Extract from:

UNITED NATIONS
JURIDICAL YEARBOOK

1990

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

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CONTENTS (*continued*)

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. 482 (25 MAY 1990): QIU, ZHOU AND YAO V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Claims to be reinstated as staff members of the United Nations — Obligation of the Secretary-General to give reasonable consideration to granting career appointments to staff on fixed-term appointments, including fixed-term appointments on secondment, with five years of continuing good service, under Articles 100 and 101 of the Charter of the United Nations, the Staff Rules and Regulations and General Assembly resolutions 37/126 and 38/232 — Conditions laid down for an official to be on secondment — Limits to the Secretary-General's discretionary powers — An exceptional character of the case justifying the payment of higher compensation

The Applicants, whose five-year fixed-term appointments had expired, sought to be reinstated as staff members of the United Nations. Their letters of appointment stated that they were on secondment from their Government. When their appointments were due to expire the Administration did not submit the recommendations for a probationary appointment to the appropriate appointment and promotion bodies but requested their Government to extend the Applicants' secondment for two years. The Government did not extend the secondment. Consequently, the Administration did not offer the Applicants new appointments.

In similar letters the Applicants requested the Respondent to grant them career appointments on the ground that they had fulfilled the requirements set forth in General Assembly resolutions 37/126 of 10 December 1982 and 38/232 of 20 December 1983.

Their request having been denied, the Applicants filed an application seeking to be reinstated as staff members of the United Nations. In that connection, the Applicants requested the Tribunal to recognize that the denial by the Respondent of further employment for the Applicants was illegal because the Applicants had not been given any reasonable consideration, in contravention of General Assembly resolution 37/126, section IV, paragraph 5, according to which staff members on fixed-term appointment upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment, and that the Respondent's decision had been arbitrary, based on illegal considerations, such as the wishes of the Applicants' Government, that is, a consideration contrary to the Charter and constituting an abuse of power. In the event of compensation being paid in lieu of reappointment, the Applicants requested the granting of an award in the amount of three years' net base salary in view of the special circumstances of the case.

The Tribunal found that the conditions laid down for an official to be on secondment had not been fulfilled in the case under consideration. The Applicants' status had not been, in fact, "defined in writing by the competent authorities in documents specifying the conditions and particularly the duration of the secondment". The Applicants had not been on genuine secondment within the meaning given to that term in Administrative Tribunal Judgement No. 192, which reaffirmed the definition established in Judgement No. 92, *Higgins* (1964): ". . . the term 'secondment' . . . implies that the staff member is posted away from his establishment of origin but has the right to revert to employment in that establishment at the end of the period of secondment and retains his right to promotion and to retirement benefits . . ."[4] The Tribunal held that the secondment of the Applicants had not been effected in conformity with the principles applicable. Secondment was an objective situation. It was not for the United Nations Administration or the Government in question or staff members to invoke a secondment which did not exist. Accordingly, the Tribunal considered that it had not been for the Respondent either to request authorization of, or to comply with, the decision of a Government in order to renew the Applicants' contracts. That being so, the Tribunal found that the decision not to renew the Applicants' fixed-term contracts had been vitiated by extraneous reasons contrary to the interests of the United Nations, incompatible with Article 100 of the Charter.

As regards career appointments, the Tribunal considered that they had been withheld because of the Government's position concerning the rotation system. The Tribunal noted that, in the opinion of the Government in question, the rotation system categorically ruled out career appointments. The Tribunal considered that the Secretary-General could not defer to that opposition by the Government without being in breach of his obligations under the Charter and the Staff Rules and Regulations, as well as under General Assembly resolutions 37/126 and 38/232.

Consequently, the Tribunal found that the Secretary-General's decisions to refuse the Applicants' request for career appointments exceeded the limits of his discretion. His decision was based on reasons which were contrary to the interests of the United Nations, erroneous or inaccurate as to fact and specious. It ignored the basic principles of the international civil service, as enunciated in Articles 100 and 101 of the Charter.

The Tribunal furthermore considered that the Secretary-General had wrongly refused the Applicants career appointments, contrary to General Assembly resolutions 37/126 and 38/232.

With regard to the question of compensation, the Tribunal noted that the Applicants had displayed outstanding professional ability and competence, that they had had a reasonable expectancy of permanent employment and a career in the United Nations, that the Administration had not acted in the Applicants' case with the prudence, care and attention to be expected of an international organization with regard to personnel questions and, lastly, that the rule that compensation may not exceed two years' net base salary would not adequately compensate the Applicants for the injury they had sustained and would sustain if they were not granted career appointments.

