Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1977

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

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

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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. 216 (14 APRIL 1977)[2]: OGLEY *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking revision of a judgement of the Tribunal on the ground that the applicant's counsel failed to exercise adequate diligence owing to his impending retirement

The applicant sought revision under article 12 of the Statute of the Tribunal of Judgement No. 215[3] on the plea that he had not known at the time of the consideration of his case that his counsel's contract with the United Nations was about to expire, a circumstance which he contended had impaired the handling of his case before the Tribunal.

The Tribunal observed that the alleged discovery of that circumstance was not, in the words of article 12 of its Statute, "some fact of such a nature as to be a decisive factor" affecting its decision in Judgement No. 215. The applicant's contention that a member of the panel of counsel of the United Nations would not take adequate interest in a case at the end of his contract was only an inference drawn by the applicant, and on the basis of such an inference a judgement could not be revised under article 12 of the Statute.

The Tribunal accordingly rejected the application.

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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 1977, 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. Paul Bastid, Vice-President; Sir Roger Stevens, Member; Mr. Francisco A. Forteza, Alternate Member.

[3] See *Juridical Yearbook*, 1976, p. 138.

2. JUDGEMENT NO. 217 (15 APRIL 1977)[4]: VANDERSYPEN *v.* SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Application seeking compensation for non-enjoyment of home leave entitlement and of the entitlement to education travel to the duty station for a dependent child attending school away from the duty station

The applicant, who was stationed in Cairo, had requested on 11 February 1975 that his two children residing in Belgium should be authorized to travel from Brussels to Tunis and back during the Easter vacation, at which time he himself was to be sent to Tunis on mission. His request had been denied on the ground that any such travel at the Organization's expense was permissible only between Brussels and the staff member's duty station, which in his case was Cairo. In a memorandum of 22 December 1975, the applicant had explained that he had not exercised his right to bring his children to Cairo because of the heat there during the summer and would have no opportunity to exercise that right before the termination of his appointment, and had asked whether the Organization would be prepared to compensate him. In another memorandum, he had explained that he had been unable to benefit from his home leave entitlement because of the fact that he had been sent on a mission, and had asked whether the Organization would be prepared to compensate him for that also.

With respect to travel for the children resident in Brussels, the Tribunal, to which the case was submitted, noted that the Administration's suggestion that the applicant should have his children come to Cairo during the summer had elicited no reply from the applicant until much later. In the Tribunal's opinion, that was not the kind of conduct to be expected of a staff member concerned with asserting his right. The Tribunal also rejected the applicant's allegation of discriminatory treatment; it noted in that connexion that, since the applicant had not been an itinerant technical assistance expert, he could not avail himself of the interpretation given to the expression "duty station" in the case of an itinerant expert. Lastly, the Tribunal noted that the applicant had not established that any practice or rule authorized the payment of such compensation as he had claimed. It recalled that in its Judgement No. 144[5] it had ruled in comparable circumstances that in principle there was no right to payment of the cost of travel not performed.

With respect to home leave, the Tribunal was of the opinion that concern for proper administration required that the Organization should take into consideration all pertinent facts before it arranged its mission and leave schedule. It noted that the applicant had not availed himself of the procedure which would have enabled him to inform the Organization of any facts that might deprive him of his leave entitlement or interfere with his enjoyment of it. The Tribunal therefore held that it had not been established that the loss of home leave benefit was attributable to the Organization.

The Tribunal accordingly rejected the application.

3. JUDGEMENT NO. 218 (19 APRIL 1977)[6]: TRENCZAK *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting two successive decisions declining to reopen a case relating to the award of compensation for illness attributable to the performance of official duties — Rescission of the two decisions on the ground that they were based on an "unreasonable and arbitrary" refusal by the Advisory Board on Compensation Claims to

[4] Mme. Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. T. Mutuale, Member; Sir Roger Stevens, Alternate Member.

[5] See *Juridical Yearbook*, 1971, p. 155.

[6] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Sir Roger Stevens, Member.

accept evidence which could have led to a reconsideration of its assessment of the applicant's disability

After suffering a heart attack in 1959, the applicant had been awarded compensation in 1961 for illness attributable to the performance of official duties on behalf of the United Nations and resulting in 25 per cent permanent partial incapacity. He had subsequently suffered further illnesses.

After two unsuccessful requests, in May 1969 and June 1972, for reconsideration of his case under article 17 of Appendix D to the Staff Rules, the applicant had asked the Secretary-General on 18 August 1972, again without success, to reopen his case under article 9 of Appendix D to the Staff Rules. His final request for a reconsideration of his case, submitted on 1 July 1975, had been denied in 1976.

The Tribunal first addressed itself to the unusual lapse of time between the onset of the heart condition and the submission of the application. It noted that that lapse of time had been due in large measure to the applicant's reluctance to appeal promptly against decisions taken by the respondent, a reluctance which appeared to the Tribunal to stem in part from advice received from the respondent.

The Tribunal then proceeded to review the questions at issue. On the question whether the applicant had, as a result of his service-incurred heart condition, been totally or partially incapacitated, the Tribunal found that the applicant's claim that he had been totally disabled had not been established. In any case, the plea against the respondent's decision was barred by the applicant's failure to appeal within the prescribed time-limits; the same applied to the assessment of 25 per cent incapacity.

With regard to subsequent illnesses, the Tribunal felt that it was not clear from the medical reports submitted how far the new symptoms had been regarded as the direct result of the service-incurred heart condition. The Tribunal concluded from the record that that particular point had never been clearly established.

The Tribunal noted that in 1972 when the applicant had requested a reconsideration of his case, the Advisory Board on Compensation Claims, on whose recommendation the Secretary-General had taken a negative decision, had been aware that the applicant had suffered a deterioration in his condition in 1970 but had failed to ascertain how far that deterioration had been the result of the service-incurred heart condition of 1961. The Board had also been aware that the applicant as a result of his health condition had failed to obtain any employment in his profession and that he had failed to obtain employment with the United Nations. In those circumstances the Tribunal found that the Board's refusal in 1972 to accept evidence which, had the case been reopened, could have led to a reconsideration of its earlier assessment of the applicant's disability had been unreasonable and arbitrary. It also found that the negative decision taken by the Secretary-General in 1976 on the recommendation of the Board suffered from the same infirmity as the decision of 1972.

The Tribunal accordingly rescinded the two decisions in question. In view of the fact that the applicant's claim had been pending for a long period of time and the difficulty of resurrecting the necessary evidence, the Tribunal, instead of remanding the case for fresh consideration by the Advisory Board, ordered the payment of a lump sum compensation in the amount of $10,000.

4. JUDGEMENT NO. 219 (19 APRIL 1977)[7]: POCHONET *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision to terminate a permanent appointment for unsatisfactory services — A complete, fair and reasonable procedure must be carried out prior to such decision

[7] Mme. Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. Endre Ustor, Member.

The applicant had been terminated for unsatisfactory services at the time of the five-year review of his permanent appointment under staff rule 104.13 (*a*)(ii). The Tribunal recalled that it had stated in several cases (Judgements Nos. 98,[8] 131,[9] 157,[10] 184[11] and 204[12]) that in view of "the very substantial rights given by the General Assembly to those individuals who hold permanent appointments in the United Nations Secretariat . . . such permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision".

The Tribunal considered itself entitled to seek to determine whether the decision of the department concerned that the permanent appointment of the applicant should be terminated had been taken in normal circumstances or in circumstances such that the decision constituted an abusive exercise of the Secretary-General's power of appraisal. After considering the material before it, the Tribunal determined that the various complaints of the applicant were unfounded and accordingly rejected the application.

5. Judgement No. 220 (20 April 1977)[13]: Hilaire *v.* Secretary-General of the United Nations

Application contesting a decision to terminate an appointment for abandonment of post

The applicant had been on sick leave from 23 August to 15 November 1971. On 13 November 1971 his physician had sent to the Medical Director a report stating that it was very difficult to determine when he would be able to return to work. Towards the end of 1971, the Administration had learned that since 12 December the applicant had been working for, and was being paid by, a private company in New York; that information had been confirmed by the company. A telegram was then sent to the applicant asking him to report to the United Nations not later than 6 January 1972, failing which he would be separated from the service. Having failed to comply with those instructions, he was informed that he had been separated from the service with the United Nations with effect from his absence on 16 November 1971. In his application to the Tribunal, he requested, *inter alia,* that he should be reinstated as from 16 November 1971.

The Tribunal observed that the unauthorized acceptance of alternative employment by the applicant was inconsistent with an intention to continue employment at the United Nations and constituted abandonment of his post. The intention to abandon employment at the United Nations was further demonstrated by the applicant's failure adequately to explain his continued absence. As far as the period from 16 November to 11 December 1971 was concerned, the applicant could perhaps argue that he had regarded himself as being on sick leave, but he must have been aware that a further report from his physician was required before his leave could be extended. Had this been a disciplinary proceeding, the argument that the Medical Service had not formally notified the applicant that his sick leave had been disallowed might have had merit. But in fact the applicant had not been disciplined but had been separated from the service for abandonment of his post.

The Tribunal accordingly rejected the application.

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[8] See *Juridical Yearbook,* 1966, p. 213.
[9] *Ibid.,* 1969, p. 193.
[10] *Ibid.,* 1972, p. 126.
[11] *Ibid.,* 1974, p. 109.
[12] *Ibid.,* 1975, p. 131.
[13] Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Endre Ustor, Member; Mr. Francisco A. Forteza, Alternate Member.

6. JUDGEMENT NO. 221 (21 APRIL 1977)[14]: BERUBE *v.* SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Application by a staff member who accepted the replacement of her appointment with an appointment at a lower grade — Question whether the offer of the new appointment is an administrative decision and whether the resulting contract of acceptance is subject to appeal to the internal appeals body — Reasons for which a contract of employment is voidable

The applicant had held a permanent appointment at the G-7 level since 1965. Because of a serious deterioration in her performance, she had been offered a new permanent appointment at a lower grade. The applicant had accepted the offer but had subsequently requested a review of her case on the ground that she had been placed in a position where she had "had to say 'yes' or 'no', that is to sign the above contract within 24 hours or to be revoked".

The Advisory Joint Appeals Board, to which the case had been submitted, had found that the offer of a new appointment was not a contract or an administrative decision and was not appealable. The acceptance of the offer and the resulting contract would be appealable only if the acceptance had been the result of duress; since the Board did not consider that there had been any duress in the case in question, it declared that the appeal was not properly receivable.

The Tribunal, to which the case was then submitted, recognized that an offer of employment made to a person not already in the service of the Organization could not be called an administrative decision or a contract. But the Tribunal noted that the applicant had been a staff member holding a permanent appointment at the G-7 level on the date when the offer of a new post at a lower grade had been made. The very offer of such a post to the applicant had implied either that the applicant was demoted as a disciplinary measure or that her appointment was terminated and a fresh one offered to her by the respondent. Before the respondent could appoint the applicant to a post at a lower level, it had been necessary that the earlier appointment should be cancelled and superseded. The Tribunal accordingly found that the decision to cancel and supersede the earlier letter of appointment had been an administrative decision. Moreover, it did not appear from the record that the relevant staff regulations and rules, "including the staff pension regulations", had been fully discussed with the applicant before her acceptance of an appointment at a lower level.

