Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1968

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 Nations [1]

1. JUDGEMENT NO. 114 (23 APRIL 1968): [2] KHEDERIAN V. SECRETARY-GENERAL OF THE UNITED NATIONS

Appeal under article 17 of appendix D to the Staff Rules—Importance of the report of the Medical Board

The applicant, alleging a permanent disability attributable to the performance of official duties on behalf of the United Nations, had submitted a claim for compensation, which the Secretary-General had rejected on the recommendation of the Advisory Board on Compensation Claims. The applicant having filed an appeal against this decision under article 17 of appendix D of the Staff Rules, the Medical Board provided for in that article had adopted by a majority opinion a report the conclusions of which were favourable to the applicant. Nevertheless, the Advisory Board, pointing out that, in the Medical Board, votes had been divided and that the report of the Medical Board was inconclusive and ambiguous, had maintained its previous recommendation; the Secretary-General had also maintained his original decision.

The Tribunal stressed in its Judgement that, so far as the medical aspects of an appeal under article 17 of appendix D to the Staff Rules were concerned, the report of the medical board was of crucial importance and that in the present case this report had been to all intents and purposes set aside by the Advisory Board. The Tribunal found that the recom-

[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. By the end of 1968, two agreements 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 two specialized agencies: the International Civil Aviation Organization; the Inter-Governmental Maritime Consultative 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; Mr. Z. Rossides, Member; Mr. H. Groz Espiell, Alternate Member.

mendation of the Advisory Board was made under misapprehension of the functioning of the Medical Board and of the purport of article 17 in providing for the appointment of a third medical practitioner selected by agreement between the medical practitioners appointed by the parties. The Tribunal, without deciding the merits of the case, ordered that the case be remanded for correction of the procedure in accordance with article 9, paragraph 2, of its Statute, and it awarded to the applicant as compensation a sum equivalent to three months of her net base salary for the loss caused to her by the procedural delay.

2. JUDGEMENT NO. 115 (24 APRIL 1968): [3] KIMPTON V. SECRETARY-GENERAL OF THE UNITED NATIONS

Request for the rescinding of a decision rejecting an applicant for employment on medical grounds

The applicant had passed a United Nations examination for English translators but was subsequently rejected for employment on medical grounds. He requested the Tribunal to rescind this decision,while the respondent requested the Tribunal to decide that it lacked competence.

The Tribunal declared itself not competent to hear and pass judgement upon the application. It found that the applicant was neither a staff member nor a former staff mèmber of the Secretariat of the United Nations, and that he was not in one of the other situations referred to in article 2, paragraph 2, of the Statute. The Tribunal also pointed out that there had never been at any time an offer of employment made by a competent authority and that the case was therefore different from the Camargo and Vasseur cases. The Tribunal found that, in the absence of statutory or regulatory provisions governing the steps preceding recruitment, it was clear that no right capable of being invoked before the Tribunal could have arisen for the benefit of the applicant.

3. JUDGEMENT NO. 116 (24 APRIL 1968): [4] JOSEPHY V. SECRETARY-GENERAL OF THE UNITED NATIONS

Request for the rescinding of a decision, described as a "correction" to an earlier decision, purporting to postpone the date of a salary increment as set by the original decision

The applicant was to have received a salary increment on 1 September 1965. On 22 September 1965, this increment was withheld with effect from 1 September 1965 for insufficient punctuality. On 13 May 1966, the increment was reinstated as of 1 June 1966 and the date of the next salary increment was indicated as September 1966. On 3 June 1966, a "correction" postponed the date of the next salary increment from September 1966 to June 1967.

The applicant requested the Tribunal to order the rescinding of the decision of 22 September 1965 and, as a corollary, the rescinding of the decision of 3 June 1966, or alternatively the rescinding of the decision of 3 June 1966 only.

The Tribunal rejected the main plea. Although it regretted the procedural irregularities and, in particular, the fact that the contested decision was taken after 1 September 1965,

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[3] Mme P. Bastid, President; the Lord Crook, Vice-President; Mr. H. Gros Espiell, Member, Mr. Z. Rossides, Alternate Member.

[4] Mme P. Bastid, President; Mr. H. Groz Espiell and Mr. F.T.P. Plimpton, Members.

the Tribunal was of the opinion that these irregularities were not such as to affect the validity of the decision of 22 September 1965 which otherwise complied with the conditions of substance set forth in the Staff Regulations and Rules.

The Tribunal decided in favour of the alternative plea. It pointed out that the decision of 3 June 1966 in effect deprived the applicant of eighteen months of salary increment instead of the nine months initially contemplated and that, inasmuch as the applicant's next salary increment date was properly fixed at September 1966 by the decision of 13 May 1966, the decision of 3 June 1966 described as a "correction" was without legal foundation.

