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UNITED NATIONS JURIDICAL YEARBOOK

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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 intergovernmental organizations

Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[2]

1. JUDGEMENT NO. 389 (4 JUNE 1987): HRUBANT AND EIGHT OTHERS V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Request for promotion to the S-3 level pursuant to the "1974 agreement" — Secretary-General's discretionary power was limited by the agreement — Terms of the agreement were valid until a new promotion system had been approved — Question of interpretation of the terms of the agreement

In a memorandum dated 3 April 1974 addressed to the Under-Secretary-General for the Department of Administration and Management, the Assistant Secretary-General for General Services summarized a series of points on which understanding had been reached between representatives of the Office of General Services (OGS) and staff representatives of the Security and Safety Section of OGS. With respect to promotions from the S-2 level to the S-3 level, the memorandum stated:

> ". . . (*b*) While Security Officers may expect advancement to S-3 in the normal course of a career, promotions will be based on seniority and satisfactory performance."

Accordingly, from 3 April 1974 onwards the procedure for promotion from the S-2 level to the S-3 level was governed by the terms of that agreement.

In June and July 1981, the Applicants, United Nations Security Officers, not having been included in the 1981 promotion register, instituted recourse procedures claiming that they had met the criteria required for promotion from the S-2 to the S-3 level, i.e., seniority in grade and a record of performance that had consistently been rated as more than satisfactory.

The Tribunal first addressed the question of whether the "1974 agreement", as set out above, was binding on the Administration, and the Tribunal held that:

> ". . . just as the Secretary-General's discretion in connection with promotions [was] limited by the provisions of the existing Staff Regulations and Rules, his discretionary powers [were] also limited by an agreement, entered into by the Secretary-General, or his authorized representatives, within the exercise of his powers."

Furthermore, the Tribunal noted that inasmuch as the Respondent had conceded that during the 1981 promotion review the new 1981 system of promotions had not yet been approved on behalf of the Secretary-General and the 1974 agreement was still in force, it followed that the Secretary-General's discretion was limited by the 1974 agreement and that any promotion review undertaken at the time should have abided by its terms.

The Applicants and the Respondent agreed that the 1974 agreement had been applied to the recourse procedures; however, the Applicants have asserted that their non-inclusion in the revised promotion register resulted from an erroneous interpretation of the agreement. They claimed that "all those with satisfactory performance would have been eligible in principle for promotion, i.e., all those whose performance was outstanding, very good or adequate". Thus, the actual promotion would then have been decided on the basis of seniority, whereas, in the Respondent's view, among those whose performance was satisfactory (i.e., at least adequate), not only seniority, but also the different levels of performance would have been taken into account. The Tribunal observed that the Office of Personnel Services had erroneously advised the Appointment and Promotion Panel that the recourse reviews should be conducted within the context of the agreement, taking into account seniority and demonstrated good performance. As the Tribunal noted, the text of the agreement did not refer to "good performance" but to "satisfactory performance".

Moreover, according to the Respondent's interpretation, performance was to be assessed not only on the basis of the periodic reports, but also on the basis of personal comments from the supervisors during the proceedings before the Appointment and Promotion Panel. The Tribunal concluded, however, that the consideration of oral remarks (not subject to rebuttal by the staff member) was contrary to the terms of the 1974 agreement, which should have been applied only taking into account objective data.

The Tribunal, agreeing with the Applicants' interpretation of the terms of the agreement, held that, having once reached the threshold of satisfactory performance, security officers should be promoted in order of seniority. In other words, those most senior would be promoted first provided they had rendered satisfactory performance.

For the above reasons, the Tribunal ordered that those Applicants who had since been promoted to the S-3 level be granted as many months of additional seniority at the S-3 level as were necessary to place them in the position in which they would have been had they been included in the 1981 Security Service promotion register and had their promotion been implemented according to the 1974 agreement. As for the Applicants who were still serving at the S-2 level, the Tribunal ordered that their future promotions should be governed by the guidelines set forth in the present judgement. Compensation was also awarded.

2. JUDGEMENT NO. 390 (5 JUNE 1987): WALTER V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[4]

Request for implementation of promotion from G-5 to P-2, granted by the Executive Director of UNITAR just before his term ended and suspended by the new Executive Director — Entitlement of the Director to exercise his authority until his term of office expired — Appointment and Promotion Board's negative

advice on the promotion is not binding on the Executive Director — No legal justification for the suspension of the decision of the former Executive Director — Question of whether the Applicant's promotion to the Professional category was valid upon her assignment to the United Nations Secretariat

The Applicant entered the service of the United Nations in 1963, and since 1968 the Applicant had been assigned to UNITAR, "an autonomous institution... within the framework of the United Nations". It was a matter of record that the Applicant had been performing Professional-level duties, and on 16 December 1982, just before his term ended on 31 December, the Executive Director of UNITAR promoted her from the G-5 level to the P-2 level, with effect from 1 December 1982. However, when the new Executive Director took over, he decided to suspend the decision. Subsequently, the Applicant's post was abolished and she was reassigned to the United Nations Secretariat and placed against a temporary G-5 level post.

The Respondent had disputed the validity of the Applicant's promotion, stressing that the Executive Director had taken the decision just before his term ended. However, noting that the Respondent did not allege any impropriety, such as favouritism, in the promotion of the Applicant, the Tribunal considered that the Executive Director was entitled to exercise his authority until his term of office expired. Furthermore, in the Tribunal's view, although the advice of the UNITAR Appointment and Promotion Board was negative as regards the promotion, it was not binding on the Executive Director, who had reached a different conclusion.

The Tribunal, noting that there was no legal justification for the suspension of the decision of the former Executive Director and that no suspension procedure had been carried out for that purpose, held that the Applicant's promotion was valid and should therefore take effect.

The Respondent contended that, given the validity of the Applicant's promotion, it could only be valid during the period in which the Applicant was in the service of UNITAR, because she had been promoted from the General Service to the Professional category without having to sit a competitive examination, as was required of other staff members of the Secretariat.

In this connection, the Tribunal considered a memorandum dated 25 February 1980 from the Director of the Personnel Office at Headquarters addressed to the Executive Director of UNITAR, referring to a "long-established administrative practice" of General Service staff members seconded by the Secretariat to UNITAR "normally" returning to the General Service category at the Secretariat, despite his or her promotion to the Professional category. The Tribunal, however, observing that the Applicant's previous promotions while in the service of UNITAR had been included in the United Nations promotion register, that she had never been advised of the consequences of her assignment in terms of promotion in the context of the Organization as a whole, that the Respondent had not called into question the professional qualities, competence and devotion of the Applicant, and that she had been in the service of the United Nations for almost 25 years and on a permanent contract for 17 years, concluded that the Applicant's promotion was also effective in respect of the Secretariat.

In view of the foregoing, the Tribunal held that the Applicant was entitled to the salary attaching to the P-2 level, until such time as the Administration regularized her status.

3. JUDGEMENT NO. 395 (5 NOVEMBER 1987): OUMMIH, GORDON AND GRUBER V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

Applicants challenge the Secretary-General's decision on the deferment of the implementation of cost-of-living adjustments in the salaries of General Service staff — Competence of the Secretary-General in the matter — No legal expectancy that the methodology or the consequential adjustments would never be modified or suspended — Interpretation of the legal effect of the decision using the guiding principle that it should be construed as having a lesser rather than greater adverse effect on the rights of the staff under the Staff Regulations and Rules — Right of the staff to be informed with reasonable clarity of an important aspect of staff compensation — Acquired right under regulation 12.1 to the payment of the cost-of-living adjustment until the General Assembly decision of 9 May 1986 — Question of consultation with ICSC in the matter — Tribunal not empowered to question sovereign authority of the General Assembly to take the decision — Accepted principle of law that the actions of any party are presumed to be in accord with and to honour prior legislation and commitments — Question of violation of the principle of equality

The Applicants, members of the General Service category, challenged the Secretary-General's decision not to pay the cost-of-living adjustment due them effective 1 February 1986, because of the financial situation of the Organization. Cost-of-living adjustments under the post adjustment scheme had been frozen for the staff of the Professional and higher categories since 1984.

The Tribunal noted that there was no dispute that the methodology for adjusting General Service salaries thus established had statutory force, and that it might be altered by the Secretary-General in exercise of his power under the Staff Regulations and Rules, subject to the requirements of good faith, intervention by the International Civil Service Commission (ICSC) and adequate consultation with the staff. In rejecting the Applicants' argument that the methodology also had contractual force and therefore could not be modified unilaterally by the Respondent, the Tribunal stated that the fact that the Applicants' contracts of employment incorporated by reference the Staff Regulations and Rules was of no consequence in this case since the action taken by the Secretary-General did not involve a change in methodology, but rather was a decision to withhold payment of the amount produced by application of the methodology. Furthermore, the Tribunal was not aware of any basis for staff members to have or have had a legal expectancy that the methodology or the consequential adjustments would never be modified or suspended; no promise or assurance, expressed or implied, was ever given to that effect.