The Tribunal also noted that the Advisory Joint Appeals Board had held that the applicant's allegations of unfairness in the terms of the contract would have been receivable only if duress had been established. The Tribunal observed that, apart from duress, a contract was voidable for other reasons, namely, mistake arising from non-disclosure of relevant information, misrepresentation, fraud or undue influence. It considered that before any change in a staff member's conditions of service could be made to his prejudice, all implications of the change should be fully explained to the staff member.

Lastly, the Tribunal observed that the Board's finding that duress had not been established had constituted a ruling on the validity of the contract, a matter on which it could not have pronounced if the appeal had not been receivable.

The Tribunal ordered that the decision taken on the basis of the opinion of the Advisory Joint Appeals Board should be rescinded and that the case should be remanded for a decision on merits.

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[14] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member; Mr. T. Mutuale, Alternate Member.

7. JUDGEMENT NO. 222 (25 APRIL 1977)[15]: ARCHIBALD *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting summary dismissal for serious misconduct — Discretionary power of the Secretary-General in the matter

The applicant sought the rescission of a decision that he should be summarily dismissed for serious misconduct.

The Tribunal noted that the facts were not in dispute and that the guilt of the applicant was admitted. Staff regulation 10.2 provided that the Secretary-General "may summarily dismiss a member of the staff for serious misconduct". Here the misconduct had certainly been serious; in the absence of any contention of improper motivation (and there had been none) the Secretary-General's exercise of the discretion conferred upon him by the regulation was not reviewable.

The Tribunal in prior judgements had stated that the summary dismissal procedure was intended to deal with "acts obviously incompatible with continued membership of the staff" and that the normal disciplinary procedures should be dispensed with, as was authorized under staff rule 110.3(a), only in cases "where the misconduct is patent and where the interest of the service requires immediate and final dismissal" (Judgement No. 104[16]). In the present case, the Tribunal held that the Secretary-General's decision which implied that the applicant's conduct was incompatible with continued membership of the staff could not be said to be arbitrary or unreasonable. The decision on what was in the interest of the service was within the discretion of the Secretary-General and the Tribunal could not substitute its judgement for that of the Secretary-General provided that the decision was not arbitrary or based on a mistake or improperly motivated. The decision had not been challenged on any of those grounds and only circumstances in mitigation of the penalty imposed had been pleaded in the present case. The Tribunal therefore held that its authority did not extend to a review of the decision of summary dismissal imposed on the applicant by the Secretary-General in the exercise in his discretionary power.

8. JUDGEMENT NO. 223 (26 APRIL 1977)[17]: IBAÑEZ *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision to make no change in a periodic report — Rescission of the decision as being based on an appraisal which was contrary to the assessment contained in the periodic report

The applicant contested a decision whereby the Secretary-General had refused to make any change in a periodic report describing him as "a staff member who maintains only a minimum standard".

The Tribunal was of the view that the contested periodic report did not present an accurate picture of the applicant's performance during the relevant period, did not faithfully reflect the over-all job performance of the applicant as found by the reporting officers themselves, and was therefore misleading.

The Tribunal also noted that the review of the applicant's rebuttal of his periodic report has resulted in a finding that the technical part of the applicant's duties had been "performed satisfactorily". The Tribunal held that such a finding was inconsistent with the rating contained in the contested periodic report. That being so, the Tribunal con-

[15] Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Endre Ustor, Member; Mr. Francisco A. Forteza, Alternate Member.

[16] See *Juridical Yearbook*, 1967, p. 294.

[17] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Member; Mr. Endre Ustor, Alternate Member.

sidered that the Secretary-General's decision to make no change in the periodic report in question was unsustainable.

Rather than remanding the case for further proceedings, the court ordered that its judgement should be incorporated in the applicant's dossier and service record and be attached to, and regarded as supplementary to and corrective of, the contested periodic report.

9. JUDGEMENT NO. 224 (28 APRIL 1977)[18]: AOUAD *v.* UNITED NATIONS JOINT STAFF PENSION BOARD

Application seeking the award of a disability benefit — Decision by the Tribunal to defer its judgement pending a ruling by the ILO Administrative Tribunal on the applicant's request for reinstatement in the service of WHO

After resigning his post with WHO, the applicant had claimed a disability benefit under article 34 of the Regulations of the United Nations Joint Staff Pension Fund. The WHO Staff Pension Committee had decided in January 1976 that his request should be accepted, and that decision had been communicated to the Secretary of the Joint Staff Pension Board in New York, whose approval had to be obtained before the award of a benefit could be finally confirmed. The Secretary of the Pension Board had declined to certify the benefit as being properly payable on the ground that the medical evidence showed that on the date of separation the applicant had not been incapacitated for further service with WHO. As the WHO Staff Pension Committee had not been scheduled to meet again until January 1977, the claim had been referred to the Standing Committee of the Pension Board at its July 1976 session. On 24 September 1976, the applicant had been informed of the Standing Committee's decision that, since he was not incapacitated for further service within the meaning of article 34 of the Pension Fund Regulations, he was not entitled to a disability benefit.

The Tribunal, to which the case was submitted, pointed out first of all that, under the special agreement signed between the United Nations and WHO on 27 March and 8 April 1961, its jurisdiction in the case was limited to the allegations of non-observance of the Pension Fund Regulations and did not extend to the interpretation of the applicant's contract or of the staff regulations and rules applicable to him, for which it would appear that the ILO Administrative Tribunal would be the competent jurisdiction.

The Tribunal noted that article 34 (*a*) of the Pension Fund Regulations read as follows:

> "A disability benefit shall, subject to article 42, be payable to a participant who is found by the Board to be *incapacitated for further service* in a member organization reasonably compatible with his abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration." (Emphasis added by the Tribunal)

It was clear from that article that the applicant's eligibility for a disability benefit depended on a finding as to whether he was incapacitated for further service reasonably compatible with his abilities, due to injury or illness. In that connexion, the Tribunal noted that the applicant had sought reinstatement in the service of WHO, implying thereby that he was not incapacitated for further service, and that his application was pending before the ILO Administrative Tribunal for consideration. The Tribunal observed that the claim for a disability benefit had come before it for decision while the claim for reinstatement was still pending before the ILO Administrative Tribunal[19] and that the contingency of its finding the claim for a disability benefit in the applicant's

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[18] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member.

[19] For a summary of the judgement rendered on 6 June 1977 by the ILO Administrative Tribunal (Judgement No. 309), see page 171 below.

favour and of the ILO Administrative Tribunal's finding the claim for reinstatement in the applicant's favour would lead to contradictory decisions. It therefore decided to defer its consideration of the case.

10. Judgement No. 225 (6 October 1977)[20]: Sandys *v.* Secretary-General of the United Nations

Application contesting a decision to terminate an appointment under staff regulation 9.1(a) *— Power of the Tribunal to review the regularity of the procedure prior to the decision in question*

The applicant contested a decision terminating her permanent appointment under staff regulation 9.1 (*a*), on the ground that she had failed to maintain the standards of efficiency, competence and integrity established in the Charter.

The Tribunal recalled that it had repeatedly held that it could not substitute its judgement for that of the Secretary-General concerning the standard of performance or efficiency of a staff member. At the same time, it had also held in its Judgement No. 138[21] that where the Secretary-General relied for his decision on a recommendation by the Appointment and Promotion Board, and the Board itself had reached its conclusions in the light of inadequate or erroneous information, the fact that there had been a review by the Board did not secure that the Secretary-General's decision was valid. In that connexion, the Tribunal noted that the applicant's supervisor had made completely contradictory evaluations of her, thus displaying a measure of insincerity which, if tolerated by the Administration, would undermine the very purpose of the institution of the periodic reports.

The Tribunal observed, however, that the contested decision had not been taken solely on the basis of those evaluations. The examination of the case by the appointment and promotion bodies had been detailed and adequate, and the recommendation on the basis of which the applicant's appointment had been terminated had been properly reached. The Tribunal accordingly held that the decision had not been vitiated by lack of due process.

11. Judgement No. 226 (12 October 1977)[22]: Aouad *v.* United Nations Joint Staff Pension Board

Award of a disability benefit by the WHO Staff Pension Committee — Refusal of the Secretary of the Pension Board to certify the benefit on the ground that, at the time of separation from service, the applicant had not exhausted his leave entitlement — Requirements of due process before the Standing Committee of the Pension Board — Rescission of the contested decision — Obligation of WHO to make, jointly with the Pension Fund, the necessary arrangements for implementation of the judgement

By its Judgement No. 224[23], the Tribunal had decided to defer its consideration of the case before it pending a judgement by the ILO Administrative Tribunal on a complaint by the applicant claiming reinstatement in the service of WHO. By its Judgement No. 309[24], the ILO Administrative Tribunal had dismissed the complaint.

The Tribunal accordingly resumed its consideration of the application before it, which essentially sought the rescission of the decision by which the Standing Committee of the Joint Staff Pension Board had refused to award a disability benefit to the applicant.

The Tribunal observed that one of the questions to be examined was the question of the exhaustion of leave entitlement prior to the award of a disability benefit. The Tribunal

[20] Mr. R. Venkataraman, President; Sir Roger Stevens, Member; Mr. Endre Ustor, Member.
[21] See *Juridical Yearbook*, 1970, p. 141.
[22] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member.
[23] See page 149 above.
[24] See page 171 below.

noted in that connexion that the applicant, on the date of his separation, had had an unused accrual of 140.5 days of sick leave and 60 days of annual leave during which he would have been paid by WHO, the disability benefit being payable only after that period had expired. It further noted that the Deputy Secretary of the Pension Board had mentioned the possibility of "resolving the difficulty" by postponing acceptance of the resignation to a date coinciding with the exhaustion of the applicant's leave, but that that suggestion had not been accepted by WHO. It was in those circumstances that the Secretary of the Board had concluded that the disability award was not, after all, warranted by the applicant's medical condition at the date of resignation. Thus, the question of the prior exhaustion of leave entitlement, which had been envisaged differently by WHO and by the Secretary of the Board, had finally led the Secretary of the WHO Staff Pension Committee apparently to contradict the position of that Committee.

The Tribunal was of the view that the differences of opinion in that regard should in no way be prejudicial to the applicant, who had not been warned, at the time when his resignation was accepted and after he had submitted his request for a disability benefit, of the problem of the prior exhaustion of his leave entitlement.

The Tribunal also noted that the request for a disability benefit, which had originally been approved by the WHO Staff Pension Committee, had been referred to the Standing Committee because of the refusal of the Secretary of the Pension Board to certify the benefit and that in such cases, according to the applicable rules, reports by the medical officer of the organization and by the Medical Consultant should be submitted to the Standing Committee. On the basis of the material before it, the Tribunal concluded that the Standing Committee, when taking its decision, had not had at its disposal all the documents necessary for a complete and equitable examination of the applicant's situation and that consequently the requirements of due process had not been observed.

With regard to the respondent's contention that it had not been shown that on the date of separation the applicant had been incapacitated for further service in WHO reasonably compatible with his abilities, the Tribunal noted that the circumstances of the case did not make it possible to conclude that the applicant had not been incapacitated at the time of his resignation; it observed that a whole series of steps taken by the applicant had shown that he was in a state of health whose origin, clearly identified, had antedated the separation from service and which was bound to deteriorate.

The Tribunal reached the conclusion that the applicant's health had been such that, on the basis of the medical reports produced, the determination by the WHO Staff Pension Committee had been well founded in law. The Secretary of the Pension Board had therefore erred in stating that the applicant had not been incapacitated within the meaning of article 34 of the Regulations at the time of his separation from service. The Tribunal therefore rescinded the contested decision.

