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UNITED NATIONS JURIDICAL YEARBOOK

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Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter V. Decisions of administrative tribunals of the United Nations and related intergovernmental organizations

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

Chapter V

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

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

1. JUDGEMENT NO. 208 (21 APRIL 1976):[2] BROADHURST *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Request of a former technical assistance expert for reimbursement of repatriation travel expenses incurred after he had resigned for health reasons before completing one year of service—Staff rule 207.24

The applicant, having resigned before completing one year of service, had been refused, on the basis of staff rule 207.24 (*b*), reimbursement of the travel and removal expenses he had incurred on resignation. He requested rescission of the decision in question, stating that his resignation had been tendered for compelling medical reasons and invoking staff rule 207.24 (*e*), under which "the Secretary-General may authorize exceptions to (*b*) ... above if he is satisfied that there are compelling reasons for so doing".

The Tribunal noted that, contrary to the affirmations of the respondent, the applicant had expressly stated that he was resigning for health reasons. It also noted that in the correspondence exchanged with the applicant at the time of his resignation, the respondent had recognized that the applicant would be entitled to reimbursement of his travel costs if medical grounds for his departure were established, in other words, that his ill health, if established, would constitute a "compelling reason" for the Secretary-General's exercising his authority to make an exception to paragraph (*b*) of staff rule 207.24 under paragraph (*e*) of that rule.

Noting that the applicant had established medical grounds for his departure from the duty station, the Tribunal rescinded the contested decision and ordered reimburse-

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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 1976, 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 and the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International 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 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; Mme. P. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President; Mr. F. A. Forteza, Alternate Member.

ment to the applicant of his travel and removal expenses according to the Staff Rules.

2. JUDGEMENT No. 209 (23 APRIL 1976):[3] CORRADO *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Request of a former staff member for payment of compensation for losses resulting from a burglary at his personal domicile—Paragraph 3 (a) *(ii) of administrative instruction ST/AI/149—Condition relating to the existence of special hazards—Compensation for damage resulting from the theft of professional documents from a United Nations warehouse—Obligation of the Claims Board to assess the damage completely*

The applicant had been the victim of a burglary at his residence and had submitted to the Claims Board a first claim for compensation for the loss suffered in that connexion, which had been rejected because it represented a simple case of burglary which was not compensable. Subsequently, he had been the victim of another theft, committed this time in a United Nations warehouse, which had resulted in the loss of personal effects and a collection of professional documents. The Claims Board, to which a second claim for compensation was submitted, had found that, through error on the part of the respondent, the effects had not been insured and for that reason had considered that the claim fell within its competence. Noting that the applicant claimed $9,200 for 14 technical studies (completed by him in 920 hours at $10 per hour) and $275 for three catalogues, two test certificates and an original drawing, the Board had considered that within its frame of reference it could not recommend compensation for the time spent in the production of the studies and had recommended an award of $50 towards the intrinsic value of the catalogues. An application requesting rescission of the decisions taken on the basis of the recommendations of the Claims Board was submitted to the Tribunal, which noted, in connexion with the first compensation claim, that the Rules did not provide for any obligation on the part of the United Nations to obtain insurance for personal effects at the duty station. It also noted that under paragraph 3 (*a*) (ii) of administrative instruction ST/AI/149, loss of personal effects was deemed to be directly attributable to the performance of official duties when such loss "was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area involving special hazards and occurred as a result of such hazards".

The Tribunal held that the burglary could not be considered, of itself, as a "special hazard" of a given area, that in order for it to assume the character specified in paragraph 3 (*a*) (ii) of the administrative instruction very special circumstances would be required, and that it had not been proved that at the time of the events in dispute that condition had actually been fulfilled. The Tribunal therefore concluded that the first compensation claim could not be sustained.

With regard to the second compensation claim, the Tribunal noted that the claims for compensation for losses resulting from a burglary and from a theft from a United Nations warehouse were based on staff rule 206.6, which states:

> "Project personnel shall be entitled, within the limits and under the terms and conditions established by the Secretary-General, to reasonable compensation in the event of loss or damage to their personal effects, determined to be directly attributable to the performance of official duties on behalf of the United Nations."

The Tribunal noted that the Claims Board had acknowledged that the applicant should receive compensation for his losses and had, among other things, recommended

[3] Mme. P. Bastid, Vice-President, presiding; Mr. F. T. P. Plimpton, Vice-President; Mr. F. A. Forteza, Member.

an award of $50 towards the intrinsic value of the catalogues, etc., thereby acknowledging that the loss of the working documents fell within the category of compensable damages. The Board had, however, refused to take a decision concerning the compensation due; it stated that "within its frame of reference it cannot recommend compensation for time spent in the production of the studies" and hence referred solely to the method of evaluating the damage proposed by the applicant. The Tribunal considered that the Board should either have proposed another method of evaluation or called for an expert valuation, since no provision in the applicable administrative instruction limited the Board's competence to propose the bases for the settlement of the matter, and that it was even obligated, under paragraph 14 of that administrative instruction, to forward a recommendation in the event that compensation was not possible according to the terms of the administrative instruction itself.

Considering that the amount of the damages had not been assessed completely as a result of an error of law committed by the Board, the Tribunal itself determined the obligation still to be discharged by the respondent. Noting that in agreeing to have his documents transported to his duty station the applicant had implicitly agreed that the maximum amount of the insurance compensation which could be awarded to him in the event of loss in transit was $2,500, as provided in rule 207.21 (*b*), the Tribunal set the compensation for all the property stolen from the United Nations warehouse at $2,500.

3. JUDGEMENT NO. 210 (26 APRIL 1976):[4] REID *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Dismissal for unsatisfactory conduct of a staff member holding a permanent appointment—Discretionary power of the Secretary-General to determine and define what constitutes unsatisfactory conduct—Advisory nature of the reports of the Joint Disciplinary Committee and the Joint Appeals Board—Competence of the Tribunal to review the respondent's decision if such decision is based on a mistake of facts or is arbitrary or motivated by prejudice or by other extraneous considerations—Lack of competence of the Tribunal to give binding force to a recommendation of the Joint Appeals Board to treat the separation of the applicant as an agreed termination

The applicant had been the subject of a decision of dismissal for unsatisfactory conduct in accordance with staff regulation 10.2 and staff rule 110.3 (*b*). Basing his argument on the fact that the Joint Disciplinary Committee and the Joint Appeals Board had both considered that dismissal was too severe a measure, the applicant contended that the decision of dismissal constituted a "wrongful act" by the Secretary-General.

The Tribunal observed that staff rule 110.3 (*b*) endowed the Secretary-General with wide discretionary power to determine and define what constitutes unsatisfactory conduct, as recognized by the Tribunal in its Judgement No. 123,[5] where it is stated:

> "... that the Respondent must necessarily have wide discretionary powers in determining in a specific case whether there has been misconduct."

It further observed that the legislative history of the provisions relating to its jurisdiction fully supported the view cited above and quoted the following extract from the report of the Secretary-General to the General Assembly at its fourth session on the establishment of an Administrative Tribunal (document A/986):

> "... there are three areas of decision in which the Secretary-General's judgement should be final—namely, a decision as to whether a particular staff member's

[4] Mr. R. Venkataraman, President; Mme. P. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President; Mr. F. A. Forteza, Alternate Member.

[5] See *Juridical Yearbook*, 1968, p. 171.

services are satisfactory or unsatisfactory, the decision of fact in disciplinary cases where non-observance of the terms of the staff member's appointment cannot reasonably be alleged, and decisions of fact in cases of serious misconduct. The authority of the Secretary-General to decide the facts in these three areas is made clear in provisional staff regulations 19 and 21. His responsibility under the Charter as Chief Administrative Officer of the Organization can be satisfactorily discharged only if his judgement on the facts in the cases indicated above is considered final. This responsibility could not be effectively discharged if an independent Administrative Tribunal were given authority to reconsider the facts in such cases, in the absence of any reasonable allegation that the terms of an appointment had been violated, and to reverse the decision of the Secretary-General."

The Tribunal also recalled that it had, in its jurisprudence, established its competence to review the decisions of the Secretary-General in disciplinary matters under certain conditions. In that connexion, it referred to cases of non-observance of the terms of appointment of staff members, and cases involving failure to accord due process to the affected staff member before reaching a decision on disciplinary matters (Judgement No. 183[6]).

The Tribunal held, however, that in the case in question the contested decision of the respondent did not suffer either from non-observance of pertinent staff regulations or rules or from denial of due process.

With regard to the applicant's plea that the rejection of the recommendations of the Joint Disciplinary Committee and of the Joint Appeals Board was wrongful, the Tribunal observed that the reports of the bodies in question were merely advisory in character. It did, however, declare itself competent to review the respondent's decision if such decision was based on a mistake of facts or was arbitrary or was motivated by prejudice or by other extraneous considerations.

On a review of the evidence and the circumstances of the case, the Tribunal found that the termination decision was not arbitrary and that the Secretary-General, in deciding not to accept the recommendation of the Joint Disciplinary Committee, was acting within the scope of his authority. It therefore rejected the applicant's plea for reinstatement.

With regard to the fact that the Joint Appeals Board, considering the termination decision too harsh, had recommended the rescission of that decision and the assimilation of the applicant's situation to one of an agreed termination, the Tribunal held that the acceptance or rejection of such a recommendation involved the exercise of the discretionary power vested in the Secretary-General and that, in the absence of legal obligations on the part of the respondent, it had no competence to give binding force to such a recommendation.

