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Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter V. Decisions of administrative tribunals of the United Nations and related inter-governmental organizations

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CHAPTER V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. DECISIONS OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS 1/

1. Judgement No. 84 (11 September 1962):2/ Young v. Secretary-General of the International Civil Aviation Organization

Request by a former Technical Assistance official of ICAO for validation by the United Nations Joint Staff Pension Fund of service completed before his participation in the Fund.

This case was submitted by an applicant who had served with the International Civil Aviation Organization as a technical assistance expert from 2 November 1951 to 31 December 1958 under several fixed-term contracts of less than two years' duration. The applicant, who became a participant in the Joint Staff Pension Fund on 1 January 1958, requested the Tribunal to order the validation by the Fund of the period of employment prior to that date. In support of his request, the applicant invoked paragraph 19 of the regulations for technical

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1/ Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. On 1 January 1963 one agreement of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with a specialized agency: the International Civil Aviation Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Civil Aviation Organization and the World Meteorological Organization.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who has succeeded to the staff member's rights on his death, or who can show that he is entitled to rights under any contract or terms of appointment.

2/ Mme P. Bastid, President; S. Petrén, Vice-President; H. Gros Espiell, Member.

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assistance experts in force on 2 November 1951 and article III of the Regulations of the Joint Staff Pension Fund. Paragraph 19 provided that experts initially appointed for less than two years would become participants in the Fund after two years of service and would be entitled to validate previous service on joining the Fund. The paragraph, however, was abrogated on 1 January 1952, and from that date to 1 January 1958 the regulations for technical assistance experts contained no provision concerning the participation of experts in the Fund. The Tribunal observed that the applicant's initial letter of appointment stipulated ICAO's right to amend regulations for technical assistance personnel and limited this right only by the reservation that the amendments should not reduce or restrict the conditions set forth in the letter. It found therefore that the abrogation of paragraph 19 operated against the applicant. As regards the Regulations of the Joint Staff Pension Fund, the Tribunal put several questions to the parties concerning the purport of articles II and III. It also put questions relating to the interpretation of an omnibus clause contained in the applicant's contracts. This clause stipulated that the applicant was not entitled to receive payments, subsidies, expenses or emoluments other than those specified in his letters of appointment or in the applicable Staff Regulations. The Tribunal postponed the consideration of the case to allow the parties to reply to the questions put to them.

2. Judgement No. 85 (14 September 1962):[1/] Carson v. Secretary-General of the United Nations

Termination on the ground of abolition of post of the permanent appointment held by a staff member of the United Nations Children's Fund.

This case concerned the termination because of abolition of post of the permanent appointment of a staff member who had been specifically recruited for UNICEF. While expressing the view that the abolition of post had been neither

1/ Mme P. Bastid, President; Lord Crook, Vice-President; the Hon. R. Venkataraman, Member; J.J. Casey, Alternate.

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mala fide nor motivated by prejudice, the Tribunal observed that the respondent had failed to submit written evidence to show that the applicant had actually been considered for posts available in UNICEF and had been genuinely found not suitable for any of them. The Tribunal rescinded the termination and ordered that, in the event of reinstatement, the applicant should receive full salary from the date of termination to the date of reinstatement, less the amount paid at termination in lieu of notice and less also the amount of termination indemnity. In the event of a decision by the Secretary-General not to reinstate the applicant, the Tribunal ordered that she should receive: (a) full salary to the date of the decision not to reinstate, less the amounts paid in lieu of notice and less also the amount of termination indemnity; (b) an amount equal to that which would be payable under the Staff Regulations and Rules if the applicant's appointment were terminated on the date of the decision not to reinstate.

3. Judgement No. 86 (14 September 1962):[1/] A. v. Secretary-General of the United Nations

Non-renewal of a fixed-term appointment held by an official of the United Nations Special Fund.

This case concerned the non-renewal of the fixed-term appointment of a staff member in the secretariat of the United Nations Special Fund. The Tribunal observed that before the expiration of the appointment the Fund had offered to extend the appointment for a period of one year and that the acceptance of the offer by the applicant had created an obligation on the part of the respondent. It found, however, that the subsequent discovery by the Fund that the applicant had withheld material information regarding his condition of health at the time of seeking employment constituted valid grounds for the respondent's decision not to fulfil the agreement to extend the appointment. It found, moreover, that the procedure provided for in regulation 9.1 (a), which was not followed in the case, was not applicable to a refusal to renew or extend an appointment. The Tribunal therefore rejected the application.