On 20 March 1986, the Secretary-General announced to the staff in Secretary-General's bulletin ST/SGB/217 his decision:

> ". . . *deferment* of the implementation of cost-of-living adjustments in the salaries of staff in the General Service and related categories at the eight main duty stations." (emphasis added)

The Secretary-General stated in this connection:

> "I realize, in particular, that the *deferment* of cost-of-living adjustments affects the lowest-paid categories of staff, and I wish to state that it is my intention to *lift this deferment* as soon as practicable." (emphasis added)

In the opinion of the Tribunal, the above decision was announced in ambiguous terms. It was not clear if the adjustment was to be withheld for the time being or if the intent was to permanently deprive the staff of the adjustments, and there was a substantial difference between a temporary withholding (however prolonged) of a sum otherwise due and, in effect, the abolition of the entitlement to receive it. Given this ambiguity, the Tribunal considered that it was open to interpret its legal effect and in so doing followed the guiding principle that the decision should be construed as having a lesser rather than a greater adverse effect on the rights of the staff under the Staff Regulations and Rules. Furthermore, the Tribunal found that inherent in the employment relationship was a right on the part of the staff to be informed with reasonable clarity of the abolition of an important aspect of staff compensation for a specified or indefinite future period, and that this right existed irrespective of an emergency situation. The Tribunal concluded that the Secretary-General's decision, which was within his authority under regulation 3.1 and rule 103.2 of the Staff Regulations and Rules, must therefore be interpreted as only a decision to withhold payment temporarily.

Moreover, the Tribunal observed that even if on 20 March 1986 the Secretary-General had made clear that the decision would apply retroactively to the period beginning 1 February 1986, to that extent that the Tribunal would hold the decision to have no effect since the Applicants had an acquired right under regulation 12.1 to be paid for the work they performed before the announcement of the decision, including the cost-of-living adjustment due in respect of that period.

In response to the Applicants' argument that the Secretary-General's decision was invalid for lack of intervention of ICSC, the Tribunal considered that the scope of any obligation that may have existed to consult ICSC would depend on the degree, if any, to which the matter was within the competence of ICSC. Here the Tribunal found that since the 20 March 1986 decision had the effect of a temporary withholding, there was no requirement to consult with the Commission.

Subsequently, by its decision 40/472, of 9 May 1986, the General Assembly decided that the "Secretary-General should proceed according to proposals made in his report, taking into account the report of the Fifth Committee", wherein it was stated that the cost-of-living adjustments, when they were resumed, should not be applied retroactively. The Tribunal stated that it was not empowered to question the sovereign authority of the General Assembly to take this decision, citing the International Court of Justice advisory opinion of 20 July 1982 in the *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal (Mortished)*. Furthermore, the Tribunal noted that from 9 May 1986 onwards the staff was clearly on notice that the cost-of-living adjustment was not merely being delayed but was being cancelled.

The Tribunal, however, disagreed with the Respondent's view that the General Assembly's decision divested the Secretary-General of discretion to pay General Service staff the cost-of-living adjustment withheld in respect of the full period beginning 1 February 1986. The Tribunal was of the view that the General Assembly's decision to cancel the cost-of-living adjustment was intended to be effective in consonance with existing Staff Regulations, i.e., only with respect to the period after 9 May 1986. Had the General Assembly specifically decided to abrogate regulation 12.1, it would have made this clear.

The Tribunal stated that it was an accepted principle of law that, unless no other interpretation was reasonably permissible, the actions of any party, includ-

ing a sovereign authority, were presumed to be in accord with and to honour prior legislation and commitments. The Tribunal therefore considered that the 9 May 1986 decision of the General Assembly was not a deliberate abrogation of the acquired rights of the staff, but a prospective measure without prejudice to acquired rights. The Tribunal, citing United Nations Administrative Tribunal Judgements No. 82 *(Puvrez)*, paragraph VII, and No. 295 *(Sue-Ting-Len)*, paragraph X, held that there was no acquired right to salary, including cost-of-living adjustment, accruing *after* the adoption of the General Assembly's decision on 9 May 1986.

The Applicants had further argued that, inasmuch as the decisions of the Secretary-General and of the General Assembly applied only to staff at the eight headquarters duty stations, constituting only some of the General Service, the principle of equality, pursuant to Article 8 of the Charter of the United Nations, was violated. However, the Tribunal, citing ILO Administrative Tribunal Judgement No. 391 *(*In re *de Los Cobos and Wenger)*, in which it was stated that "the principle of equality means that those in like case should be treated alike, and that those who are not in like case should not be treated alike", state that the Respondent and the General Assembly were therefore entitled to take into consideration such differing circumstances as different levels of remuneration or of inflation affecting the cost of living at different duty stations, and the numbers employed at those stations.

In view of the foregoing, the Tribunal ordered the Secretary-General to pay each of the Applicants the cost-of-living adjustment in respect of the period from 1 February 1986 to 9 May 1986.

4. JUDGEMENT NO. 399 (9 NOVEMBER 1987): WALSH V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[6]

Applicant challenges methodology used to calculate his emoluments upon promotion from FS-5 to P-2 — Question of whether promotion was consistent with administrative instruction ST/AI/279 and rule 103.9 of the Staff Rules — Understanding of the term "promotion" — Staff member cannot be bound by unpublished memorandum — Methodology applied did not represent a reasonable or permissible interpretation of administrative instruction ST/AI/279 or staff rule 103.9

In 1981, the Applicant, a Field Service Officer at the FS-5 level, was successful in the competitive examination for promotion from the General Service to the Professional category and as a result was promoted to P-2. However, the Applicant complained that the methodology used by the Respondent effectively froze his emoluments for several years and as a result did not constitute a "promotion" in real terms.

The Tribunal was in agreement with the Respondent that the issue was whether the Applicant had been promoted consistent with administrative instruction ST/AI/279 and with rule 103.9 of the Staff Rules. The relevant part of the administrative instruction provides, in paragraph 17:

> "Successful candidates who are at the top level of the local General Service salary scales or at the FS-5 level will be recommended for promotion to P-2... The salary step at the P-1 or P-2 level will be determined on the basis of staff

rule 103.9 on salary policy in promotions. At duty stations where a General Service staff member's emoluments in local currency, when computed for promotion purposes under that rule, exceed the ceiling step of P-1 or P-2, as the case may be, the staff member will be paid a personal transitional allowance in an amount sufficient to meet the requirements of that rule."

Apart from the foregoing, the Tribunal was unaware of any authoritative text that specifically dealt with the question of how to place Field Service Officers serving at one duty station, being sent on promotion to another as a member of the Professional staff. It noted, however, that the Respondent, in determining the Applicant's starting point in the Professional scale at Vienna, seemed to have relied on an unpublished memorandum of 1977, which modified a prior 1974 memorandum proposing a methodology now advocated by the Applicant and which, though not officially adopted, had been followed in the past. The 1977 memorandum provided that any reduction in the amount of take-home pay of the Applicant resulting from the manner of setting the starting point on the scale following the promotion was to be made up by a personal transitional allowance, which in turn was gradually absorbed over the years by annual increments. It was acknowledged that this might result in a staff member over the years not receiving any significant financial benefit from his promotion, which was what happened to the Applicant.

The Tribunal was of the view that unless and until a proper review of the problem arising from promotion of Field Service Officers to the Professional category had been undertaken comprehensively, the balance of the argument favoured the Applicant. In this connection, the Tribunal considered that the Respondent's failure to take into account the invariable element of the Field Service monthly mission allowance (MMA) less the assignment allowance in determining the comparable P-2 step rate, which was the method the Applicant advocated, must be justified by a reasonable interpretation of ST/AI/279 or staff rule 103.9.

The Tribunal, however, concluded that there was no justification for the Respondent's interpretation of ST/AI/279 or staff rule 103.9. The Tribunal noted that the Respondent had relied on the last sentence of paragraph 17 of ST/AI/279 as justifying the methods used by him. However, the Tribunal observed that, read literally, that sentence had no application to Field Service employees, but applied only to General Service employees.

Moreover, as the Tribunal noted, the provision left unclear the question of how long the personal transitional allowance was to be paid and how, if at all, it was to be phased out. In this connection, the Tribunal noted that under the methodology applied by the Respondent in the Applicant's case, the personal transitional allowance turned out to be close in amount to what he would have received had the methodology he advocated been followed. However, the personal transitional allowance for the Applicant would have been phased out over approximately five years by annual reductions equivalent to the normal step increases he could have expected to have received over that period. In effect, the Applicant, having succeeded in a competitive examination and having earned a promotion, was being obliged to forgo the normal annual increases which he would have received had he remained an FS-5. As the Tribunal noted, in the Applicant's situation, this had an especially harmful effect because he was to reach retirement age around the end of that period and, thus, his pension entitlement would have been adversely affected. Taking all of those circumstances into account, the Tribunal was unable to accept that such treatment of the Applicant

could reasonably be described as a "promotion", either within the common understanding of that term or as was contemplated by the General Assembly when it established the competitive examination procedure, or as was contemplated under ST/AI/279 or staff rule 103.9.