4. JUDGEMENT NO. 211 (5 OCTOBER 1976):[7] HAMO *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Request for the reopening of a case by the Advisory Board on Compensation Claims—Discretionary power of the Secretary-General in the case—Obligation of the Secretary-General not to exercise that power unreasonably or arbitrarily—Limits of the Tribunal's power to assess conclusions based on medical opinion

In 1965, the applicant had suffered a health accident while on duty. In 1968 and again in 1971 he suffered further disturbances, linked, according to him, to the 1965

[6] See *Juridical Yearbook*, 1974, p. 111.

[7] Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Vice-President; Mr. F. A. Forteza, Member; Sir Roger Stevens, Alternate Member.

accident, and he submitted a claim for compensation under article 11 of Appendix D to the Staff Rules. In accordance with the recommendation of the Advisory Board on Compensation Claims, the Secretary-General denied that claim on the ground that no causal connexion had been established to link the applicant's medical condition and the incident of 1965. The applicant, having requested reconsideration of that decision, a medical board was convened under article 17 (*b*) of Appendix D to the Staff Rules. Having studied that board's report, the Advisory Board recommended that the Secretary-General's decision should be maintained. The applicant then requested that his case be reopened under article 9 of Appendix D to the Staff Rules. That request was denied by the Secretary-General on the recommendation of the Advisory Board.

The Tribunal, to which the case was submitted, noted that the applicant requested the reopening of his case by the Secretary-General and payment of compensation under article 11 of Appendix D to the Staff Rules on the plea that the initial inquiry and reasoning of the Advisory Board had been inadequate and unfair to him, that the Medical Board's terms of reference had been prejudiced and contrary to the purpose and intent of Appendix D, and that, when studying the report of the Medical Board, the Advisory Board had ignored the unanimous conclusions of that report.

The Tribunal observed that under article 9 of Appendix D to the Staff Rules it was within the discretion of the Secretary-General to reopen cases relating to compensation, and recalled that the Tribunal had always held that such discretion must not be exercised unreasonably or arbitrarily.

Considering that it was not within its competence to make an assessment of the medical opinion, the Tribunal confined its examination to the question whether the conclusions reached were vitiated by lack of due process.

Concerning the applicant's allegation that the terms of reference of the Medical Board had not given the latter the necessary freedom to conduct its inquiry, the Tribunal concluded that in the absence of any complaint by the medical expert selected by the applicant, the questions framed were unobjectionable. Concerning the applicant's assertion that the Medical Board had been asked to say whether the 1965 accident had been "the direct and the essential cause" of the subsequent disturbances, whereas it should have taken into consideration the criterion of whether the illness was "attributable" to the performance of official duties, the Tribunal considered that the distinction was very thin and that in any event the medical experts, who know what they were called upon to decide in the case, had not regarded it as a matter of substance.

Concerning the applicant's argument based on the unanimous view of the Medical Board that he was "seriously disabled at the present time, suffering from a variety of complaints which may be due to his emotional response to the traumatic experience in 1965, from which he did not recover", the Tribunal noted that he had been awarded a disability benefit under the Pension Fund Regulations.

The Tribunal therefore rejected the application.

5. JUDGEMENT NO. 212 (11 OCTOBER 1976):[8] AYAH *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Request for rescission of a decision refusing the award of a UNITAR training fellowship—The applicant could not reasonably think that the respondent was legally bound by information given orally by an official of that body—Lack of competence of the Tribunal to consider the application

[8] Mme. P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Mr. E. Ustor, Member.

The applicant, having failed in his efforts to obtain a training fellowship at the United Nations Institute for Training and Research (UNITAR), and considering that UNITAR had failed to keep a promise of appointment, submitted to the Tribunal an application for compensation for failure to perform a contractual obligation on the grounds, *inter alia*, that a promise made in good faith should be respected and that the staff member responsible had demonstrated strong racial resentment and bigotry.

The Tribunal noted that there was disagreement between the parties concerning its competence.

It recalled the terms of article 2, paragraphs 1 and 2, of its Statute, which provide:

> "1. The Tribunal shall be 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 words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.
>
> "2. 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;
>
> "(*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."

The Tribunal considered that the applicant could not interpret the information given him orally in the course of his dealings with UNITAR as entitling him to an internship with UNITAR and even less as entitling him to employment with the United Nations. It noted in that connexion that the applicant himself had written, in a letter addressed to UNITAR: "I am aware that participation in the programme does not oblige the United Nations to provide employment for any of the internees involved."

The Tribunal concluded that the application did not fulfil the requirements of article 2, paragraph 1, of its Statute and that the applicant was not "a staff member of the Secretariat of the United Nations" nor "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" in the terms of paragraph 2.

The Tribunal also noted that the only provision whose non-observance the applicant invoked was staff regulation 4.3, which provides:

> "In accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex or religion. So far as is practicable, selection shall be made on a competitive basis."

While attaching great importance to that regulation, the Tribunal considered that UNITAR had convincingly refuted the allegations of the applicant, who claimed to have been the victim of racial prejudice.

For the foregoing reasons, the Tribunal declared itself not competent to consider the application.

6. JUDGEMENT NO. 213 (14 OCTOBER 1976):[9] JOHNSON *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Termination of a former staff member holding a probationary contract after the end of the third year of probation—Characteristics of the probationary contract: its duration, its purpose, and the procedure to be followed in terminating it

The applicant had completed 19 months of probation in an UNCTAD unit, at the end of which her performance had been deemed very impressive. During her second year of probation, her supervisor recommended that her probationary period should be extended for one year, because of the reorientation of the work and the change of supervisors in the unit in question. As a result of reticence on the part of the Office of Personnel Services, there was some delay in submitting that recommendation to the Appointment and Promotion Committee and its consideration by the Committee was further delayed by the fact that the file contained no periodic report covering the end of the probationary period. The report finally established for that period described the applicant as "a staff member whose usefulness to [her unit] has been compromised by her relationship with her supervisor". As a result of the aforementioned delays, the Appointment and Promotion Committee pronounced itself on the recommendation for extension of the probationary period after the additional year's probation had expired. While deploring UNCTAD's inaction, it had no alternative but to approve the recommendation retroactively. The Committee was also called upon to consider the contractual status of the applicant in the light of UNCTAD's opinion that she had failed to meet the requirements laid down in staff rule 104.13 (*a*) (i): on that point, the Committee concluded that as a result of the aforementioned reorientation of the work, the usefulness of the applicant's services had been reduced to its minimum and therefore recommended that she be separated in accordance with staff rule 104.12 (*a*) for having failed to meet the standards laid down in staff rule 104.13 (*a*) (i). The termination decision was taken some six months after the Appointment and Promotion Committee had formulated its recommendation. In the meantime, the applicant had been assigned to another unit and although her performance during the 11 months spent in her new post had not been evaluated at the time when the termination decision was taken, it was subsequently evaluated at the applicant's request in a periodic report; that report rated the applicant as "an efficient staff member giving complete satisfaction".

The Tribunal, having received an application requesting rescission of the termination decision, observed that the case concerned the legal consequences of the termination of a staff member holding a probationary contract. It therefore considered first of all how the provisions of the Staff Regulations and Rules relating to the probationary contract had been applied in the case. It emphasized that the probationary contract derived its specific nature from three characteristics, namely its duration, its purpose and the procedure to be followed in taking the decision concerning the granting of a permanent contract.

With regard to duration, the Tribunal noted that according to the Staff Regulations and Rules, the normal duration of a probationary period was two years and could in exceptional circumstances be reduced or extended for not more than one additional year. The applicant, who held a probationary contract, had been employed for three years and seven months. The file showed that the respondent, while regarding the first 19 months of the probationary period as satisfactory, had deemed it desirable to extend that period, not so much to test the professional skills of the applicant

[9] Mr. R. Venkataraman, President; Mme. P. Bastid, Vice-President; Mr. E. Ustor, Member.

for an additional year as to test her adaptation to the requirements of a new job resulting from the reorientation of the work within her unit, everything taking place as though a new probationary period were beginning. Furthermore, as indicated above, the Appointment and Promotion Committee had had no alternative but to approve the extension of the probationary period retroactively. The Tribunal noted that that irregular procedure had originated in the unusual conduct of the respondent and more particularly in the failure to prepare a periodic report at the end of the initial two-year period. It also noted that the *de facto* extension had not in fact resulted in an additional probationary period, since it had been considered that the 11 months of service by the applicant in her new assignment could not be taken into account in evaluating her skills with a view to the granting of a permanent contract. In conclusion, the initial 19 months of probation completed before the reorientation of the work of the the unit had not been taken into consideration, and neither had the last five months of the three-year probationary period, so that the applicant had been deprived of the opportunity of demonstrating during the period provided for in the Staff Regulations and Rules her suitability as an international civil servant.

With regard to the purpose of the probationary contract, the Tribunal emphasized that that contract concerned specified functions and that those were the functions for which the holder of the probationary contract must prove his suitability. The periodic report covering the first 19 months of the applicant's employment showed that she had not only demonstrated her suitability for performing the duties for which she had been recruited but that she had also given evidence of her adaptability at a time when a reorganization of her unit was beginning. That reorganization had, in the opinion of the respondent as shown clearly by the file, faced the applicant with new occupational requirements. Nevertheless, the new job description, which differed considerably from the original job description, was not communicated to the applicant at the time. It was therefore understandable that the applicant, faced with tasks which differed from those which she had up to that time performed satisfactorily, should have manifested reservations and even resentment. In any event, the Tribunal added, the probationary framework itself had changed and that change, which had occurred in the twentieth month of the probationary period, had radically affected, by reason of the action of the respondent, the very scope of the commitment made by him. Furthermore, the probationary objective had been nullified during the final five months of the third year of probation as a result of the applicant's reassignment, her performance in that new post not having been taken into consideration in evaluating her suitability because she had not been working within the framework of the post for which she had been recruited.