Consequently, the Tribunal considered that the case was an "exceptional case" justifying the payment of higher compensation than the Tribunal would normally award.

For the above reasons, the Tribunal rescinded the Secretary-General's decision not to grant the Applicants career appointments in the circumstances provided for in

General Assembly resolutions 37/126 and 38/232, decided that they should be granted such appointments as from 1 February 1990 and fixed the compensation to be paid to each of the Applicants at three years' net base salary if the Secretary-General decided not to grant the Applicants career appointments.

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2. JUDGEMENT NO. 492 (2 NOVEMBER 1990): DAUCHY V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

"Replacement" practice developed by the Secretary-General in relation to a specific category of Member State — Claim that this practice is inconsistent with Article 101, paragraph 3, of the Charter of the United Nations, regulation 4.4 of the Staff Regulations and the general principles governing the international civil service — Interpretation of General Assembly resolution 35/210, section I, paragraph 4 — Liability of the Organization

The case concerned the long-standing practice of the Secretary-General, developed in relation to Member States whose nationals served primarily on fixed-term contracts, of systematically replacing departing nationals of those Member States by candidates of the same nationality. The Applicant claimed that this practice was inconsistent with Article 101, paragraph 3, of the Charter of the United Nations and regulation 4.4 of the Staff Regulations and was incompatible with the principles of the international civil service, including those of nondiscrimination and of equal treatment, and had resulted in a violation of her right to full and fair consideration for the post of Director of her Division.

The Respondent contended that the Applicant had been considered for promotion to the post in question and that the replacement of a Soviet national by another Soviet national could not be deemed to be improper as such replacements were specifically authorized by the General Assembly in its resolution 35/210, section I, paragraph 4, in which the Secretary-General was requested:

> "to continue to permit replacement by candidates of the same nationality within a reasonable time-frame in respect of posts held by staff members on fixed-term contracts, whenever this is necessary to ensure that the representation of Member States whose nationals serve primarily on fixed-term contracts is not adversely affected".

The Tribunal observed that the above-quoted paragraph was permissive but not obligatory and that, while the Secretary-General was authorized to designate a Soviet national to fill the contested post, he was not obliged to do so. The Tribunal further observed that the selection process applied in the case under consideration had inevitably ruled out the question of promoting the Applicant to the post to which she legitimately aspired. In the words of the Tribunal, "in the very particular circumstances of this case, even the most serious consideration of the Applicant, given in all good faith, could not have had any effect. It could not have led anywhere. The entire exercise proceeded as if the Applicant had not been considered."[6]

The Tribunal concluded that the question had arisen of the responsibility of the Administration. After noting that the Applicant could have expected to crown what was generally acknowledged to be a brilliant career by becoming Director of her Division, a promotion which would have been especially desirable as only a few women

reached positions of directors of United Nations services, the Tribunal decided that the judgement under consideration, which placed on record the Applicant's excellent performance, provided appropriate partial reparation and should be included in her official status file. It further ordered the Respondent to pay to the Applicant the sum of US $5,000 in damages.

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3. JUDGEMENT NO. 499 (8 NOVEMBER 1990): AMOA V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[7]

Request of a former staff member of the United Nations for reinstatement and compensation on the ground that he had an expectancy of continued employment with the United Nations and for damages on account of delays by the Joint Appeals Board

During the course of his employment with the United Nations, the Applicant listed as his wife, simultaneously, two different persons for different purposes related to his employment. When the Administration confronted him with the facts in 1978, the Applicant wrote a memorandum admitting that "arising from a customary and a de facto conjugal relationship which existed between his second wife and himself, he used her as [his] dependent spouse for the purpose of medical insurance and passport coverage". Pending the results of the investigations concerning the allegations against the Applicant, his fixed-term appointment had been extended on a month-to-month basis. On 25 April 1980, the then Assistant Secretary-General, Office of Personnel Services, advised the Secretary-General that in his opinion the Applicant had failed to conform to the highest standards of integrity required for a United Nations staff member, under Article 101, paragraph 3, of the Charter of the United Nations, that he should be considered unfit for further service with the Organization and that his appointment should be terminated. He recommended that the Applicant's month-to-month contract, which was due to expire, not be extended further. Accordingly, on 26 June 1980, the Applicant was notified of the decision that his appointment, which was due to expire, would not be extended further.