4. Judgement No. 117 (26 April 1968): [5] Van der Valk v. United Nations Relief and Works Agency for Palestine Refugees in the Near East

Termination of a temporary indefinite contract on the ground of abolition or conversion of post—Obligation to prefer the more senior staff in the case of abolition of post does not apply in the absence of specific provisions to that effect

The applicant, whose temporary indefinite contract had been terminated on the basis of regulation 9.1 of the International Staff Regulations of UNRWA, under which the Commissioner-General might terminate the appointment of a staff member if, in his opinion, such action would be in the interest of the Agency, requested the Tribunal to rescind this decision on the grounds that the abolition of this post and conversion thereof into an area post was unwarranted, that even if the post was abolished the applicant should have been retained in preference to staff members more junior to him in service, and that the contested decision was motivated by prejudice.

The Tribunal rejected the application. It refused to substitute its judgement for that of the Administration in evaluating the merits of the abolition or the conversion of the applicant's post. As for the obligation to prefer the more senior staff in the case of abolition of post, the Tribunal said that it did not apply in the absence of specific provisions to that effect. The Tribunal acknowledged, on the other hand, that UNRWA had been under an obligation to seek to place the applicant in another appropriate post, but it considered that the Agency had properly discharged this obligation. Lastly, the Tribunal found that there was nothing on record to show that the abolition of the post and notice of termination of the applicant had been influenced by prejudice.

5. Judgement No. 118 (24 October 1968): [6] Vermaat v. United Nations Joint Staff Pension Board

Plea by a technical assistance expert of FAO against a decision refusing to validate a period of service prior to his admission to the Joint Staff Pension Fund in 1958—Was the applicant entitled prior to 1958 to participate in the Fund ?

The applicant, a technical assistance expert of FAO who had become a participant in the Pension Fund in 1958, requested the Tribunal to rescind a decision by the Standing Committee of the Joint Staff Pension Board refusing to validate his period of service prior

[5] The Lord Crook, Vice-President, presiding; Mr. R. Venkataraman, Vice-President; Mr. F.T.P. Plimpton, Member.

[6] Mme P. Bastid, President; the Lord Crook, Vice-President; Mr. L. Ignacio-Pinto, Member; Mr. Z. Rossides, Alternate Member.

to 1958. He also maintained that he had been entitled to participate in the Pension Fund from the time when he joined FAO and that by not enrolling him FAO had failed to fulfil its contractual obligations.

The Tribunal rejected the plea directed against the Pension Board on the grounds that article III (on validation) of the Pension Fund Regulations, as in force at the critical time, only provided for validation of previous service in the case of persons whose participation in the Pension Fund had been excluded because they had entered employment under a contract for less than one year or had completed less than one year of service, and that the applicant had been in neither of the situations covered by that article.

With regard to the plea directed against FAO, the Tribunal observed that in order to decide whether the applicant was entitled prior to 1958 to participate in the Pension Fund it was necessary to establish whether or not his contract excluded participation in the Fund. Since that question could be settled only by an examination of the contract and of the legal provisions in force in the Organization, it appeared from the FAO staff regulations that it was the ILO Administrative Tribunal which was the competent jurisdiction.

6. Judgement No. 119 (25 October 1968): [7] West v. United Nations Joint Staff Pension Board

This case is broadly similar to the case dealt with in Judgement No. 118.

7. Judgement No. 120 (25 October 1968): [8] Khederian v. Secretary-General of the United Nations

Rescinding of a decision rejecting a claim for compensation for sickness or injury attributable to the performance of official duties

By its Judgement No. 114, [9] the Tribunal had ordered that the case be remanded for correction of the procedure. By its Judgement No. 120, given on the merits, the Tribunal ordered the rescinding of the contested decision and ruled that, should the respondent decide under article 9, paragraph 1, of the Statute to compensate the applicant for the injury sustained, the respondent must pay to the applicant a sum equivalent to two years of her net base salary.

8. Judgement No. 121 (25 October 1968): [10] Makris-Batistatos v. Secretary-General of the United Nations

Question whether, in the absence of a contract, the relationships between the applicant and the respondent were those under a fixed-term appointment—Claim for full payment of annual leave accrued on separation.

The applicant had been recommended by the TAB Congo Office for appointment to a technical assistance post in the Democratic Republic of the Congo and, although he did

[7] Mme P. Bastid, President; the Lord Crook, Vice-President; Mr. Z. Rossides, Member; Mr. L. Ignacio-Pinto, Alternate Member.

[8] Mme P. Bastid, President; the Lord Crook, Vice-President; Mr. H. Gros Espiell, Member; Mr. Z. Rossides, Alternate Member.