With regard to the procedure followed for preparing the decision at the end of the probationary period, the Tribunal noted that the respondent had set in motion the proceedings provided for in the Staff Rules for the termination of probationary appointments, proceedings which had resulted in the recommendation of the Appointment and Promotion Committee mentioned in the termination decision. The Tribunal considered that that action made evident the respondent's belief that the applicant's appointment could not be terminated on the basis of staff regulation 9.1 (*c*) alone and that the applicant was entitled to the guarantees provided for at the expiration of a probationary period. It recalled in that connexion that in its Judgement No. 198[10] concerning the holder of a probationary contract whose appointment had been terminated long after the expiry of the probationary period, it had held that the applicant, having completed his probationary period, was entitled to due process for the assessment of his suitability for a permanent appointment. It concluded, referring

[10] See *Juridical Yearbook*, 1975, p. 122.

to its Judgement No. 138,[11] that the respondent had to comply with the provisions of administrative instruction ST/AI/115.

The Tribunal therefore examined the circumstances in which the termination decision had been taken, and concluded that the respondent had failed in his obligations towards the holder of a probationary appointment.

The applicant also requested that a periodic report and various administrative documents, which according to her were vitiated by prejudice, should be declared void of any legal validity. On the basis of the file and the content of those documents, the Tribunal, without ruling on the charge of prejudice, noted that at no time did it appear that sufficient attention had been paid by the respondent to the causes of a situation which he merely noted, namely a lack of co-operation between the applicant and her chief of service. The Tribunal therefore felt that the respondent's lack of vigilance had allowed a situation to develop in which the applicant might have felt in good faith that she was the victim of prejudice.

In conclusion, the Tribunal decided that the respondent had not carried out the obligations which he had assumed in granting a probationary appointment to the applicant.

Considering that the applicant had been denied the opportunity of obtaining permanent employment with the United Nations by reason of the respondent's failure to carry out the obligations incumbent upon him in that regard, the Tribunal, on the basis of article 9.1 of its Statute, decided to award the applicant compensation in lieu of performance. On the basis of the precedents established in its Judgements Nos. 132[12] and 142,[13] the Tribunal awarded the applicant compensation equal to two years' net base salary.

7. Judgement No. 214 (14 October 1976):[14] El-Naggar *v.* Secretary-General of the United Nations

Measures taken by the respondent to give effect to an earlier judgement—Consideration by the Tribunal of the question whether in taking those measures, the respondent fulfilled the obligations imposed on him by that judgement

By its Judgement No. 205,[15] the Tribunal had ordered the respondent to make a fair and objective attempt to place the applicant in a suitable position within three months from the date of the judgement and, should he exercise his option under article 9, paragraph 1, of the Statute of the Tribunal, to pay the applicant compensation equal to six months' net base salary.

The applicant, considering that the respondent had failed to give effect to the Tribunal's order to make a fair and objective attempt to place him in a suitable position within three months, submitted to the Tribunal an application in which he requested the Tribunal to order the payment of compensation equal to six months' net base salary.

The Tribunal noted that the respondent had accepted the obligation to make a fair and objective attempt to place the applicant in a suitable position within three months and had elected not to exercise the option to pay compensation in lieu of further action being taken in the case.

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[11] See *Juridical Yearbook*, 1970, p. 141.
[12] See *Juridical Yearbook*, 1969, p. 189.
[13] See *Juridical Yearbook*, 1971, p. 152.
[14] Mr. R. Venkataraman, President; Mme. P. Bastid, Vice-President; Sir Roger Stevens, Member; Mr. E. Ustor, Member.
[15] See *Juridical Yearbook*, 1975, p. 133.

Observing that the respondent had offered the applicant several technical assistance posts under the 200 series of the Staff Rules and that the applicant had rejected them because they were not at a high enough level, the Tribunal considered whether the offer of those posts constituted compliance with Judgement No. 205 and whether by refusing to consider those offers the applicant had forfeited his claims against the respondent. It noted that, contrary to what had occurred in connexion with the first dispute between the applicant and the respondent, the offers of technical assistance posts made to the applicant further to Judgement No. 205 had been accompanied by a job description and an indication of the salary involved.

With regard to the applicant's contention that the technical assistance posts were inferior to his previous post, the Tribunal recalled that the ground on which it had decided in its Judgement No. 205 that the earlier offers of technical assistance posts did not conclude the applicant's rights had been the absence of details regarding the rank and emoluments of those posts; it had not evaluated the relative hierarchy of technical assistance posts nor concluded that the applicant's rejection of those offers had been justified on the ground that the technical assistance posts were inferior to his previous post.

With regard to the posts under the 100 series of the Staff Rules which had been offered to the applicant but which he finally had not obtained, the Tribunal considered that nothing in the file justified the conclusion that the respondent had acted in bad faith.

The Tribunal held that in making the offer of three technical assistance posts with salaries equal to that which the applicant had received in his former post, the respondent had fulfilled the obligations imposed on him by Judgement No. 205, and therefore rejected the application.

8. JUDGEMENT NO. 215 (15 OCTOBER 1976):[16] OGLEY *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Request of a former staff member for payment of compensation for injury imputable to the conduct of a UNDP Representative—Competence of the Tribunal to hear a case in which the applicant alleges the breach of his implicit terms of employment—Charges of defamation, professional injury and personal injury—Fixing of the compensation to be paid to the applicant for the personal injury sustained by him.

The applicant, serving as adviser to the Government of Sierra Leone within the framework of an UNCTAD technical co-operation programme, had completed several periods of employment under a series of fixed-term contracts, the last of which was due to expire on 24 November 1973. From August 1973 onwards the question of the extension of that contract for a further period of six months gave rise to a whole series of actions and exchanges of correspondence which led the UNDP Resident Representative to intervene with a view to ensuring that the contract should not be extended beyond 24 November 1973. An UNCTAD official was then sent to Sierra Leone to investigate the matter and prepared a report criticizing the attitude of the Resident Representative.

On 13 November 1973, UNDP agreed to a three-month extension of the project on which the applicant was working, but the latter's situation remained confused. The applicant was about to be withdrawn to Geneva to write his terminal report within the three-month extension period when on 29 January 1974 the Sierra Leone authorities requested a six-month extension, a request which was duly granted, and

[16] Mr. R. Venkataraman, President; Mme. P. Bastid, Vice-President; Sir Roger Stevens, Member; Mr. F. A. Forteza, Alternate Member.

the applicant remained employed until the end of his six-month contract. In the meantime, he had requested that disciplinary measures be taken against the Resident Representative and the Assistant Resident Representative but was subsequently informed that UNDP, after a thorough investigation, had found no basis for disciplinary action against the two staff members concerned.

The Tribunal, to which the case was submitted, considered whether the applicant had suffered any injury to his reputation, professional injury or other damages as a result of actions or procedures for which the respondent could be held responsible.

After examining the documents relating to the case, the Tribunal concluded that the charge of defamation could not be sustained. With regard to professional injury, the Tribunal felt that the Resident Representative, having reached the conclusion that the extension of the applicant's contract was not in the interest of the United Nations, was certainly entitled to express that opinion to UNDP and UNCTAD so that they could reach an agreed solution. The Tribunal considered, however, that the Resident Representative seemed rather to have set out to try to change the decision of the Sierra Leone authorities. In so doing, he appeared to have been acting at variance with the views of UNCTAD, thereby failing to fulfil one of his obligations, namely that of acting as a field representative of UNCTAD. The Tribunal noted other failures by the Resident Representative to carry out instructions and concluded that his conduct had been full of irregularities and improprieties and that he had not observed the requisite fair standards of behaviour.

Noting that on the occasion of the investigation carried out by UNDP, the respondent had considered the Resident Representative's conduct as "legitimate" and "normal to the negotiating process" and as having been "clearly devoid of personal or extraneous motives", the Tribunal considered that the respondent acknowledged that the Resident Representative had acted on behalf of the Organization and that the latter must be held responsible for the irregular and improper actions taken in its name. With regard to the question whether the irregularities and improprieties concerned had caused the applicant material injury, the Tribunal came to a negative conclusion. On the other hand, with regard to the charge of personal injury, it considered that the applicant's claim that he had suffered humiliation and stress was well founded and that instead of receiving from the Resident Representatives the confidence and support to which he was entitled, he had suffered real and acute harassments and embarrassments as a result of the unjustifiable conduct of that Representative.

The Tribunal, referring to its Judgement No. 92,[17] in which it had allowed the applicant compensation for the uncertainties to which he had been subjected for a substantial period of time, decided in the present case to award compensation of $1,000.

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[17] See *Juridical Yearbook*, 1964, p. 205.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[18, 19]

1. JUDGEMENT NO. 265 (12 APRIL 1976): PESSUS *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Complaint impugning a decision cancelling payment of a bonus to a staff member The Director-General is empowered to change, in the interest of efficiency, the duties assigned to his subordinates—Limits of the Tribunal's power of review with regard to decisions taken in exercise of that power.

The complainant had been required to do copy-typing work and had therefore been paid a bonus provided for in the Rules. Subsequently his duties were changed, he was no longer required to do copy-typing and the aforementioned bonus was cancelled.

The Tribunal, in considering the case, recalled that the Director-General of the Organization, by virtue of the general authority conferred on him as such and in the interests of efficiency, was empowered to change the duties assigned to his subordinates provided that that change was not tainted with any flaw which entitled the Tribunal to interfere. The Tribunal found that in the case in question no such flaw had been alleged and it consequently dismissed the complaint.

2. JUDGEMENT NO. 266 (12 APRIL 1976): ANCIAUX *v.* EUROPEAN SOUTHERN OBSERVATORY (ESO)

Complaint impugning a decision not to renew a fixed-term contract—Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned the Director-General's decision not to renew his fixed-term contract on the date of expiry.