On 22 April 1981, the Applicant requested the Secretary-General to review the above-mentioned decision not to extend his fixed-term appointment for having "failed to conform to the highest standards of integrity required of a United Nations official", and on 17 June 1981 the Applicant filed an appeal with the Joint Appeals Board against the decision of 26 June 1980.

The Respondent's reply to the statement of appeal was submitted on 19 November 1985.

The Joint Appeals Board, in its report of 6 May 1988, concluded that the four-year delay in the submission of the Respondent's reply to the statement of appeal was directly the result of the Administration's inexcusable failure to provide adequate support for the appeals machinery, and accordingly recommended the award of two months' net base salary to the Applicant.

The report concluded further that the Applicant had had a legitimate expectancy of continued employment until 31 December 1980 and that, in accordance with the established jurisprudence of the United Nations Administrative Tribunal, the Applicant should be compensated for the decision not to extend his contract beyond 31 July 1980. The report also held that the failure to provide the Applicant with a copy of the contested memorandum of 25 April 1980 had not constituted a violation of due pro-

cess. The report did conclude, however, that the decision not to extend the Applicant's contract, which had been taken in lieu of assigning appropriate disciplinary measures within the context of paragraph 1 of staff regulation 10.2, had been improper and constituted an incomplete disciplinary procedure. It observed further that the maintaining of files and the communicating of information to the effect that the Applicant's non-renewal had been for disciplinary reasons, constituted an abuse of power and was violative of the basic principle of fairness between the Organization and its staff members.

Accordingly, the Board recommended an award to the Applicant in the amount of two months' net base salary. It recommended further that all material relating to the incomplete disciplinary proceeding be expunged from the Applicant's files. The Respondent accepted the Board's recommendations.

On 6 January 1989, the Applicant filed with the Tribunal the application, containing the following principal pleas: (1) the Respondent's decision not to extend the Applicant's appointment had been prejudiced and should be declared illegal; (2) the Respondent had acted in bad faith in delaying the appeal for seven years; (3) the Respondent's illegal decision not to extend the Applicant's appointment was also libellous and he was entitled to punitive damages.

On the merits of the case, the Tribunal found that the Applicant essentially sought a fundamental revision of the conclusions and recommendations of the Joint Appeals Board which had been accepted by the Respondent, the Applicant's main plea being that the Board had not taken sufficiently into account the illegal wrongs the Applicant had suffered and had been deficient in its analysis and recognition of facts, with the result that the Applicant had been deprived of remedies and compensation to which he believed himself to be entitled.

The Tribunal observed that the one and only substantial question before it was whether the Respondent's failure to show to the Applicant the memorandum of 25 April 1980, which the then Assistant Secretary-General for Personnnel Services had written to the Secretary-General, through the Legal Counsel, constituted an infringement of the Applicant's rights under the relevant procedure for disciplinary cases, either emanating from administrative instructions or from the applicable staff regulations and rules. The memorandum in question had been prepared as a follow-up action of an investigation instituted by the Respondent on the allegation that the Applicant had two wives. The report of the Investigation Team had been shown to the Applicant and his comments obtained in accordance with personnel directive PD/I/76 of 1 January 1976 entitled "'Disciplinary procedure for staff serving at offices away from Headquarters and Geneva".

The Tribunal had not been able to find any substance in the Applicant's allegations that the memorandum in question offended the general sense of fairness, if not the Applicant's specific rights, and was of the opinion that it had been not necessary for the Respondent to communicate to the Applicant the contents of the memorandum.

The Tribunal agreed with the Joint Appeals Board that the confusion about whether to separate the Applicant through disciplinary action or through recourse to the easy and quick device of ending his fixed-term contract should have been avoided. It noted that it would have been more straightforward to follow one or the other course, and not to institute a disciplinary case and then end up with the sudden termination of a month-to-month fixed-term contract. However, the Tribunal did not question the right of the Respondent to judge comprehensively the suitability of any staff

member for any appointment on the basis of all available data; that right could be challenged when it could be established, *inter alia*, that the assessment was vitiated by prejudice or any other extraneous factors. In the case under consideration, the right of the Respondent was not being impugned, but it was asserted that the procedure followed had infringed due process by confusing disciplinary action with discretion not to renew a fixed-term contract.