In so far as the judgement of the Tribunal entailed administrative and financial obligations for WHO, the Tribunal noted that according to article II of the special agreement between the United Nations and WHO:

> "The judgements of the Tribunal shall be final and without appeal and the World Health Organization agrees, in so far as it is affected by any such judgement, to give full effect to its terms."

It was for the Joint Staff Pension Fund and WHO to make within three months the necessary arrangements for the implementation of the judgement.

12. JUDGEMENT NO. 227 (12 OCTOBER 1977)[25]: HILL *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Award of compensation to the applicant for injury caused by a decision terminating his employment before the expiry of the probationary period agreed upon by the parties —

[25] Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Stevens, Member.

Question whether, for the purpose of calculating the compensation, the applicant should have been accorded the same treatment as a staff member terminated immediately upon extension of his contract — Question of the applicability in the case in question of the provisions of the Staff Rules relating to salary increments

After an initial two-year period of service which the respondent had not found entirely satisfactory, the applicant had been offered a further one-year contract covering the period from 23 August 1974 to 22 August 1975, it being agreed that at the end of that time a report would be made on that "trial period". More than five months before the date of expiry of the contract, the applicant had been informed that his employment would not be extended beyond that date.

The Joint Appeals Board, to which the case had been submitted, had found that the respondent had not carried out his commitment when he had decided prematurely, without observing the condition he had established, not to renew the appellant's appointment. The Board recommended that the appellant should be offered an appointment for a fixed term of one year or, failing that, should be paid compensation of an amount of $10,000.

The respondent having decided to grant the applicant an amount of compensation equivalent to the termination indemnity to which he would have been entitled under the Staff Regulations and Rules had his fixed-term appointment been extended for one year and immediately terminated upon extension, and the applicant having found that amount of compensation unacceptable, the case was submitted to the Tribunal.

The Tribunal observed that the termination indemnity provisions of the Staff Regulations and Rules were intended to deal with the case of an employee who had been "terminated" as that term was defined in staff rule 109.1 (*b*), and not with the case of an employee who had only been deprived of the *chance* to prove himself worthy of further employment. In the latter case, the magnitude of the injury was uncertain, because the value of the chance was uncertain. However, the Tribunal was of the view that such an employee should be given the benefit of the doubt, as the uncertainty was not of his making, and that compensation should be awarded on the same basis as it would have been awarded had the employee succeeded in gaining the appointment he sought. In other words, the employee should be treated as if he had received the appointment he sought and had then been "terminated". Thus the termination indemnity provisions provided the measure of appropriate compensation in that case.

The Tribunal sought first of all to determine the duration of the appointment that the applicant would have been awarded had his services proved satisfactory during his initial period of employment. It recalled that in its Judgement No. 132[26] it had indicated that that was a factual question and had decided that, under the circumstances, a one-year appointment should be the measure. That being so, the application of the relevant provisions of the Staff Regulations to the applicant resulted in the $5,469 already paid to him by the respondent.

The applicant contended that, if he had received a further one-year appointment as from the date of expiry of his last contract, he would have completed on that date three years of service and would have been entitled to the salary increment then accruing. The Tribunal noted, however, that under the applicable regulations the termination indemnity was to be calculated on the basis of the base salary *at the time of termination,* and on the date of termination of the applicant the salary increment had not accrued. According to the Staff Rules, the salary increment to which the applicant would have been entitled if he had obtained a one-year contract would have taken effect as from 1 August 1975, but the rule in question went on to provide: "No increment shall be paid in the case of staff members whose services will cease during the month in which the increment would otherwise have been due". The Tribunal therefore considered that the respondent had been correct in not taking into account a salary increment which might have taken effect in August 1975 if the applicant's appointment had been renewed.

[26] See *Juridical Yearbook,* 1969, p. 189.

13. JUDGEMENT NO. 228 (13 OCTOBER 1977)[27]: RIVET *v.* UNITED NATIONS JOINT STAFF PENSION BOARD

Decision of the General Assembly establishing a new system of adjustment of pensions under which benefits which commenced before 1 January 1975 are subject to a ceiling, namely, the amount which would have been payable if the benefit had commenced on 1 January 1975 — Such ceiling to be calculated on the basis of the pensionable remuneration rates during the period from 1 January 1972 to 31 December 1974 of a position at the same level as that of the recipient of the benefit — Special case of the former holder of an ungraded post the salary for which was increased after the retirement of the person concerned — Question whether the pensionable remuneration in question should be that received by the person concerned before his retirement or that of the holder of the post during the period from 1 January 1972 to 31 December 1974

The applicant, a former Deputy Secretary-General of WMO, had retired on 1 February 1971. On 18 December 1974, the General Assembly, by its resolution 3354 (XXIX), section I, had decided to revise the system of adjustment of benefits in payment, with effect from 1 January 1975, provided that no beneficiary who opted for the new system and whose benefit had commenced before 1 January 1975 should receive more as a result than if the benefit had commenced on 1 January 1975.

The applicant having opted for the new system, it had been explained to him that the current pensionable remuneration rates of the position which the applicant had held before retirement could not be used for the purpose of calculating the General Assembly ceiling on benefits payable under the new system, since the level of that position might have been reclassified or declassified in the interim. The applicant disagreed with that interpretation, and the case was submitted to the Tribunal.

The Tribunal noted that the disagreement between the parties bore on the method of calculating the General Assembly "ceiling". According to the respondent, that ceiling must be calculated on the basis of the pensionable remuneration of a staff member at the D-2, step IV, level during the period from 1 January 1972 to 31 December 1974. According to the applicant, the ceiling should be calculated on the basis of the pensionable remuneration paid to his successor during the period from 1 January 1972 to 31 December 1974. The two methods of calculation produced different results because of the fact that from 1 January 1972 onwards the salary of the Deputy Secretary-General of WMO, which had previously been the same as that of a staff member at the D-2, step IV, level, had been increased to bring it into line with the salaries of the Deputy Secretaries-General of UPU and ITU.

The Tribunal observed that the applicant's case was a very special one. There was no doubt that if the applicant had held a graded post at the time of his retirement, the ceiling set in General Assembly resolution 3354 (XXIX) could only have been calculated on the basis of the pensionable remuneration of a staff member having occupied a post of the same grade during the period from 1 January 1972 to 31 December 1974. But according to information submitted by the applicant and uncontested by the respondent, the applicant's post had been ungraded throughout the relevant period and remained ungraded. That post had always been "unclassified" and the salary for the post had been fixed at various times by the WMO Congress. The fact that during a certain period (1964–1971) the salary of the Deputy Secretary-General had been the same as that of a staff member at the D-2 level did not change that situation. That being so, if the applicant's benefit had commenced in 1975, it would have been established on the basis of the salary paid from 1 January 1972 to 31 December 1974 to his successor as Deputy Secretary-General.

The General Assembly had wished to prevent the new system from creating inequalities between earlier pensioners and newly retired staff members with the same administrative status. The respondent's interpretation of the Assembly resolution would have made

[27] Mme. Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. Endre Ustor, Member.

the ceiling on the applicant's pension lower than the pension he would have received if he had retired as Deputy Secretary-General of WMO on 1 January 1975. That seemed to the Tribunal to be manifestly contrary to the text of the General Assembly resolution, and it accordingly rescinded the contested decision.[28]

14. JUDGEMENT NO. 229 (14 OCTOBER 1977)[29]: SQUADRILLI *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Decision of the General Assembly permitting the recognition as pensionable of periods of service prior to their membership in the United Nations Joint Staff Pension Fund of staff members of UNRWA still in service on 31 December 1975 — Decision of UNRWA extending coverage under that decision to a former staff member who retired in 1967 — Question whether the increased retirement benefits are payable as from 1 January 1976 or as from the date of retirement

The applicant had joined the staff of UNRWA in 1955 and, like all staff members of the Agency, had become an associate participant in the United Nations Joint Staff Pension Fund on 1 January 1961 and a full participant on 1 January 1967. On 11 July 1967 he had retired, and from 19 July 1971 to 30 June 1976 he had held a series of fixed-term appointments with UNICEF, the last two of which had covered the periods from 1 July 1975 to 31 December 1975 and from 1 January 1976 to 30 June 1976 respectively.

On 12 November 1975, the Secretary-General had proposed in a report to the General Assembly (A/C.5/1709) that certain staff members of UNRWA should be covered by the Pension Fund for service during the period 1950–1960, with the proviso that only staff members "still on the rolls as of 31 December 1975" would be eligible for such coverage. That proposal had been accepted by the Assembly. The representative of Canada had suggested that the Secretariat should examine the implications of the Secretary-General's proposal with regard to former staff members of UNRWA who had retired prior to 31 December 1975, and it had been understood that the Secretary-General would report to the Assembly on that point at a later session.

After an exchange of correspondence between various senior United Nations and UNRWA officials and the applicant — in the course of which one question raised was whether he had still been on the rolls as of 31 December 1975 — the applicant had declared his intention of submitting the case to the Tribunal, which he had proceeded to do on 1 June 1977. On 27 May 1977, he had been informed by the Director of Personnel of UNRWA that it had been determined that he was eligible to elect Pension Fund coverage for the period from his entry on duty date with UNRWA to 31 December 1960. The applicant had expressed his intention to apply for the coverage in question but had requested elucidation of certain points; in reply, he had been informed that if he accepted the offer made to him the effective date of his increased periodic benefit, under the 1975 General Assembly decision, was 1 January 1976. The applicant had taken the view that his retirement benefits should be recalculated as from the date of his retirement, 11 July 1967, and had therefore pursued the application he had filed with the Tribunal.

The Tribunal noted that there had been shifts in the basis and the nature of the applicant's claim since the dispute had begun and that the request for rescission of what the applicant had regarded as a "decision" of the Secretary-General to limit the benefit of retroactive coverage for periods of service with UNRWA between 1950 and 1960 to certain staff members had become redundant.

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[28] One member of the Tribunal, Mr. Francisco A. Forteza, appended to the judgement a dissenting opinion, the text of which appears on pages 14 and 15 of document AT/DEC/228.

[29] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Endre Ustor, Member.

The only outstanding issue was the effective date of accrual of the increased pension benefits. The respondent contended that the dispute relating to that issue had arisen almost a month after the application had been filed and that it was not an issue as to which the agreement for direct submission of the application extended. The Tribunal nevertheless considered that the question arose as a consequence of the acceptance by the respondent of the applicant's original claim and that the matter was therefore properly before the Tribunal for its decision. The respondent further contended that any plea relating to the contract of employment or terms of appointment of a staff member of UNRWA should be addressed to that Agency and that UNRWA was therefore the proper respondent to the dispute. The Tribunal noted that it was UNRWA which had decided that the effective date for the recalculation of the applicant's periodic benefits was 1 January 1976. In the circumstances, the Tribunal considered, on the basis of its Judgement No. 63 in which it had held that pleas relating to service conditions should be addressed to the employing agency, that UNRWA was a necessary party to the dispute. It noted, however, that UNRWA had arranged for its answer to the applicant's claim to be filed through the Secretary-General of the United Nations and that the Secretary-General was acting not only on his own but also on behalf of UNRWA before the Tribunal. The Tribunal therefore held that UNRWA was represented in the proceedings before it through the Secretary-General of the United Nations and that the decision of the Tribunal was equally binding on UNRWA.

