

not arise or vice versa, or deny both claims according to the merits of the case. The Tribunal observes that the claim for a disability benefit has come before it for decision while the claim for reinstatement is pending before the ILO Administrative Tribunal. The Tribunal considers that the contingency of this Tribunal finding the claim for a disability benefit in the Applicant's favour, a decision which would be binding on the Pension Board, and of the ILO Administrative Tribunal finding the claim for reinstatement in the Applicant's favour, would lead to contradictory decisions and needs to be avoided. The Tribunal notes that the Applicant's case is listed for consideration during the next session of the ILO Administrative Tribunal in May 1977. This Tribunal therefore considers that it should defer consideration of this case.

VI. The Applicant has stated in his plea No. 4 as follows:

"In view of my material hardship, my physical condition and my mental health, I request the Tribunal, in the event that he decides to examine at length the substance of the matter, to grant me temporarily and immediately that disability benefit, on the understanding that I will refund it if the International Labour Organisation Administrative Tribunal reinstates me in my functions with WHO."

The Tribunal observes that neither article 34 of the Staff Pension Regulations nor section H of the Administrative Rules of the Pension Fund relating to disability benefits authorizes the grant of such relief.

VII. The Tribunal therefore decides to defer its consideration of the case and directs that this interim judgement be brought to the notice of the ILO Administrative Tribunal.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Geneva, 28 April 1977

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Judgement No. 225

(Original: English)

Case No. 217:
Sandys

Against: The Secretary-General
of the United Nations

Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.

Discrepancy between the majority of the Applicant's periodic reports and the information which came to light at the time of the five-year review of her appointment.—Consideration of the conflicting evidence regarding the Applicant's performance by the Working Group and the Appointment and Promotion Board.—Judgement No. 138.—Necessity of ascertaining whether the Board's recommendation was vitiated by inadequate or erroneous information and whether the termination decision is vitiated by lack

of due process.—Irregularities in the manner in which the recommendation for termination was put forward.—Lack of sincerity in the preparation of the periodic reports.—Conclusions to be drawn from the fact that the Applicant received all her annual salary increments and that an agreed termination was proposed to her.—Consideration of the case by the Working Group and the Appointment and Promotion Board.—Lack of evidence of prejudice or extraneous motivation vitiating the termination decision.—Conclusion of the Tribunal that the recommendation of the Appointment and Promotion Board was properly reached and that the termination decision is not vitiated by lack of due process.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Sir Roger Stevens; Mr. Endre Ustor;

Whereas, on 22 April 1977, Patricia M. Sandys, a former staff member of the United Nations, filed an application after the expiry of the time-limit prescribed by article 7, paragraph 4 of the Statute of the Tribunal;

Whereas, the application having been communicated to the Respondent for his comments on its receivability, the Respondent informed the Tribunal, on 5 May 1977, that he had no comment to make on the receivability of the application;

Whereas, in the pleas of the application, the Applicant requested the Tribunal:

“1. To rescind the decision terminating the appointment of the Applicant;

“2. To order her reinstatement;

“3. Alternatively to order, in the event the administration exercises the option granted under article 9.1 of the Statute of the Administrative Tribunal, the payment of salary equal to 2 years' annual salary during the time the Applicant was without steady employment, plus 2 years' annual salary for damages resulting from the extreme psychological tension under which she was forced to live, as a consequence, being single and of an age which precludes her obtaining continuous steady employment.”;

Whereas the Respondent filed his answer on 20 June 1977;

Whereas the Respondent submitted an additional document on 28 September 1977 at the request of the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 31 January 1966 under a fixed-term appointment for three months as a Clerk/Stenographer at the G-3 level in the Transport Section of the Resources and Transport Division of the Department of Economic and Social Affairs. Her appointment was successively extended for three months and for six months. On 1 February 1967 the Applicant's appointment was again extended for three months and she was reassigned within the Division to the Geology and Mining Section. On 1 May 1967 her appointment was converted into a probationary appointment which in turn was converted into a permanent appointment on 1 January 1968. On 1 May 1969 she was transferred to the Office of the Commissioner for Namibia, where she had been working on a trial basis for three months.