1/ See foot-note to Judgement No. 85

B. DECISIONS OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANISATION 1/ 2/

1. Decision No. 57 (2 May 1962) and Judgement No. 66 (26 October 1962): Press v. World Health Organization

Applicability of provisional measures specified in article 19 of the Rules of Court of the Tribunal - Rights of an official of an international organization in the results of the work performed by him within the scope of his duties.

Complainant had been appointed by WHO to experiment on insecticides used in malaria eradication. The organization later decided to produce a paper on insecticides, and entrusted its preparation to Messrs. Barnes and Elliot.

1/ The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case, of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, and the International Atomic Energy Agency. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Office and disputes relating to the application of the Regulations of the former Staff Pensions Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death, and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

2/ Lord Forster of Harraby, President; M. Letourneur, Vice-President; A. Grisel, Judge.

Complainant asserted that the paper could be produced only thanks to the work he had undertaken, and requested that his name should be mentioned as that of a co-author. The Director-General having, by a decision of 16 November 1961, rejected that request, complainant lodged a complaint before the Tribunal, with the preliminary submission that the Tribunal should order the publication of the document in the Bulletin of WHO to be suspended, and the principal submission that the Tribunal should quash the decision of WHO of 16 November 1961.

By its Decision No. 57 the Tribunal rejected the complainant's preliminary conclusions. It pointed out that no provision of its Statute attributed competence to it to issue directions to an organization against which a complaint had been lodged, and that in particular the provisional measures prescribed by article 19 of its Rules of Court could not be contemplated unless they were directed to ensuring a fully satisfactory preliminary examination of the case.

In its Judgement No. 66 the Tribunal rejected the complainant's submission that the decision against which he complained should be quashed. It pointed out that an official of an international organization had no rights whatsoever in the results of such work as he carried out on behalf of that organization within the scope of his duties, but that where the organization decided of its own volition that the publication should bear the name of its authors, it was bound to respect the principle of equality and to mention the name of all those who could claim authorship. The complainant could not make that claim, as his contribution had been limited to supplying chemical data, albeit of undisputed scientific value.

2. Judgement No. 58 (2 May 1962): Leprêtre v. International Telecommunication Union

The Tribunal notified the parties that the complainant had withdrawn suit.

3. Judgement No. 59 (2 May 1962): Cunningham v. Food and Agriculture Organization of the United Nations

The Tribunal dismissed the claim as time-barred and irreceivable.

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4. Judgement No. 60 (2 May 1962): Dadivas v. World Health Organization

Purpose and effects of grading an official in a given category - Need to prove financial or moral prejudice - Effects of mistake in a post description - Effects of downgrading an official.

On 1 January 1952 the complainant was appointed by WHO as a Grade M.3 official, and on 1 July 1953 she was placed in Grade M.4 with a salary scale ranging from 4,320 to 6,240 pesos annually. New salary scales having come into force on 1 January 1957, those officials whose remuneration would have been reduced were given the benefit of transitional measures, and the complainant accordingly retained the salary which she was earning at the end of 1956, namely 5,220 pesos per annum, but ceased to be eligible for the further salary increment provided for under the old scale. A post description dated 15 January 1960 described the complainant as budget clerk, Grade M.4, although according to the local classification plan then in effect, budget clerks were in Grade M.5.

Complainant originally appealed to the Tribunal requesting to be allowed to continue to enjoy the benefits of the old salary scale and the benefit of the difference between the salary attaching to Grade M.3 and that attaching to Grade M.4 for the period during which she was in Grade M.3. In an additional complaint she requested that she should be regraded from M.4 to M.5 as from 1 January 1957. While the case was pending, WHO decided to grant the claims made in the first request but rejected the second.

In its Judgement No. 60, the Tribunal took note of the action taken in respect of the first complaint. In examining the second complaint, the Tribunal distinguished three periods: from 1 January 1957 to 31 December 1959; from 1 January 1960 to July 1961 (the date when the new classification came into effect); and after July 1961. It rejected the complaint relating to the first period, on the ground that the complainant did not claim or establish that during that period her duties and responsibilities justified her being graded M.5, and that moreover she had not established that other officials performing exactly the same duties as she did had been regraded to that category, and that she could not establish either financial prejudice (the sums which she was

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actually paid were larger than those which she would have received if she had been regraded M.5) or moral prejudice (as the mere fact of belonging to a given grade, unlike the use of a title, does not carry any prestige value). With regard to the second period, the Tribunal acknowledged that a mistake had been made in the post description and that at that time the complainant undoubtedly belonged to Grade M.5. The Tribunal awarded her compensation for the results of that mistake. In regard to the third period, the Tribunal noted that under the new classification plan the complainant had been downgraded, but found that in the absence of a regulation applicable to the complainant she was entitled, notwithstanding the new classification, to continue receiving the annual salary which had been found to be due to her up to that time.