In reply to the respondent's contention that the applicant had rejected UNRWA's "offer" and had allowed the time for acceptance to expire, the Tribunal stated that UNRWA's decision determining the applicant's eligibility for retroactive coverage of his pre-1961 service had not been an offer subject to withdrawal, that the applicant had in fact conveyed his intention to apply for the coverage in question and that his attitude in seeking elucidation could not be regarded as rejection.

On the issue of the effective date from which the enhanced pension benefits should be calculated, the Tribunal observed that the provisions of the Pension Fund Regulations relied on by the applicant dealt with the calculation of a retirement benefit payable to a participant and that the applicant, being a former participant, could not be treated as a participant. The Tribunal also noted that article 50 (b) of the Pension Fund Regulations provided that an amended regulation should enter into force as from the date specified by the General Assembly but without prejudice to rights to benefits acquired through contributory service prior to that date. On the analogy of that principle, the Tribunal considered that the benefits accruing from the General Assembly resolution should be subject to the provisions of that resolution. The Tribunal therefore held that the enhanced pension benefits should be recalculated and paid as from 1 January 1976. Acceptance of the applicant's contention would have led to discrimination against staff members of UNRWA who had retired or would retire after 1 January 1976. Lastly, should the Assembly decide, as a result of the study suggested by the representative of Canada, to extend to UNRWA staff members who had retired prior to 1 January 1976 any benefit of retroactive coverage larger than that afforded to the applicant, the eligibility of the applicant for such benefit remained open.

15. JUDGEMENT NO. 230 (14 OCTOBER 1977)[30]: TEIXEIRA *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Competence of the Tribunal to hear, by consent of the parties, a dispute between the Organization and a person employed under a special service agreement and not having,

[30] Mme. Paul Bastid, Vice-President, presiding; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza, Member.

under the terms of the agreement, the status of a United Nations staff member — Obligation of the Organization, as set forth in the Convention on the Privileges and Immunities of the United Nations and recognized in judgements of the United Nations and ILO Administrative Tribunals, to provide the safeguard of an appeals procedure to persons with whom it enters into contracts — Award of compensation to the applicant for damage suffered by reason of delay on the part of the Organization in providing him with an appeals procedure

The applicant had worked for the Economic Commission for Latin America (ECLA) for nearly 10 years under a number of successive special service agreements. On 25 July 1974, he had asked either to be informed of ECLA's intentions towards him or to be granted the compensation due to him for his 10 years of work. His claim had been rejected on the ground that he did not have the status of a United Nations staff member, whereupon he had taken his case to the Joint Appeals Board, which had decided not to entertain the appeal on the ground that the special service agreements signed by the applicant had specified that the subscriber would not be "considered in any respect as being a staff member of the United Nations".

The Tribunal noted that in this dispute the applicant claimed certain rights under the Staff Regulations and Rules. It was therefore a dispute which the Tribunal might hear on the basis of an agreement between the parties. The respondent had stated that he found the Tribunal "an appropriate forum to be seized with the application", and the applicant had agreed with that view.

The Tribunal noted, moreover, that, in accordance with the approach it had taken in earlier cases (Judgements Nos. 96[31], 106[32], and 150[33]), it might properly hear an appeal concerning the application of the Staff Regulations and Rules without its affirmation of its competence leading to the conclusion that the applicant was a staff member or former staff member of the United Nations. Consequently, the Tribunal declared itself competent to pass judgement on the application.

As to whether or not the applicant had had the status of a member of ECLA, the Tribunal held that that issue was closely interwoven with the merits of the case and that, since the applicant has asked to plead subsequently on the merits, the Tribunal was not required to take a decision at the present stage.

The applicant also requested the Tribunal to rule that his appeal should be receivable by the Joint Appeals Board. There again, the Tribunal held that it would be able to examine the question of the competence of the Joint Appeals Board only if it was decided that the applicant was entitled to invoke the Staff Regulations and Rules.

Lastly, the applicant requested payment of compensation for the damage suffered by reason of delay attributable to the respondent's refusal to recognize the competence of the Joint Appeals Board or to establish arbitration machinery. The Tribunal noted that none of the successive agreements binding the two parties had contained any provision for the settlement of disputes. It shared the regret of the Joint Appeals Board "that the special service agreements signed by the appellant contain no provision for the settlement of disputes arising out of the contract".

The Tribunal noted that the applicant invoked in that connexion section 29 in article VIII of the Convention on the Privileges and Immunities of the United Nations,[34] which provided that:

> "The United Nations shall make provisions for appropriate modes of settlement of:
>
> "(*a*) Disputes arising out of contracts . . .".

[31] See *Juridical Yearbook*, 1965, p. 207.
[32] *Ibid.*, 1967, p. 295.
[33] *Ibid.*, 1971, p. 162.
[34] United Nations, *Treaty Series*, vol. 1, p. 15.

The Tribunal also referred to its Judgement No. 150[35], in which it had cited the statement of the ILO Administrative Tribunal, in its Judgement No. 122[36], to the effect that:

> "While the Staff Regulations of any organisation are, as a whole, applicable only to those categories of persons expressly specified therein, some of their provisions are merely the translation into written form of general principles of international civil service law; these principles correspond at the present time to such evident needs and are recognized so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently *may not lawfully be ignored in individual contracts. This applies in particular to the principle that any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure.*" (Emphasis added by the Tribunal.)

The Tribunal noted that it was only in 1977, nearly three years after the applicant had expressed his desire to submit an appeal, that the respondent had accepted "the establishment of an arbitral procedure to hear the applicant's claim". It considered that the prolongation of the dispute was attributable to the respondent by reason, firstly, of the absence of a guarantee of appeal in the various agreements concluded with the applicant over a period of nearly 10 years, and, secondly, of the respondent's subsequent refusal to make some means of appeal available to the applicant. The Tribunal fixed at $1,000 the amount of compensation to be paid by the respondent for the injury resulting from the respondent's conduct.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[37, 38]

1. JUDGEMENT NO. 286 (6 JUNE 1977): LEMERCIER *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

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[35] See *Juridical Yearbook*, 1971, p. 162.

[36] *Ibid.*, 1968, p. 176.

[37] 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 1977, 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, the Intergovernmental Council of Copper Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory and the World Tourism Organization. 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.

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

2. JUDGEMENT NO. 287 (6 JUNE 1977): NATUS *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

3. JUDGEMENT NO. 288 (6 JUNE 1977): CALLEWAERT *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

4. JUDGEMENT NO. 289 (6 JUNE 1977): DEGRAEVE *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

5. JUDGEMENT NO. 290 (6 JUNE 1977): REEKMANS *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

6. JUDGEMENT NO. 291 (6 JUNE 1977): FINKELSTEIN *v.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

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

The complainant objected to the decision of the Director-General refusing to extend beyond the date of its expiry the fixed-term appointment which the complainant had held since 1962 and which since then had been renewed several times.

The Tribunal recalled that such a decision fell within the Director-General's discretionary authority and that the Tribunal could interfere with it only if it had been taken without authority, or violated a rule of form or of procedure, or was based on an error of fact or of law, or if essential facts had not been taken into consideration, or if the decision was tainted with abuse of authority, or if a clearly mistaken conclusion had been drawn from the facts. The Tribunal considered that the impugned decision was not tainted with any of those flaws.

The Tribunal added that, supposing that the decision in question had indeed been based on the sending by the complainant of a letter couched in language which could not be tolerated from any subordinate, the Tribunal would not be entitled to quash a decision to remove from the staff of the Organization one whose attitude had on several occasions been plainly at odds with the basic duties of any international official.

The Tribunal therefore dismissed the complaint.

7. JUDGEMENT NO. 292 (6 JUNE 1977): MOLLOY *v.* EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

Conditions for the payment of a special rate of educational allowance to officials of a nationality other than that of the country of their duty station — Amendment by "Office Notices" of the system established by the Rules of Application of the Staff Regulations of the Agency — Failure of the Agency to reply to a request for an interpretation of those Rules — Receivability of a complaint submitted in such circumstances — Substantive and formal conditions that must be met in order that Rules may be validly amended by an "Office Notice"

The complainant, an official of British nationality and the father of several children of school age, had enquired of the Organization, at the time of his recruitment, about accommodation and schools at his duty station, situated in France. In accordance with article 3 of rule No. 7 of the Rules of Application of the Staff Regulations of the Agency, officials of British or Irish nationality received for each of their children an educational allowance at a special rate "provided always that they are able to show that it is impossible for their dependent children to receive" within the agglomeration of their residence "primary or secondary education in accordance with the standards obtaining in the educational institutions of their country of origin". The complainant had been told that some of the British staff sent their children to English schools while others sent them to French schools and had been informed that he would be "entitled to an educational allowance of 1,550 Belgian francs per month" (that being the amount then fixed as the special rate). It had been explained "This is a flat rate irrespective of the arrangements you make for the children". The complainant had received the special rate during his first two years of employment.

On 18 September 1970 an "Office Notice" had been circulated making the payment of the special rate conditional upon the official furnishing annually proof of payment of excessively high school fees. According to the Administration, the complainant failed to provide that proof and ceased to receive the special rate as from 1 December 1970. On 4 August 1971 another Office Notice was issued, accompanied by an Instruction prescribing further conditions, i.e. that there should be no suitable school within a radius of 50 kilometres and that fees proved to be paid should exceed the special rate. On 7 March 1972 the complainant complained about the stoppage of the special rate. The Director of Personnel and Administration replied on 25 May 1971 that "When an official is assigned to an area in which his children may within a radius or 50 kilometres receive schooling up to English standards of education the special flat rate is payable provided the official proves that school fees . . . come to twelve times (the special flat rate) . . . a year". The Director of Personnel added in his letter that the problem of educational allowances was being studied. On 30 January 1973 the complainant asked that his application should be reconsidered, but without success. On 20 January 1975, he applied for restoration of the special rate, pointing out, among other things, that the most accessible English school was 77 kilometres away from the nearest station to his home. His application was refused on the grounds that the 50 kilometres specified in the relevant Office Notice was a radius and not a distance and should be measured from the duty station and not the official's home, and furthermore that he had not proved that the school fees he paid exceeded the amount of the allowance. The complainant appealed that decision on 27 May 1975 and, having received no reply, filed a complaint with the Tribunal on 28 November 1975 in which he asked, first, for a correct and reasonable interpretation of rule No. 7, and secondly, for compensation for the loss suffered.

With regard to the receivability of the complaint, the Tribunal recalled that article 92, paragraph 1, of the Staff Regulations provides that a staff member may submit to the Director-General a request that he take a decision relating to him, and that if after four months no reply is received the request is deemed to have been rejected and a complaint may be lodged. The Tribunal considered that the first head of the complaint fell within the scope of the provision, for a request for an interpretation of article 3 of rule No. 7 was a request for a decision relating to the complainant. It could be made at any time and was not subject to any time-limit. The substantial question in the case was whether a document which had as its object *"fixer les modalités d'application"* of the provisions of article 3 could impose conditions not contained in the article, i.e. in this case, change the character of the payment from an allowance to a fixed sum and interpret the words *"dans l'agglomération"* in the article in question as meaning within a radius of 50 kilometres. The Organization had never answered that question. The Tribunal therefore declared the complaint receivable on that point.

Concerning the second head of the complaint, the Tribunal noted that the educational allowance was payable to the complainant on the first day of every month. If the complaint was well founded, the complainant had been underpaid on the first day of every month since 1970 and the Organization had acted adversely towards him on each of those occasions. However, because of the three-month time-limit on the lodging of a complaint under article 92, paragraph 2, of the Staff Regulations, and since the complainant had not lodged his complaint until 20 January 1975, the period prior to 1 October 1974 was time-barred.