[9] See p. 167 of this *Yearbook*.

[10] Mme P. Bastid, President; the Lord Crook, Vice-President; Mr. L. Ignacio-Pinto, Member; Mr. Z. Rossides, Alternate Member.

not hold a contract, he had in fact carried out the duties of the post for several months when he was informed that his candidature for the post had been withdrawn and that no other employment would be offered to him. He contended before the Tribunal that the conduct of the parties established that there existed a contract of service for his employment for one year, and that this fixed-term contract had been terminated illegally. He also claimed full payment of all annual leave—and not merely sixty days—accrued by him on separation.

The Tribunal held that the relationships between the applicant and the respondent had not been those under a fixed-term one-year appointment and that no improper motive on the part of the respondent had been established. On the subject of leave, the Tribunal ruled that it was the respondent's action, justified as it might have been by exceptional circumstances, which had led the applicant to accrue annual leave beyond the maximum of sixty days provided for in staff rule 109.8 (*a*), and that accordingly the respondent was stopped from invoking the sixty-day limitation as against the applicant.

9. Judgement No. 122 (30 October 1968): [11] Ho v. Secretary-General of the United Nations (Deletion of comments from periodic reports)

Request for the deletion of certain comments from periodic reports

The respondent having decided to take no action on requests by the applicant that comments which he regarded as incomplete and unwarranted be deleted from some of his periodic reports, the applicant requested the Tribunal to order the deletion of the comments in question.

The Tribunal rejected the application, pointing out that it had not been established that the contested periodic reports had been dictated by improper motives or misrepresented the facts.

10. Judgement No. 123 (31 October 1968): [12] Roy v. Secretary General of the International Civil Aviation Organization

Termination of a permanent appointment by discharge as a disciplinary measure

The applicant requested the Tribunal to rescind a decision by the respondent to terminate her permanent appointment by discharge for misconduct as a disciplinary measure.

The Tribunal found that the safeguards provided by the ICAO Service Code in disciplinary proceedings had not been afforded the applicant. Without determining the merits of the case, the Tribunal remanded the case for correction of the procedure and awarded to the applicant a sum equivalent to two months of her net base salary as compensation for the loss caused to her by procedural delay.

11. Judgement No. 124 (31 October 1968): [13] Kahale v. Secretary-General of the United Nations

Rescinding of a decision discontinuing an assignment allowance retroactively

By Judgement No. 124 the Tribunal rescinded a decision of the respondent discontinuing retroactively an assignment allowance paid to the applicant and ordered that the amount deducted from the applicant's salary on that account be paid back to him.

[11] Mme P. Bastid, President; Mr. H. Gros Espiell and Mr. L. Ignacio-Pinto, Members.

[12] Mme P. Bastid, President; Mr. H. Gros Espiell and Mr. F.T.P. Plimpton, Members.

[13] Mme P. Bastid, President; Mr. L. Ignacio-Pinto and Mr. F.T.P. Plimpton, Members; the Lord Crook, Vice-President, Alternate Member.

12. JUDGEMENT NO. 125 (1 NOVEMBER 1968): [14] HO v. SECRETARY-GENERAL OF THE UNITED NATIONS (CHANGE OF VISA STATUS)

Request for the rescinding of a decision denying entitlement to home leave on the ground of a change in visa status

By acquiring permanent resident status in the United States, the applicant, a Chinese national, lost his home leave entitlement as from 20 October 1967, the effective date of his change of visa status. Prior to that date, however, he had planned to take home leave from 21 September to 31 October 1967; this plan had been approved when, on 8 September 1967, the Administration informed him that his entitlement to home leave had ceased as a consequence of his having signed the waiver of privileges and immunities required under United States law. Subsequently, however, the Administration took the view that home leave entitlement ceases when the change of visa status becomes effective.

The Tribunal rejected the applicant's plea for an order to reinstate his entitlement to his 1967 home leave. The Tribunal held that home leave entitlement can only exist in law if the staff member, at the time when he is to begin exercising that entitlement, meets all the requirements laid down in the Staff Rules.

B. Decisions of the Administrative Tribunal of the International Labour Organisation [15,16]

1. JUDGEMENT NO. 116 (18 MARCH 1968): KIRKBIR v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Discretion of the Director-General under staff rule 104.6 (b)*—Limits of the Tribunal's authority to review*

After holding several successive contracts, the complainant was informed that her appointment was extended until 4 October 1964, after which date her service would terminate. She filed a complaint with the Tribunal requesting her reinstatement.

[14] Mme P. Bastid, President; Mr. H. Gros Espiell and Mr. L. Ignacio-Pinto, Members.

