

## SECOND ORDINARY SESSION

### ***In re* MARSH**

#### **Judgment No. 10**

THE ADMINISTRATIVE TRIBUNAL,

Whereas by a complaint dated 2 March 1951 Mrs. Anne Marsh has requested the Tribunal to annul the decision taken to terminate her appointment on 4 May 1951;

Whereas, in its answer dated 28 March 1951, the International Labour Office has asked for the complaint to be dismissed;

Whereas the Complainant was engaged by the International Labour Office on 30 April 1949 as a copyist (Category IV in the Second Division of International Staff) for a term of one year; whereas on 12 July 1949 she was accorded a contract of indefinite duration subject to a one-year period of probation before the appointment might become confirmed; whereas this period of probation was, by mutual agreement, to be calculated from the date of the commencement of service, that is, 30 April 1949 - the period of probation thus being due to terminate, in the normal course, on 30 April 1950;

Whereas, under the provisions of Article 26 of the Staff Regulations, at least once in every six months of probation, and in any case three months before the expire of any given period of probation, the responsible chief of any official on probation shall submit a considered report on his work and official conduct; whereas these reports, after being communicated to the official concerned, are then transmitted to the Promotions Board, which, after hearing the responsible chief, shall recommend to the Director-General either confirmation of the appointment, prolongation of the probation or discharge of the probationer official; whereas, therefore, the latest date upon which the report on the period of probation should have been made was 30 January 1950;

Whereas the report concerning the Complainant was not submitted by the responsible chief until 27 February 1950, or two months before the expiry of the period of probation; whereas this constitutes a first failure to observe Article 26, paragraph 1 of the Staff Regulations;

Whereas the whole procedure instituted preparatory to a decision being taken by the Director-General, and, in particular, the time limit of three months for the submission of the report, has been prescribed in the obvious interest of the probationer official, in order to enable him to avail himself in full safety and in good time of the means of defence and of appeal which may be open to him prior to the sovereign decision of the superior authority being taken;

Whereas in this case the facts in issue are established as follows:

(1) The first report of the responsible chief states on 27 February 1950 that, having been engaged as a copyist, Mrs. Marsh was employed from time to time as a stenographer in order that she might gain experience; that, on the whole, "her performance is a good average, but it is felt that she is capable of producing still better results", that, moreover, she is willing, punctual and pleasant and that she has been the subject of favourable appreciations during two periods when she was temporarily detached prior to this date;

(2) The last point is fully confirmed by the extremely laudatory statements of Mr. Croisiau and Mr. Wou whose secretary-shorthand-typists she replaced, when they were on holiday during the months of August and September 1949, to the entire satisfaction of those officials;

(3) At the conclusion of the said report, the responsible chief had formally proposed "confirmation of appointment", that is to say, that the Complainant should become an established official;

(4) Nevertheless, on the basis of certain reservations made in the report, the Promotions Board on 16 March 1950

proposed to the Director-General that the period of probation should be prolonged for a further term of six months and this proposal was approved on 30 March 1950 by the Director-General, the date of termination of the period of probation thus being changed to 31 October 1950;

(5) During this prolongation of the period of probation the Complainant was first of all, at the request of Mr. Croisiau, once more detached to the Transportation Service for the first three months, that is, until the end of July 1950; at the end of July 1950, under the provisions of Article 26, the report on the period of probation should have been prepared in order to observe the time limit of three months expiring on 31 October 1950; but no report and not even any appreciation of the Complainant's services was requested from her temporary chief, Mr. Croisiau;

(6) About this time the Complainant's state of health rendered necessary a serious surgical operation, which had an inevitable and profound effect on her morale, an effect which was aggravated by financial troubles in which she was involved; she then obtained, successively, sick leave and a period of leave for recuperation, with the result that she was unable to resume her normal duties until 21 August 1950;

(7) The Complainant therefore was only under the authority and supervision of her usual responsible chief for a maximum period dating from 21 August to 23 October, that is, a period of two months instead of six, a period on the basis of which, nevertheless, the chief of the Service included in her report, dated 23 October, observations so unfavourable that the Promotions Board on 8 November 1950 recommended the dismissal of the Complainant with three months' notice; when the Complainant appealed to the Joint Committee the latter confirmed the opinion of the Promotions Board which finally led the Director-General to give a decision accordingly on 3 February 1951, three months' notice being given as from 5 February 1951.

Whereas, therefore:

(1) The lateness of the first report dated 27 February 1950 does not appear to have prejudiced the Complainant, because it recommended the confirmation of her appointment and because, also, the Complainant did not appeal against the decision to prolong the period of probation taken on 30 March by the Director-General;

(2) The same is not the case with regard to the irregularities in the application of the Regulations which are present in the procedure followed during the prolongation of the period of probation, inasmuch as:

(a) the first half of this probationary period (the period during which the Complainant was detached to the service of Mr. Croisiau) was not made the subject of any appreciation on the part of the head of that service an appreciation which at least could have been and ought to have been appended to a later report;

(b) the report of 23 October related in fact to a period of probation of only two months (21 August - 23 October), a period which was particularly unfavourable to the Complainant for reasons for which she is in no way to blame;

(c) not only was this report not prepared until after the time limit laid down in Article 26, but, also, it can in no way be regarded as showing an effective and reasonable appreciation of official duties spread over a six months' period of service - an appreciation to which the probationer official was entitled by the very fact of the corresponding prolongation of the probationary period which had been imposed upon her and which she had accepted;

(d) it is, however, this report tainted by irregularities which, undeniably, exercised a determining influence on the whole of the subsequent procedure, including the decision of the Director-General of 3 February 1951.

Whereas, therefore, the appeal against the said decision is found to be receivable and well-founded and whereas the consequences must be remedied.

ON THE GROUNDS AS AFORESAID,

The Administrative Tribunal,

Rejecting all broader or contrary claims,

Annuls the decision impugned,

Orders the reinstatement of the Complainant as a probationer official in the position she occupied at the moment

that decision was taken,

Declares in law that the prolongation of the period of probation for six months decreed by the decision of the Director-General on 30 March 1950 must, in order to have full effect in accordance with the spirit and the letter of the Regulations, recommence and start to operate on 5 May 1951 at the latest,

Orders the International Labour Office to pay all the expenses which may be justified with regard to any costs incurred in the procedure before the Administrative Tribunal.

In witness of which judgment, pronounced in public sitting on 5 April 1951 by His Excellency Mr. A. Devèze, President, Jonkheer van Rijckevorsel, Vice-President, and Mr. Wyzanski, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Wolf, Registrar ad hoc of the Tribunal.

(Signatures)

Albert Devèze  
A. van Rijckevorsel  
Wyzanski  
Francis Wolf