5. Judgement No. 61 (4 September 1962): Lindsay v. International Telecommunication Union

Legal status of international civil servants - Applicability, in regard to pension, termination allowances and family allowances, of a system different from that in force on the date of the appointment.

The complainant had been given a permanent appointment by the ITU as from 1 January 1950, his duties and rights being determined, according to his letter of appointment, by the Staff Regulations and the Regulations of the Staff Superannuation and Benevolent Funds. The Plenipotentiary Conference of 1959 having decided to assimilate the conditions of service of the staff to those of the staff of the United Nations, the Secretary-General of the ITU issued on 24 May 1960 the Staff Regulations and Rules laying down the new conditions of employment applicable as from 1 January 1960; the Administrative Council of the ITU approved the Staff Regulations and Rules. On 20 June 1960 the complainant asked the Secretary-General to give him a formal assurance that his rights proceeding from the provisions of the Staff Regulations in force on the date of his appointment with regard to the termination allowance, family allowances and pension scheme would be fully respected. That request having been impliedly rejected, the complainant moved the Tribunal.

In its Judgement No. 61, the Tribunal defined the legal status of international civil servants. "The terms of appointment of international civil servants", it specified, "derive both from the stipulations of a strictly individual character in their contract of appointment and from Staff Regulations and Rules, which the contract of employment by reference incorporates. Owing, inter alia, to their increasing complexity, the conditions of service mainly appear, not amongst the stipulations specifically set out in the contract of appointment, but in the provisions of the above-mentioned Staff Regulations and Rules. The Staff Regulations and Rules contain in effect two types of provisions, the nature of which differs according to the object to which they are directed. It is necessary to distinguish, on the one hand, provisions which appertain to the structure and functioning of the international civil service and benefits of an impersonal nature and subject to variation, and, on the other hand, provisions which appertain to the individual terms and conditions of an official, in consideration of which he accepted an appointment. Provisions of the first type are statutory in character and may be modified at any time in the interest of the service, subject, nevertheless, to the principle of non-retroactivity and to such limitations as the competent authority itself may place upon its powers to modify them. Conversely, provisions of the second type should to a large extent be assimilated to contractual stipulations. Hence, if the efficient functioning of the organization in the general interests of the international community requires that the latter type of provisions should not be frozen at the date of appointment and continue so for its entire duration, such provisions may be modified in respect of a serving official and without his consent, but only in so far as modification does not adversely affect the balance of contractual obligations or infringe the essential terms in consideration of which the official accepted appointment ... It follows that, as regards their terms and conditions of appointment, international civil servants are not exclusively governed by statutory rules such as apply to the great majority of national civil servants, which are of a different nature and afford similar guarantees by different means. Furthermore, even where the provisions of the Staff Regulations and Rules are alone applicable, the power

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to modify them vested in the international organization is governed by different legal rules according to whether the provisions concerned fall within the first or the second of the two types of provisions referred to and distinguished above. ... In altering the pensions scheme, the family allowances provisions and the termination benefits in case of abolition of post, the Union modified provisions falling within the first and the second of the above-mentioned categories. While the Union was, in principle, empowered to do so, it falls to be considered whether it thereby altered the balance of contractual obligations or infringed the essential terms of appointment in consideration of which the complainant agreed to accept service."

With regard to the pension scheme, the Tribunal admitted that the adoption of the new system had seriously impaired the rights of the complainant, and recognized his right, when he qualified for his insured benefits, to receive those to which he would have been entitled under the old pension scheme. With regard to termination in the event of abolition of post, it also recognized that the changes made by the new regulations constituted a serious infringement of the complainant's terms of appointment, and it ruled that the Secretary-General of the ITU was not entitled to declare the new regulations applicable to the complainant's terms of appointment. With regard to family allowances, on the other hand, the Tribunal found the complaint not justified because the Administrative Council of the ITU had merely altered the conditions for the grant of family allowances in a manner generally favourable to the interests of those concerned.