In a first periodic report, covering the period from 31 January 1966 to 31 July 1966, the Applicant was rated “a staff member who maintains a good standard of efficiency”. This rating was raised to “an efficient staff member giving complete satisfaction” in second and third periodic reports, which related to the periods from 1 August 1966 to 31 January 1967 and from 11 April 1967 to 30 November 1967 respectively. In a fourth periodic report, however, which covered the period from 1 December 1967 to 2 February 1969, the Applicant was rated between “a staff member who maintains

a good standard of efficiency” and “a staff member who maintains only a minimum standard”, and the Chief of the Geology and Mining Section observed as first reporting officer: “Miss Sandys could be a good secretary if she had a better team spirit and would accept more gracefully instructions from her superiors. It is hoped she will improve in her new assignment. . . . These short-comings have been discussed with the staff member several times.” In a rebuttal dated 29 November 1969, the Applicant questioned the truthfulness and validity of the report and asked that “first hand” comments be submitted by the officers to whom she had been assigned. On 11 December 1969 the Applicant’s rebuttal was referred to the Director of the Resources and Transport Division by the Acting Executive Officer of the Department of Economic and Social Affairs. On 15 January 1970 the Chief of the Geology and Mining Section addressed to the Acting Executive Officer a memorandum in which he stated that the considerable change in the Applicant’s evaluation exactly reflected the change in her behaviour and attitude during the period under consideration, particularly after she had received her permanent appointment; he also referred to the Applicant’s “transfer from the Transport Section for lack of co-operation and insubordination; the fact that [he had] agreed to give her a second chance to work in the Geology and Mining Section; her correct behaviour in the early part of 1967, and the sudden change in her attitude afterwards” and attached to the memorandum copies of five documents, namely a memorandum dated 16 August 1968 from him to the Executive Officer requesting the Applicant’s transfer out of the Geology and Mining Section and four memorandums from technical advisers for whom the Applicant had worked at various times during the period covered by the contested report. On 27 April 1970 the Under-Secretary-General for Economic and Social Affairs issued his appraisal of the case in a memorandum to the Director of Personnel endorsing the comments of the Chief of the Geology and Mining Section. The Applicant’s performance in the Office of the Commissioner for Namibia was evaluated in a fifth and a sixth periodic report, covering the periods from 3 February 1969 to 31 December 1970 and from 1 January 1971 to 30 November 1972 respectively, both prepared by the Principal Officer of that Office as first and second reporting officer. In both reports the Principal Officer rated the Applicant “an efficient staff member giving complete satisfaction”; in the fifth report he observed that the Applicant had shown a commendable improvement in her work and attitude and, in the sixth report, he commented that she had maintained the standards noted in the previous report. On 4 September 1973, in a memorandum addressed to the Administrative Officer of the Department of Political Affairs, Trusteeship and Decolonization regarding the five-year review of the Applicant’s permanent appointment, the Principal Officer informed her that the Office of the Commissioner for Namibia had no objection to the “renewal” of the appointment; he added, however, that this recommendation was not to be construed as an appreciation either way of the work of the staff member and that this would be set out in her periodic report, when due. It appears from a note written on the memorandum by a Senior Personnel Officer that the original of the memorandum was withdrawn and returned to the Administrative Officer, a copy being kept for record purposes. On 7 September 1973, in a further memorandum to the Administrative Officer, the Principal Officer stated that in view of the quality of the Applicant’s work and her general attitude, the Office of the Commissioner for Namibia was unable to recommend the “renewal” of her appointment. On 10 September 1973, a Personnel Officer wrote a memorandum to the Administrative Officer of the Department of Political Affairs, Trusteeship and Decolonization to clarify the purpose of the five-year review of a permanent appointment and to ask that the Department either submit a detailed and substantiated recommendation for termination of the Applicant’s permanent appointment or inform the Office of Personnel Services that the Department recommends no change in the Applicant’s contractual status. On 18 September 1973 the Secretariat Recruitment Service sent a memorandum to a number of departments