The Tribunal observed that the holder of a fixed-term contract was in no way entitled to renewal of his contract, that that was a decision which fell within the discretionary authority of the head of the Organization alone and that the Tribunal could not interfere in that connexion unless the decision was tainted by very specific

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[18] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1976, the World Health Organization (including the Pan American Health Organization (PAHO)), 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 World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the International Patent Institute, the European Southern Observatory and the Intergovernmental Council of Copper Exporting Countries. 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 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.

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

flaws. It noted that in the case in question there had been no formal or procedural irregularities, that in particular the six-month period of notice had been respected by means of an extension of the original contract, that the decision had been based on correct and adequate grounds and that it had respected the right of defence. It also noted that the investigation had revealed a number of facts liable to cast doubt on the complainant's integrity, the falsity of which had not been established. The Tribunal considered that the behaviour of which the complainant was accused by the respondent was such as to afford lawful grounds for the impugned decision. It was open to the Director-General to take disciplinary action against the complainant on the grounds of that behaviour and he was therefore entitled, as he in fact did, merely to refuse to renew his contract.

3. Judgement No. 267 (12 April 1976): De *v.* Food and Agriculture Organization of the United Nations

Complaint submitted by a former staff member holding a permanent contract, who became manager of a UNDP project and considered that he was therefore entitled to remain in the service of the Organization until the age of 65, the age-limit applicable to field staff—The relevant staff regulation merely embodies an option and does not signify that all field staff are entitled to remain in service until the age-limit—Limited power of review of the Tribunal with regard to decisions taken on the basis of that rule

The complainant, who had been given a permanent appointment in 1952, had been appointed manager of a UNDP project for which FAO was the executing agency and which was expected to last five years, and had been transferred to Korea in that capacity on 18 November 1971. His new assignment, which was for a period of 18 months, was extended first for one year and then for six months. When the last extension expired, the question arose whether it was possible to find the complainant a new assignment: since he had passed the maximum age of 62 he could no longer be considered for a Headquarters post, and since there was no suitable field post he was retired.

The complainant asked the Tribunal to quash the Director-General's decision refusing to keep him in service with the Organization until he was 65, the age-limit applicable to field staff.

The Tribunal noted that the question arose whether at the time of termination the complainant had been a Headquarters or a field official and that the parties held differing views on that point. The Tribunal considered, however, that it was not necessary for it to settle the matter, for in neither case was the impugned decision tainted with any flaw which entitled the Tribunal to interfere. In that connexion, it emphasized that if the complainant was subject to the rules applicable to Headquarters officials he was required to retire at 62 unless the Director-General decided otherwise for exceptional reasons. In fact, there was nothing to indicate that the Director-General was required to grant an exception to the rule and in particular that the complainant had been promised any further appointment. If, on the other hand, the complainant had been a field official at the date of termination, his claim would still not be valid, for the relevant staff regulation under which field officials could remain with the Organization until the age of 65 did not mean that all officials in that category were entitled to stay on until the age-limit. In any case, that provision did not apply to holders of fixed-term contracts like the complainant. Provided that the refusal to extend such a contract was not tainted—and the dossier showed that that was so in the case in question—the complainant's claim was inadmissible.

4. JUDGEMENT NO. 268 (12 APRIL 1976): BA *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a decision refusing to renew a fixed-term contract—Quashing of the impugned decision because it was based on considerations extraneous to the interest of the service

The complainant had been recruited by WHO as a secretary in Dakar in March 1965 and in 1966 had received a two-year contract which had been renewed in 1968, 1970 and 1972. The Organization having refused to grant her a further renewal in 1974 in view of her unsatisfactory work performance and poor working relations with her supervisor, she had appealed to the internal appeals bodies from which she obtained only partial satisfaction.

The Tribunal, in considering the case, observed that the impugned decision fell within the scope of staff rule 940, the relevant provisions of which read:

> "Fixed-term appointments terminate automatically on the completion of the agreed period of service in the absence of any offer and acceptance of extension. However, a staff member serving under a fixed-term appointment of one year or more, whom it has been decided not to reappoint, shall be notified thereof at least one month and normally three months before the date of expiry of the contract..."

The Tribunal recalled that the decision not to extend a contract, by reason of its very nature, was subject to only limited review by the Tribunal.

The impugned decision had been based on two reasons: (*a*) unsatisfactory performance and (*b*) poor relations with the supervisor. The Organization having in the course of the proceedings declared its intention not to rely upon the first reason, the refusal to renew the contract of the complainant should be regarded as based solely on her poor relations with her supervisor. In the absence of any thorough on-the-spot inquiry at the time, the Tribunal considered it impossible to determine exactly what had happened. It observed, however, that for eight years the complainant had performed her duties to the satisfaction of her supervisors and that the mistakes attributed to her by her latest supervisor were fairly unimportant and, even if proved, were not of a kind which would normally have caused any serious disturbance in working relations. It also observed that the regional administration had merely adopted, without any prior inquiry, the report of the complainant's supervisor, whose impartiality was in dispute.

Considering that the impugned decision had not been based on the interest of the service, the Tribunal quashed it and in view of the complainant's length of service awarded her compensation equivalent to 12 months' salary.

5. JUDGEMENT NO. 269 (12 APRIL 1976): GRACIA DE MUÑIZ *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint impugning a decision to transfer a staff member as a result of abolition of a post—Extent to which the abolition of a post is compatible with the rules of the international civil service—Principle that no organization is bound to adhere to the purposes and policies which it adopted at any particular time

The complainant, who held a permanent appointment with FAO, had been transferred to another post following the abolition of her post as editor of the Spanish edition of the magazine CERES. Having unsuccessfully protested against that measure, she submitted a complaint to the Tribunal alleging (1) that the abolition of post was illegal; (2) that the respondent had been guilty of attempted bribery

by offering her an amicable termination; and (3) that having been assigned to an unsuitable new post she had in practice been reduced to idleness.

In determining the validity of the first point, the Tribunal considered whether and in what circumstances the abolition of a post was compatible with the rules of the international civil service. In that connexion, it expressed the following view:

> "Far from being determined once and for all, the purposes and structure of an organisation must move with the times and no institution is immune to change. According to circumstances such change in an organisation may entail the abolition of posts. Even if there is no express provision in the Staff Regulations or Staff Rules for such a measure, it is implicit in the principle that no organisation is bound to adhere to the purposes and policies which it adopted at any particular time. The complainant is mistaken in contending that abolition of a post is warranted only if the FAO ceases to perform some form of function. The theory is that for a post to exist two conditions must be met: an impersonal one, namely the definition of the functions to be performed, and a personal one, namely the assignment of those functions to a staff member in a particular category. Hence an organisation may properly decide to abolish a post in one or the other of two contingencies—either when it ceases to perform certain functions or when it relieves the responsible staff member of those functions and assigns them to one or more other staff members.
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> "Although the Director-General enjoys discretionary authority in taking measures which entail abolishing a post, his decision is not wholly free from review by the Tribunal. It may be quashed if it violates a rule of form or procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if it is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts. In particular the Tribunal will find that there has been abuse of authority where the abolition of a post is motivated, not by relevant and objective considerations, but by a desire to remove a staff member for whose dismissal there are no lawful grounds.
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> "Moreover, there is a general principle whereby an organisation may not terminate the appointment of a staff member whose post has been abolished, at least if he holds an appointment of indeterminate duration, without first taking suitable steps to find him alternative employment."

In view of the foregoing, the Tribunal considered that the fact that the complainant had been replaced in her former post by a staff member who did not hold a permanent appointment and was paid at a lower rate was not enough to establish the irregularity of the abolition of the post in question. The impugned decision met the wishes expressed on several occasions by the higher authorities of FAO to reduce editorial expenditure on CERES, for example by engaging free-lance staff. Thus in abolishing the complainant's post and assigning her functions to someone engaged under contract the Director-General was giving effect to FAO policy and it was not for the tribunal to review such policy. Lastly, the abolition of post was not directed personally at the complainant since several of her colleagues had lost their posts at the same time and for the same reasons. The Tribunal therefore concluded that there was no question of abuse of authority.

With regard to the second point—the alleged attempted bribery—the Tribunal stated that even if the allegation were proved, the acts involved would have occurred subsequent to the abolition of post and could not be relied upon to justify the quashing of the decision.

With regard to the third point—assignment of the complainant to an unsuitable post—the Tribunal considered that it was not required to consider a matter which had no bearing on the claims for relief.

6. JUDGEMENT NO. 270 (12 APRIL 1976): BREUCKMANN *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Complaint submitted by a staff member stationed in Brussels and separated from his wife and child, both of whom were domiciled in Austria in the complainant's home town, with a view to obtaining, on the one hand, reimbursement of travel expenses for the wife and child and, on the other hand, the benefit of the school allowance at the higher rate provided for children attending school "away from the family home"— Receivability of the complaint—Purpose of the provisions concerning the reimbursement of travel expenses of staff members and their families—In view of the purpose of the differential school allowance system it is necessary to consider, when the parents are separated, whether the payment of the allowance at the higher rate is justified if the child attends school at the place of residence of the parent who has custody of him

The complainant, a staff member stationed in Brussels, was the father of a child born on 22 July 1964 and had been separated from his wife by virtue of a court decision for several years before divorcing on 23 January 1975. Having discovered that the court had authorized the complainant's wife to live with the child in Salzburg, the complainant's home town, the Administration, by letter of 3 December 1973, refused to pay him in respect of 1973 the travel expenses prescribed in the regulations for his wife and child. On 28 February 1974, after an exchange of correspondence which was fruitless as far as he was concerned, the complainant appealed to the Director-General, but to no avail. On 25 September 1974 he submitted a claim for reimbursement of travel expenses for 1974 which was in turn refused by a decision of 1 October 1974.

