to this effect would have helped make the text of the information circular more clear, the Tribunal holds that no legal consequence can be derived from the absence of such a statement.

VI. The Tribunal also notes that the Applicant held a fixed-term appointment and that her letter of appointment referred to 31 August 1968 as the date of expiry of the appointment.

In this respect the Staff Rules provide that:

“The Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.” (Rule 104.12 (b)).

It should also be pointed out that this provision was reproduced verbatim in the letter of appointment sent to the Applicant.

VII. Consequently, the Tribunal considers that the Applicant's status as a staff member had ceased on 1 September 1968, since her fixed-term appointment expired on 31 August 1968.

VIII. It is understandable that, having passed the examination for Editorial Assistants, the Applicant should have expected to remain in the service of the Organization even after the date of expiry of her contract. Nevertheless, the Tribunal holds that this expectation could not give rise to any commitment on the part of the Respondent.

IX. Since the Applicant's status as a staff member of the United Nations had ceased prior to the date on which the vacancy occurred for the post of Editorial Assistant which she might have been awarded according to the order of merit established in the roster, the Tribunal concludes that there is no legal commitment on the part of the Respondent to apply a procedure which would eventually result in reinstatement of the Applicant as a staff member of the Organization.

X. For these reasons, the Tribunal rejects the application.

(Signatures)

Suzanne BASTID
Vice-President, *presiding*
Francisco A. FORTEZA
Member

Vincent MUTUALE
Member
Jean HARDY
Executive Secretary

Geneva, 8 April 1971

Judgement No. 141

(Original: French)

Case No. 139
Majid

Against: The United Nations Joint
Staff Pension Board

Request for the rescission of a decision of the Joint Staff Pension Board whereby the benefits payable to a former ILO staff member who retired on 31 December 1969 should be calculated in accordance with the Pension Fund Regulations in force on that date and not the more favourable Regulations which entered into force on 1 January 1970.