As to the merits, the Organization contended that the Instructions of 18 September 1970 and 4 August 1971 constituted valid amendments to article 3 of rule No. 7, as was crystallized in the following sentence in its reply:

> "Since Eurocontrol staff are subject to service regulations, it is obviously at the discretion of the competent authority to alter unilaterally the provisions of the regulations."

The Tribunal considered that that defence failed, in particular because the Organization did not state who the competent authority was or whence he derived his power to amend the Rules of Application. Under the Staff Regulations, the Director-General was empowered to settle the conditions of remuneration of the staff and he had established rule No. 7 for that purpose. If it was granted that the power to make a rule must embrace a power to amend it, then the Director-General could unilaterally amend rule No. 7, but only by the exercise of his rule-making power, which he did not seem to have used in this case.

The applicable texts did not indicate clearly whether the Rules of Application were to be put on a par with Office Notices nor which was to prevail if the two categories of text were contradictory. The Tribunal did not seek to answer those questions. It assumed that a Rule of Application could be amended by an Office Notice, provided that the document containing the amendment was made by the Director-General himself, that it was presented expressly as an amendment, that the amendment was clear in its effect and that it was not deemed effective to deprive an official of essential acquired rights.

The Tribunal noted that the relevant Office Notices had been signed indiscriminately by the Director-General and the Director of Personnel and Administration. Their wording did not show that their object was to amend the provisions of article 3, since their stated object was to fill in the details of its application.

The Tribunal concluded from the foregoing that the new conditions imposed must be within the scope of that article. In that connexion, the Tribunal considered that requiring the official to furnish proof of payment of excessively high school fees was tantamount to changing the character of the payments made in connexion with school fees from an allowance, i.e. a sum paid without any conditions as to its utilization, into a reimbursement. It also noted that according to article 3, British officials, in order to obtain the special rate, must be able to show that their children could not obtain what might be broadly described as a "British" education at a school in *"l'agglomération de leur résidence"*, "reasonably near their places of residence". The Tribunal assumed that it was within the power of the Director-General to lay down by means of an Instruction what was "reasonably near". In so doing, he must be guided by accessibility for school children, which must vary according to the conditions in each locality and depended upon distance and means of transport. To lay down that for every official whatever the situation of his residence, every school within a radius of 50 kilometres (whether from the duty station or from the residence) was to be deemed accessible was not a proper exercise of the power of decision.

The Tribunal therefore decided that article 3 of rule No. 7 had not been amended by the aforementioned Office Notices and that the complainant was entitled to recover from

the Organization the sums underpaid to him as educational allowance on and after 1 October 1974.

8. JUDGEMENT NO. 293 (9 JUNE 1977): CONNOLLY-BATTISTI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint impugning a decision changing the description of a type of appointment

The FAO Council having decided that "permanent" appointment should henceforth be described as "continuing", the complainant, fearing that the change might entail negative consequences for her, requested the Tribunal to order the Organization to confirm her status as the holder of a permanent appointment and to stop using the term "continuing" in all documents referring to her employment status in FAO, and to guarantee her the security of employment given by permanent status according to the relevant sections of the FAO Manual.

The complainant contended first that the Director-General had exceeded his authority in that the relevant resolution of the Council applied only to employment created after the date of its adoption. The Tribunal rejected that contention, noting in particular that the Council was unlikely to have intended that a type of employment should be described in two different ways according to the date on which it had begun.

The complainant contended, secondly, that the change in description could not apply to her because she had an acquired right to have her employment described as permanent. The Tribunal likewise rejected that contention, observing that the expression "acquired right" in that context related to rights of substance, whose impairment would result in injury, financial or otherwise, to the staff member, and did not embrace matters of nomenclature.

Lastly, the complainant contended that the terminological change could in certain circumstances have a negative impact on her security of tenure. The Tribunal noted that the Organization had given the staff in general the clearest and most explicit assurances that the amendment did not alter the conditions of employment or security of employment. It added that staff regulation 301.121, which had remained unaltered, provided that any amendment was without prejudice to the acquired rights of staff members. The Tribunal concluded that to the extent to which any staff member had had a right to security of tenure or to any other benefit, such right was protected by the aforementioned provisions, and it therefore dismissed the complaint.

9. JUDGEMENT NO. 294 (6 JUNE 1977): CONNOLLY-BATTISTI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Reform of the step system of one of the grades of the General Service category having the effect of adding three additional steps to that grade — Situation of staff members who, at the time of the reform, had been at the highest step of that grade for several years — Decision of the Administration to grant those staff members, in implementation of the reform, the step immediately above the last step of the former system — Purpose of step increases — Principle of equal treatment of staff members

The complainant, who had been at the highest step of grade G-6 since 1968, had been granted, following a reform introduced by the FAO Council resulting in the addition of three additional steps to her grade, the step immediately above that she had held at the time of the reform. Noting that the step increment was granted every two years and considering that she had served for over six years at the highest step of her grade, she contended that she ought to have been granted three additional steps.

The Tribunal first noted that according to Manual Section 308.411 and in the light of well-established practice, the step increment was granted at the end of a fixed period and a staff member whose increment was withheld otherwise than on the grounds of unsatisfactory service would be recognized as having cause for complaint. It added that while grades were distinguishable one from another by a difference in the nature of the duties performed and in the degree of responsibility undertaken, steps within grades were not similarly distinguishable and that in fact the increment was simply a way of rewarding seniority and experience.

The Tribunal observed that the Director-General had treated the Council's decision as substituting the new salary scale with three additional steps in grade G-6 for the old scale; Manual Section 308.411 would then, in the Director-General's view, be applied to the new scale in the same way as to the old, with the result that advancement from one step to the next must necessarily be preceded by a qualifying period. The Organization added that if the Council had intended that the new scale should be applied retroactively to G-6 staff members having attained the highest step of their grade, it would have said so specifically.

The Tribunal considered it unnecessary to determine whether the Council's decision automatically amended the rule to which the old salary schedule was attached or whether it should more correctly be regarded as an instruction to the Director-General to take the necessary formal steps to effect the introduction of the new schedule. It confined itself to noting that it was not to be expected that the Council would itself provide in detail for all the implications of the change and that the Director-General had therefore been in error in supposing that he had no power to do otherwise than apply Manual Section 308.411 literally to the new situation. Furthermore, the Tribunal added that the Director-General was under an obligation "to use his powers so as to ensure that an amendment authorized by the Council does not in its application result in inequality of treatment which the Council cannot be supposed to have intended". On this point the Tribunal expressed the following view:

> "It is of course inevitable that, if a salary scale has a maximum figure, there can be no further reward for length of service after the maximum has been reached. Whether this is fair or not (and clearly one of the objects of the new salary scale was to fix a span that would as far as possible eliminate it), it is the same for all. But when a halt has been made and thereafter progress has been resumed, it will not be the same for all. Staff members will be differently affected according to the length of the halt and from this point of view the length of the halt is bound to be arbitrary. There were doubtless good administrative reasons in 1971 for not extending the scale in grade G-6 as in the other grades, but the consequence is that, when it was extended, the complainant was less well treated than others who had been moving forward while she was stationary. It is not at all a question of retroactivity. The complainant has lost forever the increments which she would have got between 1 September 1970 and 1 February 1975 if the change had been made retroactive to the former date. The point relates in the period of her service after 1 February 1975. The change that came into force on that date confers an advantage on all staff members in grade G-6, but it is an advantage that is substantially less for the complainant and interveners than it is for the others.
>
> "Manual Section 308.411 is not framed to cover a situation arising from the sudden creation of three additional steps. The Director-General was right in thinking that the Rule could not be interpreted in a way that would equalise the effect of the change. Where he was wrong was in thinking that he had neither the power nor the duty to equalise the effect of the change by some other means consistent with the principle that the object of the salary scale is to reward length of service and experience. In short the change, as changes frequently do, required some transitional pro-

vision to cover exceptional cases and it was the duty of the Director-General to make such provision."

The Tribunal therefore ordered the Director-General to take such steps as were necessary to ensure that the complainant was treated as if on the date on which the new system had entered into force she had been at the highest of the new steps of grade G-6 for five months.

10. JUDGEMENT NO. 295 (6 JUNE 1977): GRENET *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint by a staff member seconded from a national administration referring to delay in his recruitment by the defendant organization and requesting various refunds

The complainant claimed: (1) compensation for the injury he had allegedly sustained as a result of negligence on the part of ILO, deriving from the fact that his appointment by the Organisation had taken effect several weeks after his secondment from the civil service of his own country; (2) refund of the "excessive rents" paid to landlords in his duty station; (3) refund of hotel expenses incurred by him on his arrival in his duty station and (4) recognition of his right to promotion by reason of his promotion in the civil service of his country some months prior to his appointment by ILO.

With regard to the first point, the Tribunal noted that the date of the complainant's secondment had been fixed by the authorities of his country of origin in accordance with rules for which of course ILO bore no responsibility. ILO had been willing to sign the contract only two weeks after the date of secondment. The signing had taken place later because the complainant himself had delayed coming to Geneva for personal reasons. The Tribunal therefore concluded that ILO was not to blame for any delay and was not at fault.

As to the "excessive rents", the Tribunal noted that the complainant, who had no such entitlement under his conditions or contract of appointment, had been paid a "special housing allowance" on the terms applicable, according to international rules, to all technical co-operation experts posted to Cameroon.

As to hotel expenses, the Tribunal noted that the installation allowance paid to all staff members upon arrival in their duty station precluded any refund of hotel expenses. The complainant had received the usual statutory allowances.

Lastly, as to the complainant's promotion in the civil service of his country of origin, the Tribunal considered that that fact had no bearing on the terms of his contract with ILO. The Tribunal therefore dismissed the complaint.

11. JUDGEMENT NO. 296 (6 JUNE 1977): HAGLUND *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint seeking compensation from an organization other than the defendant organization — Irreceivability of the complaint owing to expiry of the time-limit.

The complainant considered that he had not received sufficient compensation for the injury he had sustained as a result of the fact that some of his baggage, which had been shipped by the local UNDP office, had been lost or damaged in the course of official travel. He requested the Tribunal to order UNDP to pay him $US 5,407 as compensation. The Organization objected that the complaint was irreceivable.

The Tribunal observed that when considering a complaint directed against one organization it could not make an order requiring payment by some other body. It acknowledged, however, that in the light of the facts of the case the complainant could allege that UNDP, in arranging the removal of the effects, had been acting as agent for the Organization which might thus be made responsible. The Tribunal refrained from deciding on that point.

It concluded, however, that the complaint was time-barred, in that the Organization having failed to take a decision on the initial claim within 60 days, the complainant should have filed his complaint within 90 days after the expiry of that 60-day period, but had not done so.

12. JUDGEMENT NO. 297 (6 JUNE 1977): LOROCH *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Decision not to renew a fixed-term appointment — Limits of the Tribunal's power of review with regard to such a decision — Advisory function of internal appeals bodies

The complainant, having been unable to obtain the renewal of his fixed-term contract, had appealed to the FAO Appeals Committee, which had unanimously recommended to the Director-General that every endeavour be made to redeploy the complainant within the Organization in duties with less operational implications, yet in his own sphere of competence. The Director-General had accepted that recommendation "in principle", explaining that his application for any suitable vacancy would receive the fullest consideration. The complainant had taken the view that that statement was not in accordance with the Appeals Committee's recommendation and had so informed the Director-General, who had maintained his position.

