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UNITED NATIONS JURIDICAL YEARBOOK

1969

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

Chapter V. Decisions of administrative tribunals of the United Nations and related inter-governmental organizations

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Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations [1]

1. JUDGEMENT NO. 126 (13 MAY 1969): [2] SALVINELLI V. UNITED NATIONS JOINT STAFF PENSION BOARD

Application of the criterion of custody to determine to whom a children's benefit should be paid—Non-receivability of a plea contesting the legality of a decision by a domestic court certified as in order by the Ministry of Foreign Affairs of the country concerned

In 1965 the applicant, a former staff member of FAO, who had been the recipient of a disability benefit since 1961, lodged with the FAO Staff Pension Committee a claim to children's benefit for her two minor sons, who, upon the death of their father in 1963, had been placed in the care of their uncle under a decree by the competent domestic court, reaffirmed by an order of 1966. The Committee decided, and confirmed after reconsideration, that the benefit was due effective from 1961 but that, in view of the condition of the applicant's health, it was to be paid to the legal guardian. The Standing Committee of the Joint Staff Pension Board, to which the matter was referred, came to the same decision. The applicant then requested the Tribunal to rescind the decision of the Standing Committee and to order the children's benefit due in respect of her two sons to be paid to her.

The Tribunal rejected the application; it pointed out that the applicant's contention was unacceptable by reason of the order of 1966 reaffirming the decree of 1963 to the effect that the applicant's minor sons should remain in the care of their uncle. Nor could the applicant's plea that according to the definition of dependants relevant to internal administrative procedures "children of a female staff member are to be dependent upon her if the

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[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1969, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with two specialized agencies: the International Civil Aviation Organization; the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organization, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Telecommunication Union, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who has succeeded to the staff member's rights on his death, or who can show that he is entitled to rights under any contract or terms of appointment.

[2] Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Z. Rossides, Member.

father or step-father either has no legal obligation or is unable to ensure their main and continuous support" avail against an order of court depriving the applicant of the custody of the children and placing them under the care of the legal guardian. Lastly, with regard to the validity of the order of 1966, the Tribunal noted that, according to a *note verbale* of 30 March 1967, addressed to FAO by the Ministry of Foreign Affairs of the country concerned, the order had been issued in accordance with the regulations in force; it ruled that the legality or validity of that order could not be raised before the Tribunal.

2. JUDGEMENT NO. 127 (19 MAY 1969):[3] BURDON v. UNITED NATIONS JOINT STAFF PENSION BOARD

Appeal against a decision refusing to validate, for Pension Fund purposes a period of service completed by the person concerned prior to participation in the Joint Pension Fund—Competent jurisdiction in a dispute concerning the participation of a FAO staff member in the Fund, where the dispute relates mainly to the interpretation of the contract of the person concerned and of the regulations applicable to him.

The applicant, who entered the service of FAO at the beginning of 1952 as a technical assistance expert under a one-year appointment, had his appointment extended several times. In 1957 the appointment was converted into a programme appointment and in 1967 the applicant received a permanent appointment. At the beginning of 1952 the employment of technical assistance experts was governed by an Administrative Memorandum which expressly excluded such personnel from participation in the Joint Staff Pension Fund. However, at the end of 1952 the Memorandum was superseded by two others which contained no provision relating to the Pension Fund. As of 1 January 1954 these two Memoranda were in turn superseded by sections 370 and 371 of the FAO Manual, which again contained no provisions concerning the Pension Fund. Effective 1 December 1956, however, a provision was inserted into those sections whereby it was contemplated that holders of programme appointments would become eligible for participation in the Fund from the effective date of such appointments. Under the regulation adopted shortly thereafter on the basis of that provision, the applicant became eligible in 1957 for participation in the Pension Fund. In 1967, he formally applied to the FAO Staff Pension Committee for validation for Pension Fund purposes of his period of service from 1952 to 1957. The Committee noted that the time-limit provided by article III of the Joint Staff Pension Fund Regulations (one year, starting from the commencement of the participation of the person concerned) had not been observed, and, further, that the participation of EPTA experts in the Pension Fund had been specifically excluded, under certain conditions, by the provisions of the FAO Manual during the years in question. The applicant then submitted an appeal to the Joint Staff Pension Board, which was rejected on the grounds that he had not observed the time-limit provided in article III mentioned above. The Committee further noted that the appeal could not be admitted in any case, since the service performed between 1952 and 1957 was not service to which article III.1 referred (service under a contract of less than a year or covering a period of less than a year).

The applicant thereupon filed an application with the Tribunal, asking it in particular to rescind the decision of the Joint Staff Pension Board and to order FAO to pay him a nominal sum to acknowledge FAO's responsibility in having unjustly deprived him of his rights.

The Tribunal rejected the application: it noted that the service performed by the applicant between 1952 and 1957 had been performed neither on a contract basis for less

[3] Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Z. Rossides, Member.

than one year nor for a period of service of less than one year, so that the applicant could not avail himself of article III of the Pension Fund Regulations.

As to whether the applicant was entitled, from 1953, to enrolment in the Fund under the provisions of the FAO Manual and to validation of his prior service, and whether FAO, by failing to ensure this enrolment, had infringed the applicant's rights under his contract of employment and terms of appointment, the Tribunal stated that, in order to decide that question, it would be necessary to examine the contract of the staff member and the relevant legal provisions in force in FAO. There was nothing in the file to indicate that this question had been the subject of any administrative decision open to appeal. Moreover, even if there had been such a decision, the question would arise as to what jurisdiction would be competent. The Tribunal had stated in its Judgements Nos. 118 and 119: [4]

> "When, in a case involving participation of a FAO staff member in the Fund, the dispute relates mainly to the interpretation of his contract and of the FAO regulations and rules applicable to him, it would appear from article XI of the Staff Regulations of FAO that the International Labour Organisation Administrative Tribunal would be the competent jurisdiction."

Since the Tribunal had held that the applicant could not avail himself of the provisions of article III of the Pension Fund Regulations, it did not deem it necessary to rule on the question of time-limits.

3. Judgement No. 128 (22 May 1969): [5] Al-Abed v. Secretary-General of the United Nations

An oral promise of employment not emanating from the authority competent to conclude the contract has no legal validity—Injury resulting from a decision not to renew the contract although made in exercise of contractual rights—Obligation to respect the principle of good faith in relations between the parties

The applicant, who entered the service of the United Nations under a one-year appointment, had had two successive extensions of his appointment, the first until 4 August 1966 and the second until 4 August 1967. At a meeting on 12 January 1967, the Deputy Resident Representative is said to have offered him an extension of his contract until the end of that year. The applicant is said to have accepted that offer, and the arrangement was allegedly subsequently confirmed at a second meeting held on 20 March 1967. In the interim the applicant had been authorized to take home leave, and the consent of the local authorities had been requested for the extension of his contract. However, on 14 February 1967, the Deputy Resident Representative sent a memorandum to Headquarters drawing attention to a confidential report concerning a "flagrant swindle" of which the applicant was said to have been the victim, and raising the question of the extension of his contract until the end of 1967. Having seen this memorandum, the Technical Assistance Recruitment Service decided not to extend the appointment beyond 4 August 1967; the decision was communicated to the applicant and subsequently confirmed. The applicant then appealed to the Joint Appeals Board, which considered that in reliance of the promise made to him and the decision to authorize his home leave, the appellant had had a legitimate expectancy of the extension of his contract, and the Administration had been under the moral obligation to carry out such an extension of appointment. On the other hand the Board was convinced

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[4] See *Juridical Yearbook*, 1968, pp. 169-170.