The Tribunal further noted that the Respondent had also sought to justify his methodology as binding upon the Applicant because it was purportedly described in a memorandum dated 15 December 1977; however, in the opinion of the Tribunal, the memorandum had never been published, or even brought to the attention of the Applicant before he accepted the promotion. The Tribunal, citing Judgement No. 390, *Walter*, 1987 (see sect. A.2 above), stated that in order to meet the basic elements of due process, a staff member could not be bound by an unofficial, unpublished memorandum, particularly when he had no notice of it or of its consequences.

The Respondent also contended that, since the 1974 methodology on which the Applicant relied was also unpublished, it should not constitute a source of authority for the Applicant's argument that the invariable element of the MMA less the assignment allowance should be taken into account in arriving at the proper step at the P-2 level, as had been done on an exceptional basis in an earlier case of conversion of a Field Service Officer to the Professional category. The Tribunal, however, did not view any earlier cases of this nature as precedents, stating that, at most, those cases indicated that, at least at one point, the Respondent had recognized the reasonableness of the methodology advocated by the Applicant. The Tribunal further stated that thus, when the Applicant had entered the Professional category as a result of promotion following a competitive examination, he could at least have expected treatment not less favourable than that accorded to the previous Field Service Officer converted to the Professional category.

The Tribunal concluded that the methodology applied by the Respondent in the Applicant's circumstances did not represent a reasonable or permissible interpretation of administrative instruction ST/AI/279 or staff rule 103.9 and strongly endorsed the Joint Appeals Board's view that "steps be taken within the appropriate administrative and staff/management organs to devise, implement and publicize a coherent policy and methodology which can be used system-wide and in all circumstances for determining the level, step and remuneration of Field Service staff members who are promoted to the Professional category."

Accordingly, the Tribunal ordered that the Applicant's emoluments, effective 1 March 1982, should be recalculated by adding the difference between the invariable element of the Field Service MMA and the Professional category assignment allowance to his net base Field Service salary and then by granting him the net base salary in the Professional category nearest to the resulting amount, plus one step as required by staff rule 103.9, and that the Applicant's subsequent emoluments be recalculated accordingly with an appropriate retroactive adjustment paid to him.

5. JUDGEMENT NO. 401 (12 NOVEMBER 1987): UPADHYA V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[7]

Discriminatory treatment of a staff member determined by the Panel to Investigate Allegations of Discriminatory Treatment — Unjustified delay of the Respondent in replying to the Applicant's appeal — Competence of the Joint

Appeals Board in the matters raised by the Applicant — Prompt and effective action has to be taken to remedy discriminatory treatment

In 1981, the Panel to Investigate Allegations of Discriminatory Treatment had concluded that the Applicant had been treated in a discriminatory manner by his department (Department of Political and Security Council Affairs). In response, the Assistant Secretary-General for Personnel Services informed the Under-Secretary-General for Political and Security Council Affairs of the conclusions of the Panel and requested from him a plan for the Applicant's career development with the department. As the Applicant was unsuccessful in his efforts to be promoted to the P-5 level in 1981 or 1982, the Assistant Secretary-General for Personnel Services on 19 March 1984 authorized the implementation of the Applicant's promotion to the P-5 level, effective 1 June 1983, after the Under-Secretary-General for Political and Security Council Affairs did not immediately implement the Applicant's promotion pursuant to the 1983 promotion register. In the meantime, the Applicant had filed an appeal with the Joint Appeals Board (JAB).

The Tribunal first considered the conclusion of the JAB that, because of a three-year delay on the part of the Respondent in replying to the Applicant's appeal, and his promotion in 1984, effective 1 June 1983, the JAB did not consider itself competent to consider the Applicant's claims of discrimination. Although the Tribunal recognized that the passage of time and the intervening promotion rendered moot the question of whether the JAB should recommend promotion as a remedy for discrimination that it might have found, that did not in the Tribunal's view exhaust the range of further recommendations, depending upon how the JAB would have assessed the related matters raised by the Applicant, such as the alleged continuing discriminatory treatment against the background of the report of the Panel to Investigate Allegations of Discriminatory Treatment, or the issue of the unjustified delay of the Respondent in answering the Applicant's appeal. The Tribunal concluded that the JAB had taken an excessively narrow view of its own competence to deal with the problems presented to it and that this was not in keeping with the rationale underlying its advisory functions.

The Tribunal noted that the the Panel had concluded, *inter alia*, that the Applicant had been treated unfairly in being bypassed for promotion and recommended that the Office of Personnel Services play an active role in ensuring him a fair chance for career development within or outside his Department. While the Panel might have explained more clearly the rationale underlying its conclusions and might also have been more specific with regard to the remedy it recommended, the Tribunal considered that the Panel had investigated the Applicant's claims carefully and satisfied itself that they were sufficiently meritorious to warrant a determination of unfair treatment. The Tribunal further considered such a Panel determination highly significant because, firstly, it was fundamental that no staff member should be subjected to discriminatory treatment and it was of the utmost importance to the integrity of the Organization that prompt action be taken to remedy such treatment; and, secondly, it was equally fundamental that, after a Panel determination of discrimination, the victim must not be retaliated against for having claimed discrimination, and strong efforts should be made by the Administration to avoid even the appearance of such retaliation.

In this connection, following the Panel's finding that the Applicant had been discriminated against, there was thus, in the Tribunal's opinion, an especially

heavy burden on the Administration to provide a prompt and effective remedy, and if one was not forthcoming, to provide clear and convincing evidence of justifiable reasons for this. In this case, the Tribunal was unable to find in the record any adequate explanation for the repeated instances of inability or unwillingness on the part of the Administration to take effective action to remedy in a meaningful fashion the unfair treatment which the Panel found the Applicant had been subjected to prior to 1981. Furthermore, the Tribunal found that the Administration had acted in derogation of the Applicant's rights stemming from the determination of unfair treatment made by the Panel in 1981.

In view of the foregoing, the Tribunal strongly urged that in the future the Administration should monitor carefully the Applicant's career to ensure not only that it was in no way prejudiced by the events which had given rise to the Tribunal proceeding, but that he receive the fair treatment to which he was entitled. The Tribunal also awarded US$ 12,000 to the Applicant as compensation for the injuries he had sustained.

6. JUDGEMENT NO. 408 (13 NOVEMBER 1987): RIGOULET V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[8]

Request for a repatriation grant — Prerequisites for payment of a repatriation grant — Those entitled to the grant have to meet relevant requirements set forth in rule 109.5 of the Staff Rules — Tribunal obliged to apply to United Nations staff members the provisions of the United Nations Staff Regulations and Rules irrespective of what other international organizations do

The Applicant, a French national, who had been working at the United Nations Office at Geneva and living in France, had requested payment of the repatriation grant. She had provided the personnel office with papers certifying that she would reside in Strasbourg upon her retirement.

In its consideration of the case, the Tribunal identified three prerequisites for payment of a repatriation grant to a staff member, taking account of all relevant factors:

(1) The staff member must be in the category of staff members who are eligible for the repatriation grant. Under annex IV to the Staff Regulations, the staff members in question were those whom the Organization was obligated to repatriate.

(2) The fact that under annex IV a staff member was among those whom the Organization was obligated to repatriate did not mean that he or she was automatically entitled to the grant. In order to be eligible for the grant, a staff member must be able legitimately to exercise the right in question by meeting the relevant requirements set forth in rule 109.5 of the Staff Rules.

(3) There must not be a legal obstacle to payment of the grant, based on the text of annex IV to the Staff Regulations and of staff rule 109.5. One such legal obstacle concerned any staff member who was residing at the time of separation in his or her home country while performing official duties.

The Tribunal, rejecting the Applicant's argument that this exception concerned only a staff member who was both residing and performing official duties in his or her country, concluded that the wording chosen by the legislative authority for the text in question covered both situations, because the justification for

withholding the grant was exactly the same: there was no reason to pay a repatriation grant to a staff member who was already residing at the time of separation in his or her home country.

The Tribunal noted that in Geneva international organizations adopted different rules or followed different practices in respect of payment of the repatriation grant in similar cases; however, the Tribunal was obliged to apply to United Nations staff members the provisions of the Staff Regulations and Rules that were in force. It was not for the Tribunal to establish uniform practice in respect of payment of the repatriation grant.

The Tribunal, while concluding that in refusing to pay the repatriation grant to the Applicant, the Respondent had not violated either the Staff Regulations or the Staff Rules, awarded the Applicant $US 2,000 in compensation in view of the special circumstances in which she found herself.