in the Secretariat inquiring about their interest in securing the Applicant's services. Those attempts at transferring the Applicant, however, proved unsuccessful. In a memorandum dated 16 October 1973 to the Office of Personnel Services, the Principal Officer of the Office of the Commissioner for Namibia recommended termination of the Applicant's appointment on the grounds that she did not possess the required standards of efficiency and competence; he stated *inter alia* that her performance had been mediocre from the beginning and had further deteriorated during the last year or so. On 26 October 1973 the Office of Personnel Services informed the Applicant of the recommendation to terminate her appointment and transmitted to her a copy of the memorandum of 16 October 1973 for her comments. On 5 November 1973 the Applicant, referring to her last two periodic reports, contested the statements made in that memorandum by the Principal Officer. On 20 November 1973 the Office of Personnel Services advised the Applicant that the five-year review of her permanent appointment would shortly be undertaken by Working Group II of the Appointment and Promotion Panel of the Appointment and Promotion Board and that the Working Group would have before it a joint recommendation by the Office of the Commissioner for Namibia and the Office of Personnel Services that her appointment be terminated on the grounds that she had failed to maintain the standards of efficiency and competence established in the Charter. On 26 and 27 November 1973 the Applicant requested from the Office of Personnel Services copies of the above-mentioned memorandums of 4, 7 and 10 September 1973. In a memorandum dated 28 November 1973 to the Chairman of the Appointment and Promotion Panel the Applicant reiterated her request and asked the Panel to interview the Administrative Officer of the Department of Political Affairs, Trusteeship and Decolonization as well as the Personnel Officer who had written the memorandum of 10 September 1973. On 29 November 1973 the Office of Personnel Services advised the Applicant that the memorandums in question were privileged material since they related to internal consultations between officials and that the presentation of her case to the Appointment and Promotion Panel was based solely on the information contained in her official status file, to which she had had access, as well as on the Principal Officer's memorandum of 16 October 1973 and her comments thereon. On 23 January 1974 the Chairman of Working Group II of the Appointment and Promotion Panel submitted to the Assistant Secretary-General for Personnel Services the Working Group's report on its review of the Applicant's permanent appointment. The concluding paragraphs of the report read as follows:

"7. In its deliberation, the Working Group, after having heard all the statements, noted the following:

- "(i) None of the adverse comments made orally by Mr. Engers [Principal Officer of the Office of the Commissioner for Namibia] before the Working Group were borne out in the two periodic reports given by him to Miss Sandys and covering the period of four years, i.e. from 3 February 1969—30 November 1972;
- "(ii) On the other hand the Working Group took into consideration the adverse comments made by Mr. Falzon [Chief of the Geology and Mining Section] and the 4 technical advisers mentioned before for the period from 1 December 1967 to 2 February 1969 since this period, with the exception of the month of December 1967, falls within the period of 5-year review of her permanent appointment now under consideration. Furthermore, it was the Working Group's opinion that had Miss Sandys' termination been proposed during this period, the Working Group's task would have been greatly facilitated and this case would have been disposed with fairly and equitably since the supervisors' adverse comments were reflected in their written testimonies;

- “(iii) The fact that an agreed termination was proposed by the Office of Personnel Services proves sufficiently that the ground for recommending the termination of Miss Sandys’ permanent appointment was not strong enough in order to warrant a strong termination action;
- “(iv) The Working Group also was surprised by the fact that no disciplinary action or withholding of a salary increment was contemplated. This shows that the supervisor was satisfied with Miss Sandys’ performance;
- “(v) Moreover, the Working Group held the view that the contradiction between Mr. Engers’ oral and written statements on Miss Sandys’ performance and attitude was a clear indication of the poor supervision given to the staff member concerned;
- “(vi) It was also the feeling of the members of the Working Group that Miss Sandys’ record of performance was not quite up to the standard when one takes into consideration the written adverse comments made by Mr. Falzon, the 4 technical advisers in ESA [Economic and Social Affairs] and the oral and adverse comments given by most of her colleagues in the Office of the Commissioner for Namibia.

“8. After having examined all these relevant factors, the members of the Working Group concluded that it was a very complex case especially since the possibility of transfer of the staff member had been precluded given the negative material on her official status file. Certain members of the Working Group considered such material highly prejudicial to the staff member’s career, and questioned why and when it had been placed on the official status file. Other members maintained that her consistently average to poor performance would far outweigh any damage caused by the negative material. In the light of these considerations, and being unable to reconcile its differences, the Working Group by a vote of two in favour of the termination of her permanent appointment, two against the termination and two abstentions *recommended that the Secretary-General take whatever action he deems appropriate in the interest of both the staff member and the Organization.*”

The Working Group having been unable to decide on a specific course of action, the Assistant Secretary-General for Personnel Services on 12 February 1974 submitted the case to the Appointment and Promotion Board for its consideration. On 13 March 1974 the Appointment and Promotion Board submitted its recommendation to the Secretary-General in a report reading in part:

“3. The Board, while appreciating the Group’s difficulties in reconciling the difference between the recommendation of the Office of the Commissioner for Namibia i.e. separation from the service and the overall rating of ‘an efficient staff member giving complete satisfaction’ contained in the staff member’s periodic reports, noted in the documentation supplied to it that Miss Sandys had worked in different offices where she encountered the same difficulties and showed the same lack of cooperation. In the opinion of the Board, there is clear evidence that the staff member under review has failed to measure up to the standards required from all staff. The Board, therefore, decided to endorse the position of both the Office of the Commissioner for Namibia and the Office of Personnel Services and *to recommend that Miss Patricia M. Sandys be separated from the service of the Organization* for having failed to maintain the standards of efficiency, competence and integrity established in the Charter.”

On 4 June 1974 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General had decided to terminate her appointment under staff regulation 9.1 (a) and to pay her compensation in lieu of notice under staff rule 109.3 (c), her last day of duty being 7 June 1974. On 14 June 1974 the Applicant

requested the Secretary-General to review the termination decision. On 1 July 1974 she was informed that the Secretary-General had decided to maintain that decision and on 3 July 1974 she lodged an appeal with the Joint Appeals Board. The Board submitted its report on 16 January 1976. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations:

"33. The Board finds that the appellant has not met the burden of proving that the termination of her appointment was motivated either by prejudice or by extraneous factors.

"34. The Board finds that due process has been observed in reaching the decision to terminate the appellant's appointment.

"35. Accordingly, the Board makes no recommendation in support of this appeal."

On 16 April 1976 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General had taken note of the Board's conclusions and of its decision to make no recommendation in support of her appeal. On 22 April 1977 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The allegation of unsatisfactory service is self-contradictory:

(a) The written record, as evidenced in the progress reports, clearly demonstrates that the Applicant, throughout her length of service, January 1966 to September 1974, met the standards prescribed by the Staff Rules and was, therefore, wrongfully terminated;

(b) The Applicant received every year salary increments awarded on the basis of satisfactory service.

2. The contention of the supervisor that the satisfactory progress reports were given to "encourage" the Applicant cannot be accepted on face value, given the history of the incoherent atmosphere, characterized by the rapid turnover of secretaries assigned to the supervisor of the Applicant prior to her assignment to him, and the extreme inconsistencies evidenced by his rapid change in opinions concerning a matter as important as support or non-support of a staff member at the five-year review, and promotion to G-4.

3. The circumstances of the termination of the Applicant's appointment have made it virtually impossible to obtain continuous employment in a period of unprecedented unemployment.

Whereas the Respondent's principal contentions are:

1. The Secretary-General's decision was a proper exercise of authority under staff regulation 9.1 (a) and was taken on the recommendation of the Appointment and Promotion Board in accordance with proper procedures.

2. No improper motive or other extraneous factor has been established for the decision which was taken on the recommendations of the Appointment and Promotion Board.

3. Favourable periodic reports did not limit the proper scope of the five-year review or the responsibility of the Appointment and Promotion Board to recommend separation of a staff member not maintaining the required standard.

4. The Applicant's procedural rights were respected in the course of the review preceding the Secretary-General's decision.

The Tribunal, having deliberated from 27 September to 6 October 1977, now pronounces the following judgement:

I. The Tribunal notes at the outset that, during her period of service from 31 January 1966 to 7 June 1974, the Applicant was the subject of six periodic reports covering the period 31 January 1966 to 30 November 1972 and that of those six reports only one relative to the period 1 December 1967 to 2 February 1969 was definitely unfavourable. It is the discrepancy between the majority of these reports and the information which came to light when the Applicant's employment was subjected to the statutory five-year review in 1973 which is the basis of the Applicant's plea for reinstatement or, alternatively, "the payment of salary equal to 2 years' annual salary during the time the Applicant was without steady employment, plus 2 years' annual salary for damages resulting from the extreme psychological tension under which she was forced to live, as a consequence, being single and of an age which precludes her obtaining continuous steady employment".

II. The conflicting evidence regarding the Applicant's performance has been carefully examined, successively, by Working Group II of the Appointment and Promotion Panel of the Appointment and Promotion Board and by the Appointment and Promotion Board itself prior to the termination decision. While the first of these bodies was unable to reach a firm conclusion on the evidence, and recommended that the Secretary-General take whatever action he deemed appropriate in the interest of both the staff member and the Organization, the Appointment and Promotion Board recommended that the Applicant be separated for having failed to maintain the standards of efficiency, competence and integrity established in the Charter.