The Tribunal first observed that the decision not to renew a fixed-term contract fell within the Director-General's discretionary authority and could not be quashed unless it was tainted with very specific flaws. It noted in that connexion that the complainant considered that the impugned decision was tainted by an error of law in that the Director-General had failed to act on the recommendation of the Appeals Committee. The Tribunal observed, however, that according to staff regulation 301.111, the Appeals Committee was to advise the Director-General and its function was thus purely advisory. The Tribunal could not treat the aforementioned regulation as an exception and, passing over the law in force, regard the Appeals Committee's recommendations as mandatory. It might go so far as to impute an error of law to the Director-General if the impugned decision were tainted with inconsistency. But it was not, for the Director-General had not overlooked the recommendation since he had stated he was prepared to take account of it.

The complainant contended, moreover, that the Director-General had failed to take account of such essential facts as the complainant's age, his family commitments, his high professional qualifications and so on. However, the Tribunal considered that argument irrelevant, since the Director-General had known of the report of the Appeals Committee, which set out the parties' allegations, and there was nothing to suggest that he had disregarded the facts in question.

Lastly, the complainant contended that the Director-General had drawn mistaken conclusions from the dossier. In that connexion, the Tribunal reviewed the various solutions which might have been considered on the basis of the facts in the dossier. It concluded that in adopting the solution consisting in the nonrenewal of the complainant's appointment, the Director-General had not drawn clearly mistaken conclusions from the dossier.

The Tribunal therefore dismissed the complaint.

13. JUDGEMENT NO. 298 (6 JUNE 1977): GORNER *v.* EUROPEAN SOUTHERN OBSERVATORY

Complaint falling outside the competence of the Tribunal in that it impugns a decision by a national court, and irreceivable by reason of expiry of the time-limit in that it is directed against a decision of the defendant organization

On 5 June 1974 the complainant had submitted to the Organization a claim which had been dismissed. She had then brought suit before the Labour Court of Hamburg

which, by a decision of 21 October 1975, had declared itself not competent. She had then filed her original claim with the Tribunal, giving 31 October 1975 as the date of the decision impugned.

However, the dossier showed that the decision of 31 October 1975 had been taken by the Labour Court of Hamburg and not by the Organization. The Administrative Tribunal of the ILO, as an international tribunal, was not competent to hear an appeal against a decision by a national court.

Moreover, even if recourse to a national court which did not have jurisdiction might be regarded as postponing the time-limit for appeal to the Administrative Tribunal, it would have been necessary — and such was not the case, that the complaint be lodged with the latter within 90 days after notification of the decision of the national court.

The Tribunal therefore declared the complaint irreceivable.

14. Judgement No. 299 (6 June 1977): Mollard *v.* International Labour Organisation

Complaint impugning a decision determining the level of a post — Limits of the Tribunal's power of review with regard to such a decision — Every post description covers not only purely material considerations but also subjective ones taking account of the responsibilities of the incumbent

The complainant, a documents clerk, had applied for review of the grading of her post at G-5. She had pointed out, among other things, that her job description, the sole basis for her grading, was identical to that of the G-7 post of a documents clerk in another branch.

The Organization replied that in grading posts account should be taken not only of the material description of the duties pertaining to each post, but also of the nature and importance of the incumbent's actual responsibilities.

The Tribunal held that, although in the case in question the job description for a post was the sole basis which should be taken into account, it should cover not only purely descriptive material considerations but also subjective ones: account must be taken of, for example, staff members' actual responsibilities. It was true that the complainant's duties might be regarded as identical, according to their material description, with those of another official whose post was graded at G-7. But the Tribunal concluded from the documents in the dossier that the two posts were not comparable from the standpoint of the responsibilities involved and the technical knowledge they required. That being so, the impugned decision was in no way unlawful and was not based on any material errors of fact.

The Tribunal therefore dismissed the complaint.

15. Judgement No. 300 (6 June 1977): Ledrut and Biggio *v.* International Patent Institute

Decisions refusing promotion to the complainants — Limits of the Tribunal's power of review with regard to such decisions — Differences in career patterns which are justified by administrative reasons do not breach the principle of equal treatment

The complainants impugned decisions of the Director-General refusing to promote them from grade A-7 to grade A-6. The Tribunal first observed that such decisions fell within the Director-General's discretionary authority and it could interfere with them only if they were tainted by very specific flaws.

The complainants argued first that it was unlawful not to put on a par with staff members having the four years' actual service required for promotion from grade A-7 to

grade A-6 staff members who, like themselves, had three years' actual service plus one or more years' seniority benefit granted for experience acquired prior to recruitment. The Tribunal considered, however, that the principle of equality among staff members belonging to the same category mentioned in the Staff Regulations did not mean that seniority benefit was to be equated to actual service for the purpose of determining entitlement to promotion. To take account of actual service was to reward staff members for loyalty and induce them to stay on. It was true that according to the Staff Regulations the Director-General might, "so as to take account of the training and special occupational experience of a new staff member, grant him a seniority benefit and so ensure his appointment to the next higher grade." But that did not mean that the grant of a seniority benefit should have any effect on regradings subsequent to appointment.

It was immaterial that the complainants would have been promoted in 1975 had the same criteria been applied as in 1973 and 1974. It was for the Careers Committees and for the Director-General to adapt the conditions of promotion to the Institute's requirements and the resulting differences in treatment did not breach the principle of equality where they were justified by administrative reasons. However, it had not been shown that in this case the Director-General had acted for any purpose but to serve the Institute's interests.

The Tribunal likewise considered that the complainants had provided no evidence to support their allegations that the Director-General had ignored essential facts or drawn mistaken conclusions from the dossier.

It therefore dismissed the complaints.

16. JUDGEMENT NO. 301 (6 JUNE 1977): SCHMITTER *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a refusal of promotion — Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned a decision of the Director-General refusing to promote him in 1975 from grade A-6 to grade A-5. The Tribunal noted first that it could interfere with such a decision only if it was tainted by very specific flaws.

The "general principles governing promotion" approved by the Administrative Council normally required for promotion from grade A-6 to grade A-5 from nine to 10 years' actual service with the Institute, including five at A-6. However, in 1975 the complainant had actually served for only six years, including four at grade A-6. It was true that by 1975 the complainant could not have served for more than four years at grade A-6, since that grade had been created in 1971, but in any event he did not meet the requirement of nine to 10 years' actual total service.

According to the Tribunal, there was no force in the complainant's criticisms of the criteria applied by the competent Careers Committee: the function of such committees was purely advisory, the criteria they adopted had no binding force, and even though those criteria were not beyond reproach, the Director-General's decisions were not tainted on that account.

It was immaterial that the criteria applied in 1975 were not the same as had been applied in earlier years. It was for the Careers Committees and for the Director-General to adapt the promotion criteria to the Institute's requirements and the resulting differences in treatment did not breach the principle of equality where they were justified by administrative reasons. However, it had not been shown that in this case the Director-General had acted for any purpose but to serve the Institute's interests.

With regard to the allegation that essential facts had been ignored, the Tribunal considered that there was nothing to suggest that the Director-General had discounted facts in favour of promoting the complainant.

17. JUDGEMENT NO. 302 (6 JUNE 1977): SMITH *v.* EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

Complaint deemed irreceivable owing to expiry of the time-limit

The complainant claimed that the Agency had erroneously paid him a school fees allowance to which he stated he was not entitled. He had sent a cheque for the amount in question to the Agency which, considering that the allowances were indeed due, had returned it to him on 3 October 1975.

The Tribunal declared the complaint irreceivable because it had been filed after the expiry of the statutory time-limit of 90 days after the notification of the impugned decision.

18. JUDGEMENT NO. 303 (6 JUNE 1977): BRISSON, DEMETER, VAN DE VLOET AND VERDELMAN *v.* INTERNATIONAL PATENT INSTITUTE

Decisions refusing promotion to the complainants — Limits of the Tribunal's power of review with regard to such decisions — Rejection of arguments based on the composition of the body responsible for recommending staff members for promotion — Lack of binding force of documents containing mere guidelines — Power of the Director-General to adapt the conditions of promotion to administrative requirements

The complainants impugned decisions refusing to promote them from grade C-3 to grade C-2. The Tribunal first noted that it could interfere with such decisions only if they were tainted by very specific flaws.

One of the complainants contended that the committee which recommended staff members in his category for promotion included the Chief of the Personnel Service, the official who had determined his performance mark, and that the committee's composition was therefore irregular. The Tribunal considered that the fact that the Chief of the Personnel Service should sit on such a committee was only normal, that there was no incompatibility between his function as marker and his position as a member of the committee, and that there was nothing to suggest that he had shown any prejudice against the complainant.

The complainants also contended that the Director-General, in studying their cases, had failed to take account of the "normal career pattern" described in a declaration of 22 December 1971 by the Administrative Council. The Tribunal noted in that connexion that it was doubtful whether the declaration in question, which related to those on the staff at the end of 1971, could properly be relied upon by the complainants, who had joined the Institute later. It added that the declaration merely afforded guidance and was not a binding rule.

The complainants also invoked in support of their complaint the "general principles governing promotion" approved by the Administrative Council. The Tribunal observed that those principles did not have absolute force in this case and that the Administrative Council could not have meant to depart from article 25 of the Staff Regulations, which made both seniority and performance the criteria for promotion.

It was immaterial that the criteria applied in 1975 were different from those used in preceding years. It was for the Careers Committees and for the Director-General to adapt the conditions of promotion to the Institute's requirements and the resulting differences in treatment did not breach the principle of equality where they were justified by administrative reasons, and it had not been shown that in this case the Director-General had acted for any purpose but to serve the Institute's interests.

Lastly, the Tribunal rejected the allegation that the Director-General had drawn mistaken conclusions from the dossier: even if it had been shown that the complainants met the conditions for promotion, the Director-General would not necessarily have abused his discretionary authority, since financial reasons and a desire to keep a hierarchy of staff

members within a category could lead him to grant promotion to fewer staff members than deserved it.

19. JUDGEMENT NO. 304 (6 JUNE 1977): KARSKENS *v.* INTERNATIONAL PATENT INSTITUTE

This case is similar to that dealt with in Judgement No. 303.

20. JUDGEMENT NO. 305 (6 JUNE 1977): GUYON AND NICOLAS *v.* INTERNATIONAL PATENT INSTITUTE

Complaints impugning final decisions not appealable to the internal appeals body but which nevertheless formed the subject of a recommendation by the internal appeals body — The time-limit for impugning such decisions before the Tribunal runs from the final decision and not from the purely confirmatory decision taken following the recommendation of the internal appeals body

The complainants, relying on Judgement No. 262, delivered by the Tribunal *in re Labadie* v. *International Patent Institute*[39], asked that the effective date of their promotion, of which they had been notified on 13 November 1974, be changed. Having received a negative reply from the Director-General in a letter dated 5 December 1975, they had appealed to the internal Appeals Committee and had obtained a favourable recommendation. However, that recommendation had not been followed by the Director-General, who had held to his original decision in a notification dated 29 April 1976.