B. Decisions of the Administrative Tribunal of the International Labour Organization[9]

1. JUDGEMENT NO. 803 (13 MARCH 1987): GROVER V. INTERNATIONAL COMPUTING CENTRE (WORLD HEALTH ORGANIZATION)[10]

Question of the conclusion of an employment contract — Conditions for formulation of a valid contract — UNOG officials do not have competence to make commitments that would bind the International Computing Centre — Right of the complainant to payment for work he did

The International Computing Centre (ICC) provides computer services for the agencies of the United Nations system. The World Health Organization, which shares premises with ICC, provides ICC with administrative services and the appointment of its staff members. The complainant had a six-month contract with ICC, from 27 February to 26 August 1984; however, his services were at the disposal of the United Nations Office at Geneva (UNOG). He had a second employment contract with UNOG itself, from 28 August to 26 September. On 28 September 1984, the complainant received an offer dated 27 September 1984 for a third employment contract, this time with ICC. The complainant objected to the terms of the offer regarding salary and employee status, but continued to work at the Centre. A work plan antedated 27 September 1984 was appended to the contract and communicated to him on 10 October 1984. He further objected to the work plan, but nevertheless signed and returned the contract. Subsequently, ICC wrote to the complainant on 11 October stating that because he had "changed the appendix" to the contract UNOG would have to agree before the contract could come into effect. The complainant protested in a letter of 12 October, alleging an oral promise by UNOG officials, at the time of his second contract, that the terms of his third contract would be the same as those of the first contract. On 15 October, he was informed by an UNOG official that he was not entitled to a three-month appointment with the Centre and that he must choose between a contract for one month as from 27 September and leaving immediately without any pay at all. The complainant declined to make the choice and from 16 October 1984 he was forbidden access to the work premises.

At the outset, the Tribunal determined that it was competent to hear the case, because the matter came within article II, paragraph 4, of its statute and because the International Computing Centre, which is a party to the dispute, is administered by the World Health Organization, which has recognized the Tribunal's jurisdiction.

In considering the merits of the case, the Tribunal referred to Judgement No. 621 (in re *Poulin*), in which it observed that "no contract can conceivably arise unless there was an unquestioned and unqualified concordance of will on all the terms of the relationship. A contract is concluded only if both parties have shown contractual intent, all the essential terms have been worked out and agreed on, and all that may remain is a formality of a kind requiring no further agreement". In the present case, the Tribunal held that no contract had been concluded between the parties. It was clear on the evidence as set out above that the complainant's acceptance of the offer of 27 September 1984 was neither unquestioned nor unqualified and that no contract had ever been concluded.

Moreover, the Tribunal found no evidence to support the complainant's contention that there was an oral agreement between him and UNOG officials that he would be granted a third contract on the same terms as those of the first one, except that it would be for three months. In any event, the other party to the third contract was to be, not UNOG, but the Centre, and no one in UNOG was competent to make commitments that would be binding on the Centre.

The Tribunal decided, however, that the complainant should be paid pro rata for the period during which he had worked at the Centre while the exchanges on the third contract were going on.

2. JUDGEMENT NO. 809 (13 MARCH 1987): NAJMAN (NOS. 1 AND 4) V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION[11]

Complainant challenges a Director-General's decision to place him on an "unclassified" post on special leave with pay — Consultation with the UNESCO Executive Board required for appointment or renewal of a contract for senior officials — Conditions of rule 105.2(b) of the UNESCO Staff Rules on placing a staff member on special leave without pay were not met — Director-General in making assignments must pay due regard to a staff member's qualifications and experience — Rule 105.2(b) cannot be invoked in place of a disciplinary procedure

The complainant challenged a decision the main effect of which was to put him on special leave with full pay for a period not to exceed one year, and a decision to extend the period of that leave by two months.

The complainant had held three two-year appointments at the rank of Assistant Director-General. Assistant Directors-General are not granted permanent appointments but, in accordance with regulation 4.5 of the UNESCO Staff Regulations, are appointed for successive periods not exceeding five years each and which in practice are two years. Before the complainant's third two-year appointment expired, on 31 May 1982, the Director-General of UNESCO wrote to him, on 25 May 1982, informing him that he would receive a one-year extension to 31 May 1983 and then be reassigned, and instead of the praise of earlier years the Director-General indicated in the letter that he expected his loyal support in his new position. With the Director-General's consent, the complainant

took study leave from 1 July 1982 until 31 May 1983. On 1 June 1983, the Director of the Office of Personnel wrote to the complainant and informed him that he was to resume duty forthwith at the grade of his permanent appointment, P-5, and was to choose between two posts at that grade, one in Nigeria and one in Samoa. Based on health reasons, he objected to a field assignment in the tropics, and on 30 June 1983 the Director-General informed him that pending a new assignment he would be placed on special leave pursuant to UNESCO Staff rule 105.2(b) from 1 June 1983 until 31 May 1984, and would be against an "unclassified" post with an Assistant Director-General's pay. Furthermore, on 15 May 1984, he was notified that the Director-General had extended his leave to 31 July 1984, to allow time for the Appeals Board to report.

The Tribunal, disagreeing with UNESCO's contention that the action was merely an assignment of a P-5 official, pointed out that the Director-General — by creating an "unclassified" post and placing the complainant against it with an Assistant Director-General's salary — had neglected to consult the Executive Board of UNESCO before taking his decision, which was in breach of article 54 of the Board's rules of procedure which required such consultation for appointment or renewal of a contract for officials at the D-1 level and above. The effect of the decision had been to appoint the complainant for a period of up to one year to a grade above D-1, having been placed against a post that carried an Assistant Director-General's pay, even though he had lost his previous Assistant Director-General's post. Thus, the impugned decision may be seen either as "renewal of a contract" as regards pay, since the complainant was to continue receiving the same amount, or else as an "appointment" to a grade above D-1. The Tribunal also rejected UNESCO's argument that pursuant to staff rule 112.2(b) exceptions should just be "made known" to the Executive Board and that the Board should not be consulted. The Tribunal stated that the Organization could not do away with a safeguard that prescribed that the Board must be consulted when the Director-General wanted to create a senior post and appoint someone against it. In this case, it was all the more imperative as the high-ranking post had been created with no content to it.

Moreover, the Tribunal concluded that, in the present case, UNESCO, in placing the complainant on special leave against the unclassified post, had not met the conditions of rule 105.2(b), which required that "exceptional circumstances" must exist in order for a staff member to be placed on special leave with pay — both because of the circumstances that led the Director-General to take the decision and because of the long duration of the special leave. While it is no breach of the letter or spirit of rule 105.2(b) to make a staff member take provisional special leave until some new assignment is found for him, the Tribunal noted that the Director-General had decided as early as May 1982 that the complainant must leave his post on 1 June 1983. Thus, over a year was allowed to go by before the impugned decision was taken, and when the complainant reported for duty (after the Director-General had suggested a few days before that he not report for work) he was offered two posts, both at the P-5 level, and the Tribunal considered this offer tantamount to a sanction. The Tribunal, while noting that UNESCO staff regulation 1.2 made staff members subject to the authority of the Director-General and to assignment by him, his authority was not absolute and "quite plainly he failed in this case to pay due regard to the complainant's qualifications and experience in picking P-5 posts".

At one point, UNESCO had accused the complainant of serious shortcomings in his conduct as an international civil servant. However, the Tribunal found that the facts did not support his being put on special leave because of any shortcomings. In a broader sense, if the Organization's intent was for the decision to have been some sort of disciplinary sanction, then it should have invoked the disciplinary procedure to be followed and not rule 105.2(b).

As regards the complainant's other complaint, regarding the two-month extension of the period of his special leave to 31 July 1984, the Tribunal further concluded that, in so far as the decision of 1 June 1983 to create an "unclassified" post and grant special leave to the complainant was unlawful, so was the decision to extend the special leave.

In view of the foregoing, the Tribunal declared the impugned decisions unlawful in so far as they placed the complainant in an unclassified post and on compulsory special leave, and awarded the complainant, under article VIII of its statute, moral damages in the amount of 50,000 French francs, and 100,000 French francs for costs.

3. JUDGEMENT NO. 810 (13 MARCH 1987): NAJMAN (NO. 5) V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION[12]

Complainant challenges a decision to assign him at a lower grade to a temporary post — Authority of an executive head of an organization in assigning staff is not absolute — In reviewing the complainant's assignment, the Tribunal relies on general principles that govern the international civil service, particularly that of good faith — Requirement of consultations of the decision with UNESCO Executive Board — Decision tainted with several flaws

The complainant, who previously had served at the Assistant Director-General level, requested the quashing of the decision by the Director-General of UNESCO to appoint him, from 1 August 1984, to a D-1 post, as special adviser to the European Centre for Higher Education in Bucharest, where he would remain until some suitable permanent assignment was found for him. For reasons of health the complainant did not take up the post, and he was dismissed on 7 May 1986. The complainant further requested that his status as an official be retroactively restored with reinstatement as an Assistant Director-General, as from the date on which the impugned decision took effect, i.e., 27 July 1984 (and confirmed on 31 December 1985).

The Tribunal pointed out that while an executive head had wide discretion in assigning staff in the organization's interest, his authority was not absolute. The lawfulness of his decision was subject to review, albeit limited, so that the Tribunal might not meddle in the actual running of the Organization. The Tribunal can determine whether there is a formal or procedural flaw or a mistake of law or of fact, or whether some essential fact has been overlooked or a clearly mistaken conclusion drawn from the evidence, or whether there is abuse of authority. As the Administrative Tribunal indicated, the executive head had assigned the complainant to a post, but one that was established for only six months, repeating the decisions taken in 1982 and 1983 in that he would later get a final assignment to some post that matched his qualifications and experience. In other words, for over two years and for all the assurances the Director-General

himself had given in his decisions of 1982 and 1983, UNESCO was still keeping the complainant waiting.

