

STATEMENT BY MR. R. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

Geneva, 5 April 1973

(Signature)
R. VENKATARAMAN

Judgement No. 173

(Original: English)

Case No. 172:
Papaleontiou

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

Non-renewal of a fixed-term appointment.

Stipulation in the letter of appointment that the appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.—No contractual right to renewal.—Applicant's contention that he was entitled to a renewal of his appointment by virtue of two memoranda from the Administration of the United Nations Truce Supervision Organization in Palestine (UNTSO).—Analysis of these memoranda.—The Tribunal cannot hold that there was an express or an implied commitment by UNTSO for the renewal of the Applicant's appointment.—Contention of the Applicant that a periodic report on which the contested decision was based was vindictive or motivated by extraneous considerations.—Contention rejected.—Request that the Applicant's former supervisor should submit a report on his performance.—Request rejected, since the views of that staff member have no relevance to the case.—Allegation of the Applicant that the Respondent took discriminatory action against him by not allowing him to take his family with him to successive duty stations.—Allegation unfounded.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Bentham Stevens;

Whereas on 11 October 1972, Leontios C. Papaleontiou, a former staff member of the United Nations, filed with the Tribunal an application which 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 2 January 1973;

Whereas, in the pleas of the application, the Applicant requests the Tribunal "to take the following action, in the name of justice, and in the light of my present application:

"(a) Request Mr. Eric Bayerl, who was my immediate Supervisor in UNTSO Jerusalem, to submit a report on my performance.

"(b) to give weight to the contents of three Periodic Reports which I received in UNMOGIP and which cover more than the two thirds of my assignment in the Field Service.

“(c) to condemn the constant refusal of the UNTSO Administration to recognize my inalienable right to bring my family in the mission area, because I come from Cyprus, and find that by adopting this policy, he had created to me great inconveniences and difficulties.

“(d) to find the Liaison Officer’s Report against my person as totally vindictive and, therefore, constituting distortion of the truth and naturally misleading.

“(e) consider my official transfer to Jerusalem Headquarters (which became effective on 4 January 1969) as an implied commitment by the UNTSO Administration, on the basis of which I could reasonably expect renewal of my Fixed-Term Appointment which was due to expire on 28 February 1969.

“(f) submit a favourable report to the Secretary-General, recommending—

“(i) a suitable offer of employment to me within the Organization, “alternatively

“(ii) reasonable compensation for the hardship and financial loss sustained by me, as stipulated under Article 9 of the Statute of the Administrative Tribunal.”;

Whereas the Applicant submitted an additional statement on 22 January 1973;

Whereas the Respondent filed his answer on 30 January 1973;

Whereas the Applicant filed written observations on 23 February 1973;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 2 February 1966 as Field Service Officer (Secretary) under a fixed-term appointment of one year and was assigned to the United Nations Military Observer Group in India and Pakistan (UNMOGIP). On 2 February 1967 his appointment was renewed for one year and on 2 February 1968 it was further extended for a term due to expire on 28 February 1969. In two periodic reports covering his assignment to UNMOGIP, the Applicant was rated “an exceptionally competent staff member of unusual merit”. Throughout that period, his family stayed with him at the duty station. On 1 July 1968 the Applicant was reassigned to the United Nations Truce Supervision Organization in Palestine (UNTSO), with Damascus as his first duty station. Before taking up his new assignment, however, he took his home leave in Cyprus, his home country, where he left his family. On 12 July 1968, in a memorandum addressed to the Chief Administrative Officer of UNTSO, the Applicant asked to be informed of his future assignment in order to be able to decide whether his family would join him. In a reply dated 23 August 1968 the Deputy Chief Administrative Officer advised the Applicant that he would be “reassigned to either Amman or Jerusalem on completion of [his] Damascus detail” but that if he were assigned to Jerusalem he would be “considered for the normal three months rotation to Kantara as the needs of the service arise”. In the meantime, however, the Applicant had brought his family to Damascus. On 17 September 1968 the Applicant was reassigned to Amman but was advised not to bring his family with him. On 7 October and 7 November 1968 he complained to the Chief Administrative Officer about the inconvenience of being separated from his family and inquired about the duration of his Amman assignment. The Chief Administrative Officer replied on 26 November 1968 in a memorandum reading in part:

“2. I am aware that since your arrival in UNTSO . . . life has not been entirely easy for you and that it was necessary initially, due to the exigencies of the service, to assign you to Damascus temporarily and then three months later to reassign you to Amman. I appreciate that this has caused you certain financial outlays and other difficulties and has prevented you from leading a settled life with your family.

But, in Field Service, these are not unique problems and, having accepted employment with the Field Service, you have contracted to serve the United Nations in any part of the world as and when required by the Organization. . . .