6. Judgement No. 62 (26 October 1962): Cásseres v. Food and Agriculture Organization of the United Nations

The Tribunal recorded the complainant's withdrawal of suit.

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7. Judgement No. 63 (26 October 1962): Andreski v. United Nations Educational, Scientific and Cultural Organization

Definition and conditions governing validity of summary dismissal - Definition of serious misconduct.

In March 1961 the complainant, who had been engaged by UNESCO for one year to teach sociology in the Faculty of Social Sciences of Latin America (FLACSO) in Santiago, Chile, had, in several letters addressed concurrently to UNESCO organs and to various national authorities, institutions and persons, accused one of his colleagues of making use of his official functions for political purposes, of occupying a post for which he was not qualified, of owing his appointment to hidden influences, and of trying to set his students at loggerheads with each other. The Director-General of UNESCO vainly summoned the complainant to come and explain matters in Paris, and tried to facilitate his travel by sea, after which, still in vain, he ordered the complainant to come to Paris by air, under penalty of disciplinary action. Acting on the recommendation of a committee specially established to examine the case, the Director-General informed the complainant that he was summarily dismissed for serious misconduct. His appeal having been dismissed by the Appeals Board of UNESCO, the complainant filed a complaint with the Tribunal.

In its Judgement No. 63, the Tribunal dismissed the complaint, after defining summary dismissal and the conditions under which it was valid. The Tribunal found that under Staff Regulations 10.1 and 10.2 of UNESCO, summary dismissal did not mean termination without notice, but termination not preceded by a recommendation made by an administrative organ on which the staff was represented. That had been the position in the present case, since the Director-General had dismissed the complainant after consulting a committee which he had set up expressly for that case, but not a joint disciplinary committee. Moreover, under Staff Regulation 10.2 summary dismissal could be ordered only against an official who was guilty of serious misconduct - in other words, an official who in the first place had failed in his duty, and in the second place had thereby incurred serious reprobation. In the opinion of the Tribunal, those requirements had been fulfilled in the present case.

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By approaching national authorities, institutions and persons, the complainant had on the one hand failed to comply with several of his obligations under the Staff Regulations and Staff Rules: he had brought the international civil service into disrepute in disregard of Staff Regulation 1.4, he had acted contrary to the duty of discretion defined in Staff Regulation 1.5, and he had harmed the interests of UNESCO contrary to the solemn undertaking to which he had subscribed in accordance with Staff Regulation 1.9; moreover, his many breaches of duty implied serious misconduct, both objectively and subjectively. Furthermore, by refusing to come to Paris in response to the orders of the Director-General of UNESCO the complainant had been guilty of a patent dereliction of his duties under Staff Regulation 1.2, and in that respect also the misconduct was serious both objectively and subjectively.

8. Judgement No. 64 (26 October 1962): Albero v. United Nations Educational, Scientific and Cultural Organization

Conditions governing exercise of entitlement to repatriation.

The complainant had been assigned to work as an expert at Tegucigalpa, Honduras, his appointment being due to expire on 30 June 1961. In a letter dated 27 January 1961 the Administration authorized him to return home to Spain by sea, and explained how he should go about booking a passage; as the Administration preferred that he should take all his leave before the end of his appointment, it urged him to make the necessary arrangements to leave Tegucigalpa on or about 8 April 1961. The complainant did not comply with those instructions, and the Administration, in a letter dated 1 March 1961, offered to book his passage for him. That letter was left unanswered, and the complainant eventually sailed from Panama City on 10 July and reached home on 29 July. He then lodged a claim for payment of his salary from 1 to 29 July; the Administration rejected that claim and he moved the Tribunal.

In its Judgement No. 64 the Tribunal dismissed the complaint. It found that the Administration had complied with the provisions of Staff Rule No. 109.12(b), since between 8 April and 30 June 1961 the complainant had had enough time to

take all the leave to which he was entitled and to return home by an approved route before his separation from service. It could only be for personal reasons that he had postponed his departure. Accordingly, under Staff Rule No. 109.12(c), he was not entitled to the additional salary that he claimed.

9. Judgement No. 65 (26 October 1962): R.S. Morse v. World Health Organization

Non-renewal of a fixed-term appointment: competence of the Tribunal, limits of its authority; discretionary power of the Head of the Secretariat, its limits - Conclusiveness of periodical reports for appraisal of an official's service - Reserve, tact and discretion required of international officials.