The complainant had also requested payment of the school allowance at the higher rate prescribed for any child attending school "away from the breadwinner's place of residence". That claim was accepted with regard to the period 1 April-1 July 1974. However, the applicable rule having been amended with effect from 1 July 1974 by replacing the words "away from the breadwinner's place of residence" by the words "away from the family home", the complainant was informed in a letter dated 25 June 1974 that as from 1 July 1974 he would no longer be paid the school allowance at the higher rate. The complainant protested against that decision in a letter of 25 July 1974. An instruction of 6 August 1974 explained that "the family home is the place of residence of the father or of the mother", and that was confirmed in a letter of 2 December 1974 addressed to the complainant.

On 12 December 1974 the complainant appealed to the Director-General against the decision of 1 October 1974 concerning the reimbursement of travel expenses for 1974 and against the decision of 2 December 1974 concerning the school allowance. Having received no reply by 6 May 1975, the complainant lodged a complaint with the Tribunal, asking it among other things: (1) to order the respondent to pay the travel expenses for annual leave in 1973 and 1974; (2) to hold that with effect from 1975 the respondent was bound to pay travel expenses for the child in respect of the period during which he was the complainant's dependant; (3) to order the respondent to pay the school allowance at the higher rate with effect from 1971; and (4) to hold that the special rate of school allowance should be paid in respect of the child for periods during which he was his father's dependant but lived with his mother.

Concerning the question of the reimbursement of travel expenses, the Tribunal noted that the complainant had, on 28 February 1974, submitted an appeal to which no effect had been given. It also noted that the complainant stated that he had withdrawn his claim because he had at the same time been granted the school allowance at the higher rate. After studying the dossier, the Tribunal accepted that contention and acknowledged that the complainant had withdrawn his appeal concerning travel expenses only on condition that he would be paid the school allowance at the higher rate, and that having lost that advantage on 1 July 1974 he was entitled on that date to allege non-fulfilment of the condition and to revive the claim which he had temporarily withdrawn. Consequently, the Administration's decision of 1 October 1974 to dismiss the claim for reimbursement of travel expenses should be regarded as a new decision against which the complainant was entitled to appeal to the Director-General within three months, which he had done on 12 December 1974. The internal means of redress had therefore been exhausted according to the applicable rules. The Tribunal nevertheless declared the complaint irreceivable in so far as the claims for relief went beyond those set out in the appeal of 12 December 1974 and the rule that internal means of redress must be exhausted had therefore not been respected. The appeal of 12 December 1974 concerned only the reimbursement of travel expenses for 1974 and the Tribunal therefore declared itself competent to consider the latter point only.

The Tribunal rejected that part of the complaint: it stated that the purpose of the provisions relating to the reimbursement of travel expenses was to enable staff members and their family to visit their place of origin from time to time and therefore did not apply in respect of a wife and children living in the place of origin —which was exactly the situation of the complainant's family.

With regard to the school allowance, the notification of 25 June 1974 informing the complainant that he would no longer be paid the higher rate as from 1 July 1974 was tantamount to a decision and he was therefore entitled to appeal against it to the Director-General within three months. The complainant had, however, preferred to request an explanation in a letter dated 25 July 1974 to which no reply had been forthcoming until 2 December. If that reply merely confirmed an earlier decision, the original decision of 25 June 1974 had become definitive since it had not been appealed to the internal means of redress within the required time-limit, and the complaint was irreceivable. If that was not the case, the reply of 2 December gave rise to a further three-month time-limit which the complainant had respected, since he had appealed on 12 December. The Tribunal considered that the second of the two hypotheses was the correct one, since the decision of 2 December, which referred to a circular subsequent to the notification of 25 June, explained the latter and did not merely confirm its contents.

The Tribunal nevertheless declared the complaint irreceivable in so far as it related to any period preceding 1 July 1974, first because on unconditionally accepting payment of the school allowance at the higher rate with effect from 1 April, the complainant had implicitly surrendered his claim for the period preceding that date, and second because he was actually paid that allowance from 1 April to 30 June 1974. The Tribunal therefore confined itself to determining whether from 1 July 1974 the complainant's claim was allowable under the provisions in force.

In that connexion, the Tribunal considered that the Organization's interpretation that if the parents were separated the term "family home" should be taken to mean not the place of residence of the father who was supposed to support the child but

the place of residence of the parent who had custody of the child was the interpretation which was more in keeping with a differential system of school allowances: when the child attended school at the place of residence of the parent who had custody of him, that was a normal situation and there was no reason to pay the allowance at the higher rate. Noting that the complainant's son attended school in the place of residence of his mother, who had been given custody of him, the Tribunal considered that the complainant was not entitled to payment of the school allowance at the higher rate.

7. Judgement No. 271 (12 April 1976): Lopez-Vallarino v. Food and Agriculture Organization of the United Nations

Complaint concerning the modalities established by the Staff Rules for the reimbursement of home leave travel—Incompatibility of the relevant provisions of the Staff Rules with the letter and spirit of the provision of the Staff Regulations concerning home leave entitlement—Once framed, the regulation is conclusive and the Director-General is not authorized to apply it only when he is sure that it will not entail a loss for the Organization

The complainant, a non-local official in the General Service category stationed at FAO headquarters in Rome and whose home was in Colombia, had been informed, in response to a request she had addressed to the Administration for clarification concerning her home leave entitlement and in application of staff rule 302.40622,[20] that, so that she could obtain reimbursement of the expenses of her travel on home leave, a point within the general area of Headquarters[21] would have to be chosen to determine FAO's liability. Having chosen Karachi, she was informed that her choice was unacceptable, since Karachi did not lie upon the direct route from Rome to Colombia.

The FAO Appeals Committee, to which the case was referred, held that the full cost of the complainant's travel from Rome to her home country, Colombia, should be borne by FAO, and made a recommendation to that effect to the Director-General of the Organization. That recommendation not having been endorsed, the complainant appealed to the Tribunal.

The Tribunal first of all recalled the terms of staff regulation 301.053, which reads:

"Eligible staff members shall be granted home leave once in every two years."

The Tribunal stressed that it was indisputably within the power of the Director-General to determine by the Staff Rules what categories of staff members were eligible under staff regulation 301.053 and recalled in that connexion that at the time of her recruitment the complainant, as a staff member in the General Service category, had not been declared eligible under that rule and had only been declared so at a later stage, at the time of the adoption of staff rule 302.40622, which granted all non-local staff certain benefits, including "home leave and family visit travel", but stated that the travel would be paid "only to a point within the general area of the

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[20] According to this rule, "Travel on home leave and on family visits ... shall be granted only to a point within the general area of the duty station, whatever be the nationality of the staff member."

[21] According to rule 302.40622, that area consists of Europe, the Near East and North Africa.

duty station", the result being that for staff whose homes were situated outside the general area only part of the cost of the journey would be covered.

The Tribunal held that the words "shall be granted home leave" in staff regulation 301.053 meant that the Organization would pay the reasonable expenses of the journey to and from the home country, i.e. for the whole of the journey and not just a part of it. To interpret that provision as enabling the Director-General to rule that the Organization would pay for only a part of the journey was not only contrary to the language used but was also inconsistent with the principle of the regulation, i.e. with the acknowledged purpose of home leave, namely to enable staff members to maintain their links with their home countries in the interest of the Organization as an international body. If the provision covered only travel within a certain radius that might lead, in the case of staff members who were nationals of more distant countries, to a loss of the links in question when the staff members concerned were either unwilling or unable to pay the rest themselves.

The Tribunal added that if the Director-General had power to rule that the Organization would pay only a proportion of the travel cost, there was no reason why he should not in all cases fix that proportion at whatever percentage he thought the Organization could afford. The Tribunal noted in that connexion that in its reply the respondent had referred to "circumstances in which the benefit to the Organization that may be derived from the continued contact of the staff members with their home countries, may be more than offset by the relatively high cost to the Organization of home leave travel". The Tribunal held that those were questions of personnel policy to be solved before the regulations were framed, so that the solution could be embodied in regulation itself. Once framed, the regulation was conclusive on all questions of principle and personnel policy and could not be interpreted as authorizing the Director-General to apply it only when he was satisfied that the Organization would not lose thereby.

The Director-General was no doubt empowered to determine which categories of staff were eligible under a given regulation, but once it was accepted that on its proper construction the regulation provided that eligible staff members should be paid the whole cost of their travel, it was not permissible for the Director-General to say that in certain circumstances only those staff members who were prepared to pay part of the cost themselves would be eligible.

Lastly, the Tribunal rejected the procedural argument invoked by the respondent according to which the complainant, having confined herself in her original claim to contesting the respondent's interpretation of the relevant provision of the Staff Rules and having failed to raise before the Appeals Committee the question of the validity of that provision, was not entitled to submit to the Tribunal a claim which had not been submitted to the Appeals Committee. The Tribunal observed in that regard that the Appeals Committee itself had raised the question and that the Director-General had taken the impugned decision after receiving a recommendation from the Committee on the point in question.

In view of the foregoing, the Tribunal quashed the impugned decision and ordered that the claims of the two staff members who had submitted applications to intervene should be remitted to the Director-General for him to determine what sums, if any, were due to them in the light of the judgement in respect of home leave entitlement.

8. JUDGEMENT NO. 272 (12 APRIL 1976): CARRILLO *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint submitted by a staff member recruited outside the United States, the country in which the Headquarters of the Organization is situated, with a view to obtaining recognition of the status of "internationally recruited staff" with effect from the date of her appointment—Breach by the respondent of the relevant provision of the Staff Rules—Question of the effects of the decision of the Tribunal on the complainant's entitlement to the benefits flowing from her international recruitment.