In view of the above and in the light of the recommendation already made by the Joint Appeals Board and accepted by the Respondent, the Tribunal was of the view that the Applicant was not entitled to any further relief for the wrongs he had suffered. The Tribunal also approved of the Board's conclusion that the Applicant could normally have expected to continue to serve on short fixed-term appointments until the end of 1981, and that the decision to employ the Applicant on a month-to-month basis, even if it had been within the Respondent's power and had been known to the Applicant, had been taken without sufficient justification. Accordingly, the Tribunal ordered the Respondent to pay the Applicant the sum of US $10,931.20, plus 10 per cent interest from the date when the Joint Appeals Board's recommendation had been accepted by the Respondent until the date when payment was finally made to the Applicant.

For the foregoing reasons and except as provided in the preceding paragraph, the application was rejected in its entirety.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[8]

1. JUDGEMENT NO. 1000 (23 JANUARY 1990): CLEMENTS, PATAK AND ROEDL V. THE INTERNATIONAL ATOMIC ENERGY AGENCY[9]

New salary scales for General Service staff drawn up by the International Civil Service Commission — Complainants were objecting to a flat 2.4 per cent reduction in salary that purported to offset the value of the so-called "Commissary benefit" — Annex II, paragraph B.1, of the Agency's Provisional Staff Regulations, providing that the pay shall normally be based on "the best prevailing conditions of employment in the locality" (Fleming principle) — Question whether the Commissary benefit was relevant in determining the best local conditions

The complainants were employed in the General Service category of staff at the headquarters of the International Atomic Energy Agency in Vienna. They sought the quashing of decisions by the Director General of the Agency setting their pay according to new salary scales introduced as from 1 October 1987. It was the International Civil Service Commission[10] that had drawn up those salary scales, and the complainants were objecting to a flat 2.4 per cent reduction in salary that purported to offset the value of the so-called "Commissary benefit" enjoyed by Agency staff.

The origin of the complaints lay in a provision that also set the context of the dispute: annex II, paragraph B.1, of the Agency's Provisional Staff Regulations. That provision stipulated that the pay of staff in the General Service and other locally recruited categories should normally be based on "the best prevailing conditions of employment in the locality" (the so-called "Fleming principle").

The complainants objected to the reduction on two grounds. First, they submitted that the Commissary benefit was irrelevant in determining the best local conditions — the yardstick in the Agency's rules, that the methodology was therefore fundamentally flawed and that the Agency's action on staff pay was null and void. Their second objection was that even if the Tribunal endorsed the methodology it had been so arbitrarily applied that, again, the impugned decisions were flawed.

The complainants' objections to the Commission's recommendations and to the decisions impugned must be viewed against the rule about the best prevailing local conditions of employment, which was in the Staff Regulations of the organization. The introduction to the 1982 report on the methodology stressed in paragraph 3 the importance of the rule of parity.[11] General Service pay in the Agency was to be compared with typical pay on the local employment market. Therefore, the effect of taking into account any item other than salary proper in calculating the pay of the international staff was to cancel an equivalent portion of the items taken into account in calculating local pay and to lower correspondingly the level of parity required by the Agency's rules. It was necessary to determine at the outset which payments should be taken into account for the purpose of comparison with local conditions. The Tribunal held that something like the Commissary benefit could not count in such a comparison. It was not provided for in the Staff Regulations or financial rules, and though the Agency had negotiated for it for the staff's sake it was a form of tax relief that the host country bestowed by way of a privilege on those who had access to the Commissary and at no cost whatever to the organization.

The Tribunal observed that in following the Commission's conclusions in its report of 1987 about how to take account of the Commissary benefit the Agency had altered the salary scales by introducing an irrelevant factor, the effect being to lower salaries and lighten the Agency's own burden as employer. That reason alone was a sufficient one for quashing the decisions to take account of the value of the Commissary benefit for the purpose of comparing pay and ensuring parity. There was no need to go into the complainants' further objections to the calculation of the Commissary benefit and to the way in which it affected the salary scales. It was sufficient to say that the Commission's approach, which involved the use of some thoroughly unreliable lump-sum estimates, had been an inadmissible way of carrying out a survey which would eventually affect the pay of a large category of staff and, indirectly, their pension entitlement as well.

For the above reasons, the Tribunal set aside the decisions that had set the complainants' pay in keeping with salary scales that had come into effect on 1 October 1987.