In response to the complainant's argument that rule 104.14 of the UNESCO Staff Rules, which says that when a staff member is to be transferred to a post of lower grade he may elect to be terminated instead, was violated when he was transferred to a lower grade post, the Tribunal concluded, given the peculiar position of the complainant, that the rule might not apply in his case. Rather, the Tribunal preferred to rely on general principles governing the international civil service, particularly that of good faith. The Tribunal explained that good faith required that the staff member being transferred be given proper notice, and not just of a vague intention, but of the nature of the post he is to get and of the duty station. The principle does have to be applied flexibly, and a transfer may be lawful even if no notice is given provided that there is enough time before it takes effect. In the present case, the complainant was not given due notice of the decision of 27 July 1984: (1) the decision was made known five days before it was to come into effect; (2) there was vagueness over his duties and title; (3) the Director of Centre in Bucharest was not consulted; and (4) the matter did not appear urgent.

The Tribunal, noting that article 54.1 of the rules of procedure of the Executive Board stated that "the Director-General shall consult the members of the Executive Board with regard to the appointment or renewal of contract of officials at D-1 and above . . .", rejected the Organization's argument that the Board, however, did not have to be consulted on "non-renewal of promotion, non-renewal of appointment or dismissal of an official at D-1 and above". The Tribunal pointed out that since the complainant was not a grade D-1 official on the date of the decision the case did concern an appointment at that grade. Therefore, the Director-General was bound by the Board's rules of procedure. Indeed, in the Tribunal's view, there was greater need to consult the Board in that the Director-General and the complainant were in disagreement regarding the latter's assignment.

The Tribunal concluded from the above that the decision of 27 July 1984 was tainted with several flaws: (1) even though the Director-General had a long time in which to take the decision, he made it known only a matter of days before the leave expired; (2) there was no preparation for the decision; (3) the duties were not even stated; (4) the Executive Board was not consulted; and (5) the decision was not shown to have served UNESCO's interest.

As to the matter of redress, while the Tribunal stated that there was no objection in principle to retroactively restoring the complainant's status as an official over the period covered by the decision, that did not entail appointing him to an Assistant Director-General's post. However, the Tribunal stated that the Director-General would exercise his discretion in executing the judgement and trusted that the matter would be looked into, after consultation with the complainant, in an attempt to reach a settlement. The Tribunal awarded moral damages in the amount of 50,000 French francs and 25,000 French francs in costs.

4. JUDGEMENT NO. 832 (5 JUNE 1987): AYOUB, LUCAL, MONAT, PERRET-NGUYEN AND SAMSON V. INTERNATIONAL LABOUR ORGANIZATION[13]

Challenge to the new scale of pensionable remuneration — Question of the receivability of the application founded on article 3.1.1 of the ILO Staff Regulations — Acquired right is a general principle — Definition of an "acquired

right" — Tests used by the Tribunal to determine whether the altered term of appointment is fundamental and essential — International organization is bound by general principles of law

The complainants requested the quashing of the decisions to apply to them the new scale of pensionable remuneration (as from 1 April 1985), which resulted in a reduction in their pension contributions and thus also in the amount of their future pensions, alleging breach of their acquired rights.

The Tribunal considered whether the application was receivable. Although the complainants' case did not rest on any breach of their contract or any provisions of the Staff Regulations, the application of article 3.1.1 of the Staff Regulations, which brought the new scale into effect, caused the complainants injury. The Tribunal, rejecting the Organization's argument that article 3.1.1 was merely a corollary of article 54(b) of the Regulations of the United Nations Joint Staff Pension Fund, thereby precluding review of any decision taken under article 3.1.1, concluded that the latter was an "independent" provision and that it could hear complaints impugning decisions that were founded on it.

As to the substance of the claims, ILO had claimed that the complaints were misdirected, in that they challenged the reckoning of pensionable remuneration whereas what was really at issue was the reckoning of the remuneration used in calculating pension contributions. However, the Tribunal noted that the complaints impugned decisions to apply article 3.1.1, which was a provision that determined pensionable remuneration and therefore that the Tribunal was required to rule on the actual amount of such remuneration. Secondly, there was a close connection between pensionable remuneration and the remuneration used in reckoning pension contributions: the remuneration on which contributions were based may not be lower than the remuneration that gave right to a pension, and when the former fell, so did the latter. Even if the complaints had a direct bearing only on the reckoning of contributions, they would indirectly raise the question of the reckoning of the pension.

As regards the complainants' argument that their acquired rights had been violated, the Tribunal, rejecting the Organization's inference that staff members under article 49 (b) of the Pension Fund Regulations could rely on their acquired rights only up to the date of adoption of the new scale, stated, *inter alia*, that since the doctrine of acquired rights was a "general principle" it did not matter whether article 49 (b) of the Pension Fund Regulations construed acquired rights widely or narrowly. Moreover, article 14.7 of the ILO Staff Regulations provided for the protection of acquired rights.

The Tribunal, while acknowledging that the meaning of the term "acquired rights" was debatable, defined the right as "one the staff member may expect to survive any amendment of the rules". In its decision in Judgement No. 61 (in re *Lindsey*), the Tribunal held that the amendment of a rule to an official's detriment and without his consent amounts to breach of an acquired right when the structure of the contract of appointment is disturbed or there is impairment of any fundamental term of appointment in consideration of which the official accepted appointment.

Moreover, the Tribunal used three tests to determine whether the altered term of the staff member's appointment was "fundamental and essential",

depending on (*a*) the nature of the altered term; (*b*) the reason for the change; and (*c*) the consequence of allowing or disallowing an acquired right. The Tribunal considered that pensionable remuneration had greatly altered with circumstances, and that the calculation of the pension depended on such factors as the cost of living, currency rates and rates of tax in the country of the pensioner's residence — variables that might preclude the creation of acquired rights — and to treat pensionable remuneration as a fundamental condition of service, an acquired right and therefore inviolate, might be to overlook the real difficulties facing the Pension Fund and the agencies. The Tribunal concluded that because the altered term was in the rules and because of the reasons for the amendment, and notwithstanding the financial injury to the complainants, no breach of an acquired right had occurred. However, the Tribunal also stated that if the injury increased because of future decisions there might be a further review.

Furthermore, the Tribunal stated that although the complainants had no acquired right in that regard, an international organization should refrain from any measure which was not warranted by its normal functioning or the need for competent staff. It was bound by the general principles of law such as equality, good faith and non-retroactivity and should act from reasonable motives and avoid causing unnecessary or undue injury.

For the foregoing reasons, the complaints were dismissed.

5. JUDGEMENT NO. 848 (10 DECEMBER 1987): PILOWSKY V. WORLD INTELLECTUAL PROPERTY ORGANIZATION[14]

Complainant's request for withdrawal of a written warning over the allegation of misleading WIPO by claiming a specific nationality in his employment application — Overwhelming evidence of the complainant's right to this nationality — Right to a nationality under the Universal Declaration of Human Rights — Definition of "stateless person" as provided for in the 1954 Convention relating to the Status of Stateless Persons — Organization's obligation to examine evidence of nationality carefully — Possession of passport does not determine nationality

On 10 October 1984, the complainant, who had been born in Chile in 1929 and who, after leaving his country owing to a change in government, had been granted refugee status in Switzerland since 1974, filled out an application for employment with WIPO in Geneva indicating that his "present nationality" was "Chilean". He was granted an appointment for one year as from 1 January 1986. When WIPO discovered that he did not hold a Chilean passport, the complainant was informed that he would be treated as stateless, receiving neither home leave nor other expatriate benefits, and, on 10 March 1986, the Director General of WIPO issued the complainant a written warning, stating that his assertion of Chilean nationality in his application form amounted to "serious misconduct", and any further such act or omission might entail sanctions under the Staff Rules. The warning was also reflected in his performance report of 21 May. The complainant objected to this course of events, observing that he had surrendered refugee status and, on 28 April 1986, had provided a Chilean passport, issued by the Chilean Consul-General. Subsequently, as from 1 May 1986, the complainant was treated as a Chilean national by WIPO.

The Tribunal considered that WIPO's argument for its action in the matter rested on the implication that the Swiss authorities' granting the complainant refugee status and issuing him travel authorization had in some way terminated his Chilean nationality. The Tribunal noted that there was overwhelming evidence of the complainant's right to Chilean nationality. The Tribunal further noted that the Organization was bound to recognize that everyone had the right to a nationality and that no one should be arbitrarily deprived of his nationality, as stated in the Universal Declaration of Human Rights, and that under article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954[15], a stateless person was "a person who is not considered as a national by any State under the operation of its law". In this regard, in the Tribunal's view, WIPO was under an obligation to examine the available evidence with great care before concluding that the complainant had not proved the nationality he claimed, and the Tribunal concluded that in the present case the facts did not support the inference that the complainant's nationality had been annulled or suspended, but rather that the complainant was without a passport at the time he completed the application and had been given permission to reside in Switzerland.

The Tribunal, noting that the possession of a passport did not by itself determine nationality, nor did the failure to produce a passport denote a loss of nationality heretofore held, maintained that the Director General's warning was misconceived. Moreover, the complainant had made no entry in his application for employment which had been shown to be inaccurate, nor had any answer which he gave to the Personnel Section been shown to be false or misleading. By stating his date and place of birth, his nationality, his place of residence and the period during which he had lived there, his marital status and the names of his dependants, the complainant satisfied the requirements of regulation 4.11 of the WIPO Staff Regulations and Rules, which placed on him the duty of providing information necessary for the purpose of determining his status and entitlements.