"3. On the other hand, I am also aware, that at the time of your arrival here, it was pointed out to you that the operational and administrative needs of the mission were such that no firm indication could be given as to when it would be possible to assign you permanently to a secretarial post though we would endeavour to do so when a vacancy occurred, having regard to the fact that at some time you would, like all other secretaries, be required to serve a tour of duty in Ismailia or Kantara. It was also noted that when you arrived you had left your family in your home country (Cyprus) which is cheaply and easily accessible to all the countries of the UNTSO mission area. You were therefore very fortunately placed to go on leave at periodic intervals to visit your family and could for this purpose have availed yourself of the UN aircraft. For these reasons, you were advised not to bring your family to the mission, at least until we were in a position to give you definite information as to your future postings. However, you apparently preferred to ignore this well-founded advice and brought your family to Damascus in mid-August, notifying us only after their arrival. I consider therefore that most of the difficulties in which you and your family find yourselves are essentially of your own making.

"4. Nevertheless, I would like you to know that we are continuing our attempts to find a suitable assignment for you but I regret I can still make no firm commitment as to when this will be. I am hopeful that some secretariat rearrangements can be made around the New Year but these have yet to be worked out."

The Applicant's performance during his Amman assignment was evaluated by the UNTSO Liaison Officer at Amman in a report of 4 January 1969 concluding as follows:

"In summary, Mr. Papaleontiou was a conscientious and capable secretary. He could not, however, adjust to temporary separation from his family. This affected his work and his constant complaining about his situation did not enhance inter-personal relations within the Liaison Office."

By a memorandum of 9 December 1968 the Deputy Chief Administrative Officer advised the Applicant of his forthcoming reassignment to Jerusalem. On 4 January 1969 the Applicant was reassigned to Jerusalem. On 24 January 1969 the Chief Administrative Officer addressed to the Chief of the Field Operations Service at Headquarters the following recommendation with regard to the renewal of the Applicant's appointment:

"... I regret I am unable to recommend the renewal of his appointment since I do not believe he is prepared to accept the type of service which is a concomitant of his obligations as a Field Service staff member. He arrived here seven months ago and in that time has done little but complain. While he would seem to be technically well qualified as a secretary, his constant preoccupation with family and personal affairs and his disinclination to accept his contractual obligations to move around the various duty stations as required by the needs of the service cause him to be a liability."

On the same day the Chief Administrative Officer wrote to the Chief of the Field Operations Service a confidential letter in which he observed:

"... Papaleontiou's attitude is becoming more and more common these days and while I am prepared to put up with a certain measure of this from the people with long service I find it completely unacceptable among the newer ones. . . . I would hope that in the recruitment of new FS [Field Service] staff you will get the Office of Personnel and Geneva to impress upon them that they must accept

uncomplainingly a necessary measure of inconvenience. We should try and recruit only youngish people without family commitments.”

The recommendation of the Chief Administrative Officer was approved by Headquarters and, having failed to obtain from the Secretary-General a reconsideration of that decision, the Applicant lodged an appeal with the Joint Appeals Board on 23 June 1971. The Board submitted its report on 11 July 1972. The Board's conclusion and recommendation read as follows:

“Conclusion and recommendation

“25. The Board notes that the appellant had three consecutive fixed-term appointments, each for one year containing the specific clause that they did not carry any expectancy of renewal. In the absence of any commitment by the administration, express or implied, the Board is unable to make a recommendation in favour of the appellant's claim for reinstatement.”

On 16 August 1972 the Applicant was advised that the Secretary-General, having reviewed the case in the light of the Board's report, had decided to maintain the contested decision. On 11 October 1972 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant had a right to express dissatisfaction about being separated for so long from his family while his colleagues in the same missions were leading a settled life with their families.

2. The report of the UNTSO Liaison Officer at Amman was motivated by extraneous considerations, and the Applicant had no opportunity to answer the charges made against him.

3. In his memorandum of 26 November 1968 the Chief Administrative Officer had committed himself to assign the Applicant permanently to a secretariat post when a vacancy occurred. Consequently the Applicant could reasonably expect renewal of his fixed-term appointment immediately after he received the memorandum of 9 December 1968 from the Deputy Chief Administrative Officer regarding a “more settled assignment”.

4. The Applicant could also reasonably expect such a renewal on the grounds that he had a long record of excellent performance and that the Respondent could not put forward any other reasons for non-renewal, such as abolition of post.

5. The decision not to offer a new appointment to the Applicant was based solely on the vindictive report of the Liaison Officer and must consequently be regarded as a violation of human rights and an act of racial discrimination.

Whereas the Respondent's principal contentions are:

1. The contract for a fixed-term held by the Applicant did not carry any expectancy of renewal or of conversion to any other type of appointment. Nor did the Organization give any commitment, express or implied, to renew the contract. The memorandum of 26 November 1968, in particular, contains no grounds for the Applicant's assertion that a commitment had been given him to renew his contract. Furthermore, this memorandum and that of 9 December 1968 concern assignments, not appointments or contracts.

2. The decision not to offer the Applicant a new appointment was not influenced by extraneous considerations but based exclusively on the needs of the Field Service and there is no evidence to support the contention that the Liaison Officer's report was inspired by vindictive motives.