[5] The Lord Crook, Vice-President, presiding; Mrs. S. Bastid and Mr. L. Ignacio-Pinto, Members.

that, by the time when the extension of the appointment had been due to take effect, the retrenchment of the project to which the appellant had been assigned had warranted the termination of his extended appointment. Consequently the Board recommended the payment of an indemnity equivalent to the amount of termination indemnity to which the appellant would have been entitled had his fixed-term appointment been extended until 31 December 1967 and then terminated forthwith on the grounds of reduction of staff. The Secretary-General accepted this recommendation, stressing that his decision was based on the moral obligation which, in the view of the Joint Appeals Board, had been created by the particular circumstances of the case, and not on any legal obligation.

The applicant then appealed to the Tribunal, alleging that there had been an extension of his contract beyond 4 August 1967 and consequently requesting (1) the rescission both of the decision to terminate his services and of the decision taken by the Secretary-General as a result of the recommendation of the Joint Appeals Board and (2) compensation in full for the material and moral injuries he had sustained.

The Tribunal considered that the statements made by the Deputy Resident Representative at the meetings on 12 January and 20 March 1967 could at most constitute a proposal made subject to the approval of the respondent, who alone had authority to engage staff. Neither the authorization to the applicant to take home leave nor the fact that the consent of the local authorities had been sought for the extension of the appointment could suffice to give legal force to an oral promise which did not emanate from the authority competent to conclude the contract. The Tribunal pointed out that "the overriding interest of sound administration requires that contracts of appointment and any subsequent amendments to such contracts should be safeguarded by being in written form." The Tribunal accordingly reached the conclusion that the respondent had not been obliged to renew the applicant's contract and that the decision of 6 September 1968 was not open to criticism as being based on a "moral obligation ... and not on any legal obligation".

On the other hand it was clear from the file, according to the Tribunal, that the true reason for the non-renewal of the contract had been a private financial transaction and that it had been decided that the applicant should be separated from the service as soon as his accrued annual leave permitted. It was indisputable that the terms of the notification of the termination of appointment and the circumstances in which that notification had been made were likely to cause him injury. The respondent had no doubt caused the injury in the exercise of contractual rights and in giving notice of the date of the termination of the applicant's employment, but it was none the less true that, in so doing, he had disregarded the principle of good faith in relations between the parties. Considering the decision taken by the respondent on the recommendation of the Joint Appeals Board and the indemnity awarded in that connexion, considering also that the allegations of material injury were unfounded because they were linked to the date on which the applicant's services had been terminated, a date which the respondent had been in any case entitled to fix as he had done, the Tribunal decided that the finding that the respondent had disregarded the principle of good faith was sufficient to redress the injury sustained by the applicant.

4. Judgement No. 129 (22 May 1969): [6] Gallianos v. Secretary-General of the United Nations

Time-limit prescribed in article 7, paragraph 4 of the Statute of the Tribunal for the filing of applications—Condition to be fulfilled if an illness contracted by a staff member serving with the United Nations is to entitle him to compensation

[6] Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mrs. S. Bastid and Mr. Z. Rossides, Members.

The applicant, who entered the service of the United Nations under a fixed-term appointment, had been given several extensions. During his assignment to ONUC, he had been repatriated on medical grounds. After being medically examined and found fit for work, he was assigned to UNTSO. On 24 May 1965, he was informed that his fixed-term appointment, due to expire on 2 August 1965, would not be renewed. He then protested against that decision, but it was confirmed a month later. On 2 August 1965, the applicant was on sick leave and he remained temporarily in the mission area. He requested that his subsistence allowance continue to be paid during that period on the ground that his departure from the mission area had been delayed by a service-incurred illness. The Office of Personnel informed him that he could, if he wished to pursue the matter, submit a formal claim to the Advisory Board on Compensation Claims.

Having received a claim for compensation by the applicant, the Advisory Board on Compensation Claims made a negative recommendation to the Secretary-General, which was approved by the Secretary-General and notified to the applicant on 17 June 1966. On 2 July 1966, the applicant appealed to the Joint Appeals Board against the decision not to renew his contract and against the decision of the Advisory Board. With regard to the latter decision, the Joint Appeals Board noted that the applicant could use the procedure mentioned in article 17 of appendix D to the Staff Rules (convening of an independent medical board), so that it did not have to rule on that point; with regard to the decision not to renew the contract, it declared that the appeal was not receivable on the grounds that it had been filed a long time after the expiry of the time-limit prescribed in Staff Rule 111.3, and that there were no exceptional circumstances in this case that would warrant a waiver of the time-limits in accordance with that Rule.

The applicant having chosen to avail himself of the remedy provided under article 17 of appendix D to the Staff Rules, the medical board which met in consequence submitted a report in which it stated that it did not believe that the applicant was "unfit for work due to his general condition". Having noted the report, the Advisory Board recommended to the Secretary-General that his decision to deny compensation be maintained.

The applicant then requested the Tribunal (1) to rescind the decision not to renew his contract and (2) to declare the respondent responsible for the deterioration of his health, since according to him the disease contracted in the Congo was an industrial accident entitling him to compensation.

On point (1) the Tribunal stated that the plea was not receivable as it had been raised beyond the time-limits prescribed in article 7, paragraph 4, of the Statute of the Tribunal. On point (2) it noted that an examination of the file and in particular a letter from the applicant himself showed that on his return from the Congo he was medically fit for work. With regard to the illness which occurred in 1965, the medical board which met at the applicant's request concluded that it did not believe that he was "unfit for work due to his general condition". In any case, the applicant could not validly contend that, because his illness had been contracted when he was in the service of the United Nations in a tropical region, it should be regarded as service-incurred. Under article 2 of appendix D to the Staff Rules it was not sufficient to contract an illness during service with the United Nations in order to claim compensation; it also had to be proved that the illness was attributable to the performance of official duties on behalf of the United Nations. Consequently the Tribunal upheld the decision based on the recommendation of the Advisory Board. However, it considered it unfortunate that, in spite of the clear instructions contained in paragraph 3 of the *Field Administration Handbook*, no exit medical examination had been conducted in the case of the applicant, who had complained of sickness and had actually been on sick leave at the time of separation.

5. JUDGEMENT NO. 130 (23 MAY 1969): [7] ZANG-ATANGANA V. SECRETARY-GENERAL OF THE UNITED NATIONS

Obligation duly to state the reasons for a disciplinary measure, especially in the case of a staff member who under the Staff Rules has no opportunity of recourse to a Joint Disciplinary Committee

The applicant, who had entered the service of the United Nations on 25 June 1965 as Director of the Sub-Regional Office of the Economic Commission for Africa (ECA) at Kinshasa, on a fixed-term appointment for two years, had, on 21 September 1966, been informed that on 1 November he would be transferred to Addis Ababa. After registering his objections to this transfer, he was informed on 5 December that he was to report to Addis Ababa not later than 15 December and that if he did not do so, the Executive Secretary would have no alternative but to recommend termination of his contract for failure to comply with instructions. The applicant then wrote to the Director of Personnel, who in his reply insisted that the applicant should inform him by cable that he would report to Addis Ababa on 3 January 1967, otherwise the Director of Personnel would be obliged to recommend that the Secretary-General should suspend the applicant from duty pursuant to Staff Rule 110.4, pending an investigation. On 4 January 1967 the Director of Personnel sent the applicant a cable stating that he had been suspended from duty without pay pending an investigation of his failure to comply with the instructions of the Executive Secretary after express warning from the Director of Personnel. On 6 February 1967 the applicant wrote to the United Nations Resident Representative at Kinshasa expressing his willingness to proceed to Addis Ababa. On 2 March 1967 the Director of Personnel replied that the Secretary-General, after profound study, had decided to terminate his appointment and to confirm his suspension without pay in application of the disciplinary measures under Staff Rule 110.3.

The applicant filed an appeal with the Joint Appeals Board, which recommended to the Secretary-General that in lieu of the disciplinary measures of dismissal and suspension without pay, as communicated to the appellant by the Director of Personnel on 3 March 1967, the appellant's fixed-term appointment should be terminated under Staff Regulation 9.1 (*b*) with effect from 4 March 1967, the date on which the notice of the disciplinary measures had been transmitted to him. The Secretary-General decided not to implement the Board's recommendation, one reason for his decision being that the applicant's refusal to comply with the transfer order fell within the scope of unsatisfactory *conduct*, in the sense of Staff Regulation 10.2, and not within that of unsatisfactory *services* in the sense of Staff Regulation 9.1 (*b*). This decision was notified to the applicant on 1 February 1968.