The complainant, having been interviewed in her country of origin, Peru, by a PAHO representative, had been recruited for a post in Washington, and at the time of her appointment had been asked to state that Washington was her place of residence. On 1 July 1974 she requested recognition of the status of "internationally recruited staff". Her request having remained unanswered, she filed a complaint with the Tribunal on 12 May 1975 asking it to rule: (1) that she had been internationally recruited and was entitled to all the benefits corresponding to the status of internationally recruited staff and (2) that those benefits were a matter of acquired rights and should be granted to her with effect from the date of her appointment.

In June 1975, the Executive Committee of PAHO had before it a proposal by the Director that from 1 January 1975 staff members in the General Service category recruited outside the country of the duty station should enjoy all the benefits granted to staff internationally recruited in accordance with the PAHO Staff Rules. That proposal was adopted and it was decided that in applying the new system account would be taken of the date of appointment of non-local staff members recruited before 1 January 1975.

With regard to the receivability of the complaint, the Tribunal first ruled that, in view of the silence of the Organization, the complaint had been validly submitted to it directly on the basis of article VII, paragraph 3, of its Statute. It recalled, however, that under article II of the Statute, its authority was limited to complaints alleging non-observance of the terms of appointment and of provisions of the Staff Regulations.

With regard to the merits, the Tribunal referred to staff rule 360, which reads:

> "At the time of appointment of a staff member, the Bureau shall determine in consultation with him, that place which is to be recognized throughout his service as his residence prior to appointment, for purposes of establishing entitlements under these Rules. Unless there are reasons to the contrary, the residence shall be determined to be the place in the country of the staff member's nationality where he was residing at the time of appointment."

The complainant, a national of Peru, was residing there at the time of her recruitment, was interviewed there before being appointed and had indicated "Lima, Peru—Washington D.C." as her place of residence in the WHO form 386 she had completed before leaving her country. On arrival in Washington, she was made to complete another copy of the same form and instructed to state that Washington, D.C. was her place of residence, which she did.

The Tribunal found that staff rule 360 was framed so that one place of residence only fell to be determined and that was the place of residence immediately prior to appointment. Moreover, the facts in the dossier established that the designation of Washington, D.C. in WHO form 386 had not been due to inadvertence but

had been required by the Organization. The Tribunal concluded that staff rule 360 had not been complied with.

The Tribunal, while noting that by means of the aforementioned resolution of the Executive Committee of PAHO staff members in the General Service category recruited outside the country of the duty station had been provided with effect from 1 January 1975 with all the entitlements of internationally recruited staff, noted that the complainant wished to benefit from those entitlements from the date of her appointment. It considered that in view of the uncertainty created by the breach of staff rule 360, the complainant was entitled to have her position under the rules clarified and to have it declared that notwithstanding the contents of WHO form 386, she was at the time of her appointment resident in Lima, Peru. It refused to decide, however, that she was entitled to attendant benefits, whether the entitlement arose before or after 1 January 1975. The Tribunal considered that the answer with regard to both the entitlement to a particular benefit and the date on which that entitlement arose, was dependent on the nature of the benefit in quesion and the circumstances at the time when the benefit became due. The Tribunal added:

> "To make a declaration that the complainant is entitled to all the benefits which flow from her international recruitment provided she shows herself qualified in all other respects to receive them would be vague and meaningless. On the other hand, to make a declaration that she is qualified to receive all the benefits provided by the eleven Rules cited in the complaint, would mean the examination by the Tribunal in hypothetical circumstances of eleven Rules which are no more than mentioned in the dossier. This is not a task which, even if it is within its competence, it is the function of the Tribunal to undertake."

The Tribunal therefore confined itself to deciding that for the purpose of establishing entitlement under the Staff Regulations and Rules in accordance with staff rule 360, the place of residence of the complainant should, notwithstanding the content of WHO form 386 signed by her at the time of appointment, be determined as having been at Lima in Peru. The Tribunal also decided that the cases of several staff members having lodged applications to intervene should be remitted to the Director-General so that he could amend WHO form 386 in the light of the judgement.

9. JUDGEMENT NO. 273 (12 APRIL 1976): GRAFSTRÖM *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Application for interpretation of an earlier judgement.

In its Judgement No. 257[22] the Tribunal had ordered the Director-General to make appropriate arrangements to ensure that the pension of the complainant, a former staff member in the General Service category who had been promoted to the Professional category, was not less than it would have been if, at the time of her retirement, her pensionable remuneration had been that of her former category. The complainant, on the basis of the idea that if she had remained in her former category she would have reached step XI long before retirement, requested the Tribunal to state whether that step—and not step IX, which was mentioned in the judgement—should be used to determine her pensionable remuneration.

The Tribunal did not accept the complainant's argument: it considered that there could be no question of undertaking an inquiry, let alone engaging in speculation, concerning the promotions in the General Service category a particular staff member would have had if he or she had remained in that category and not moved to the

[22] See *Juridical Yearbook*, 1975, p. 145.

Professional category. The Tribunal added that in staff rule 302.3103 the phrase "maintaining the said remuneration at its previous level" referred to the level which the staff member had reached when she was promoted.

10. JUDGEMENT NO. 274 (12 APRIL 1976): CONNOLLY-BATTISTI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint seeking withdrawal of reprimands for misconduct—Power of the Director-General, who has disciplinary control over all staff members, to warn as an alternative to a disciplinary measure—Limits of the Tribunal's power to review a measure which is not of a disciplinary nature—Difficulties inherent in the position of staff representative—Concept of misconduct—Principle of freedom of association

The complainant challenged the validity of two written reprimands for misconduct administered to her by the Director-General. Both reprimands related to her activities as a member of the FAO Staff Council.

The Tribunal first of all rejected the complainant's contention that a reprimand could only be administered to a staff member by a supervisory official. Since under the General Rules of the Organization the Director-General had disciplinary control over all staff members, he must have the inherent power to warn as an alternative to a disciplinary measure.

The Tribunal then stated that whereas in the case of censure of a disciplinary nature it exercised full power of review as to the facts and the law, when the measure took the form of a reprimand which was not of a disciplinary nature it exercised a limited power of review.

The Tribunal noted that the first reprimand had been administered to the complainant for having criticized in terms deemed unacceptable members of the Staff Council with whom she disagreed. It noted that the complainant had exhibited a number of documents which, she claimed, showed her criticisms to have been justified, and that the Organization, considering those documents to be immaterial, had confined itself to contending that to cast doubt upon the integrity of another staff member was misconduct. The Tribunal considered that that was too broad a proposition and that motive and intent were relevant: for example, was the criticism made under a sense of duty or merely as gossip? Was there an honest belief in it or was it simply malicious? Was the occasion on which it was made one on which a Council member ought to have kept silent or one on which she might have been expected to speak out?

The Tribunal observed in that connexion that the position of a staff representative was not an easy one and that each representative must resolve as he saw fit the possible conflicts between loyalty to the staff and loyalty to the Administration. It stressed that although it was not possible to find evidence that the members of the Staff Council whom the complainant had criticized had been lacking in integrity or loyalty to the staff, it was equally impossible to find in the dossier any evidence that the complainant had used language designed to distort the truth or to intimidate her colleagues, as was alleged in the memorandum of reprimand. The Tribunal also noted that that memorandum, in which the criticisms expressed by the complainant were condemned as false, had been written before the complainant had been given an opportunity to submit her side of the case. Lastly, it stated that it was not satisfied that the acts with which the complainant was charged amounted to unsatisfactory conduct within the meaning of the Staff Rules, that is "conduct which is incompatible with the staff member's undertaken or implied obligation to the Organization".

On that point the Tribunal expressed itself in the following terms:

"The unsatisfactory performance of staff duties in clearly within this general definition. But when the offending conduct falls outside staff duties, each case must be examined carefully to see whether an obligation has been broken. As a general rule a staff member's conduct of her private life, for example, is not the concern of the Director-General, though there are exceptional cases as when, for example, misconduct brings the Organization into disrepute. Activities within the Staff Organization likewise constitute an area that is 'prima facie' outside the Director-General's jurisdiction. Here again there may be exceptional cases. It is unnecessary for the Tribunal to decide what view it would take of malicious and indefensible slanders spread about other members of the staff in conversation, whether in the office or outside the office and whether connected or not with the affairs of the Staff Council. But as a general rule a staff member gives no undertaking, express or implied, about how she will conduct herself in the business of the Staff Council or its organs. It would be contrary to the principle of freedom of association that she should. Freedom of association means that there must be freedom of discussion and of debate, and this freedom when feelings run strong can spill over into extravagant and even regrettable language. The Staff Council has its own rules for dealing with misdemeanours of this sort. There could be no true freedom of association if the disapproval of the Director-General, whether justified or not, of what was said could lead to disciplinary measures."

With regard to the second reprimand, the Tribunal noted that the Director-General, referring to an incident caused by the complainant at a meeting of the FAO Council, had treated as another instance of misconduct and described as very serious the complainant's disregard of the first warning. The Tribunal recalled that it had set aside the Director-General's conclusions about the earlier incident and observed that in those circumstances the second reprimand could not remain on the complainant's record in its existing form.

The Tribunal therefore (1) quashed the two decisions embodying the reprimands, (2) directed that the documents concerning the two decisions be removed from the complainant's record and (3) remitted the documents relating to the second decision to the Director-General so that he might, if he thought fit, reprimand the complainant.