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2. JUDGEMENT NO. 1012 (23 JANUARY 1990): AELVOET AND OTHERS V. THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION[12]

Reduction of staff's salary — Question whether the complainants may challenge the Director General's decisions to apply the general measures to them and thereby also challenge the lawfulness of the Permanent Commission's decisions — Pay slips issued on the basis of the Commission's decision that still had to come into effect

The complainants asked the Tribunal to quash the initial action taken towards making staff pay 5 per cent lower in the European Organisation for the Safety of Air Navigation (EUROCONTROL) than in the European Communities, the amount of the reduction since 1 July 1986 having been 0.7 per cent. They wanted EUROCONTROL to pay back to them, with interest, the sums wrongly withheld since that date in keeping with the decision to reduce pay.

The Permanent Commission for the Safety of Air Navigation, the governing board of EUROCONTROL, had on 7 July 1987 taken a provisional decision changing the policy of maintaining the pay of Agency staff on a par with that of staff of the European Communities. Its decision was to keep to the policy of alignment, but as from 1 July 1986 to make the net pay of EUROCONTROL staff 0.7 per cent lower than that of staff in the Communities. That was the first step in an exercise which was to be spread over three years and to introduce a 5 per cent differential in pay between the two organizations.

The Director General of EUROCONTROL, the "appointing authority", had conveyed the matter to the staff in office notes dated 23 and 29 July 1987, and in July, August and September 1987 the staff had accordingly received pay slips informing them both of payment of sums due in arrears and of reductions in current monthly salary.

The Commission on 12 November 1987 had approved its decision of 7 July. Thereafter hundreds of EUROCONTROL officials had submitted appeals to the Director General. Having received no answer within the time-limit of four months set in the Staff Regulations, three of them filed their complaints with the Tribunal on 25 February 1988. Others awaited an express decision before doing so. The decision came on 18 April and the joint complaint was lodged with the Tribunal on 15 July.

In the statement of their claims, the complaints explained that what they were challenging were the individual decisions which had applied the general decision and which had first come to their notice on receiving their pay slips showing the payment of arrears and the monthly reductions.

The Tribunal stated that, in line with the principles it had affirmed in Judgements Nos. 624[13] and 902,[14] the complainants might challenge the Director General's decisions to apply the general measures to them and might thereby also challenge the lawfulness of the Commission's decisions. The Tribunal would therefore entertain any plea to the effect that those measures ran counter to general rules and principles governing the international civil service.

Having been issued before the Commission's decision setting the new pay scales and making sure the reduction had taken effect, the pay slips had no basis in law and had to be set aside in so far as they caused the complainants injury. EUROCONTROL should therefore reimburse them for the sums withheld and pay them interest thereon as from the date on which the deduction had been made.

The Tribunal observed that, though the pay slips were set aside in so far as they reduced pay, the complainants went much further in that what they also inpugned was the lawfulness of the actual reduction. Though the pay slips were plainly unlawful because the Commission's decision still had to come into effect, they applied only to the period they covered and could not be treated as giving effect to a decision that had not yet become final.

Since not a single complainant had challenged an individual decision subsequent to 12 November 1987, the Tribunal was bound to declare the claims irreceivable in so far as they objected to future reductions in pay.

For the above reasons, the Tribunal set aside the pay slips issued by EUROCONTROL before the Permanent Commission's decision of 12 November 1987 had taken effect in so far as they reduced staff pay by 0.7 per cent and ordered the Organisation to refund the sums withheld and to pay interest thereon at the rate of 10 per cent a year as from the date of withholding. The Tribunal dismissed the complainants' other claims.

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3. JUDGEMENT NO. 1033 (26 JUNE 1990): HEITZ V. THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS[15]

Tribunal's competence to hear the complaint of an official employed by the organization that has not recognized the Tribunal's jurisdiction — The administrative arrangements provided for in its Agreement with the World Intellectual Property Organization do not impair its distinct legal identity

The complainant, an official of the International Union for the Protection of New Varieties of Plants (UPOV), submitted that the Tribunal was competent to hear his complaint by virtue of regulation 11.2 of the WIPO Staff Regulations, which directly applied to UPOV staff. Though UPOV had not addressed to the Director-General of the International Labour Office a declaration recognizing the Tribunal's jurisdiction, the Swiss authorities assimilated UPOV staff to WIPO staff and WIPO's recognition applied *mutatis mutandis* to the staff of UPOV.