The applicant then filed an application with the Tribunal, which noted that the only reason given by the Director of Personnel in his cable of 2 March 1967 to justify the disciplinary measures imposed had been "the refusal to comply with the transfer order". While the Tribunal recognized that it was not for it to decide whether, in the particular case under consideration, refusal to comply with the order received could justify the disciplinary measures taken against the applicant on 2 March 1967, it stated that it had the right to ascertain whether a procedure respecting the rights of the defence had been followed. In that connexion, the Tribunal noted that about three weeks before the respondent had come to a decision concerning the disciplinary measures, he had been informed that the applicant was prepared to comply with his superior's instructions (willingness expressed in his letter of 6 February 1967 to the Resident Representative at Kinshasa). The disciplinary measures had been imposed, and when they had been confirmed, the only reason

[7] Mr. R. Venkataraman, President; Mrs. S. Bastid and Mr. L. Ignacio-Pinto, Members.

given had not taken into account the willingness expressed by the applicant, of which the respondent had been informed. At the Tribunal's request, the respondent had provided some explanation of his behaviour, alleging that the letter of 6 February 1967 had arrived too late for the transfer to Addis Ababa to serve any useful administrative purpose; however, those reasons had not been made known to the applicant either in the decision of 2 March 1967 or in that of 1 February 1968. If the considerations in question had provided the grounds for the disciplinary measures, they did not correspond to the sole reason given officially to the applicant.

Consequently, the Tribunal came to the following conclusions:

> "As no information was given ... about the duties which the applicant was to perform at Addis Ababa, it is not possible to determine whether the applicant's presence would have met the needs of the service on 3 January 1967 but would not have done so a little more than a month later. Moreover ... it is for the respondent to make such an appraisal. But if this appraisal leads to the conclusion that it does not serve any useful administrative purpose to transfer an official from Kinshasa to Addis Ababa, such a consideration cannot in itself justify disciplinary action. If the respondent considered, on the other hand, that the applicant's refusal to leave for Addis Ababa on the dates set justified disciplinary measures, even through the applicant subsequently agreed to go there, this appraisal came within the respondent's competence, but he should have stated that reason when he took the decision with respect to the disciplinary measures after the applicant had changed his position."

The Tribunal considered that for a disciplinary measure to be valid the reasons for it must be stated with a reasonable degree of precision and with due regard for the facts of the case as evidenced by the file, particularly in the case of a staff member who under the Staff Rules is not assured of the guarantees provided by referral to a Joint Disciplinary Committee. In that connexion, it emphasized the necessity of ensuring that all staff members have the benefit of a procedure similar to the Joint Disciplinary Committee procedure, which at the present time is available only to staff members serving at Headquarters or at the United Nations Office in Geneva.

As the decision of 2 March 1957, which was confirmed on 1 February 1968, did not satisfy the requirements of a procedure respecting the rights of the defence, the Tribunal declared that it was not well founded and awarded the applicant an indemnity to compensate for the injury sustained.

6. Judgement No. 131 (10 October 1969):[8] Restrepo v. Secretary-General of the United Nations

Termination of a permanent appointment on the ground of unsatisfactory services—Such a decision may be taken only as the outcome of a complete, fair and reasonable procedure

The applicant received a permanent appointment in 1961. In 1966 this appointment became due for the first five-year review, which was carried out by a Working Group of the Appointment and Promotion Panel. The Working Group had before it a joint recommendation by the Office of Conference Services and the Office of Personnel that the appointment should be terminated on the ground of unsatisfactory services. The Working Group recommended approval of the joint recommendation, and its report was endorsed by the Appointment and Promotion Board. Consequently, the Deputy Director of Personnel informed the applicant that the Secretary-General had decided to terminate her appoint-

[8] Mr. H. Gros Espiell, Vice-President, presiding; Mrs. S. Bastid and Mr. L. Ignacio-Pinto, Members; Mr. F. T. P. Plimpton, Alternate Member.

ment in accordance with the provisions of Staff Regulation 9.1 (*a*). The decision was reviewed at the request of the applicant and was maintained. Meanwhile the applicant had arranged for excerpts from the Working Group's report to be communicated to her. An appeal was filed with the Joint Appeals Board, which recommended that the decision should be maintained.

The applicant then requested the Tribunal to rescind the decision in question. The Tribunal referred to its Judgement No. 29, in which it had stated that "permanent appointments cannot be terminated except under Staff Regulations which enumerate precisely the reasons for and the conditions governing the termination of service", and to its Judgement No. 98 [9] in which it had stated that "such permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision". While noting that the respondent had erred in neglecting to specify the reasons for the termination in the letter communicating the decision to the applicant (a point which the Tribunal had emphasized in its Judgement No. 85), the Tribunal considered that the file clearly indicated that the applicant had been aware of the real reason for her termination and that consequently, when she had exercised her right of appeal, she had been in a position to argue her case properly. The Tribunal also noted that the fact that the conclusions of the Working Group had not been communicated to the applicant constituted a procedural error but that that error had been corrected by the procedure subsequently followed.

The Tribunal stated that the Secretary-General's decision on the question whether or not the applicant's services had been satisfactory was final; however, it added that such a decision must be reached by means of a complete, fair and reasonable procedure. In that connexion, it noted that the examination carried out by the Working Group had permitted adequate consideration of the unfavourable judgements concerning the applicant's work, that the examination had been reasonably detailed and that the applicant had had an opportunity to explain her position fully. The Tribunal therefore rejected the application.

7. Judgement No. 132 (10 October 1969): [10] Dale v. Secretary-General of the International Civil Aviation Organization

Extent of the legal relations arising between the applicant and the respondent as a result of the extension of the applicant's contract as an "interim measure"—The respondent must execute the commitments undertaken by him in that connexion, making a bona fide *search for a post for the applicant or, alternatively, compensating him for the injury sustained*

The applicant was employed at the Civil Aviation Training Centre at Zaria (Nigeria) under a fixed-term contract. Shortly before the applicant's contract was due to expire, the Director of the Technical Assistance Bureau offered him, as an "interim measure", a two-month extension, which he accepted, also as an interim measure. The Director then informed him by a cable of 8 July 1968 that his appointment at Zaria could not be extended and that there was no other suitable post available in the technical assistance programme. The applicant then lodged an appeal with the Advisory Joint Appeals Board, which considered that the administration "had the major responsibility for creating a legitimate and reasonable expectation in the mind of the appellant that he would in due course receive another one-year contract". According to the Board, the refusal to extend the

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[9] See *Juridical Yearbook*, 1966, p. 213.

[10] Mr. R. Venkataraman, President; Mrs. S. Bastid, Mr. L. Ignacio-Pinto, and Mr. Z. Rossides, Members.

employment of the appellant for the remaining period of ten months, which would have concluded his one year of further service that had begun with the two-months' extension, should be regarded as termination, thus attracting the provision in Rule 9.7 (*b*) in regard to indemnities on termination, and the Board therefore recommended that the appellant should be paid indemnity. However, since the Secretary-General had confirmed the initial decision, the applicant requested the Tribunal to rescind the decision communicated to him by the cable of 8 July 1968, as well as the decision maintaining the first decision, and to order the respondent to reinstate him.