The complainant, who entered the service of WHO in 1949 and was assigned in 1954 to the Liaison Office of WHO with the United Nations in New York, had earned satisfactory appraisal reports for the years 1954 to 1958. On 18 September 1959 the Secretary-General of the United Nations gave a dinner party in honour of Mr. Khrushchev. It was an occasion of great importance, but by inadvertence the United Nations protocol service addressed an invitation intended for Mr. David Morse, Director-General of the International Labour Office, to "R. Morse, WHO". The complainant accepted it and attended the dinner. His superior officer reproached him for thus placing him, as Director of the Liaison Office, in an embarrassing situation and for compromising the good relations between the United Nations and WHO; he asked him to send a letter of apology to Mr. David Morse, which the complainant refused to do. On 7 October 1959 the dinner incident was reported in the New York Times, and consequently Reuter's United Nations correspondent, with whom the complainant had discussed the incident, also published the story, adding that the Director of the Liaison Office had requested the complainant to offer an apology to Mr. David Morse.

In October 1960 the Director of the Liaison Office prepared the complainant's appraisal report for 1959, recording an unfavourable opinion. In December 1960 he signed the appraisal report for 1960, in which he indicated that the complainant's performance had deteriorated in the last few months and that he could not recommend a prolongation of his assignment to the Liaison Office. In

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January 1961, in a letter to the Chief of Personnel, he recalled having previously stated that he had lost confidence in the complainant because the latter had disclosed to a group of newspaper correspondents the details of a delicate and confidential conversation. In June 1961 the complainant was officially informed that, in view of the unfavourable appraisal report for 1960, his appointment would not be renewed. The complainant then appealed to the WHO Board of Inquiry and Appeal, which found that his professional work performance had been satisfactory and that the last two appraisal reports reflected personal prejudice on the part of his immediate superior. The Director-General refused to accept those conclusions and decided not to renew the complainant's contract; the complainant petitioned the Tribunal to quash that decision.

In its Judgement No. 65 the Tribunal stated that, having regard to the advisory opinion of the International Court of Justice of 23 October 1956, applicable by analogy to the case of a WHO official, it was competent to hear complaints relating to the non-renewal of fixed-term appointments. It also stated, however, that "the extent to which the Tribunal is empowered to review is not ... unlimited. In taking the decision complained of, the Director-General exercised his discretion. A decision of this nature can be quashed only if, on the one hand, it is taken by a person without authority or in an irregular form, or if there has been failure to comply with recognized procedure; or, on the other hand, if it is tainted by an error of law or based upon materially incorrect facts, or if essential material elements have been left out of account, or if obviously wrong conclusions have been drawn from the evidence in the dossier".

The Tribunal then considered whether the decision complained of was tainted with any of those errors. The decision was based essentially on the 1960 appraisal report. A decision not to renew an appointment, if based on a single unfavourable report after a long period of satisfactory service, would leave out of account essential material elements and would constitute a wrong conclusion drawn from the record unless the report disclosed sufficiently serious deficiencies in the work or conduct of the official to justify the

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decision by themselves. Although the complainant had not failed in his obligations by attending the Khrushchev dinner or by refusing to tender an apology which was not due, he had nevertheless violated the obligations of reserve, tact and discretion laid on him by articles 1.5 and 1.6 of the Staff Regulations, by disclosing to press correspondents the details of a conversation with his chief relating to a matter of official business which should have remained privy to the organization and the disclosure of which was likely to harm the prestige of WHO and its relations with the United Nations. Consequently the complainant's conduct as an international civil servant was unsatisfactory.

Since the decision complained of was not in breach of any of the conditions mentioned above, the Tribunal dismissed the complaint.

Judgement No. 66 (26 October 1962): see decision No. 57

10. Judgement No. 67 (26 October 1962): Darricades v. United Nations Educational, Scientific and Cultural Organization

The Tribunal held that it lacked jurisdiction, since the complainant had been engaged specifically for a conference and could not therefore be regarded as a UNESCO staff member for the purposes of article 111.2 of the Staff Regulations and Rules. It recognized that as a result of its lack of jurisdiction the complainant was regrettably deprived of any means of judicial redress but, being a court of limited jurisdiction, it was bound to apply the mandatory provisions governing its competence.