11. JUDGEMENT NO. 275 (12 APRIL 1976): STEIJN, VAN TUIJL-VAN DEN HARST, VOORN, DEN OUDEN-DE MAN AND LAKWIJK *v.* INTERNATIONAL PATENT INSTITUTE

Complaint concerning the date on which individual regrading decisions effective upon the establishment of a new régime retroactive to 1 January 1971 should take effect—Receivability of the complaint—Quashing of the decisions making the regrading retroactive to 1 January 1974, the application of the new régime to the complainants having been delayed for reasons for which they were not responsible

The Administrative Council of the International Patent Institute having decided in 1970 to align the remuneration of its staff with that of the staff of the European Communities, new staff regulations had come into force on 1 January 1972, the provisions of Book VI ("Financial rules and social benefits") to be retroactive to 1 January 1971. Anomalies having occurred in the process of realignment, corrective action was undertaken with retroactive effect to 1 January 1971. By the end of 1973 there remained 15 cases to be reviewed: five of the officials concerned were promoted with effect from 1 January 1974 as the result of a review of their posts consequent upon changes in their duties; five were upgraded due to the correction of their re-classification with retroactive effect from 1 January 1971. In the case of the remaining

five (the five complainants), the Administration of the Institute, considering that their grading had been mistaken, requested the Administrative Council of the Institute to authorize an amendment to the budget "to end the present injustice to [the complainants]". At its October 1974 session the Administrative Council of the Institute gave the requested authorization, specifying that the regrading would take effect from 1 January 1974. On 12 December 1974, the Director-General took a decision by virtue of which the complainants were promoted with effect from 1 January 1974.

On 25 November 1974, the complainants submitted a letter for the attention of the Administrative Council expressing surprise that their regrading should take effect from 1 January 1974 and not 1 January 1971. On 19 December 1974, they reminded the Director-General of their earlier letter. On 29 January 1975, the Director-General informed the complainants that their objection really related to his decision of 12 December 1974, and referred the case to the Appeals Committee. The latter formulated recommendations favourable to the complainants, but the Director-General nevertheless maintained his position in a decision of 18 April 1975.

Before the Tribunal, to which complaints were submitted on 19 June 1975, the Administration of the Institute contended that the impugned decision was not that of 18 April 1975 but that of 12 December 1974, against which an internal appeal had been lodged on 19 December 1974. According to the Institute, the internal appeal should be considered dismissed if no reply was received within 60 days, and the complainants then had three months, counting from the end of the 60-day period, in which to refer the matter to the Tribunal. The complaints should thus, according to the Institute, have been lodged by 19 May 1975 at the latest.

The Tribunal noted that the appeal had been dismissed on 18 April 1975 and that the complaints had been lodged on 19 June 1975, that is, within the prescribed 90-day time-limit. It deemed it unnecessary to consider whether the internal time-limit had been respected, since the Appeals Committee had decided on the merits.

As to the merits, the Tribunal considered, in the light of the documents in the dossier and the reasons for the Director-General's proposal to the Administrative Council and for the views of the Appeals Committee, that the complainants had been reclassified, not promoted, following the entry into force of the new regulations and that that reclassification, having been delayed for reasons for which the complainants were not responsible, should be put into effect on 1 January 1971 or, for the complainants recruited after that date, on the date on which they took up their duties.

12. JUDGEMENT NO. 276 (4 OCTOBER 1976): TIARKS *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

The Tribunal, noting that the complaint had become devoid of substance, decided that no decision was called for thereon.

13. JUDGEMENT NO. 277 (4 OCTOBER 1977): CHARBONNIERAS *v.* INTERNATIONAL PATENT INSTITUTE

Complaint submitted by a staff member who had resigned, with a view to obtaining payment of the pension contributions paid by the employer on his behalf—Receivability of the complaint—According to the applicable texts, a staff member who has resigned is entitled only to reimbursement of his personal contributions plus simple interest—A statement of the Administrative Council contemplating the alignment of the salary scales of the Institute with those of the European Communities constitutes a simple declaration of intent and creates no right upon which staff members may rely

On leaving the Institute, the complainant had requested that he be paid the pension contributions made by the Institute on his behalf. That request was denied in a letter

of 13 March 1975. He then requested, in a letter of 19 April 1975, that he be paid the contributions of the Institute plus compound interest at 3.5 per cent. On 29 April 1975, the Director-General confirmed his letter of 13 March. On 11 May 1975 the complainant requested that the matter be referred to the Appeals Committee. The latter made a negative recommendation. The Director-General accepted that recommendation and informed the complainant of his decision in a letter of 2 July 1975.

Before the Tribunal the Institute contested the receivability of the complaint, arguing that the complainant had failed to appeal to the Appeals Committee against the decision of 13 March 1975 until 23 April 1975, i.e. after the expiry of the prescribed 30-day time-limit. The Tribunal observed, however, that according to article VII, paragraph 1, of its Statute, it was required to consider merely whether the internal means of redress had been exhausted—in the case in question, whether the decision of 13 March had led to a recommendation by the Appeals Committee—and not to review the observance of procedural rules in internal bodies: it was immaterial that the Appeals Committee might have erred in hearing the appeal, it sufficed to note that it had heard it. The most that could be said was that matters would have been different had the Director-General in his final decision expressed reservations on the propriety of the appeals procedure, but he had not done so.

The Tribunal also rejected the respondent's argument that the complaint contained a claim that was being made for the first time. According to the Tribunal, that claim was identical to that made by the complainant in his letter of 19 April 1975, although it had been formulated at a different time.

Lastly, the Tribunal rejected the respondent's argument that since no infringement of the Staff Regulations was alleged, the complaint was irreceivable. It noted in that connexion that the complainant alleged infringement of a resolution adopted on 17 December 1970 by the Administrative Council, i.e. a text which, in his view, replaced the provisions of the Staff Regulations and so had the same legal force.

As to the merits, the Tribunal held that under article 6 of the pension and welfare scheme rules, the complainant could lay valid claim only to his own contributions plus simple interest at 3.5 per cent a year. With regard to the aforementioned resolution of the Administrative Council, it was a mere statement of intent which did not imply any firm undertaking by the Institute and which consequently had not created rights upon which the staff could rely. The Tribunal therefore dismissed the complaint.

14. JUDGEMENT NO. 278 (4 OCTOBER 1976): GEISLER, GIROUD, BEHMO, ARMITANO-GRIVEL, LEHERTE, SCHRIJVERS, PHILLIPS, MAHIEU AND NIVEAU DE VILLEDARY *v.* INTERNATIONAL PATENT INSTITUTE

Complaints seeking to have quashed decisions relating to the staff pension scheme—Receivability of the complaints—Charge that the Administrative Council infringed commitments towards staff members

The complaints sought to have quashed decisions whereby the Administrative Council of the Institute had refused to revise, for each of the complainants, the staff pension scheme before the merger of the Institute with the European Patent Office. The Tribunal considered that the decisions in question were individual decisions even if they had been based on a decision of a general character and that since they had been taken by the Administrative Council they were final although they dismissed the initial claims as irreceivable. It therefore declared the complaints receivable.

As to the merits, the Tribunal noted that the complainants contended that in refusing to align the Institute's pension scheme with the scheme in force in the

European Communities, the Administrative Council had infringed commitments it had made towards staff members. However, in the light of the records of the relevant debates in the Council, the Tribunal considered that the Council had not made any undertaking whatsoever whose violation might be criticized by the Tribunal and that, in so far at least as the matter fell within the Tribunal's power of review, neither the Council's action nor its failure to act afforded any valid ground for complaint.

15. JUDGEMENT NO. 279 (4 OCTOBER 1976): DE BUCK *v.* EUROPEAN SOUTHERN OBSERVATORY (ESO)

Complaint impugning a decision not to renew a fixed-term appointment—Time-limit for filing complaints with the Tribunal—Rule concerning the exhaustion of internal means of redress

The complainant sought to have quashed a decision of 15 August 1973 by which the Organization, while offering to renew his appointment for the period 15 November 1972 to 31 May 1974, had informed him that it would not be extended beyond the latter date. In fact, the appointment was extended two more times, first from 1 June to 31 July 1974 and then from 1 to 31 August 1974.

The Tribunal recalled that article VII, paragraph 2, of its Statute provided that to be receivable a complaint must have been filed within 90 days after the date of notification of the decision impugned and that according to paragraph 3 of the same article, in the case of an implied decision to dismiss an appeal the 90-day period began to run from the expiration of the 60 days allowed for the taking of the decision by the Administration. In the case in question the date of the impugned decision could be no later than 31 August 1974, and even if there was an implied decision to dismiss the appeal, the time-limit—150 days in all—had expired several months before 8 August 1975, the date on which the complaint was posted.

The Tribunal also noted that according to the Staff Rules, any decision taken by the Administration and challenged by a staff member had to be referred within 30 days to the Joint Advisory Appeals Board for a prior opinion and that in the case in question the complainant had not at any time appealed to that Board, and thereby had failed to have recourse to internal means of redress at his disposal.

The Tribunal therefore declared the complaint to be irreceivable as being time-barred and on the grounds of failure to exhaust internal means of redress.

16. JUDGEMENT NO. 280 (4 OCTOBER 1976): REDA *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint impugning a decision turning down the candidature of a staff member for a post for which he had applied—Receivability of complaint—Limits of the Tribunal's power of review with regard to decisions relating to the appointment of staff

While employed by FAO the complainant had applied for a post as agricultural planning economist. Having failed to obtain the post, he impugned the decision by which another candidate had been preferred to him.

The Tribunal first of all declared the complaint receivable although it had been lodged after the complainant had left the service of the Organization, since he was contesting decisions taken earlier. The Tribunal also deemed it unnecessary to consider whether, as the Organization contended, a staff member had no right to be appointed to a particular post even if he was qualified for it: to be receivable, a complaint need only, as in the case in question, allege breach of provisions or principles applicable to the staff of the Organization.