[15] 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, as at 31 December 1968, 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, the International Atomic Energy Agency, the United International Bureaux for the Protection of Intellectual Property, the European Organization for the Safety of Air Navigation and the Universal Postal Union. 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.

[16] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

The Tribunal dismissed the complaint. It noted that the complainant held a fixed-term appointment with UNESCO and thus was covered by the provisions of staff rule 104.6 (*b*). It was clear from those provisions that a staff member holding a fixed-term appointment had no right to renewal of his appointment and that such renewal was within the discretion of the Director-General of the Organization. It followed that the authority of the Administrative Tribunal to review a decision of the Director-General refusing such renewal was limited to considering whether the decision was tainted by an error of law or based upon materially incorrect facts, or whether essential material elements had been left out of account or obviously wrong conclusions had been drawn from the evidence in the dossier. In taking the decision impugned, the Director-General had given a ruling which did not appear to be tainted by any of those errors. The decision was therefore in order.

2. Judgement No. 117 (18 March 1968): Wright v. Food and Agriculture Organization of the United Nations

Qualification for being held to be employed by an organization and consequently to be one of its staff members

The complainant had entered into a contract of employment with the "FAO Credit Union". She was notified that the Board of Directors of the Union had decided to terminate her appointment. She then submitted an appeal to the Chairman of the FAO Appeals Committee. The Appeals Committee declared that it was not competent because, in its view, the complainant was not a staff member of FAO. The complainant submitted to the Tribunal that she was an FAO staff member and that any decision to the contrary should be reconsidered.

The Tribunal dismissed the complaint. It pointed out that only staff members of the organizations which had recognized its competence could bring suit before it, and noted that it was impossible to be an FAO staff member without being employed by the Organization and that the identity of the employer was fixed by the contract of employment. The employer named in the complainant's contract of employment was the FAO Credit Union. It was unnecessary to consider whether the Credit Union had a legal personality, because, even if "Credit Union" was in the eyes of the law no more than a convenient name for a group of individuals, such individuals were as a group capable of entering into contracts of employment. It was only if it was proved that the signatory to the contract of employment had had authority from FAO to make contracts of employment on its behalf that the complainant could be held to be employed by FAO. The Tribunal could find no evidence of such authority. Accordingly, the complainant not being employed by FAO, and so not one of its staff members, the Tribunal lacked jurisdiction to determine her complaint.

3. Judgement No. 118 (18 March 1968): Jurado v. International Labour Organisation (No. 18—Certificate of service and appeal to the governing body of the ILO *

Issue of certificates of service under article 11.17 of the Staff Regulations—The Tribunal's authority to review

The complainant, whose appointment had been terminated by the ILO, had asked for a certificate of service in accordance with article 11.17 of the ILO Staff Regulations.

* The complainant submitted an objection to the composition of the Tribunal, which the Tribunal dismissed as lacking any valid grounds.

The certificate was duly given to him. As an error had been made in respect of a date, however, the Administration subsequently sent the complainant a corrected certificate and a second certificate relating to his competence, efficiency and conduct. He submitted a complaint to the Tribunal requesting (1) the rescinding, on the basis of article 11.17 of the Staff Regulations, of the certificate issued by the Administration and its replacement by another certificate, and (2) the rescinding of a tacit decision of the Administration refusing to submit the question of the legal validity of Judgement No. 96 of the Administrative Tribunal to the Governing Body, with a view to an appeal to the International Court of Justice. [17]

The Tribunal declared that it was not competent to consider point (2). With regard to point (1), it noted that, in so far as the complaint was directed against the certificate originally issued, it had become irrelevant; in so far as it might be directed against the certificates issued subsequently, it should be recalled that the assessment made by the Director-General was not open to discussion before the Administrative Tribunal, which could only check whether all the particulars listed in article 11.17 had been given and ascertain that the assessment made by the competent authority was not based on materially incorrect facts or obviously wrong conclusions drawn from the evidence in the dossier. In the case at issue, the certificates issued by the Administration were in order and it was therefore not necessary to rule on the complainant's submissions concerning them.

4. Judgement No. 119 (18 March 1968): Ambrozy v. Food and Agriculture Organization of the United Nations

The Tribunal is not competent to rule on complaints from staff members of FAO concerning the benefits of the United Nations Joint Staff Pension Fund—A complaint is not receivable unless the complainant has exhausted the means of resisting provided for in the Staff Regulations

The complainant, having on several occasions taken extended periods of sick leave following a fall in her office, was asked to undergo an examination by specialists chosen by FAO. Since the findings of the examination led the Organization to conclude that the complainant was fit for work, she was requested to resume her duties. When she did not comply, she was separated for abandonment of post, under section 314.33 of the FAO Manual. She then submitted a complaint to the Tribunal challenging the findings of the medical examinations and requesting (1) payment of compensation for the loss of earning capacity resulting from bodily injuries sustained in the performance of her official duties, and (2) payment of a disability benefit from the United Nations Joint Staff Pension Fund.