III. The Tribunal has repeatedly held that it cannot substitute its judgement for that of the Secretary-General concerning the standard of performance or efficiency of the staff member involved. At the same time, the Tribunal has also held in its Judgement No. 138 (*Peynado*) that where the Appointment and Promotion Board reached its conclusions "in the light of inadequate or erroneous information and the Secretary-General relied on these conclusions for the termination of the appointment, the fact that there was a review by the Board does not secure that the Secretary-General's decision is valid". The Tribunal therefore proceeds to examine whether the Appointment and Promotion Board's recommendation was vitiated by inadequate or erroneous information and whether the termination decision is vitiated by lack of due process.

IV. In this connexion the Tribunal notes that a number of irregularities occurred in the manner in which the recommendation for termination was put forward in October 1973, for which the Applicant's supervisor, the Principal Officer of the Office of the Commissioner for Namibia, must be held primarily responsible. That Officer made two favourable periodical reports on the Applicant the substance of which he later in effect withdrew, both in recommending her termination on 16 October 1973 and subsequently in the evidence given to Working Group II. This ambivalent attitude was also reflected in his initial response to the request of the Office of Personnel Services in connexion with the five-year review of the Applicant's appointment. He first stated in a memorandum of 4 September 1973 that his Office had no objection to the "renewal" of the Applicant's appointment. He subsequently withdrew this memorandum and substituted for it (on 7 September 1973) a statement that he was "unable to recommend the renewal of Miss Sandys' appointment" without giving reasons and in terms which suggested that he believed she was on a fixed-term appointment rather than on a permanent appointment subject to an initial five-year review. He was subsequently required to produce a recommendation in proper form. It was in this memorandum of 16 October 1973, which was shown to the Applicant, that the Principal Officer wrote:

"Miss Sandys' performance has been mediocre from the beginning. This may

not be fully reflected in the periodic reports because we were always hoping for improvement and we wanted to give her encouragement."

In this connexion, the Tribunal wishes to emphasize its view that for a supervisor to make periodic reports which describe a staff member's performance in unjustifiably favourable terms, which are subsequently retracted, is as reprehensible as to report in unjustifiably unfavourable terms though, unlike the latter, it cannot be held to reflect prejudice on the part of the supervisor in question. The evaluation of a person whose "performance has been mediocre from the beginning" as "an efficient staff member giving complete satisfaction" displays a measure of insincerity on the part of the Principal Officer which, if tolerated by the Administration, would undermine the very purpose of the institution of the periodic reports.

The Applicant also received her annual salary increments throughout her service, implying that she fulfilled the criteria of satisfactory performance and conduct prescribed in staff rule 103.8 (a).

It would also appear from the report of Working Group II that at some stage between September and November 1973 an agreed termination was proposed by the Office of Personnel Services, indicating that the grounds for recommending termination were deemed somewhat inadequate or likely to be controversial.

V. Had the termination decision been reached on the basis of the actions described in the preceding paragraph, a challenge to that decision might have carried some validity. In the event, however, the decision to terminate the Applicant's appointment was not taken on so fragile a basis. Her performance was carefully reviewed by the Office of Personnel Services and Working Group II, before which she gave evidence and was fully considered by the Appointment and Promotion Board itself. The Tribunal finds that the examination of the case by Working Group II of the Appointment and Promotion Board was detailed and adequate and that the Appointment and Promotion Board had all the relevant material for reaching a decision. That the Applicant was not afforded a second opportunity to present her case before the Appointment and Promotion Board is neither an infraction of the Staff Rules nor of due process. After examining all the material, the Appointment and Promotion Board reached the independent conclusion that the Applicant's services should be terminated.

The Tribunal also finds that there is no evidence of prejudice or extraneous motivation vitiating the termination decision.

VI. The Tribunal therefore decides that the recommendation of the Appointment and Promotion Board was properly reached and that the Secretary-General's decision of termination of the Applicant's appointment based on such recommendation is not vitiated by lack of due process.

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

(Signatures)

R. VENKATARAMAN

President

Roger STEVENS

Member

New York, 6 October 1977

Endre USTOR

Member

Jean HARDY

Executive Secretary