The Tribunal observed that the granting of a two-month contract to the applicant was connected with a certain plan of action described by the Director of the Technical Assistance Bureau, on which the applicant was entitled to rely. That plan of action included an "interim measure" (the two-month contract) and the prospect of a longer extension. The two-month contract could not be considered as an isolated short-term contract expiring at the end of its anticipated duration. It was clear from the file that the respondent had explicitly acknowledged that the applicant's rights were not limited to those resulting from the two-month contract, but also related to the applicant's future. Moreover, it was obvious that the applicant had reluctantly consented to an interim measure only because there was prospect of a more durable solution. The Tribunal therefore considered that the legal relations between the parties comprised, on the one hand, the two-month contract and, on the other, the obligations assumed by the respondent when he had proposed the two-month extension. While the assessment of the advisability of retaining the applicant in his post at Zaria was within the respondent's discretion, at the same time he ought, in some other way, to have fulfilled the obligations assumed by him, which he had recognized by indicating to the applicant that he was considering the possibility of assigning him to another post. Therefore the only point of issue was whether the mere statement that no post was available constituted an acceptable discharge of the obligations assumed by the respondent. The Tribunal decided that the respondent had not met his obligations in that respect and that he was called upon to execute the commitments undertaken by him, making a *bona fide* search for a suitable post or, alternatively, compensating the applicant for the injury sustained by paying him a termination indemnity of one week's salary for each month of uncompleted service.

8. Judgement No. 133 (14 October 1969):[11] Frias v. Secretary-General of the United Nations

Rule that staff members are expected to assume temporarily the duties and responsibilities of higher level posts as a normal part of their customary work—Discretionary power of the Secretary-General to grant a special post allowance in such a case

The applicant, a permanent staff member at the G-5 level serving in the Joint Staff Pension Fund, was called upon in May 1966 to take a course in programming, and in November 1967 the Secretary of the Pension Board informed the Office of Personnel that he intended to recommend the applicant's promotion during the financial year 1967/1968 but believed that the applicant should be granted a special post allowance before the promotion became effective, under the arrangement, outlined in a circular, whereby programmer trainees recruited through an examination became eligible for an allowance after six months provided that their services were satisfactory. The applicant passed the programmers' test in December 1967 and was granted a special post allowance effective 1 January 1968.

[11] Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. F. T. P. Plimpton, Member; Mr. Z. Rossides, Alternate Member.

On 1 July 1968 he was promoted to the P-2 level. Meanwhile, he had requested a review of the effective date of his special post allowance. The administration refused this request and maintained its decision despite a recommendation by the Joint Appeals Board that the special post allowance should be made effective as of 1 July 1967.

The applicant then filed an application with the Tribunal requesting (1) the rescission of the decision taken by the respondent on recommendations made to him by the Joint Appeals Board and (2) compensation for work performed by him as a programmer since September 1966, the latter request being based on the non-observance of two information circulars.

The Tribunal stated that, under staff rule 103.11, staff members were expected to assume temporarily the duties and responsibilities of higher level posts as a normal part of their customary work and without extra compensation and that, in specific circumstances, a special post allowance might be paid at the discretion of the Secretary-General. Accordingly there was no entitlement which had been denied to the applicant nor any non-observance of the pertinent staff rule. As for the circulars invoked, the Tribunal noted that the applicant did not belong to the category of staff covered by them. It therefore rejected the application.

9. Judgement No. 134 (15 October 1969):[12] Fürst v. Secretary-General of the United Nations

Limits of the Tribunal's authority to review appointments and promotions

The applicant entered the service of TAB under a fixed-term contract which was extended a number of times, the last extension, in the post of Deputy Resident Representative, being granted for a period of one year from 1 September 1966 to 31 August 1967. The purpose of this extension, as stated in a letter from the Administration, was to afford the applicant's superior a better opportunity to make an appraisal of his qualifications and performance, on the understanding that if the appraisal led to a favourable decision the applicant could "look forward to a continuation in our [UNDP's] service". In the report for the period March 1965-March 1967, the applicant was rated as an efficient staff member giving complete satisfaction, although the opposite view had been expressed earlier in a confidential report sent to Headquarters by a Special Adviser to the Administrator of UNDP. Following an exchange of correspondence, the Administration offered the applicant a two-year extension of his contract at the same grade. The applicant then filed an appeal with the Joint Appeals Board, which recommended that he should be promoted and expressed the opinion that the appropriate authorities might consider the feasibility of granting the appellant an appointment that would ensure for him a greater permanency of tenure as a member of the UNDP staff. The Administration nevertheless decided to maintain its original decision.

The case was brought before the Tribunal, which noted that Staff Rule 104.12 (*b*) as well as the letter of appointment stipulated that the fixed-term appointment "does not carry any expectancy of renewal or of conversion to any other type of appointment"; thus, the applicant could sustain his claim for a permanent appointment only if there was an obligation binding on the respondent. The applicant contended that the respondent's statement that, if the appraisal for the period 1965-1967 was favourable, he could "look forward to a continuation in our [UNDP's] service" constituted a pledge to grant him a permanent appointment if that condition was fulfilled. The Tribunal noted, however, that the letter in question also contained the following sentence: "If, on the other hand,

[12] Mr. R. Venkataraman President; Mr. F. T. P. Plimpton and Mr. Z. Rossides, Members.

the result of the appraisal is negative, then you would still have at least half a year to prepare yourself for the interruption of your services with UNDP". It found that the Administration had not, merely by pointing out the alternatives, bound itself to any course of action in the event that one or the other of the alternatives materialized. It emphasized that "appointments and promotions are within the discretion of the Secretary-General and, unless there is a legal obligation binding on the Secretary-General, the Tribunal cannot enter into the merits of the same".

The applicant further contended that the Administration's letter constituted an offer to extend his appointment for one year, during which period the applicant was to be placed on probation, and that the probationary nature of this appointment was to end, following an appraisal of his performance, either with the award of a permanent appointment or with termination. The applicant held that, as he was free to accept or reject the extension, his acceptance constituted a valid agreement. The Tribunal rejected this interpretation. It also rejected the applicant's contention that the Provisional Statement of Policy Guidelines for Personnel Management in UNDP Field Offices provided that staff members towards the end of their fourth year of service should be reviewed for either the award of a permanent appointment or termination and that the respondent had therefore acted contrary to his formally declared policy. The Tribunal found that the Statement of Policy Guidelines did not create for the staff covered by the Statement an expectancy in the legal sense for either a renewal of contract or permanent appointment.

With regard to the question of promotion, the Tribunal found the applicant's claim to be unsustainable, since the document entitled "Policy governing the Use of Titles in UNDP Field Offices", to which he referred, did not provide that all Deputy Resident Representatives should be assigned to P-4 level.

B. Decisions of the Administrative Tribunal of the International Labour Organisation [13]

1. Judgement No. 129 (17 March 1969): [14] Douwes v. Food and Agriculture Organization of the United Nations

Decision taken by the Director-General in the interests of the Organization—Limits of the Tribunal's authority to review

In Judgement No. 125 of 15 October 1968, [15] the Tribunal had rendered an interlocutory decision directing FAO to produce copies of a number of letters on which it had based its decision to transfer the complainant from Central America to Surinam.

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[13] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in from, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case, of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1969, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the United International Bureaux for the Protection of Intellectual Property, the European Organization for the Safety of Air Navigation and the Universal Postal Union. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Office and disputes relating to the application of the Regulations of the former Staff Pensions Fund of the International Labour Organisation.

The Tribunal, after examining the letters, found that the decision to transfer the complainant had been taken purely in the interests of the Organization and that accordingly it could not substitute its own judgement for that of the Director-General unless he had based his decision on incorrect facts, had failed to take essential facts into consideration or had drawn false conclusions from the documents in the dossier. In the present case, the fact—which was attested to by the letters in question and was not disputed—that inharmonious working relations between the officers concerned in the project were jeopardizing its success was of itself sufficient, without inquiring into where the fault lay, to justify the Director-General's decision. The Tribunal accordingly dismissed the claim that the decision had been unlawful and unjust.