The Tribunal ordered the warning to be set aside and any record of it removed from the complainant's file, and that he be paid 10,000 Swiss francs for moral injury and 6,000 Swiss francs for legal costs.

6. JUDGEMENT NO. 873 (10 DECEMBER 1987): DA V. INTERGOVERNMENTAL COUNCIL OF COPPER EXPORTING COUNTRIES[16]

Abolition of the complainant's post — Question of the abolition of a post under regulation 9.1(c) of the Staff Regulations while a fixed-term appointment had not expired — Organization's duty to adopt a reasonable attitude towards notice and payment of compensation to be given to a redundant staff member — Organization must abide by general principles governing international civil service

The complainant, who was on a fixed-term appointment to terminate on 30 June 1988, challenged the decision to abolish his post and pay him nine months' pay in settlement. He was informed on 26 January 1987 that he would be separated from service at the end of the month.

As to the merits of the case, the Tribunal concluded that the abolition of the complainant's post complied with the Staff Regulations and that the reasons given for the decision, namely, a desire to effect savings and to organize the secretariat

on more rational lines, were genuine. Therefore, there was neither abuse of authority nor any desire to impose a hidden disciplinary sanction, in breach of regulations 10.1 and 10.2 of the Staff Regulations.

The complainant had alleged breach of contract as his contract was to expire on 30 June 1988 and he had been separated from service at the end of January 1987. However, as the Tribunal explained, the fact that an appointment still had time to run did not preclude abolition under Council staff regulation 9.1(c), which was a general and unconditional rule and allowed no derogation in favour of the holder of an unexpired fixed-term appointment.

As regards the issues of notice and the amount of compensation to be given to a redundant staff member, the Tribunal noted that the Staff Regulations did not make such provisions, and that since the Council was an intergovernmental consultative organization set up under treaty and not affiliated to any other international body, its work and the terms of appointment of its staff were exclusively governed by its own rules. However, in the Tribunal's view, the fact that there was no provision in the Staff Regulations did not mean that no notice must be given or no compensation paid. The Council was under a duty to adopt a reasonable attitude. Ordinarily, a staff member on a fixed-term appointment whose post is abolished is entitled to notice and to fair and reasonable compensation — the amount and the manner of determining it to depend upon the particular circumstances of the organization and an assessment of the staff member's own situation and seniority and the terms of his appointment — and the decision must not be discriminatory or tainted with any other flaw.

In the present case, the Executive Committee instructed the new Secretary General to negotiate the amount of compensation to be paid to the two staff members whose post had been abolished and their appointments ended. However, the Tribunal considered that notwithstanding the express mandate for the negotiations, the organization also had to abide by the general principles that govern the international civil service, including the respect and consideration due to staff members, as well as such criteria as seniority, record of service and qualifications, and that in the complainant's case, these requirements had not been fully complied with.

The Tribunal held that the complainant should be paid 13 months' salary in compensation, and that he receive 3,400 French francs in costs.

7. JUDGEMENT NO. 874 (10 DECEMBER 1987): CACHELIN (NO. 2) AND APPLICATION OF ILO IN RE CACHELIN V. INTERNATIONAL LABOUR ORGANISATION[17]

Complainant's request for interest on the amount awarded — Sound administration of justice demanded joinder of the cases — Interest does not automatically accrue from the date the principal is due — One cannot infer legal effect from the Tribunal's refusal or failure to rule — Interest cannot be awarded on an application for a court order unless the payment of the principal is due

The complainant, who had retired on 31 December 1985 and had filed an earlier appeal regarding the payment of indemnity provided for under article 11.16 of the Staff Regulations awarded to her under Judgement No. 792, has

objected to ILO's not paying interest on the amount awarded. She claimed that since the indemnity under article 11.16 was due from the date of retirement she was entitled to payment of interest from the date on which the principal fell due, namely, 1 January 1986.

The Tribunal will ordinarily join cases only if the purpose of the suit, the issues of fact and the defendant are the same. Although the conditions were plainly not met in the present case, i.e., the cause of action was not the same and the two parties took a different approach, the Tribunal considered that the sound administration of justice demanded joinder of ILO's application of 19 February 1987 seeking a further ruling or else an explanation of the judgement and the complainant's application requesting payment of interest on the indemnity awarded in the earlier judgement. The Tribunal further stated that though there were differences, the purpose of both suits was to obtain a ruling by the Tribunal on a dispute that had arisen over the consequences of its earlier judgement, and the unusualness of the case warranted a derogation from the rules on joinder.

As regards the issue of the payment of interest, the Tribunal stated that, in general, interest would not automatically accrue as from the date on which the principal was due. Save where there was express provision in a clause of a contract or in some general text, interest would not be payable until a formal demand for payment of the principal had been made, the demand being addressed directly by the creditor to the debtor, or being implicit in an application for a court order, in which case the creditor need not have asked originally for payment of interest over and above the principal. As there were many precedents for applying these rules, the Tribunal further stated that it was immaterial that the Organization claimed no interest from a staff member who owed it money.

The Tribunal, in rejecting ILO's argument that, having made no award of interest the Tribunal may be deemed to have declined to do so, stated that to allow this argument would be to infer legal effect from the Tribunal's refusal or failure to rule. The reason the Tribunal did not give an explicit ruling on the financial consequences of its judgement was that at the date of filing of the original complaint the indemnity under article 11.16 of the Staff Regulations was not due.

As noted by the Tribunal, interest would not be awarded on an application for a court order unless payment of the principal was due. In the present case, the principal was not due when the original complaint was filed on 17 July 1985. At that time the complainant was still a staff member of ILO, and not until 1 January 1986 did she take retirement and become entitled to payment of the indemnity. Since the Tribunal had not given judgement by 1 January 1986, the claim in the original complaint held good even though at the date of filing no interest had yet been due, and the application for an award of interest implicit in the original complaint also held good up to the date on which the Tribunal gave judgement.

Considering the above, the Tribunal held that the complainant was entitled to interest at the rate of 5 per cent a year on the indemnity it paid her under article 11.16 of the Staff Regulations for the period from 1 January 1986 to 9 January 1987, the date of payment of the principal, and interest on the amount so calculated at the rate of 5 per cent a year from 10 January 1987 to the date of payment. She was also awarded 1,000 Swiss francs in costs.

C. Decisions of the World Bank Administrative Tribunal[18]

1. Decision No. 38 (27 October 1987): Von Stauffenberg, Ganuelas and Leach v. the World Bank[19]

Applicants dispute salary increases in the salary structures — Question of the jurisdiction of the Tribunal — Tribunal would not fulfil its judicial mission if it were, for procedural and purely formalistic reasons, to limit itself to the review of only one aspect of the case — Principle of parallelism between the World Bank and the International Monetary Fund in salaries and staff benefits — Principles governing staff compensation laid down in the Kafka system and in the ruling of the Tribunal in the de Merode case — Principles in question included in various aspects a margin of flexibility — Discretionary power of the President of the Bank is subject to limits on which the Tribunal has to exercise its right to review — "Political pressure" of member States and the President's responsibilities under the Articles of Agreement

In their initial applications, the Applicants maintained that the increases in the headquarters' salary structure of 4 per cent and 1.2 per cent (according to category) recommended by the President of the World Bank on 18 July 1984, instead of the increases of 5 per cent and 2 per cent first recommended by the President on 29 May 1984, violated the principles governing staff compensation laid down by the Executive Directors on 24 May 1979 (known as the Kafka system), as well as the rulings of the Tribunal in the *de Merode* case (Decision No. 1 (1981)). The Applicants argued that the Bank had thus not observed their contracts of employment or terms of appointment and requested that the Bank revert to the increases initially recommended by the President. Secondly, after resumption of the case, the Applicants also maintained that in granting, on 10 June 1986, general salary increases of 1.5 per cent and 1.3 per cent (according to category), effective 1 May 1986, instead of the increases of 1.6 per cent and 0.5 per cent retroactive to 1 May 1984, and 0.5 per cent retroactive to 1 May 1985, decided by the International Monetary Fund, the Bank had violated the principle of parallelism between the Bank and the Fund in compensation matters. The Applicants consequently requested that the Tribunal award them retroactive adjustments in the same amounts as those decided by the Fund.

In response to two jurisdictional objections raised by the Respondent, firstly, the Tribunal, in rejecting the Bank's contention that the decisions on salary adjustments had been taken by the Executive Directors and that the President's recommendations were not binding and did not create rights or obligations as between the Bank and the staff, stated that since the applications alleged non-observance of the contracts of employment or terms of appointment of the Applicants, it was competent to determine those matters. Secondly, as regards the Bank's argument that the Tribunal had jurisdiction to rule on the 1984 decisions but not the 1986 decision and the 1985 salary adjustment decision, since the initial applications had been directed against the decisions made in 1984 only, the Tribunal noted that the 1986 decision was part of the 1984 salary adjustment, and that the Applicants only referred to the 1985 salary adjustments in so far as they had been referred to by the Bank, alongside with the 1984 salary adjustments, as the background of the 1986 action and as a basis for the calculation of the 1986 increase. Furthermore, bearing in mind the views

expressed in *Mavrommatis Palestine Concessions*[20] and *Northern Cameroons*,[21] the Tribunal was of the opinion that it would not fulfil its judicial mission if it were, for procedural and purely formalistic reasons, to limit itself to the review of only one aspect of the case.