The Tribunal recalled that under article 82 of the Institute's Staff Regulations a decision concerning a promotion taken after consulting one of the joint bodies mentioned in article 10 of the Regulations could not be appealed to the Appeals Committee; since it was a final decision, any complaint inpugning it before the Tribunal ought to have been lodged within 90 days after the date of its notification. The impugned decisions had been notified on 13 November 1974. The complaints, lodged on 7 May 1976, were therefore clearly time-barred. They would still be time-barred if 5 December 1974, the date on which the Director-General had dismissed the complainants' appeals, was taken as point of departure.

The Tribunal added that it was true that the complaints had been lodged within 90 days of the date on which the Director-General had held to his original decision. However, a decision which was a mere confirmation could not give rise to a new period when the first has been allowed to lapse. It was immaterial that the Appeals Committee had erroneously declared itself competent: it was for the Tribunal to see whether article VII of its own Statute was applicable, which meant that, in particular, it must determine the date on which the internal body of last instance had taken its decision and from which the 90-day period therefore began to run.

The Tribunal added that, even if they had been receivable, the complaints would have had to be dismissed. It recalled that a judgement by the Tribunal on a dispute between an organization and a staff member affected only the parties to that dispute. It could not alter a decision affecting third parties which was already in force. The stability of legal relationships would be impaired if staff members were entitled to rely upon new case law to cast doubt on the validity of earlier and final decisions. The complainants were thus mistaken in relying upon Judgement No. 262 in seeking review of the decision of 11 November 1974 relating to them; they must bear the consequences of their failure to impugn in time the decision fixing the date of their promotion.

[39] See *Juridical Yearbook*, 1975, p. 149.

21. JUDGEMENT NO. 306 (6 JUNE 1977): ALMINI *v.* INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING (INTERNATIONAL LABOUR ORGANISATION)

Complaint impugning a decision not to renew a fixed-term contract — Quashing of the decision as based on conclusions not borne out by the dossier

The complainant impugned a decision dated 9 February 1976 refusing to renew his fixed-term contract. The Centre argued that the complaint, filed on 10 May 1976, was time-barred. The Tribunal observed that according to article VII of its Statute, a complaint was not receivable unless it had been filed within 90 days after the decision impugned had been notified. It noted that in this case the aforementioned time-limit had expired on 9 May 1976, but considered that since that date was a Sunday the complaint, having been registered by the Registrar on 10 May, was receivable.

As to the merits, the Tribunal noted that the complainant, who in August 1974 had received a highly commendatory assessment from the Director of the Centre, had 10 months later been informed by the person who had succeeded that Director that his contract would not be renewed. It was all the harder to account for such a difference in assessment because there was not a single document in the dossier which revealed the true reason.

The Tribunal concluded that, although the impugned decision could not be said to have been taken for reasons contrary to the interests of the Centre, it was clear at least that the decision drew clearly mistaken conclusions from the facts and should therefore be quashed.

The Tribunal ordered that the complainant be reinstated in his post or, should that prove impossible, that he be paid a sum equivalent to one year's salary.

22. JUDGEMENT NO. 307 (6 June 1977): LABARTHE *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Question of the receivability of the complaint — Review by the Tribunal of the possible ways in which the complainant could bring his case before it — Conclusion of the Tribunal considering the complaint as filed by a person alleging non-observance of a binding promise of employment — Interpretation of the words "terms of appointment" as used in paragraph 5 of the Statute of the Tribunal — Indissociability of the question of receivability and the question of the merits — Decision of the Tribunal that a binding contract was made between the parties and granting compensation to the complainant

The complainant sought payment of compensation for breach of the contract alleged by the complainant to have been made on or about 18 June 1973 to appoint him to the position of FAO representative in Trinidad and Tobago.

The Tribunal noted that prior to the cessation of his employment with FAO on 31 October 1972 the complainant had been offered the aforementioned post and had been informed on 22 August 1972, when notified that his employment would cease, that that notice would be retracted if the new appointment became effective. Under staff rule 302.403, if a former staff member is re-employed within 12 months of being separated from service, he may at the option of the Organization be reinstated and on re-instatement his services are considered as having been continuous. In those circumstances and given the divergence of view between the Organization and the complainant as to whether any contract had been made in June 1973, the Tribunal had to consider various hypotheses concerning ways in which the complainant could bring his case before it, namely (1) as an official on the date of his complaint, (2) as a former official on that date, and (3) as a victim of non-observance of terms of appointment.

With regard to the first hypothesis, the case for saying that the complainant was actually an official at the date of his complaint rested upon the effect of the letter of 22 August 1972. The Tribunal considered it doubtful whether the Organization had by that letter exercised conditionally and in advance its option under staff rule 302.403 and considered it more reasonable to interpret the letter broadly as indicating that the notice of termination was not necessarily final. The Tribunal did not, however, decide the question of jurisdiction on that ground.

As to the second hypothesis, it was not disputed that the complainant had the status of a former official, but the Organization contended that to be receivable the complaint must then be founded on events which had taken place during his period of employment. There again, the Tribunal refrained from deciding the question of jurisdiction on that ground.

The complainant contended that the Organization had agreed to appoint him and had then broken its agreement. In relation to the receivability of such a claim, it was a mere accident that the complainant had formerly been an officer of the Organization. With regard to its receivability the complaint ought therefore to be treated as a complaint lodged by a person alleging non-observance of a binding contract by the Organization to appoint him to a post who had not received any formal letter of appointment. The English text of the Statute referred to non-observance of "the terms of appointment", but in that context the word "appointment" should be treated as embracing a contract to make an appointment. Accordingly, the question of whether the Tribunal had jurisdiction depended on whether the complainant could establish the existence of a contract of appointment in the sense defined above; that was a question which the Tribunal, by virtue of its Statute, was competent to decide.

It was not disputed that if the existence of such a contract could be established, the claim must succeed. The Tribunal therefore concluded that the issue between the parties on jurisdiction was also the issue between them on the merits and it was convenient to deal with it under the latter head.

As to the merits, the Tribunal observed that there could be a binding contract prior to the issue of a letter of appointment if there was manifest on both sides an intention to contract, if all the essential terms had been settled, and if that all that remained to be done was a formality which required no further agreement.

In the light of the circumstances and having examined the dossier, the Tribunal concluded that the conditions set forth in the preceding paragraph had been met and that a binding contract had been made between the parties in June 1973. It ordered payment to the complainant of compensation equivalent to the amount of salary and related emoluments which he would have received had he been reinstated on 1 July 1973 and continued in the Organization's employment until 30 June 1975.

23. Judgement No. 308 (6 June 1977): Phillips, De Laet, Van Maren, Bake, Bracke, Duren and Vuillemin *v.* International Patent Institute

Coexistence within the Organization of two pension schemes — Complaint seeking the quashing of a measure considered by the participants in one of the two schemes as breaching the principle of equal treatment — Interpretation of that principle by the Tribunal — Lack of competence of the Tribunal to order the adoption of new rules eliminating in future the differences in treatment mentioned in the complaint

The complainants belonged to a pension scheme known as the "old scheme", which coexisted in the Institute with another scheme known as the "new scheme", which had come into force on 1 January 1965. When offered a choice between the two schemes, they had preferred to remain with the old scheme. In January 1976 the complainants, having heard of a decision taken by the Administrative Council providing that the Institute should

pay extra contributions solely for the benefit of members of the new scheme and considering that that was unfair, had appealed against the Council's decision, but their appeal had been dismissed by a decision of 5 February 1976.

Before the Tribunal the complainants requested it (1) to quash the decision of 5 February 1976 and (2) to order the Institute to put members of the old and new schemes on a par.

The first claim was deemed receivable by the Tribunal. To support that claim, the complainants alleged a breach of the principle of equality. While acknowledging that that principle, embodied in article 5 of the Staff Regulations, could be relied upon by the complainants in, for example, claiming pension rights, the Tribunal stressed that the general principle of equality did not mean that all Institute staff members should be subject to identical rules but was rather reflected in the rule that like circumstances called for like treatment and different ones for different treatment. However, the impugned decision applied solely to staff members belonging to the new scheme. The complainants, who all belonged to the old scheme, could not properly ask to have applied to them a decision which affected staff members in a different position. They did not show that the remedial measures applied by the Council to the new scheme were suited to the old scheme. They were therefore mistaken in alleging discriminatory treatment and their first claim failed.

As to the second claim, in so far as the complainants sought to put an end to the discrimination which they alleged to have suffered by individual or specific measures, it was irreceivable because it had not previously been referred to the Administrative Council. In so far as the complainants wanted general and non-specific measures in the form of new rules, the second claim was likewise irreceivable, since the Tribunal was competent to correct breaches of terms of appointment or provisions of the Staff Regulations, but not to order the adoption of new rules.

24. Judgement No. 309 (6 June 1977): Aouad *v.* World Health Organization

Complaint impugning a decision refusing to reinstate a staff member who had resigned

The complainant had resigned on the grounds that, despite repeated requests, he had been unable to have one of his secretaries, who according to him was utterly insubordinate, transferred. He asked the Tribunal, among other things, to order his immediate reinstatement in his former post.

The Tribunal considered that although it was true that the aforementioned secretary, because of her attitude, ought long before to have been compulsorily transferred at least and that the complainant had always behaved with great propriety, it could not be said that the effect of the secretary's regrettable behaviour and of the Regional Director's equally regrettable inaction had been either to put the complainant in a position which in practice precluded his continuing as Chief of Unit or to damage seriously his state of health or to impair his free will. Hence the complainant's resignation, which he had given of his own free will and without duress, was fully valid in law; it might have been given somewhat lightly, but the complainant was alone responsible and that fact did not vitiate its legal validity.

25. Judgement No. 310 (6 June 1977): Steele *v.* International Labour Organisation

Complaint seeking to have the Tribunal reprimand those responsible for a decision and quash a decision not to renew a fixed-term appointment — Lack of competence of the Tribunal with regard to the first request — Limits of the Tribunal's power of review with regard to the second request

The complainant contended that the decision not to renew his fixed-term contract

was based on a mistaken and biased assessment of his work performance and asked the Tribunal to reprimand those responsible for the substance and cause of the complaint and to "restore the *status quo ante*".

With regard to the first request, the Tribunal stated that it had no power to superintend the work of an organization or to administer reprimands. With regard to the second request, the Tribunal took it as seeking the quashing of a decision not to renew a contract. The Tribunal observed that that was a decision which fell within the discretion of the Director-General, with which the Tribunal could interfere only if it was tainted by very specific flaws, only one of which, that of improper motivation, could be relevant to the case. The complainant's superiors considered that he was not the type of person who could work within a team; they might have been right or wrong about that, but a careful study of the dossier did not indicate the existence of any improper motive or of any other ground which could justify the intervention of the Tribunal.

26. JUDGEMENT NO. 311 (6 JUNE 1977): PINTO DE MAGALHAES *v.* INTERNATIONAL LABOUR ORGANISATION

Sudden transfer of a staff member, prompted by the desire of the Organisation to separate him from one of his colleagues — Quashing of the transfer decision because it drew clearly mistaken conclusions from the facts and award of damages for the moral prejudice suffered by the complainant

The complainant had asked the Chief of the Payment Authorisation Section in which he worked whether one staff member could have his salary paid to another — in other words, whether he could open jointly with his immediate superior a joint bank account into which both their salaries would be paid and from which withdrawals could be made only if the signatures of both account-holders were obtained. Having been informed of the matter, the Chief of the Financial and Central Administrative Services Department decided to transfer the complainant forthwith to another section on the grounds that it was improper that a staff member should be unable to draw his own salary "but should have to ask a subordinate to pay out money to him" and that it was therefore in the Organisation's interest to separate the two officials who "had shown such close links of interdependence". The complainant asked the Tribunal to quash the transfer decision and order the payment of compensation.