2. JUDGEMENT NO. 130 (17 MARCH 1969):[16] MAHMALGI v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Time-limit for appeals to the Appeals Board and complaints to the Tribunal—Inadmissibility of complaints which do not resist any specific decision

The complainant, who held a fixed-term contract, was informed by UNESCO in a letter of 15 April 1966 that his contract would not be renewed. In a letter of 25 November 1967, he complained that he had been the victim of "slander" by his superior and requested "a solution based on his most legitimate rights". UNESCO replied that it had nothing to add to its letter of 15 April 1966 and confirmed its position in a letter of 16 January 1968.

The Tribunal, with which a complaint was lodged on 15 April 1968, noted that it was for the complainant to resist the decision of 15 April 1966 by filing an appeal with the Appeals Board within the time-limit laid down in the Statutes of the Board if he considered himself justified in doing so, and then, if necessary, to file a complaint with the Tribunal within the time-limit of ninety days specified by article VII of the Statute of the Tribunal. In the absence of any action to resist the decision within the prescribed time-limits, it could no longer be challenged. The complaint was thus inadmissible, because it was time-barred in so far as it related to the termination of the complainant's employment and because it did not resist any decision in so far as it related to the letter of 16 January 1968.

3. JUDGEMENT NO. 131 (17 MARCH 1969):[17] SEGERS v. WORLD HEALTH ORGANIZATION

Purpose of notice of termination of fixed-term appointment provided for in Staff Rule 940 —Applicability of Staff Rule 950.2

The complainant, who held a fixed-term contract which was due to expire on 31 August 1967, received a written warning on 29 July 1966, while on home leave, to the effect that unless his relations with his colleagues improved, his appointment would be terminated under Staff Rule 970 relating to unsatisfactory service.

The Tribunal is open to any official of the International Labour Office and of the above mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death, and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

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

[15] See *Juridical Yearbook*, 1968, p. 178.

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

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

The complainant fell ill during his home leave, and his sick leave was extended to the end of February 1967, and then to 10 April 1967, on the recommendation of the medical adviser. On 6 April 1967, WHO informed the complainant that it was obliged to terminate his appointment as from 10 April 1967 because no post corresponding to his qualifications was available for his reassignment (Staff Rule 950). WHO subsequently indicated, however, that the contract would be extended until further notice. On 26 June, the complainant was informed that his contract had terminated on 1 June.

An appeal was filed with the Organization's Board of Inquiry and Appeal, which found: (1) that Staff Rule 950 was not applicable; (2) that Rule 970 was also inapplicable since, owing to the termination of the complainant's appointment, the period of three months granted to him by the letter of 29 July 1966 had not begun to run; (3) that the Administration had not shown sufficient diligence in seeking a reassignment for the complainant. The Board accordingly recommended that the notice of termination should be rescinded. On 21 August 1967 the Director-General, in accordance with the Board's recommendations, notified the complainant that his contract would terminate on the normal date of its expiry, namely 31 August 1967, under the terms of Staff Rule 940. The complainant then lodged a complaint with the Tribunal, contending *inter alia*: (1) that under the terms of Staff Rule 940 the Organization, having decided not to reappoint him, was required to notify him of its decision at least one month and normally three months before the date of expiry of the contract; (2) that all possibilities for his reassignment under Staff Rule 950 had not been exhausted.

The Tribunal dismissed the complaint. On the first point, it noted that the decision of 21 August 1967 should be regarded as the final step in the termination procedure and that on 21 August the complainant had already been aware for more than three months that the Organization had decided to terminate his contract; the purpose of Staff Rule 940, which was to protect the staff member from the consequences of a sudden termination of his appointment, had not therefore been defeated. On the second point, the Tribunal found that Staff Rule 950.2, stipulating that a staff member's appointment shall not be terminated before he has been made a reasonable offer of reassignment, applied only to staff members holding contracts of indefinite duration and in the event of abolition of post.

4. Judgement No. 132 (17 March 1969):[18] Tarrab v. International Labour Organisation

Authority of the Director-General to decide upon a transfer in the interests of the Organisation under article 1.9 of the Staff Regulations—Limits of the Tribunal's authority to review

The complainant, having been transferred to ILO headquarters following differences with the Director of the ILO Office at Beirut, lodged a complaint with the Tribunal in which he contended that the decision to transfer him represented a disciplinary sanction which was irregular in that it had not been preceded by the prescribed statutory formalities, which was contrary to the Director-General's Instruction of 26 May 1954 providing for a minimum period of assignment of three years, and which, finally, being based on feelings of animosity and resentment and having been taken for a purpose other than that for which the powers available to the Administration under article 1.9 (*a*) of the Staff Regulations had been granted, constituted a misuse of authority.

The Tribunal dismissed the complaint. It noted that the decision to transfer had not in any way prejudiced the complainant's career and that the reason given for the decision,

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

namely the need to ensure harmony among the officials serving at a duty station away from Headquarters, was such that its very vagueness excluded any suggestion of a disciplinary measure and the procedure laid down in the case of imposition of sanctions was therefore not applicable. The grounds cited were, indeed, among those justifying transfer in the interests of the Organization under article 1.9 of the Staff Regulations. That article conferred wide discretion on the Director-General, who was responsible for the satisfactory working of the Organisation, and the Tribunal could not review any decision taken under the provision in question except in so far as it might be in irregular form, tainted by illegality or based on incorrect facts or ignored essential facts, or if conclusions which were clearly false had been drawn from the dossier. It had been established that incidents involving the complainant had created a situation in the ILO Office at Beirut which was prejudicial to its satisfactory operation. Consequently, regardless of where the responsibility for the incidents in question might lie, the Director-General was entitled to act under the authority conferred on him by article 1.9 of the Staff Regulations without being bound by his Instruction of 26 May 1954, which did not lay down any mandatory rule, and his decision was not tainted by any of the faults that the Tribunal was competent to review.

5. JUDGEMENT NO. 133 (17 MARCH 1969):[19] HERMANN v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Dismissal by reason of abolition of post of a staff member holding an indeterminate appointment—Admissibility as written evidence of resolutions of the Staff Association showing the reactions of the Organization's staff to certain actions taken by the Administration—Interpretation of Staff Rule 109.5 (b)

The complainant, who had been engaged by the Organization in 1952, had been given an indeterminate appointment in 1956. His post having been abolished owing to a reorganization undertaken pursuant to decisions taken by the UNESCO General Conference and all efforts by the Organization to find him another post having proved unsuccessful, the Director-General terminated the complainant's appointment in 1967 in accordance with article 9.1 of the Staff Regulations. The complainant then filed an appeal with the Appeals Board seeking cancellation of the notice of termination or, alternatively, the award of damages equivalent to five years' salary. The Appeals Board limited itself to a recommendation that the complainant should be reassigned, but this recommendation, although agreed to by the Director-General, was not given effect. The complainant made a number of claims before the Tribunal, including claims which he had made previously before the Appeals Board.

The Tribunal, noting that the complainant had produced resolutions of the Staff Association showing the reactions of the staff to the action taken in respect of him, declared that the resolutions were admissible as written evidence and that there was therefore no cause to exclude them from the dossier.

The Tribunal further ruled that the abolition of a post was not in itself a ground for complaint on the part of the holder of the post and therefore could not be resisted as such unless it was followed by the downgrading or termination of the staff member concerned, in which case any irregularities by which such action was tainted could be challenged before the Tribunal inasmuch as they might invalidate the consequences of the abolition of the post. Nevertheless, as an organizational act the decision to deprive a staff member of his post lay within the Director-General's discretion and could be reviewed by the Tribunal only if it was tainted by procedural irregularity or by illegality, if it was based on incorrect

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

facts, if essential facts had not been taken into consideration or if conclusions which were clearly false had been drawn from the documents in the dossier. In the case at issue, the abolition of the post had been decided upon for objective reasons which did not fall within the competence of the Tribunal.