The issue in the case was how to determine the complainant's take-home pay after deletion of regulation 3.1 bis from the Staff Regulations that applied to him. The staff formerly had had protection under that provision against fluctuations in the rate of exchange between the Swiss franc and the United States dollar, the currency in which salaries were determined.

The Tribunal observed that it was beyond dispute that the defendant organization had made no declaration recognizing the Tribunal's jurisdiction under article II (5) of its statute. The complainant submitted that the Tribunal was competent by virtue of an Agreement which UPOV had concluded with WIPO on 26 November 1982. Under article 4 (1) of the Agreement, the Secretary General of UPOV was also the Director General of WIPO. He endorsed the complainant's submissions on the Tribunal's competence and took the view that by virtue of article 8 of that Agreement the staff of UPOV were assimilated to WIPO staff and that the remedies prescribed in the WIPO Staff Regulations were available to UPOV staff as well.

The Tribunal found that the above arguments afforded no grounds for the Tribunal's declaring that it was competent to hear the case. According to article II (5) of its statute, it was competent to hear a complaint only if the international organization that employed the complainant had addressed to the Director-General of the International Labour Office a declaration of recognition in accordance with its Constitution or internal administrative rules and if the Governing Body of the International Labour Office had approved the declaration.

The Tribunal stated further that under article 24 of the Paris Convention of 1961,[16] as amended, UPOV had legal personality of its own and the administrative arrangements provided for in its Agreement with WIPO did not impair its distinct identity. The reasons why the complainant might not appeal were that even though the WIPO Staff Regulations and Staff Rules applied to him as an employee of UPOV he was not an official of WIPO, and the organization that did employ him had not recognized the jurisdiction of the Tribunal under article II (5) of its statute. The Tribunal was therefore not competent to hear the complaint.

For the above reasons, the Tribunal dismissed the complaint.

C. Decisions of the World Bank Administrative Tribunal[16]

DECISION NO. 93 (25 MAY 1990): WAHIE V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT[17]

Applicant's contention that the Respondent should restore her right to expatriate benefits upon renunciation by the Applicant of her duty station country citizenship and resumption of G-4 visa status — Staff rules 6.13 and 6.14 concerning expatriate benefits — Tribunal's understanding of the rationale behind the system of expatriate benefits and its approach to citizenship

The Applicant joined the Bank on 14 January 1974 as a telephone operator. Since she was an Indian national with United States permanent resident status, she was given all expatriate benefits attached to her status in accordance with the Bank regulations in force at the time. Two weeks later the Respondent changed its policy on expatriate benefits and the Applicant was given the option to retain her United States permanent resident status with the entitlement in effect at the time she had joined the Bank or to change to G-4 visa status by 30 June 1974 and thereby become eligible for broader benefits. She chose the latter. Subsequently, she changed again to United States permanent resident status, but without losing her expatriate benefits in accordance with the regulations in force at the time. Effective 1 June 1984, the Applicant acquired United States citizenship and, consequently, became ineligible for expatriate benefits. On 30 January 1985, the Bank announced to all staff some changes on expatriate benefits the purposes of which were, *inter alia*, to rationalize the eligibility criteria for such benefits and in particular to restrict the eligibility of those staff who were not G-4 visa holders. According to the new staff rules, 6.13 and 6.14, effective 29 January 1985, all new staff who had held United States permanent resident status or United States citizenship at any time in the 12 months prior to appointment to the Bank would be ineligible for expatriate benefits. Staff who were currently eligible for expatriate benefits, whether they had G-4 visas or permanent resident status, would continue to be eligible for existing benefits as long as their status did not change. Staff with G-4 visas who changed to permanent resident status would lose eligibility for expatriate benefits, except for those who had already formally applied for permanent resident status or who did so not later than 28 January 1986. Three years later, on 19 October 1987, the Applicant formally requested the Director, Compensation, to change her status to that of G-4 and to give her all the expatriate benefits attached to it because she could not afford on her own to send her children to school in India, nor could she afford to visit her relatives in her home country from time to time. On 30 October 1987 the Director, Compensation, replied that the rule's silence concerning

the consequences of relinquishing citizenship of the duty station country did not create a right to the reacquisition of expatriate benefits in that circumstance, and that the clear implication of staff rule 6.13, supported by its drafting history, was that there would not be a reacquisition of expatriate benefits. He concluded that the Applicant would not be entitled to expatriate benefits if she gave up her United States citizenship.