The Tribunal dismissed the complaint. It declared that it was not competent to rule on point (2), and recalled that it heard complaints from FAO staff members alleging non-observance of their terms and conditions of appointment, "with the exception of complaints concerning the benefits of the United Nations Joint Staff Pension Fund". On point (1), it noted that, under article VII, paragraph 1, of the Statute of the Tribunal, a complaint was not receivable unless the complainant had exhausted the means of resisting provided for in the Staff Regulations. In the case at issue, the complainant had not submitted a claim for the payment of compensation either to the Director-General or to the FAO Appeals Committee, as specified in section 303.131 of the Manual. On that point, therefore, the complaint was irreceivable.

[17] See *Juridical Yearbook*, 1966, p. 221.

5. JUDGEMENT NO. 120 (18 MARCH 1968): NOWAKOWSKA v. WORLD METEOROLOGICAL ORGANIZATION (NO. 2)

The Tribunal recorded the complainant's withdrawal of suit.

6. JUDGEMENT NO. 121 (15 OCTOBER 1968): AGARWALA v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Illegality of suspension from duty otherwise than in accordance with the Staff Regulations—Limits of the Tribunal's authority to review a decision not to renew a fixed-term contract

The complainant, whose contract had been due to expire on 31 August 1966, had been assigned to two FAO projects in Iraq. Following a difference of opinion between him and his Iraqi counterpart, he was informed on 8 and 9 June that his contract would not be renewed. At the same time, he was asked by the directors of the two projects to which he was assigned not to present himself again for work. The Appeals Committee, to which an appeal was submitted in due form, recommended that the complainant should be granted compensation for the moral and material injury he had suffered. The Director-General of FAO maintained his decision not to renew the appointment and offered the complainant a sum of $US 2,500 in settlement of all accounts and claims.

The Tribunal, which was requested to rescind this decision and—failing the granting of a new contract—to award damages in the amount of $US 28,992, noted that the complainant had in effect been relieved of his duties and forbidden to call at his office. The Organization had therefore committed a breach of contract by suspending the complainant otherwise than in accordance with the Staff Regulations, and he was entitled to compensation from it for the moral damage caused by a decision which was tantamount to summary dismissal. The Tribunal accordingly decided that the Organization should pay the complainant the sum of $US 6,000.

The decision not to renew the contract was a matter within the discretion of the Director-General and was therefore immune from interference by the Tribunal unless it was in irregular form, tainted by illegality or based on incorrect facts, or unless essential facts had not been taken into consideration or conclusions which were clearly false had been drawn from the documents in the dossier. On the facts of this case none of the conditions which would justify interference by the Tribunal was present. The Tribunal therefore dismissed the plea for the rescinding of the decision not to renew the contract.

7. JUDGEMENT NO. 122 (15 OCTOBER 1968): CHADSEY v. UNIVERSAL POSTAL UNION

Affirmation of the right of any employee having a link other than a purely casual one with an organization to the safeguard of some appeals procedure—Obligation to take into account all the professional and moral qualifications of any candidate for a permanent post—Fundamental principle of the independence of an international organization in relation to its members

When a new language system was introduced in the Universal Postal Union, it was decided to set up within the framework of the Union an English translation service operating on the instructions of a Management Committee appointed by the "English Language Group"; the staff of the translation service were to enjoy the same conditions of employment as the officials of the International Bureau. Even before the new system was introduced, the International Bureau had set up a temporary English translation service, the staff of

which held fixed-term contracts specifying that the Staff Regulations of the Bureau were not applicable to them. In these circumstances the complainant was engaged as a translator for eighteen months, and his contract was renewed and later tacitly continued as from 1 June 1966. On 26 September 1966, he was informed that one of the members of the English Language Group objected to his appointment as a permanent translator on the ground that he had refused to perform his military service in the army of the country concerned. On 6 March 1967, the International Bureau informed the complainant that, in accordance with the instructions of the Management Committee of the English Language Group, it was not in a position to offer him a permanent position in the new translation service. The complainant then requested the Director-General to submit the decision of 6 March to the appeals machinery provided under the Staff Regulations. The reply was (1) that his complaint was misdirected, inasmuch as the International Bureau had acted on behalf of the English Language Group, and (2) that he was employed by the Bureau without a contract and, in any event, since he had expressly recognized at the time of his initial engagement that the Staff Regulations were not applicable to him, he could not claim the benefit of the appeals procedure laid down in those Regulations. The complainant then requested the Tribunal to order the rescinding of the decision of 6 March.