With regard to the termination of appointment, the Tribunal noted that under article 109.5 (*b*) of the Staff Rules "Staff members holding indeterminate appointments shall, as a general rule, be retained in preference to those holding other appointments, subject to the availability of suitable vacant posts in which their services could be effectively utilized," that the obligation to place staff members with indeterminate appointments in another post depended on the "efficiency, competence and integrity and length of service" of the person concerned, and that the Director-General was required to assign a staff member whose post had been abolished to another post only if he appeared to be at least as competent as the other applicants in competition with him. In the Tribunal's opinion, however, it was consonant with the spirit of the Rules and Regulations that a staff member who had served the Organization in a fully satisfactory manner for a particularly long period should be given more favourable treatment. In such circumstances, he could claim the right to be appointed to any vacant post which he was capable of filling in a competent manner, whatever might be the qualifications of the other candidates. In the case at issue, the Tribunal noted that the Organization, in its efforts to reassign the complainant, had assessed the merits of the various applicants and thus followed the normal procedure but had not taken account of the general principle deduced above from Staff Rule 109.5. The Tribunal ruled, therefore, that the Organization must pay damages to the complainant equivalent to five years' salary unless it assigned him to a new post within a maximum period of six months.

6. JUDGEMENT NO. 134 (17 MARCH 1969): [20] CANTILLON V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

The Tribunal recorded the fact that the complainant's suit had been withdrawn.

7. JUDGEMENT NO. 135 (3 NOVEMBER 1969): [21] CHADSEY V. UNIVERSAL POSTAL UNION

Standards of integrity and morality required of persons applying for permanent appointments in an international organization—Limits of the Tribunal's authority to review a decision rejecting an application for a permanent appointment

In Judgement No. 122, dated 15 October 1968, [22] the Tribunal had ruled on a decision taken by the Management Committee of the English Language Group of UPU refusing to offer the complainant a permanent position in the Group because of objections expressed by a member State. The Tribunal had quashed the decision and had referred the case back to the Management Committee for a new decision concerning the application for a permanent appointment. The Committee accordingly reviewed the case and concluded that the complainant's irregular situation in regard to the military service laws of his country, the penal proceedings to which he was liable and the reasons he had given for defaulting on his obligations as a citizen were "incompatible with the standards of integrity and morality commonly required of persons applying for permanent appointments in an international

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

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

[22] See *Juridical Yearbook*, 1968, p. 175.

organization". The Committee further stated that owing to the penal proceedings to which the complainant was liable in his country, his mobility would be restricted—a fact which would inevitably reduce the efficiency of the service. The Director-General accordingly informed the complainant on behalf of the Management Committee that his application could not be accepted. The complainant then brought the case before the Tribunal, claiming that the decision by which the Director-General had notified him of the rejection of his application was in violation of Judgement No. 122 of the Tribunal.

The Tribunal noted that it has quashed the original decision of the Management Committee on the ground that it was based solely on the objections of a member State, and therefore tainted by illegality, and that it had referred the case back to the Committee for review of the application for a permanent appointment in the light of all the evidence in the dossier. Consequently, the Committee had in no way infringed Judgement No. 122 of the Tribunal but had on the contrary conformed strictly to the Judgement in question.

With regard to the substance of the Committee's decision, the Tribunal ruled that, having been based on an examination of the circumstances of the case and not on considerations of principle, the decision was not tainted by illegality, that it was not based on incorrect facts, and that, in concluding that the complainant's explanation of his reasons for refusing to do his military service fully justified doubts as to his suitability for permanent appointment as an international civil servant, the Committee had not made an appraisal that was clearly false. The decision in question was therefore not tainted by illegality. Nevertheless, considering that prejudice had been caused to the complainant by the state of uncertainty in which he had found himself as a result of the decision rescinded by Judgement No. 122, the Tribunal granted the complainant damages amounting to 30,000 Swiss francs.

8. Judgement No. 136 (3 November 1969):[23] Goyal v. United Nations Educational, Scientific and Cultural Organization

Limits of the Tribunal's authority to review a decision refusing to renew the contract of a staff member holding a fixed-term appointment on the ground that he had made grave accusations against a colleague—Suspension ordered in violation of the provisions of the Staff Rules and Regulations

The complainant, who held a fixed-term appointment due to expire on 30 June 1968, had written a letter to Headquarters, accusing one of his colleagues at the Regional Centre in New Delhi of fraud and corrupt practices and had repeated the accusations to his supervisor. On the recommendation of the Director of the Centre, the Organization informed the complainant on 18 March 1968 that his contract would not be renewed. On 16 April, the Director of the Centre urged Headquarters to order the complainant's immediate dismissal on the ground that he had spread abroad unfounded allegations; on the following day the Director informed the complainant that he was, on his own authority, placing him on annual leave with orders not to return again to the Centre—a status changed by Headquarters, at the request of the complainant, to that of special leave with pay. In addition, Headquarters instituted an investigation into the allegations of fraud made by the complainant. The Appeals Board, with which an appeal was lodged, recommended that the Director-General should reject the complainant's request for renewal of his appointment and payment of damages.

The Tribunal, before which the case was thereupon brought, noted that the renewal or non-renewal of a contract was within the discretion of the Director-General and was

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

therefore not within the competence of the Tribunal unless it was in irregular form, tainted by illegality or based on incorrect facts, or unless essential facts had not been taken into consideration or conclusions which were clearly false had been drawn from the documents in the dossier. The Organization sought to justify its decision on the ground that the complainant, by making grave accusations against a colleague, had created a situation which made the smooth working of the Centre impossible and that the Director-General, using his discretionary power, had decided that the only way of dealing with the situation was to terminate the complainant's appointment. In the case at issue, however, the accusations were specific and had led the Director-General to decide that an inquiry was required. Any decision concerning the complainant's future employment should therefore have awaited the outcome of the inquiry. Since that procedure had not been followed, the Director-General's decision was tainted by illegality and must be rescinded. The Tribunal therefore decided that the Organization should either renew the complainant's contract as from 30 June 1968 or pay him equitable compensation.

The suspension resulting from the order given to the complainant not to return again to the Centre did not fall within any of the cases in which the Staff Rules and Regulations authorized such a measure, and it was in fact a disciplinary sanction. The Organization had therefore committed a breach of contract by suspending the complainant in a manner that violated the relevant Staff Rules. Since the complainant had continued to receive his salary, he had suffered no material damage, but he was entitled to compensation for the injury done to his reputation and to his prospects of obtaining other employemnt. The Tribunal accordingly decided that the Organization should pay the complainant equitable compensation for the injury in question.

9. JUDGEMENT NO. 137 (3 NOVEMBER 1969): [24] BRACHE v. WORLD HEALTH ORGANIZATION

Termination of the contract of employment of a staff member of a body not having an administrative tribunal—Tribunal is bound to apply the statutory provisions governing its competence

The complainant, who had received a two-year appointment from the Pan American Sanitary Bureau (PASB), was dismissed after six months. He filed a complaint with the Tribunal calling for annulment of the termination of his employment.

The Tribunal noted that PASB was the administrative organ of the Pan American Health Organization (PAHO) and also served as the Regional Office of WHO. It recalled that WHO had transferred its New York staff to PASB, so that PASB personnel included, in addition to that body's own staff members, others who were paid by WHO; the two groups of staff worked side by side in the same premises, and no clear demarcation could be made between the work done by PASB as Regional Office of WHO and that done by it as an organ of PAHO. However, different regulations were applied to the two groups of staff. With respect to the settlement of disputes, in particular, the Executive Board of WHO had decided to make temporary use of the ILO Administrative Tribunal pending arrangements to give effect to article 11.2 of the WHO Staff Regulations, which assigned jurisdiction to the United Nations Administrative Tribunal; the Directing Council of PAHO, on the other hand, had decided that article 11.2 of the PAHO Staff Regulations, which also assigned jurisdiction to the United Nations Administrative Tribunal, would not become operative until the arrangements with that Tribunal had been completed. Article 11.2 of the PAHO Regulations was therefore accompanied by a footnote, the

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

wording of which also appeared in Staff Rule 1040, to the following effect: "The PASB has no administrative tribunal, the Board of Inquiry and Appeal being the final recourse in appeals."