The complainant noted that the impugned decision, which related to staff recruitment, fell within the Director-General's discretion and hence could be quashed only if it had been taken without authority, violated a rule of form or procedure, or was based on an error of fact or of law, or if essential facts had not been taken into consideration, or if it was tainted with abuse of authority, or if a clearly mistaken conclusion had been drawn from the facts.

The Tribunal observed that the complainant contended that the Organization had held four competitions to fill the vacancy and had refused to communicate the Selection Committee file to the Appeals Committee, which had considered the case before it was submitted to the Tribunal. It noted in that connexion that the complainant had not relied upon any provision which prevented the Organization from holding further competitions in the circumstances described and that secondly, the Appeals Committee could not have asked to see the Selection Committee file since according to the Staff Rules it was not required to express a view on a staff member's ability or, consequently, on the Selection Committee's assessment of a candidate.

The Tribunal held that there was no evidence in the file showing that the complainant had been the victim of prejudice on the part of the Administration or that the Director-General had drawn clearly mistaken conclusions from the file. The complaint was therefore dismissed.

17. JUDGEMENT NO. 281 (4 OCTOBER 1976): HELEAN *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint impugning a decision rejecting the candidature of a staff member for a post for which he had applied—Limits of the Tribunal's power of review with regard to such a decision

The complainant had applied for a post in the Organization. His application having having been rejected, he impugned the decision by which the Director-General had appointed another candidate to the post.

The Tribunal noted that the impugned decision fell within the discretionary authority of the Director-General and that accordingly it had only a limited power of review. On the basis of the dossier, it held that the decision in question was not tainted by any of the flaws which would enable it to interfere and therefore dismissed the complaint.

18. JUDGEMENT NO. 282 (4 OCTOBER 1976): PESSUS *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Complaint seeking to have quashed a decision changing the duty station of an official—Power of the Director-General to assign each official by appointment or transfer to a post within his category—Limits of the Tribunal's power of review with regard to decisions taken in the exercise of that power

The complainant had been informed on 28 July 1975 that he was to be transferred from Brussels to Brétigny (France). He stated that he was not interested in being transferred but the decision to transfer him was nevertheless taken on 31 July 1975 with effect from 1 October.

The Tribunal, in considering the case, recalled that according to article 7 of the Bureau Control Service Regulations, "the authority empowered to make appointments may, in the sole interests of the service, assign each official by appointment or transfer to a post within his category or the group corresponding to his grade". It noted that in support of his complaint the complainant maintained that he had been transferred

without prior consultation and that the decision to transfer him had not been taken in the interests of the service and was tainted with abuse of authority.

As to the first argument, the Tribunal noted that the Director-General had given the complainant two months' notice and was not bound to consult him beforehand. As to the second argument, the Tribunal noted that the Agency regarded the complainant's performance, and particularly his qualifications for his post, as not entirely satisfactory, and that in transferring him to a post corresponding to his grade and better suited to his talents the Director-General had not imposed any disciplinary sanction but had merely exercised his right to assign his subordinates in the Agency's best interests. The Tribunal therefore dismissed the complaint.

19. JUDGEMENT NO. 283 (4 OCTOBER 1976): RISBOURQUE *v.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint seeking the removal of unfavourable performance reports from the personnel file of a staff member—Charges of procedural flaws, infringement of the right to a hearing and abuse of authority.

The complainant, having received unfavourable performance reports, requested that they be withdrawn from his file. He claimed that (1) procedural improprieties had been committed, (2) his right to a hearing had been infringed and (3) the reports in question were tainted with prejudice.

As to the first point, the Tribunal stated that contrary to the complainant's contention, the Administration was not required to inform a staff member of the recommendations made by the competent advisory board with regard to his claim, since those recommendations were intended solely to assist the decision-making authority. The Tribunal added that the contentious nature of the proceedings had been respected by notification to the staff member of the decisions taken by that authority in the light of the Board's report and by allowing him to reply to those decisions and that report after studying the whole of his file.

As to the second point, the Tribunal noted that all the material documents and decisions had been notified to the complainant and he had been given an opportunity to make any comments he thought relevant on those documments and decisions: it therefore deemed the charge unfounded.

As to the third point, the Tribunal considered that there was no document in the dossier which suggested that the impugned decision was tainted with abuse of authority, and that on the contrary the complainant's case had been given highly objective consideration. The Tribunal therefore dismissed the complaint.

20. JUDGEMENT NO. 284 (4 OCTOBER 1976): LORD *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint impugning a decision depriving a staff member of his annual salary increment—Limits of the Tribunal's power of review with regard to such a decision—Charges of procedural flaws, erroneous evaluation of the facts and disregard of the right to a hearing

The complainant impugned a decision by virtue of which the annual salary increment to which he would normally have become entitled on 1 April 1973 had been deferred because of his unsatisfactory performance.

The Tribunal noted that the texts relating to the within-grade increment were paragraph 315.322 of the FAO Manual and administrative circular No. 71/25 setting out the procedure to be followed so as to ensure that the question was given proper

consideration in advance of the date when the increment would be due. The Tribunal stressed that a circular of that character did not, as did the Staff Regulations, form part of a staff member's terms of appointment and so a departure from its provisions did not give any right to relief unless it was established that it had in fact caused prejudice.

The Tribunal also stressed that the impugned decision fell within the scope of the power of appreciation of the Director-General and hence was subject to only limited review by the Tribunal. The following allegations by the complainant fell within the scope of that limited review: failure to follow the procedure laid down in circular 71/25, errors of fact in the evaluation reports, taking into account of events outside the period to which the salary increment related, disregard of the right of the complainant to a hearing.

As to the first point, the Tribunal was satisfied that the complainant had not in any way been prejudiced by any departure from the procedure; as to the second point, it considered that the errors of fact were minor and not material to the assessment of his performance; as to the third point, the Tribunal stressed that it was quite possible that events outside the relevant period might cast light upon the value of the services during that period; lastly, as to the fourth point, the Tribunal noted that the competent administrative authorities had had before them all the relevant documents, including the complainant's written replies, and considered that the decision as to whether the staff member should be given a hearing fell within the discretion of his supervisors.

The Tribunal concluded that the complainant's objections to the assessment of his performance could not be sustained and therefore dismissed the complaint.

21. JUDGEMENT NO. 285 (4 OCTOBER 1976): WATSON *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Complaint concerning the method of calculating a retirement pension—Application to salaries of a weighting factor designed to ensure that all staff members of the same grade wherever they may be working will enjoy the same purchasing power—Application of a similar system mutatis mutandis *to retirement pensions—Provisions of the Regulations giving pensioners the choice between three currencies of payment cannot be interpreted as allowing them to benefit from both the weighting factor and a favourable development in exchange rates*

The complainant, a retired staff member of the European Organization for the Safety of Air Navigation, had, at the time of his retirement, exercised his rights under article 45 of Annex IV to the Service Regulations and had asked for payment of his retirement pension in Belgian francs, the currency of the host country of Eurocontrol Headquarters, and not in sterling, the currency of the country in which he would henceforth reside. Until 1 April 1975 he had received a pension amounting to 34,100 Belgian francs. In March 1975 he had been told that the arrangement followed until then had been mistaken and that in future the sum of 34,100 Belgian francs would be converted into sterling at the International Monetary Fund rate applicable in 1965 and then converted back into Belgian francs. As a result the pension had fallen from 34,100 to 24,431 Belgian francs.

The Tribunal, in considering the case, observed that articles 62, 63 and 64 of the Eurocontrol Service Regulations constituted a group of articles designed to ensure as far as possible that officers who enjoyed the same salary would also enjoy the same purchasing power, wherever they might be working. The device used was that of a weighting factor as prescribed by article 64, which in fact consisted of two parts, a cost of living component and a tax adjustment component.

In order to calculate the weighting factor it was necessary to be able to make a comparison between the cost of living figures and for that purpose it was necessary to take a rate of exchange on a given date. Any rate would do for the calculation of the salary in Belgian francs (it being understood that the same rate would have to be applied when the salary expressed in Belgian francs had to be converted into some other currency). If parity in purchasing power had been reached, exchange fluctuations were irrelevant. Article 63 of the Regulations provided that the rate of conversion should be the 1965 IMF rate.

It appeared from article 82 of the Regulations that pensions, which were calculated as a percentage of salary, were to follow the same design and to be affected in the same way by the weighting factor, according to the country in which the pensioner intended to reside.

Details concerning the application of the pension scheme were laid down in Annex IV to the Regulations, article 45 of which read:

> "Beneficiaries may elect to have their pensions paid in the currency either of their country of origin or of their country of residence or of the country where the Agency has its seat; their choice shall remain operative for at least two years."

The complainant claimed that if his pension, calculated in Belgian francs with the benefit of the weighting factor, was to be converted into sterling, it must be converted at the current rate of 87 francs to the pound instead of at the IMF 1965 rate of 140 francs to the pound.

The Tribunal acknowledged that that argument would have been convincing if article 45 had stood by itself. But since it was a subordinate clause it could not be so interpreted as to alter profoundly the method of calculation settled by article 82 and to give the complainant the benefit of both the weighting factor and the current favourable rate of exchange. The calculation made in accordance with articles 82 and 63 produced a sterling figure: the payment in Belgian francs must not exceed the value of the sterling expressed in Belgian francs at the rate current at the date of payment.

The Tribunal acknowledged that article 82 was imprecise. It felt that the article should be amended so as to state expressly that the pensioner should be paid in the currency of the country in which "he declared his home to be." It would then at once be apparent that the options provided by article 45 were misleadingly wide.