The Tribunal, having deliberated from 28 March to 5 April 1973, now pronounces the following judgement:

I. The Applicant requests the Tribunal to recommend "i. a suitable offer of employment to [him] within the Organization, alternatively ii. reasonable compensation for the hardship and financial loss sustained by [him], . . .".

II. The Applicant had three successive fixed-term appointments, each containing the usual stipulation that a fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment in the Secretariat of the United Nations. He had therefore, under the terms of his appointment, no contractual rights to renewal.

III. The Applicant, however, claims entitlement to renewal of appointment on the ground that there was a commitment to that effect by the Chief Administrative Officer of UNTSO in his memorandum of 26 November 1968. The Applicant argues that the words ". . . no firm indication could be given as to when it would be possible to assign you permanently to a secretarial post though we would endeavour to do so when a vacancy occurred . . . we are continuing our attempts to find a suitable assignment for you . . ." and "I am hopeful that some secretarial rearrangements can be made around the New Year . . .", gleaned from the memorandum of 26 November 1968, constituted a commitment on the part of UNTSO to renew his appointment.

IV. The Applicant further contends that the memorandum from the Deputy Chief Administrative Officer dated 9 December 1968, which states:

"1. I refer to the discussions and correspondence which we have had regarding a more settled assignment for you.

"2. I am now able to inform you that you will be transferred from Amman to Jerusalem on or about 20 December 1968. . . .", gave him a reasonable expectation of renewal of his appointment.

The Tribunal finds that the words quoted above from the memorandum of 26 November 1968 have been taken out of context and that the tenor of the letter does not give any commitment for renewal of the Applicant's appointment, but deals only with his future assignment. Moreover, the memorandum states in paragraph 4 as follows: "but I regret *I can still make no firm commitment as to when this will be*. I am hopeful that some secretarial rearrangements can be made around the New Year but *these have yet to be worked out.*" [*Emphasis supplied.*] The memorandum of 9 December 1968 announcing the Applicant's transfer to Jerusalem could have been construed as the fulfilment of the attempt "to assign you permanently to a secretarial post" mentioned in the memorandum of 26 November 1968. There is, however, nothing in either of these memoranda which constitutes a commitment to renew the Applicant's fixed-term appointment, as opposed to finding him a more congenial post within the period to which that appointment related. The Tribunal is therefore unable to hold that there was an express or an implied commitment by UNTSO for the renewal of the Applicant's appointment.

V. The Applicant challenges the decision not to renew his appointment also on the ground that the evaluation report dated 4 January 1969 by the Liaison Officer at Amman, on which the contested decision was based, was "vindictive" and a "distortion of the truth".

The said report concludes as follows:

"In summary, Mr. Papaleontiou was a conscientious and capable secretary. He could not, however, adjust to temporary separation from his family. This affected his work and his constant complaining about his situation did not enhance inter-personal relations within the Liaison Office."

The Tribunal notes that the report was favourable to the Applicant so far as his competence was concerned, but that it does make reference to the Applicant's inability to adjust himself to temporary separation from his family and its adverse effect on his

work. The Applicant has produced no evidence to show that this assessment was a distortion of truth. Nor is there any evidence before the Tribunal to substantiate the Applicant's allegation that the Liaison Officer was prejudiced against him.

The Tribunal therefore rejects the plea that the Liaison Officer's report was either vindictive or motivated by extraneous considerations.

VI. The Applicant also asks the Tribunal to request "Mr. Eric Bayerl, who was [the Applicant's] immediate Supervisor in UNTSO Jerusalem, to submit a report on my performance". The Respondent points out that Mr. Eric Bayerl was a junior level officer and was not entrusted with the responsibility of reporting on the performance of the Applicant. In view of the earlier finding that there was no contractual obligation, either express or implied, to renew the fixed-term appointment of the Applicant, the views of Mr. Eric Bayerl have no relevance to the case.

VII. The Tribunal notes that the Applicant had an exceptionally good record during his service with UNMOGIP when he lived together with his family and that problems arose when he was separated from his family during his service with UNTSO. The Applicant charges that he was not allowed to take his family with him to successive duty stations while other staff members had been permitted to do so. He therefore characterizes the Chief Administrative Officer's action as "discrimination, humiliation and having an ulterior motive". The Respondent states that the Applicant was advised not to bring his family to Damascus owing to the uncertainty of the duration of his assignment and that he was advised not to bring them to Amman owing to the political situation; in his statement to the Joint Appeals Board, he also stated that staff members whose families stayed with them were those having longer-term assignments.

The Tribunal recognizes that the movement of dependants with a staff member to duty stations must be subject to the exigencies of the Field Service. The Tribunal therefore holds that the Applicant's charge of "discrimination, humiliation and having an ulterior motive" made against the Respondent in this respect is unfounded.

VIII. For the foregoing reasons, the application is rejected.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President
Geneva, 5 April 1973

Roger STEVENS
Member

Jean HARDY
Executive Secretary

Judgement No. 174

(Original: French)

Case No. 165:
Dupuy

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

Termination of the employment of a staff member for abandonment of post.

An original decision to terminate the employment of the Applicant was superseded by a decision