The Tribunal declared that it was competent. While the Staff Regulations of an organization were as a whole applicable only to those categories of employees expressly specified therein, some of their provisions were merely the translation into written form of general principles of civil service law; those principles must be considered applicable to any employees having a link other than a purely casual one with an organization and consequently could not lawfully be ignored in individual contracts. That applied in particular to the principle that such employees were entitled, in the event of a dispute with their employers, to the safeguard of some appeals procedure.

On the merits, the Tribunal held that the complaint must be regarded as, in fact, attacking the decision of the Management Committee of the English Language Group in refusing to give the complainant a permanent contract. It noted that the appointment of a temporary employee to a permanent post did not constitute a right for the person concerned but was within the discretion of the Management Committee of the Group, which must take into account all the elements disclosed by the dossier. In the case at issue, the Committee had been motivated solely by the objection expressed by the representative of a member State. The Tribunal held that such an objection could not be reconciled with the fundamental principle of the independence of an international organization in relation to its members. In restricting itself to that one reason, which was tainted by illegality, and in omitting to exercise its discretion, the Management Committee had misinterpreted its own competence; the decision must accordingly be rescinded and the case referred back to the Management Committee for a new decision, with reasons stated, on the complainant's request.

8. Judgement No. 123 (15 October 1968): Martin v. International Atomic Energy Agency

Method of reckoning the time-limit for filing a complaint with the Tribunal—Conditions for entitlement to a repatriation grant and payment of travel expenses

The complainant, after holding short-term contracts, had entered into a special service agreement with IAEA and later into a fixed-term contract, which was renewed twice. Shortly before the expiry of the last contract he applied for a repatriation grant, and this was awarded to him by a decision of 31 August 1966, which also informed him that he would

be paid a lump sum for travel expenses. On 26 June 1967, he was notified that he was not entitled either to the grant or to the payment of travel expenses but that the Director-General was prepared to treat the amount already paid as a *ex gratia* payment; this decision was confirmed on the advice of the Joint Appeals Committee, and two copies of it were sent by the Agency to the complainant, the first being delivered at his usual home address on 27 June 1967 and the second at a business address on 28 June 1967. The complainant filed a complaint with the Tribunal, which was posted on 26 September 1967, requesting the rescinding of the decision of 26 June 1967 and the maintenance of the decision of 31 August1966.

The Tribunal declared the complaint to be receivable; it ruled that the time-limit—ninety days after the decision impugned—had begun to run on 28 June and not on 27 June. In the first place the Agency, by sending two copies of its decision, had admitted that if one were to go astray the time-limit would run from the date of receipt of the second, and in the second place the complainant, upon receiving the two copies, might reasonably have felt some doubt as to the date from which the time-limit ran. In addition, since the two texts were identical, he could, without failing in his duty to exercise proper care, have kept only one of them—namely the one which was delivered on 28 June—and reckoned the time-limit as running from that date.

On the merits of the case, the Tribunal noted that, since, as could be seen from the facts of the case, the complainant had been recruited locally, he could not invoke either staff rule 6.01.1 or the first part of travel rule 1.04 in order to claim payment of his travel expenses or repatriation grant. Nor had he completed two years of continuous service within the meaning of the second part of travel rule 1.04, since he had been covered by the Staff Regulations and Rules for only eihgteen months and short-term contracts and special service agreements specifically excluded the payment of travel expenses.

On the question whether the Agency could legitimately reverse a wrong decision, the Tribunal noted that in the case of the repatriation grant the Director-General was not demanding the return of the amount paid, and the only point at issue was, therefore, the question of travel expenses. While recognizing that in particular circumstances the mere fact of approval by one of its organs might commit the Agency under the rules of good faith, the Tribunal noted that in the case at issue there had been an obvious misinterpretation of the applicable rules, and also that the lump sum for travel expenses had never been paid; furthermore, payment of that sum was subject to a condition which had not been fulfilled—namely, that definite arrangements for travel on repatriation should have been made. The Tribunal consequently dismissed the complaint.

9. Judgement No. 124 (15 October 1968): Pannier v. United Nations Educational, Scientific and Cultural Organization

The complainant had obtained a housing loan from UNESCO and had undertaken, in the receipt, to use the loan for the purposes for which it had been granted, namely, to liquidate obligations which he had incurred previously in order to purchase a home but which he found to be too onerous. He nevertheless decided to use the amount lent by UNESCO to acquire shares in a housing development. When the matter came to his notice, the Chief of the Bureau of Personnel of UNESCO informed the complainant, on 7 February 1967, that repayment of the loan was due immediately, and on 18 May 1967 he notified him that, starting with the month of May, a deduction would be made from his monthly salary until the debt was paid off.