The Tribunal next addressed the issue of parallelism, the question of which was only one among others with respect to the 1984 decisions and the initial applications, while the legality of the 1986 decision turned exclusively on the question of parallelism. Parallelism had been formulated by the President and the Executive Directors in 1972 and referred to the principle of the "greatest feasible parallelism in salaries and staff benefits" between the Bank and the IMF, while at the same time provision was made for "differences . . . clearly warranted by circumstances". Subsequently, the Kafka system was developed by a joint Bank/Fund committee and was adopted at the same time by the two institutions. Likewise, both the Bank and the Fund initiated their job grading programme at about the same time in 1982 and the exercise had been conducted in close consultation between the two institutions and with a view to achieving similar results. Turning from procedure to substance, it appeared that over all those years parallelism in most cases had led to identical policies and similar measures. None the less, however consistent the policy and practice of parallelism had been since 1972, the Tribunal observed, in many cases they had led only to broadly conceived harmonization which admitted of differences between the two institutions. The question for the Tribunal was not the relationship between the Bank and the Fund regarding the principle of parallelism, but whether the principle of parallelism was part of the conditions of employment of the Bank's staff. The Tribunal, noting the legal commitment or obligation referred to in the *de Merode* case, concluded that the established practice confirmed by consistent statements made by Bank management and the Executive Directors had created a rule of parallelism which had become part of the conditions of employment of the Bank's employees, but that both practice and statements most consistently reflected a flexible approach.

As regards the adjustments of 1984 in the salary structure, the Applicants based their case against the 1984 decisions primarily on an alleged violation of the principles governing staff compensation (the Kafka system), which in the opinion of the Tribunal were also part of the conditions of employment for the staff. The Tribunal found, however, that those principles included in various respects a margin of flexibility and that the Respondent, in adopting the contested decisions of 1984, did no more than exercise the discretionary power conferred upon it by the system established in 1979. As the Tribunal noted, the Kafka principles were not the only source of the staff's conditions of employment as regards compensation and salary review; the rule, binding the Bank even prior to the adoption of the Kafka system and independently of the principles laid down in 1979, was that endorsed in the *de Merode* case, placing the Bank under the legal obligation to carry out periodic reviews of salaries, taking into account various relevant factors, including changes in the cost of living. Again, as the Tribunal noted, the Bank retained a measure of discretion in the process.

However, as the Tribunal further noted, as with every discretionary power it was subject to limits on which the Tribunal had to exercise its right of review. The Applicants had claimed that while the President had correctly exercised his discretion in making the original recommendation of 29 May 1984, he had abused

his discretion by amending that proposal and formulating a reduced proposal on 18 July 1984. The Tribunal, however, had difficulty in understanding why the Applicants saw a violation of their conditions of employment in the rates of adjustment proposed on 18 July while they admitted the legality of the original proposal of 29 May. Moreover, the Applicants also contended that the circumstances in which the President had made his revised proposal of 18 July 1984 showed an abuse in the exercise of the discretionary power left to the Bank by the Kafka system and by the *de Merode* ruling on periodic salary reviews. Contrary to the Applicants' arguments, the attempt to achieve parallelism with the Fund, the taking into consideration of the austerity policy of member States and of the Bank and the search for a consensus among the Executive Directors, in the view of the Tribunal, did not constitute improper motives and were legitimate factors to be taken into consideration.

The Tribunal also rejected the Applicants' contention that the President and the Executive Directors had yielded to "political pressure", pointing out that an international organization was composed of States and each member State was entitled to seek the adoption of its views within the governing bodies of the organization, on condition, of course, of respecting its constituent instrument. Far from adopting an attitude of a "political" nature, the President was acting in accordance with his responsibilities under the Articles of Agreement when he altered his initial proposal in such a way as to take account of the "concerns" which had led to its rejection.

The Tribunal concluded that the recommendation formulated by the President on 18 July 1984 and the approval of that recommendation by the Executive Directors on 19 July 1984 were in accordance with the principles governing staff compensation decided upon by the Executive Directors on 24 May 1979, as well as with the other applicable rules, in particular with the Bank's obligation to make periodic salary reviews taking into account various relevant factors, including changes in the cost of living and the principle of parallelism. The President and the Executive Directors all exercised the discretionary power given to them by the principles laid down in 1979 and the other relevant rules. Neither the content of the contested decisions nor the circumstances of their adoption constituted a misuse or abuse of their respective discretions. In deciding the salary adjustments for 1984, therefore, the Respondent had not committed any non-observance of the conditions of employment of the Applicants.

Turning to the issue of the salary increases of 1986, the Tribunal, rejecting the Applicants' argument that the Bank had abandoned the principle of parallelism when on 10 June 1986 it had granted salary increases below those earlier decided by IMF and without retroactivity, stated that it was satisfied that there had been no abuse or misuse of discretion. In arriving at this conclusion, the Tribunal took into account a number of factors, including the budgetary impact of the various options and the administrative difficulties raised by retroactive increases. The Tribunal pointed out that the decision had been made in a reasonable manner, seeking to avoid unnecessary harm to the staff, noting that the increase was lower than that granted by the Fund at professional levels (1.5% instead of 1.6%), and higher at support levels (1.3% instead of 0.5%), because of the much wider discrepancy between Bank and Fund salaries at support levels than at professional levels.

For the foregoing reasons, the Tribunal decided to dismiss the applications.

2. DECISION NO. 40 (27 OCTOBER 1987): THE WORLD BANK STAFF ASSOCIATION V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, INTERNATIONAL FINANCE CORPORATION, INTERNATIONAL DEVELOPMENT ASSOCIATION[22]

The Staff Association challenges various aspects of the Bank's plan for reorganization of the staff — Question whether the Tribunal has power to hear and pass judgement upon the application filed by the Staff Association — Staff Association standing vis-à-vis the Tribunal — The Staff Association may serve, under rule 23(2) of the Tribunal's statute, in particular cases as amicus curiae

The Staff Association, which was created during the early years of the Bank's existence to promote and safeguard the rights, interests and welfare of the members of the staff, is a membership organization, open to all members of the staff of the Bank and IFC. The Bank has accorded to the Staff Association a formal role in the formulation of Bank policies, embodied in principle 10.1 of the Principles of Staff Employment, and in rule 10.01 of the Staff Rules. On 8 October 1986, the President of the Bank announced the reorganization, and soon thereafter the Staff Association began to express concerns involving various aspects of the reorganization process. Eventually, on 15 May 1987, a draft of rule 5.09 on "Implementation of the Reorganization" had been forwarded to the Staff Association for comments. At a meeting on 20 May 1987 with the Assistant General Counsel and the Director of Compensation, the Association gave its comments on the draft rule. On 1 June 1987, a document was distributed entitled "A Guide to Staffing Policies", and three days later the Chairman of the Staff Association stated the document had been issued before the Staff Association had had an opportunity to review it, which he thought in itself to be a breach of the rule on consultation.

The Staff Association contended, variously, that it was empowered to file an application on its own behalf (at least by virtue of the Respondent's alleged failure adequately to consult with regard to the formulation of rule 5.09), or on behalf of aggrieved staff members (in the generality or in particular), or as an intervenor, or as *amicus curiae*.

The Tribunal observed that under the statute of the Tribunal the only person who might properly file an application was a member of the staff as defined in article II, paragraph 3, of its statute. That definition referred only to an individual currently or formerly employed, or a personal representative of such an individual, or a person claiming a pension payment. The Staff Association was not within any of those categories. Moreover, the Tribunal noted that the statute was clear in defining not only the kind of person entitled to file an application but also the kind of claim that must be asserted in that application: the applicant must allege "non-observance of the contract of employment or terms of appointment of such staff member". Obviously, the Staff Association failed to satisfy this requirement as well, as the Tribunal further noted, for it could not properly allege the non-observance of an employment contract or terms of appointment on its own. The Tribunal, therefore, concluded that the Staff Association had no standing to file an application with the Tribunal on its own behalf as an institution.

Furthermore, the Tribunal stated that any of the concerns expressed by the Staff Association, including the Bank's alleged failure fully to consult with the

Association as required by various Bank policies and statements, could be asserted in an application by an individual staff member who claimed that he or she had been the subject of an improper adverse decision by the Bank.

The Staff Association also asserted standing to file an application on behalf of all or particular staff members who had been adversely affected by the Respondent's alleged non-observance of those persons' contracts of employment or terms of appointment. As the Tribunal pointed out, there was no greater support in the statute of the Tribunal for the Staff Association filing an application on behalf of staff members than there was for its filing an application on its own behalf. Article II, paragraph 1, of the Tribunal's statute expressly contemplated the filing of an application "by which a member of the staff" alleged non-observance of the contract or terms of appointment "of such staff member". The only exception to this rule concerned an application by an applicant acting "as a personal representative or by reason of the staff member's death".