The Applicant contended that the Respondent could not validly refuse to grant her expatriate benefits if she renounced her duty station country citizenship.

The Tribunal observed that in deciding to acquire United States citizenship on 1 June 1984 the Applicant should and could have investigated the legal and financial consequences of her decision due to the absence of any provision allowing restoration of financial benefits in case of subsequent renunciation of that citizenship. On her appointment to the Bank the Applicant had been informed of the conditions of eligibility for home leave, education and repatriation benefits, by a letter dated 7 March 1974. The information in the letter should have alerted the Applicant to the fact that eligibility required maintaining the status of non-citizen of the duty station country.

In reaching the above conclusion the Tribunal had borne in mind its understanding of the rationale behind the whole system of expatriate benefits and the proper approach to citizenship as a reflection of allegiance to and connection with a particular State. To provide for the reacquisition of certain economic benefits when a staff member renounces his or her nationality might encourage a casual approach to the responsibilities and implications of citizenship. The Applicant did not conceal the real purpose of her decisions first to acquire United States citizenship and then to consider renouncing it.

The Tribunal did not accept the Applicant's contention that by denying her re-eligibility for expatriate benefits if she renounced her United States citizenship the Respondent would be interfering with the right of staff members freely to acquire and reassume their citizenship. The Applicant remained free to renounce her previously acquired United States citizenship and to revert to G-4 visa status, but she could not use that freedom as the basis for requiring the Respondent to grant her certain benefits. The Respondent's regulation of eligibility for expatriate benefits was a proper exercise of its power to regulate the rights and obligations of staff members.

The Tribunal concluded that, by denying the Applicant's request to regain expatriate benefits on her renunciation of United States citizenship, the Respondent had not violated any element of the Applicant's rights under her contract of employment or terms of appointment.

For the above reasons, the Tribunal decided to dismiss the application.

NOTES

[1] In view of the large number of judgements which were rendered in 1990 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 Judgements Nos. 471 to 501 of the United Nations Administrative Tribunal, Judgements Nos. 987 to 1096 of the Administrative Tribunal of the International Labour Organisation and Decisions Nos. 87 to 99 of the World Bank Administrative Tribunal, see, respectively: docu-

ments AT/DEC/471 to 501; *Judgements of the Administrative Tribunal of the International Labour Organisation*: 68th, 69th and 70th Ordinary Sessions; and *World Bank Administrative Tribunal Reports*, 1990.

[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. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[4] United Nations Administrative Tribunal Judgement No. 192, *Levcik* (1974), para. IV.

[5] Mr. Roger Pinto, President; Mr. Ahmed Osman, Vice-President; and Mr. Francisco A. Forteza, Member.

[6] In a subsequent case dealing with a claim which, in the words of the Tribunal, "falls squarely within the jurisprudence established in its recent Judgement No. 492 (*Dauchy*)", the Tribunal confirmed that the replacement policy was inconsistent with the Staff Rules and Regulations, adding that it was also contrary to Article 101, paragraph 3, of the Charter (Judgement No. 533 (*Araim*)).

[7] Mr. Roger Pinto, President; Mr. Samar Sen and Mr. Arnold Kean, Members.

[8] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organisation and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1990, 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 Tarriffs 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 for Development, the Intergovernmental Organisation for International Carriage by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization and the International Fund for Agricultural Development. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour

Organisation and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organisation.

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 on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the staff regulations upon which the official could rely.

[9] Mr. Jacques Ducoux, President, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge.

[10] Set up by the General Assembly of the United Nations by resolution 3357 (XXIX) of 18 December 1974 (ICSC/1/Rev.1).

[11] Report of the Commission dated 15 September 1982 on its 16th session, Documents of the General Assembly's 37th session, Supplement No. 30, A/37/30.

[12] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge.

[13] *In re* Giroud No. 2 and Lovrecich.

[14] *In re* Aelvoet and others.

[15] Mr. Jacques Ducoux, President, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge.

[16] United Nations, *Treaty Series*, vol. 815, p. 89.

[17] 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.

[18] Mr. P. Weil, President; Mr. A. K. Abdul-Magd and E. Lauterpacht, Vice-Presidents; and Mr. F. K. Apaloo, Mr. R. A. Gorman, Mr. E. Jiménez de Aréchaga and Tun M. Suffian, Judges.