The Appeals Board, to which two appeals were submitted—one against the decision of 7 February and one against the decision of 18 May—stated that it was not competent to

hear the first and considered that the second was without foundation. This advice was accepted by the Director-General, who communicated his decision to the complainant on 4 August 1967.

The Tribunal, with which a complaint was filed in due form, held that under article II, paragraph 5, of its Statute it was competent to rule on the validity of the decision of 18 May 1967. It could not, however, reach a decision on that point without considering the regularity of the decision of 7 February 1967. It therefore declared itself competent to rule on the latter decision. Accordingly, the decision of 4 August must be rescinded because it was based on erroneous advice from the Appeals Board.

The Tribunal consequently rescinded the decision of the Director-General and referred the case back to him for a new decision after he had obtained the advice of the Appeals Board.

10. Judgement No. 125 (15 October 1968): Douwes v. Food and Agriculture Organization of the United Nations

Authority of the Tribunal to order such measures of investigation as it considers desirable—Right of any employee to see the documents used in evidence against him

As a result of various disputes, the complainant had been transferred from Central America to Surinam. He subsequently submitted his resignation, and the Director-General decided that his services would be discontinued as from 31 August 1967.

The Tribunal, with which a complaint was filed in due form, noted that under article 11 of the Rules of Court it could take such measures of investigation as it considered desirable. In support of his complaint the complainant contended that the decision to terminate his services had originally been based on letters about him addressed to headquarters by officials of FAO and TAB. The Organization, relying on section 34.023 of the Manual, had not deemed it necessary to furnish the full text of those documents because, in its view, all the points in them concerning the complainant had been reproduced in the statement which it had prepared and in the appendices thereto. The Tribunal held that, since the Organization had relied upon the contents of those letters as evidence against the complainant, he was entitled to see the letters. If there were passages in them which related to some quite different subject-matter or which because of their confidential nature, for example, could not be disclosed to the complainant, the Organization might omit such passages from the copies produced, stating the reasons for any omissions. If the omissions were challenged by the complainant, the Tribunal would examine the passages omitted and decide whether or not they should be shown to the complainant.

As an interlocutory decision, the Tribunal directed the Organization to produce copies of the letters mentioned above in accordance with the terms of the judgement.

11. Judgement No. 126 (15 October 1968): Danjean v. European Organization for Nuclear Research (Nos. 1 and 2)

Right of the Director-General, with certain provisos, to assign a staff member to work normally done by lower-grade employees, if the necessities of the service so require—Authority of the Director-General freely to determine whether or not the retention of a staff member is in the interests of the Organization—Limits of the Tribunal's authority to review the case

The complainant, who had entered the service of CERN in 1958, protested on several occasions that the conditions in which she had to work were unhealthy. In November

1966, she complained that she had been assigned to work that did not come up to her qualifications and was contrary to her contract of employment, under which she was in grade 5 (calculator III). The Director-General replied on 21 December 1966, contesting her complaints and advising her first to recover her health, and assuring her that the provisions of the Sickness Fund would be interpreted in the broadest possible way in her case. The Joint Appeals Boards, to which an appeal was submitted in due form, found that responsibility for the deterioration in the complainant's situation was shared between the complainant and the Organization. On the recommendation of the Board, the Director-General offered on 22 March 1967 to grant the complainant special leave with pay and to make arrangements for her reclassification. The complainant, who in the meantime had filed a complaint with the Tribunal, agreed to take special leave with pay and suspended her complaint. She later refused to take a vocational guidance test and stated that none of the vacancies in CERN of which she had been given a list matched her qualifications. She then received notice that her appointment would be terminated, whereupon she filed a second complaint with the Tribunal.

The Tribunal ruled that the second complaint did not render the first one irrelevant because the legality of the decision to terminate which was attacked in the second complaint depended on the disposal of the first complaint and because, if the first complaint was held to be well-founded, the complainant could claim compensation even if the complaint concerning termination were dismissed.

With regard to the first complaint, the Tribunal noted, with reference to the legality of the decision of 21 December 1966, that the complainant's contract of employment, while describing the main features of the work of a calculator, stated that the person concerned "performs such other duties as may be assigned to her". Moreover, it was within the discretion of the Director-General—provided that there was no change in grade, reduction in salary or lowering of their dignity—to assign staff members to work done by lower-grade employees if the necessities of the service so required. In the case at issue, it appeared from the evidence that the Director-General had not overstepped the above-mentioned limits of his authority, and also that the assignment to which the complainant objected could not be regarded as a disciplinary measure. With reference to the legality of the decision of 22 March 1967, the Tribunal held that the purpose of the decision was to change the assignment of the complainant, as she had repeatedly demanded. Even assuming that the allegations—deterioration of health caused by unhealthy conditions—were proved, they might conceivably entitle her to financial compensation but could not in any way affect the legality of the decision.