The Tribunal ruled that it lacked jurisdiction. According to the Tribunal, it appeared from the evidence in the dossier that the complainant was an employee of PASB and held a contract under which he was covered by the PAHO Staff Regulations and that PAHO, whatever its links with WHO, was an independent body with its own staff under its sole authority. In the absence of any agreement on that point between the two organizations, PAHO staff members could not enjoy the benefits guaranteed to WHO staff members in the matter of legal remedy. PAHO Staff Rule 1040, cited above, expressly confirmed that fact.

The Tribunal recognized that a regrettable result of its finding that it lacked jurisdiction was to deprive the complainant of any means of seeking a judicial ruling on the possible illegality of the termination of his contract. As a court of limited jurisdiction, however, the Tribunal was bound to apply the statutory provisions governing its competence, and only the organization concerned could determine whether it was desirable to provide its employees with a safeguard enjoyed at the present time by the great majority of international civil servants.

10. Judgement No. 138 (3 November 1969):[25] Pouros v. Food and Agriculture Organization of the United Nations

Conditions for awarding an expatriate employee the education grant referred to in FAO Staff Regulation 301.033, Staff Rule 302.3144 (vi) and Manual provisions 310.212 and 371.513 (vi)—Obligation of the Organization to assess in each case whether the person concerned has had to incur "significant additional expenses" for the education of his child

The complainant had submitted a claim for an education grant for his children, stating that in the country to which he was posted there were no facilities for teaching his children their mother tongue and that as a result he had had to keep a separate household for them and his wife in his home country. The Director-General rejected the claim, and the complainant then lodged an appeal before the Appeals Committee, which, holding that the fact that the complainant had maintained two households did not constitute additional charges for education covered by Manual provision 371.531 (*vi*), recommended that the decision to reject the claim should be maintained.

The case was duly brought before the Tribunal, which observed that under Staff Regulation 301.033 the Director-General was to establish terms and conditions under which education grant would be available to a staff member serving outside his recognized home country and that under Staff Rule 302.3144 (*vi*) education grant was not payable to a staff member whose child was attending a school in the home country and whose spouse did not reside with him at his duty station unless the staff member furnished acceptable proof at the time of the claim that he had incurred, by reason of his expatriation, significant additional expenses for the education of the child. Manual provision 371.513 (*vi*) reflected the above-mentioned Staff Regulation; it provided that the grant would not be payable to an expert who left his spouse and child at the home station to enable the child to complete the scholastic year unless the spouse subsequently joined the expert at the duty station or the expert furnished acceptable proof that he had incurred, by reason of his expatriation, significant additional expenses for the education of the child.

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[25] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Mr. A. T. Markose, Judge.

The Tribunal pointed out that the governing rules on the subject were based on the idea that the grant represented partial compensation for a clearly identifiable additional expense incurred by staff members by reason of their expatriation. The word "additional" was to be read in conjunction with "expatriation". In this particular case of the spouse remaining in the home country, the burden of proof was on the employee to show that the additional expenses had been incurred for the education of his children in the home country and had arisen because of his expatriation. The fact of the spouse's having remained in the home country could be attributable to circumstances wholly unconnected with the education of the children. It was therefore for the Director-General to examine the circumstances of each case in order to satisfy himself that the additional expenses had been significant, had been incurred for the education of the children and had arisen by reason of the expatriation.

In this case, by refusing to look into the complainant's particular circumstances and by affirming that the maintenance of two households could under no circumstances confer the right to an education grant, the Organization had made an error of law which had entailed the non-exercise of its discretionary power. Whereas the mere fact that an expert sent outside his home country continued to maintain a household in that country could not in itself entitle him to the aforesaid allowance, on the other hand that same fact could not rule out grant of the allowance on grounds of principle.

The Tribunal therefore quashed the tainted decision and referred the case back to FAO.

11. Judgement No. 139 (3 November 1969): [26] Chuinard v. European Organization for Nuclear Research

Dismissal of staff member by reason of suppression of post—Conditions governing such a measure

The services of the complainant, who held a fixed-term contract, had been very satisfactory until the beinning of 1964, when differences arose between him and his successive chiefs. At his own request he was provisionally detached to another division, which subsequently declined to retain him. In the meantime, the duties for which he had been responsible in his original division had been taken over by his colleagues and it was decided to suppress the post in accordance with Rule H 1/4 of the Staff Rules (chapter II, section 5.01 (*d*) of the Staff Rules in force since 1 January 1968). Following action taken by the Director-General pursuant to the aforementioned Rule, the complainant was offered a post in a grade which was in fact lower than his own but which he would fill at his previous grade. Having received no reply, the Personnel Division informed the complainant on 1 March 1968 that he was being dismissed because of the suppression of his post. On 26 September 1968, the Director-General, after making, on the recommendation of the CERN Joint Advisory Appeals Board, further efforts to find another post for the complainant and having failed to do so, confirmed the dismissal on grounds of suppression of post. The complainant requested the Tribunal to declare that there was no valid basis for the suppression of his post and to order his reinstatement.

The Tribunal observed that under article II.5.01 (*d*) of the Staff Rules the severance of the employment relationship of a staff member because of suppression of post was subject to two conditions: the suppression of the post which he held, and the impossibility of transferring him to another post. As to the suppression of post, the Tribunal found as follows:

[26] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Mr. A. T. Markose, Judge.

"In order to meet the objection of abuse of authority, the decision must be justified in the interests of the service. Consequently, it must have the lasting effect of reducing the size of the staff, that is to say the expenses of the Organization. It is not necessary, however, that duties of the person holding the post should be abolished. They can be assigned to other staff members already employed, on condition that this is not merely a provisional measure and that it does not at the same time or within a short interval involve the appointment of a new staff member. On the other hand, if the Director-General suppresses a post and then re-establishes it soon after, there is reason to suppose that he was guided by reasons other than the efficiency of the administration, that is to say that he has abused his discretionary powers.

"The suppression of a post is not tainted by such abuse when it is designed to have lasting effect in the interest of the service and at the same time terminates the appointment of a staff member whose services were unsatisfactory. It is true that the desire to terminate the contract of an unsatisfactory staff member is not in itself a ground for suppressing his post; that would mean depriving the staff member concerned of the legal remedies to which he is entitled, or at least, by disguising the true reasons for his termination, would make it difficult for him to defend his interests. If, however, the result of a suppression of post is to effect a permanent saving, it is not irregular simply because it also has the effect of removing an official."

In the opinion of the Tribunal, the file showed that the complainant's differences with his chiefs were the root cause of the suppression of his post. It did not, however, follow that there had been an abuse of discretionary power. On the contrary, the distribution of the complainant's duties among other staff members had proved expedient and it had not been necessary to appoint another staff member. Thus, the suppression of post was based on two grounds, one related to the person of the complainant and the other to the interests of the service. The second ground was sufficient to justify the decision taken in the case.

As to the grant of a new post, the Tribunal observed that the Director-General was bound to inquire of all heads of service, without exception, about immediate or foreseeable vacancies and to make inquiries about all posts which the incumbent of the suppressed post could fill satisfactorily either within his own grade or, subject to the agreement of the person concerned, at a lower grade. Finally, a staff member who had worked for many years for the Organization to its full satisfaction was absolutely entitled to fill a post suitable to his abilities in preference to any other candidate. The Tribunal found that in the present case the Director-General had fulfilled his obligations. In particular, in taking once again, on the recommendation of the Joint Advisory Appeals Board, the steps which he had already taken several months before, he had taken account of the complainant's long period of service. He had also offered the complainant a post at a lower grade and on conditions which, in view of the criticisms levelled against the complainant's behaviour, must be regarded as reasonable. The Tribunal therefore, dismissed the complaint.