The Staff Association also had claimed standing to file an application, in the alternative, as an intervening party. Under the Tribunal's statute and rules, intervention is available only to persons who are entitled to file an initial application pursuant to article II of the statute, and, as explained by the Tribunal, the Staff Association was not such a person.

However, rule 23(2) of the Tribunal's statute expressly contemplated that the Staff Association might serve in particular cases as *amicus curiae*. The Tribunal concluded that in those cases properly brought before the Tribunal by staff members alleging non-observance of their contracts of employment or terms of appointment, the Staff Association could usefully file briefs in support of the staff member's contentions regarding such matters as the Respondent's alleged failure to consult properly with the Staff Association or the allegedly arbitrary and unreasonable methods chosen by the Respondent to implement the reorganization plan. The Tribunal, therefore, treated the pleas and supporting memoranda of the Staff Association in the present case, which had been cross-referenced in the other cases filed and listed at the same time, as requests for permission to participate as friend-of-the-court and as *amicus curiae* briefs.

For the foregoing reasons, the Tribunal dismissed the application and granted the Staff Association's request to participate as friend-of-the-court in the other cases arising from the reorganization of the Bank.

3. Decision No. 41 (27 October 1987): Godwin Agodo v. International Bank for Reconstruction and Development, International Finance Corporation, International Development Association[23]

Applicant challenges various aspects of the Respondent's rules providing for the reorganization of the staff — Applicant's standing to file an application in a representative capacity — No similarity to the de Merode *case — The Tribunal is not empowered by its statute or the Staff Rules to issue advisory opinions — Question of issuing a decision in the form of a declaratory judgement*

The general facts relating to the reorganization of the Bank are the same as those in Decision No. 40 above. The Applicant had been employed as an Accounting Assistant by IFC and was elected by his unit at IFC to be a delegate to

the World Bank Staff Association and was currently serving on the Executive Committee of the Staff Association.

The Applicant contended that he was a "member of the staff", as required under article II of the statute of the Tribunal, who might properly file an application with the Tribunal, in which he challenged the Respondent's rules providing for the comprehensive reorganization of the staff, particularly rule 5.09 of the Staff Rules on implementation of the reorganization of the Bank. He asserted that, in his capacity as a member of the Executive Committee of the Staff Association, he had standing to bring the application as a representative of the staff members for the same reasons which justified the representative standing of the Staff Association, and that he had standing to allege that the Bank's actions constituted a non-observance of his own contract of employment. However, the Tribunal concluded that the Applicant had no standing to file an application in a representative capacity and that he had failed to identify a particular decision by the Respondent that had adversely affected him. While it was true, as the Tribunal noted, that the Applicant was an individual who indisputably fell within the definition of a "member of the staff" empowered by article II, paragraph 1, to file an application, he none the less, for the same reasons that warranted denying the Staff Association standing to assert claims of individual staff members, could not assert claims of other individual staff members.

Furthermore, article II, paragraph 1, of the statute expressly limits claims to injuries of the applicant filing the claim. As the Tribunal pointed out, the staff member must allege non-observance of the employment contract or terms of appointment "of such staff member", i.e., of the staff member filing the application. An application asserting a violation of some other staff member's contract of employment is clearly inadmissible under the provision.

The Applicant had relied in support of his assertion of standing to present the claims of fellow staff members on the case of *de Merode* (Decision No. 1 (1981)), in which the applications filed with the Tribunal had alleged non-observance of the applicants' own contracts of employment or terms of appointment. However, as the Tribunal explained, the impact that those applications had had upon the rights of other staff members stemmed not from any statutory right of the applicants but rather from a stipulation to which the Respondent was a party, stating that in the interests of economy of adjudication staff members similarly situated would be given the benefit of any Tribunal decision favourable to the particular applicants.

The Applicant also alleged non-observance by the Respondent of his own contract of employment and terms of appointment, challenging the procedures employed in promulgating rule 5.09 and the content of the rule. The Tribunal, however, noting that the Applicant did not contend that rule 5.09 had served as the basis for some particular decision of the Respondent which had adversely affected his own working conditions or status, agreed with the Respondent's contention that the Applicant was in effect requesting the issuance of an advisory opinion by the Tribunal, which in fact lacked the power to do so. The Tribunal further noted that article XII of its statute required a "decision" be made that adversely affected the Applicant specificially, and that at the time of the creation of the Administrative Tribunal, in November 1979, a proposal by the Staff Association requesting provision for advisory opinions had been rejected and had not been incorporated in the statute. The Tribunal also observed that other tri-

bunals had reached similar conclusions regarding advisory opinions (In re *Sikka* No. 3, ILOAT Judgment No. 622, p. 4 (1984)).

The Tribunal also rejected the Applicant's contention that the attack on the validity of staff rule 5.09 could be adjudicated by the Tribunal by means of the issuance of a declaratory judgement which, although not expressly authorized in the statute of the Tribunal, was a form of remedy that all adjudicatory bodies could issue by virtue of inherent powers. The Tribunal stated that, even assuming that the Tribunal could issue a decision in the form of a declaratory judgement, the premise underlying any such relief was that the applicant had standing before the Tribunal and that he or she had properly alleged and proved a cognizable violation of his or her own contract of employment or terms of appointment.

For the foregoing reasons, the Tribunal dismissed the application.

NOTES

[1]In view of the large number of judgements which were rendered in 1987 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the three tribunals, namely, Judgement Nos. 380 to 408 of the United Nations Administrative Tribunal, Judgements Nos. 800 to 878 of the Administrative Tribunal of the International Labour Organization and Decisions Nos. 31 to 54 of the World Bank Administrative Tribunal, see, respectively: *Judgements of the United Nations Administrative Tribunal, Numbers 371 to 438, 1986-1988* (United Nations publication, Sales No. E.98.XI); *Judgements of the Administrative Tribunal of the International Labour Organization:* 61st, 62nd and 63rd Ordinary Sessions; and *World Bank Administrative Tribunal Reports*, 1987, Decisions 31-54 (Parts I, II and III).

[2]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.

The Tribunal shall be open: (*a*) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (*b*) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: the International Civil Aviation Organization and the International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

[3]Mr. Luis de Posadas Montero, Second Vice-President, presiding; Mr. Endre Ustor, Member; and Mr. Ahmed Osman, Member.

[4]Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Endre Ustor, Member; and Mr. Roger Pinto, Member.

[5]Mr. Arnold Kean, First Vice-President, presiding; Mr. Luis de Posadas Montero, Second Vice-President; and Mr. Jerome Ackerman, Member.

[6]Mr. Samar Sen, President; Mr. Arnold Kean, Vice-President; and Mr. Roger Pinto, Member.

[7]Mr. Roger Pinto, First Vice-President, Presiding; Mr. Luis de Posadas Montero, Member; and Mr. Jerome Ackerman, Member.

[8]Mr. Samar Sen, President; Mr. Roger Pinto, Vice-President; and Mr. Ahmed Osman, Member.

[9]The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organization and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1987, the World Health Organization (including the Pan American 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 General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organisation for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organization, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration and Development, the Central Office for International Railway Transport, the International Center for the Registration of Serials, the International Office of Epizootics and the United Nations Industrial Development Organization. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization.

The Tribunal is open to any official of the above-mentioned organizations, even if his employment has ceased, to any person on whom the official's rights have devolved upon 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 upon which the official could rely.

[10]Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; and Tun Mohamed Suffian, Judge.

[11]Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; and Tun Mohamed Suffian, Judge.

[12]Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; and Tun Mohamed Suffian, Judge.

[13]Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; and Tun Mohamed Suffian, Judge.

[14]Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and Sir William Douglas, Deputy Judge.

[15]United Nations, *Treaty Series*, vol. 360, p. 117.

[16]Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge; and Mr. Héctor Gros Espiell, Deputy Judge.

[17]Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and Miss Mella Carroll, Judge.

[18]The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[19]Mr. Eduardo Jiménez de Aréchaga, President; Mr. Prosper Weil and Mr. A. Kamal Abul-Magd, Vice-Presidents; and Mr. Robert A. Gorman, Mr. Elihu Lauterpacht, Mr. Charles D. Onyeama and Tun Mohamed Suffian, Judges.

[20]*P.C.I.J.*, Series A, No. 2, 1924, p. 34.

[21]*I.C.J. Reports 1963*, p. 28.

[22]Mr. Eduardo Jiménez de Aréchaga, President; Mr. Prosper Weil and Mr. A. Kamal Abul-Magd, Vice-Presidents; and Mr. Robert A Gorman, Mr. Elihu Laterpacht, Mr. Charles D. Onyeama and Tun Mohamed Suffian, Judges.

[23]Mr. Eduardo Jiménez de Aréchaga, President; Mr. Proper Weil and Mr. A. Kamal Abul-Magd, Vice Presidents; Mr. Robert A. Gorman, Mr. Elihu Lauterpacht, Mr. Charles D. Onyeama and Tun Mohamed Suffian, Judges.