

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1963

Part Two. Legal activities of the United Nations and related inter-governmental 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 Nations¹

1. JUDGEMENT No. 87 (3 OCTOBER 1963):² CARSON V. SECRETARY-GENERAL OF THE UNITED NATIONS

*Interpretation of Judgement No. 85 of 14 September 1962—
Meaning of the word “terminate” in Staff Regulation 9.3*

By its Judgement No. 85, the Tribunal had rescinded the termination of the applicant and ordered that, in the event of reinstatement, the applicant should receive full salary from the date of termination to the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 had 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. In its Judgement No. 87, the Tribunal interpreted Judgement No. 85 and ruled that the applicant was entitled to three-months' notice and that the termination indemnities due to her under paragraph 12(b) of Judgement No. 85 should be calculated on that basis.

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 1964, 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, the World Meteorological Organization and the International Atomic Energy Agency.

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; The Lord Crook, Vice-President; R. Venkataraman, Member.

2. JUDGEMENT NO. 88 (3 OCTOBER 1963)³: DAVIDSON V. SECRETARY-GENERAL OF THE UNITED NATIONS

Question of reimbursement by the Secretary-General of the Social Security Self-Employment Tax paid by staff members of United States nationality on their United Nations salaries and emoluments—Interpretation of Staff Regulation 3.3

The applicant—a United States national—requested the Tribunal to order the Secretary-General to reimburse to him the Social Security Self-Employment Tax which he had been obliged to pay since the adoption by Congress in 1960 of legislation imposing the tax on the salaries and emoluments paid by international organizations to United States nationals. He contended in particular that, under United States fiscal law, the tax fell within the category of income tax and that Regulation 3.3 of the Staff Regulations of the United Nations obliged the Secretary-General to reimburse income taxes paid by staff members on their United Nations salaries and emoluments. Analysing the legislative history of Regulation 3.3, the Tribunal held that the Social Security Self-Employment Tax was not covered, for the purposes of reimbursement, by the term “national income taxes” appearing in the regulation. It found, therefore, that the reimbursement of the tax was not mandatory and rejected the application.

3. DECISION OF 3 OCTOBER 1963 UNDER ARTICLE 7 OF THE STATUTE OF THE TRIBUNAL⁴: RAYRAY V. SECRETARY-GENERAL OF THE UNITED NATIONS

Submission of a dispute directly to the Administrative Tribunal without prior reference to a joint appeals body—Article 7 of the Statute of the Tribunal

The applicant requested the Tribunal, under article 7, paragraph 5 of its Statute, to suspend the provisions of the Statute regarding time limits in order to consider an application directed against the termination in 1956 of his temporary indefinite appointment with the United Nations. The Tribunal noted that the parties had not agreed to submit the application directly to it and that the matter had not been previously referred to a joint appeals body. It found therefore that neither of the requirements laid down in article 7, paragraph 1, of its Statute had been fulfilled and that the request was not receivable.

4. JUDGEMENT NO. 89 (9 OCTOBER 1963)⁵: 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—Interpretation of article III of the Regulations of the Joint Staff Pension Fund

This case had been 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 and invoked, *inter alia*, article III of the Regulations of the Joint Staff Pension Fund. In its Judgement No. 84, the Tribunal put several questions to the parties concerning mainly

³ Mme P. Bastid, President; The Lord Crook, Vice-President; R. Venkataraman, Member; James W. Barco, Alternate Member.

⁴ Mme P. Bastid, President; The Lord Crook, Vice-President; R. Venkataraman, James W. Barco and L. Ignacio-Pinto, Members.

⁵ Mme P. Bastid, President; James W. Barco and L. Ignacio-Pinto, Members.

the purport of articles II and III of those Regulations, and postponed the consideration of the case. After receiving the replies of the parties, the Tribunal resumed the consideration of the application. In its Judgement No. 89, the Tribunal noted that, in a general circular issued in 1958, ICAO had based the contested decision on paragraph 4 of article III of the Regulations of the United Nations Joint Staff Pension Fund but that it had subsequently invoked paragraph 1 of that article instead of paragraph 4. The Tribunal considered that the respondent could not properly abandon, in a situation relating to an individual case, the legal position which it had taken in a document of general application. It held therefore that the dispute should be decided on the basis of paragraph 4 of article III. Interpreting that provision in the light of the applicant's contracts, the Tribunal found that it did not exclude the validation of previous service and rescinded the contested decision.

5. JUDGEMENT NO. 90 (9 OCTOBER 1963)⁶: CHIACCHIA V. SECRETARY-GENERAL OF THE UNITED NATIONS

Powers of the Secretary-General with regard to the termination of probationary appointments—Interpretation of Staff Regulation 9.1(c)

The applicant requested the Tribunal to rescind the decision by which the respondent terminated her probationary appointment in 1961. The Tribunal recalled that it had consistently ruled that Regulation 9.1(c) of the Staff Regulations of the United Nations granted to the Secretary-General discretionary powers with respect to the termination of probationary appointments but that these powers should be exercised without improper motive which, if found, would constitute a misuse of power calling for the rescinding of the contested decision. The Tribunal noted that the applicant had not established the existence of any improper motive. As regards the applicant's complaints regarding the conditions prevailing in her service, the Tribunal observed that these complaints had been examined with the greatest care by the Joint Appeals Board and were known to the Secretary-General when he decided to maintain the contested decision. Accordingly, the Tribunal rejected the application.

B. Decisions of the Administrative Tribunal of the International Labour Organisation

[No decisions were rendered by the Administrative Tribunal of the ILO in 1963.]

⁶ Mme P. Bastid, President; James W. Barco and L. Ignacio-Pinto, Members.