With regard to the second complaint, the Tribunal ruled that, contrary to the complainant's contention, the Director-General, in deciding on 30 May 1967 to terminate her appointment, had not ignored the implications of the decision he had taken on 22 March 1967 in accordance with the recommendations of the Joint Appeals Board. Indeed, he had tried to implement the earlier decision, and the responsibility for his failure to do so lay entirely with the complainant. Moreover, the decision of 30 May 1967 was based on the provisions of article H 1/7 of the Staff Regulations and Rules, which gave the Director-General the discretionary authority to determine whether or not the retention of a staff member was contrary to the interests of the Organization; it followed that a decision taken under that article could not be reviewed by the Tribunal unless it was irregular, tainted by illegality or based on incorrect facts, or unless essential facts had not been taken into consideration or conclusions which were clearly false had been drawn from the evidence in the dossier. None of those errors had been established in the case at issue.

The Tribunal consequently dismissed both complaints.

12. JUDGEMENT NO. 127 (15 OCTOBER 1968): GLATZ-CAVIN v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Staff regulation 9.1—The Director-General is the sole judge of action to be taken in accordance with the necessities of the service—Limits of the Tribunal's authority to review the case

The complainant, who had been assigned as a teacher to the Special Fund/UNESCO project for the Rabat Teacher Training College, had submitted to his chief, the Senior Technical Adviser, a report criticizing the progress of the project. Soon afterwards, the Technical Adviser gave an official from headquarters copies of two letters, numbered 1009 and 1010, which were supposedly to be dispatched shortly by the Minister of Education of Morocco to the Resident Representative—who said later that he had never received the originals—and which the Technical Adviser had helped to draft. The first letter criticized the complainant's behaviour during a recent students' strike and stated that, despite his undoubted competence, his transfer would be in the general interest; the second proposed the appointment of another person to the post to be vacated by the complainant. On 18 March 1966, the Chief of the Bureau of Personnel of UNESCO informed the complainant orally that the Moroccan Government had asked UNESCO to abolish his post because it wanted to introduce teaching in Arabic. On 24 March and again on 4 April, the Moroccan Government notified UNESCO that it would like the complainant's contract to be terminated and an Arabic-speaking teacher appointed in his place. On 3 September 1966, the Chief of the Bureau of Personnel informed the complainant that, in accordance with staff regulation 9.1, the Director-General had decided to terminate his appointment on the ground of an abolition of post required by the necessities of the service.

The complainant then filed a complaint with the Tribunal requesting the rescinding of the termination decision, which he claimed was the result of a plot against him. The Tribunal noted that the relevance of the reason given in support of the decision impugned was a matter within the discretion of the Director-General, who was the sole judge of action to be taken in accordance with the necessities of the service. It therefore confined itself to considering whether the decision was tainted by procedural errors or by illegality or whether the Director-General had failed to take account of essential facts or drawn conclusions which were clearly false from the evidence in the dossier. It noted that, since the originals of letters Nos. 1009 and 1010 had not been produced, the Organization could not rely on them. On the other hand, the letters from the Moroccan Government dated 24 March and 4 April clearly expressed a desire to replace French-speaking teachers by Arabic-speaking ones. However, it had not been established that the policy of introducing teaching in Arabic had been regarded by the competent authorities as a sufficient ground for requesting the withdrawal of the complainant before the expiry of his contract; on the contrary, it appeared from the evidence in the dossier that his services were highly appreciated. It was therefore extremely likely that the intervention of the Senior Technical Adviser had played a decisive role in the matter. It appeared from the dossier that the views he had expressed concerning the complainant in the presence of Moroccan officials had been lacking in impartiality. In particular, by acknowledging that he had helped to draft copies Nos. 1009 and 1010, he implicitly admitted that he had induced the Moroccan authorities, without proper cause, to take steps which had led to the termination of the complainant's employment before the normal expiry of his contract. Nevertheless, the Organization had rightly based its action on the wishes of the Moroccan authorities, as expressed in the letters of 24 March and 4 April, and the Director-General had not drawn false conclusions from the evidence in the dossier when abolishing the complainant's post in order to replace him by an Arabic-speaking teacher. The decision must therefore be confirmed, but the Organization had an obligation

to the complainant because of the intervention of the Senior Technical Adviser. The Tribunal consequently decided that the Organization should pay the complainant a sum of 10,000 Swiss francs in compensation for the material and moral injury he had suffered.

13. JUDGEMENT NO. 128 (15 OCTOBER 1968): CONNOLLY v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

The Tribunal recorded the complainant's withdrawal of suit.