12. Judgement No. 140 (3 November 1969):[27] Kraicsovits v. Food and Agriculture Organization of the United Nations

Dismissal on expiry of probationary period under FAO Manual provision 314.211—Limits on the Tribunal's power to review decisions lying within the Director-General's discretion

The complainant had been engaged to work on an FAO/Special Fund project under a thirty-six-month contract with a probationary period of twelve months. Three months before the expiry of the probationary period, the Project Manager, the United Nations

[27] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Mr. A. T. Markose, Judge.

Resident Representative and the Project Supervisor sent the Organization communications indicating that the complainant lacked the necessary practical experience to carry out his duties satisfactorily. The Organization then informed the complainant that his services would be terminated on the expiry of his probationary period in accordance with FAO Manual provision 314.211. When an appeal was lodged with the Appeals Committee, the latter recommended that the decision should be confirmed. The complainant then requested the Tribunal to quash the aforementioned decision, which, according to him, had resulted from animosity towards him on the part of his chief and was tainted by error of law because it was based on an incorrect interpretation of the facts.

The Tribunal dismissed the complaint. It observed that decisions taken under Manual provision 314.211 lay within the Director-General's discretion and could therefore be interfered with by the Tribunal only if they were tainted by a procedural irregularity or by illegality, if they were based on incorrect facts or disregarded essential facts, or if conclusions which were clearly false were drawn from the dossier. In the case at issue, the Director-General had neither misinterpreted the facts nor drawn false conclusions from them, since both the Resident Representative and the Project Supervisor had made unfavourable personal evaluations of the complainant which, taken together with those of the Project Manager, justified termination of the appointment.

13. Judgement No. 141 (3 November 1969):[28] Miele v. European Organization for Nuclear Research (Interlocutory Order)

Determining degree of invalidity attributable to an accident

The complainant was engaged by CERN in 1959. While he was carrying a lathe mandrel, it slipped from between his hands. He had to make a violent effort to catch it and felt a sharp pain in his back. A succession of doctors were called in to examine him; some assessed his work disability resulting from the accident at 100 per cent, others at 30 per cent, and yet others at 20 per cent. On the recommendation of the Medical Adviser of the CERN Staff Insurance Scheme, the Management Board decided to set the extent of the permanent partial invalidity at 20 per cent and to pay the complainant a lump sum representing the actuarial value of a 10 per cent invalidity pension. The complainant then wrote to the Management Board to protest against the charges of simulation in the examination report on which it had based its decisions and requested arbitration in accordance with the Scheme Regulations. On 10 May 1968 the arbitrators made their award, under which payment of a 20 per cent pension and a lump sum representing the actuarial value of a 10 per cent pension was confirmed.

The complainant then contested the award before the Tribunal on the grounds that under article 23 (4) of the Regulations of the CERN Staff Insurance Scheme any member who is the victim of an accident at work is automatically entitled, together with his spouse and children, to full compensation for his present invalidity, whatever the extent to which it is attributable either to the accident itself or to psycho-pathological sequelae. Under Swiss law, account must be taken of such sequelae in calculating a pension and he was justified in invoking that law as a supplementary source because of the vagueness of the Scheme Regulations and, in particular, because the Scheme was reinsured with a private Swiss insurance company.

In its reply the Organization did not agree that what was at issue was a work accident. The poor physical and mental condition of the complainant could only be explained, in its view, by a debility existing prior to the accident. As to the legal position, although

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it waived its objections to the Tribunal's lack of competence (the Scheme Regulations of 1959 did not confer jurisdiction), the Organization could not agree that the complainant should variously invoke the Regulations of 1959, 1962 and 1967 to suit his purpose. If Swiss law was relevant as a supplementary source, it was the provisions relating to compulsory insurance rather than private insurance which applied. According to Swiss case law, the calculation of an invalidity pension must discount the extent of invalidity attributable to a psycho-pathological condition. The Organization therefore requested the Tribunal to quash the arbitrators' decision and to set the invalidity pension at 10 per cent.

In his rejoinder the complainant pointed out that he had been admitted to the Scheme without limitations, so that the existence of a debility prior to the accident could not be invoked. In its reply the Organization stated that a psychological predisposition could not have been detected at a medical examination which the complainant had undergone on joining CERN. Furthermore, by failing to use mechanical lifting equipment the complainant had committed a serious fault which, since the insurance scheme in question was similar to compulsory Swiss insurance, called for a reduction in invalidity benefits under Swiss federal law.

The Tribunal ordered that an examination should be carried out by two medical experts for the purpose of (*a*) determining the degree of invalidity; (*b*) determining the extent to which the invalidity thus assessed could be regarded as the direct consequence of the accident; (*c*) if necessary, determining the extent to which that invalidity could be regarded as the indirect consequence of the accident; (*d*) determining the nature of the disorders identifiable as the indirect consequence of the accident, and stating the extent to which those disorders could be regarded as being attributable to factors independent of the accident. The Tribunal also decided that the Vice-President would appoint the experts and determine the procedure for the examination, that the experts would draw up their report after consulting the dossier of the case and examining the complainant, and that the costs of the examination would be advanced by the Organization.

14. Judgement No. 142 (3 November 1969):[29] Silow v. International Atomic Energy Agency

Competence of the Tribunal to hear a complaint alleging non-observance of the terms of appointment of a staff member—Authority of the Director-General to transfer an official on the basis of Staff Regulation 1.02

The complainant, a staff member of FAO, became in 1964 Deputy Director of the Joint FAO/IAEA Division for Atomic Energy in Agriculture, which had just been established within the Agency. In January 1966, without obtaining clearance from his superiors, he sent the Directors-General of FAO and IAEA a memorandum setting out serious criticisms of the Joint Division's activities; furthermore, he complained to the Director-General of the Agency that he had been subjected to professional and personal humiliation. He was then relieved of his duties as Deputy Director and appointed to another post which, according to statements made by him, he accepted after receiving an oral assurance that the transfer would have no adverse effect on his career. Some months later, a group of consultants appointed to review the Joint Division's activities submitted a report which stated that they had reviewed "criticisms of the Joint Division's programme made by a senior member of the IAEA staff" and considered them unjustified. The complainant then requested either the withdrawal of the report or the attachment to it of documents setting out his views. As that request was not complied with, he requested the Tribunal: (*a*) to order withdrawal

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of the consultants' report; (*b*) to compensate him for the professional damage he had suffered through its distribution; and (*c*) to compensate him for the Director-General's breach of the agreement made with him at the time of his transfer, which breach, in view of the oral understanding reached with the Director-General at that time, was equivalent to non-observance of the terms of his appointment.

The Tribunal declared that it was competent, under article II, paragraph 5 of its Statute, to hear the plea for withdrawal of the consultants' report, since the complainant alleged that the publication of that report had damaged his career, and complained of infringement of his rights under his contract of service and under the staff regulations.

As to the legality of the refusal to withdraw the report, the Tribunal pointed out that the Directors-General of IAEA and FAO had merely exercised their general powers in obtaining the advice of consultants on a particular programme and in distributing the report of the consultants. Since the latter were not called upon to judge the complainant, they were therefore under no obligation to interview him and their report, which did not even name him, could not cast any slur on his professional reputation. The decision was thus not tainted with illegality and gave no entitlement to indemnity.

Finally, as to the appeal against the decision to transfer the complainant, the Tribunal noted that in transferring him the Director-General had exercised the authority conferred upon him by Staff Regulation 1.02. The file showed that the decision was motivated by differences of opinion between the complainant and his superiors and by his circulation of criticisms of the activities of IAEA and FAO. That motive was such as to furnish legal grounds for the decision made under staff regulation 1.02. Accordingly, the complainant was not entitled to request damages for his transfer.

15. JUDGEMENT NO. 143 (3 NOVEMBER 1969):[30] BOULMIER AND MORIZOT V. INTERNATIONAL LABOUR ORGANISATION

The Tribunal recorded the withdrawal of suit by the complainants.

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[30] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Mr. A. T. Markose, Judge.