The Tribunal observed that at the date when the impugned decision had been taken the complainant had merely asked whether he could open a joint bank account with his immediate superior and that the decision to transfer him had been made upon a hypothesis which had never matured, for the proposal had been dropped since the necessary approval had not been forthcoming. The decision thus drew clearly mistaken conclusions from the facts and should be quashed. The Tribunal ordered the payment of damages in the amount of 10,000 Swiss francs as compensation for the moral prejudice suffered by the complainant.

27. JUDGEMENT NO. 312 (6 JUNE 1977): CORREDOIRA-FILIPPINI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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 a decision not to renew her fixed-term contract. The Tribunal recalled that such a decision fell within the Director-General's discretionary authority and that the Tribunal could not interfere with it unless it was tainted by very specific flaws. It noted that the impugned decision had been taken for budgetary reasons cogently explained by the Organization and that in the circumstances the complainant's

qualities constituted no reason for the Director-General, who bore sole responsibility for the smooth running of the Organization, not to exercise his authority and either refuse the complainant a new appointment or conclude a new contract with her or with someone who had different skills.

Finding that the impugned decision was not tainted with any irregularity, the Tribunal dismissed the complaint.

28. JUDGEMENT NO. 313 (21 NOVEMBER 1977): BEERTEN *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a decision which had not come into effect at the time when the complaint was filed — Failure to respect the principle of exhaustion of internal means of redress imputable to the chairman of the internal appeals body — Receivability of the complaint — Interpretation of the rule by which, in case of promotion, a staff member's seniority in his new grade is determined

On 1 May 1973 the complainant had been appointed deputy administrative assistant at grade B-5, step 3, with 10 months' seniority; on 6 February 1976, he had been promoted to grade B-4, step 2, with effect from 1 November 1975 and had been given four months' seniority at that step.

On 12 February 1976 the complainant lodged an internal appeal objecting to the period of seniority he had been granted; in the absence of the Staff Committee's nominees, the internal proceedings had been suspended, and on 29 April 1976 the complainant had appealed to the Tribunal. On 30 August 1976, the Appeals Committee, having resumed the proceedings, made its recommendations to the Director-General, who endorsed them and dismissed the appeal.

In his complaint, the complainant asked the Tribunal (*a*) to quash the decision to promote him to grade B-5, step 3, and to order instead a promotion to grade B-4, step 1; (*b*) Subsidiarily, to order the grant of promotion to grade B-4, step 2, with 18 months' seniority on 1 November 1975.

The Tribunal first considered the question of the receivability of the complaint: it noted that if the complainant had lodged his complaint before the Appeals Committee had formulated its recommendation and the Director-General had taken his decision in the light of that recommendation, he had done so because the Chairman of the Appeals Committee had told him that should the Director-General fail to take a decision within 60 days of the lodging of the appeal, the time-limit for filing a complaint with the Tribunal would start to run no matter when the Appeals Committee eventually met and reported. The Tribunal considered that a party should not suffer prejudice from acting on even the mistaken suggestion of an appeals body, and that the complainant, who had followed the advice of the Chairman of the Appeals Committee, could not be taken to task for acting too soon and failing to file his complaint again after the Director-General had taken his decision in the light of the recommendation of the Appeals Committee.

It added, however, that although the complaint was receivable in principle, it was time-barred in so far as it sought the quashing of the decision to promote the complainant to grade B-5 which, not having been appealed in time, had come into effect.

With regard to the merits, the Tribunal noted that the complainant claimed that at the time of his promotion, in order to determine his seniority in his new grade, the period during which he had remained at the highest step in his former grade should be taken into consideration. In so doing he relied on article 30 of the Staff Regulations, paragraph 1 of which provides

> "... An official appointed to a higher grade shall be granted in his new grade seniority corresponding to the equivalent notional step or the next highest step which

he reached in his former grade, plus the amount of the biennial step increment in his new grade",

while the first sentence of paragraph 2 states:

"... For the purposes of applying this provision each grade comprises a series of notional steps corresponding to a series of notional monthly periods of seniority and salary rates which rise from the first to the last of the actual steps at the rate of one twenty-fourth of the biennial step increase in the grade in question".

The Tribunal first noted that the first sentence of paragraph 2 referred to a series of notional steps corresponding to a series of periods of seniority and salary rates which progressed from the first to the last of the *actual steps*. The Tribunal observed that those last words alone suggested that on reaching the last actual step the complainant had lost his right to claim further notional steps.

The Tribunal also noted that the complainant's contention did not square with the provisions of article 30 quoted above. On that point, it stated the following:

"Taking account of notional steps is not an end in itself. The purpose is to give effect to the second sentence of article 30(2), which reads: 'In no case shall an official be paid a lower basic salary in his new grade than he would have been paid in his former grade,' and to article 30(3), which reads: 'An official appointed to a higher grade shall be granted at least the first step in that grade'. For these provisions to be respected account must be taken of the notional steps provided for within an actual step. On the other hand, there are no grounds for adding notional steps to the last actual step in the lower grade: that would confer on the official a benefit which plainly does not meet the intention underlying article 30."

Lastly, the Tribunal noted:

"... if the complainant's interpretation were right, the distinction drawn in the Staff Regulations between advancement by grade and advancement by step would be blurred. A staff member promoted to a higher grade would be granted fictitious seniority: he would be taken to have reached a step which in fact he had not. This method of calculation would affect the position of the promoted official. It would therefore detract from the Director-General's discretionary authority not only to promote someone from one grade to another but also to say what place he shall hold in his new grade."

The complaint was therefore dismissed.

29. JUDGEMENT No. 314 (21 NOVEMBER 1977): REMPP *v.* INTERNATIONAL PATENT INSTITUTE

Complaint seeking the quashing of a salary deduction following a strike — Principle of international public service that salary is payable only for services rendered

In July and September 1975 the complainant had taken part in collective work stoppages at the Institute. On 23 October 1975 a decision of the Administrative Council of the Institute entitled "Salary deductions due to the collective work stoppages in July and September 1975" had been posted for the information of the staff. It read as follows:

"As to the strike days, the Council takes the view that as a rule deductions should be made from salaries for any day on which staff members are on strike. It has decided, however, to waive that rule until the end of the year in the belief that there would be no grounds for deductions if by then progress on the programme prescribed in the budget had been made up ..."

On 29, 30 and 31 October 1975 there was another strike in which the complainant took part. On 13 November 1975 the Director-General announced that a deduction would

be made from the salaries of staff members who had taken part in the strikes in July, September and October 1975. The complainant submitted an internal appeal against that decision. By a circular of 21 January 1976 the Director-General informed the staff that following the review of the progress of work in 1975 undertaken by the Administrative Council at its December 1975 session, no reductions would be made for the strikes in July and September 1975. The complainant, considering that his claim had been only partly met by that decision, pressed it in so far as it challenged the decision to make salary deductions for the strike in October 1975, but to no avail.

The Tribunal recalled that according to a principle of international public service, salary was generally payable only for services rendered, so that the Institute had been right to refuse to pay a staff member who had gone on strike for the period during which he had not worked. The Administrative Council had made the concession described above only for the strikes in July and September and had made no special provision for the strike in October, which in any case had been subsequent to the Council's decision. The Tribunal therefore dismissed the complaint.

30. JUDGEMENT NO. 315 (21 NOVEMBER 1977): FANO *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint seeking payment of a separation allowance not provided for in the contract of appointment

The complaint sought, among other things, payment of a separation allowance by the Organisation. The Tribunal noted that the letter appointing the complainant formally established that the salary stated in the contract was exclusive of any allowance, indemnity or additional sum of any kind. It concluded that the complainant could not claim a "separation allowance" since none was provided for in his contract and no such allowance had existed at the time of the conclusion of the contract.

31. JUDGEMENT NO. 316 (21 NOVEMBER 1977): REITAN *v.* INTERNATIONAL LABOUR ORGANISATION

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 complaint impugned a decision not to renew a fixed-term contract. The Tribunal recalled that such a decision fell within the discretion of the Director-General and that the Tribunal could not interfere with it unless it was tainted by very specific flaws. The dossier failed to show that any of those flaws existed in this case and the Tribunal therefore dismissed the complaint.

32. JUDGEMENT NO. 317 (21 NOVEMBER 1977): RHYNER-CUEREL *v.* UNIVERSAL POSTAL UNION

Dispute concerning a "contract for the settlement of termination entitlements" concluded between the complainant, the defendant Organization and its Provident Scheme — Lack of competence of the Tribunal with regard to such a contract — A complaint contesting a decision of the Scheme defining the scope of the contract on important points would be receivable if directed against the Scheme, an independent legal entity, and if the rule of the exhaustion of internal means of redress were observed

The complainant, who wished to take early retirement, had concluded on 23 January 1976 a "contract for the settlement of termination entitlements" with the UPU Provident Scheme and UPU itself. In performance of the contract, and as she had been informed by a letter of 28 January 1976, the complainant's appointment had been terminated for

reasons of health on 30 April 1976. Moreover, by a letter of 25 March 1976 the Provident Scheme had explained to her in detail how her entitlements would be paid and had also asked her in a letter of 29 April 1976 to sign a statement of release, which she had done, thus forgoing, in the terms of that statement, "any claim in this regard on the International Bureau".

On 29 April 1976 the complainant filed with the Tribunal a complaint relating among other things to the number of years of service to be taken into account in calculating her deferred benefits.

The Tribunal first noted that the complaint impugned a decision taken "end of January 1976, taking effect on 1 May 1976". It observed that there had been only one act in which the Union had taken part at that time and which concerned the complainant, namely the conclusion of the contract for the settlement of termination entitlements. According to its Statute, however, the Tribunal was competent to hear complaints which challenged decisions and decisions alone, and that excluded contracts, for example. Unless the complainant was impugning a decision, her complaint was irreceivable. If she wished to avoid or vary the contract of 28 January 1976, she ought first to have asked the other parties and called for decisions from them on the matter, which were the only kind of decisions she might have impugned before the Tribunal.

The Tribunal acknowledged that it was true that the letter of 25 March 1976, which interpreted the rules and gave figures which were open to discussion, could not be considered as a normal consequence of performance of the contract of 23 January 1976. It furthered the performance of that contract, was a fairly important supplement thereto and constituted a true decision. But even if the complaint had impugned that decision it would nevertheless have been irreceivable for two reasons. First, the decision in question had been taken by the Secretary of the Provident Scheme and related to the obligations of that body, which was a fund within the meaning of the Swiss Civil Code and therefore an independent legal entity distinct from the Organization itself. Since the complaint had been brought against the Organization and not the Scheme it would have been irreceivable on the first ground. It would also have been irreceivable because the complainant had not exhausted the internal means of redress provided by the Regulations of the Provident Scheme.

33. JUDGEMENT NO. 318 (21 NOVEMBER 1977): JOYET *v.* WORLD HEALTH ORGANIZATION

Dismissal of the holder of a probationary contract at the end of the probationary period — Special nature of the situation of a probationer compared with that of an established official or the holder of a fixed-term appointment or of one without limit of time — Discretionary authority of the Director-General regarding a probationer and limits of the Tribunal's power of review in that regard

The complainant, who had been dismissed at the end of a one-year probationary period, asked for the quashing of the decision to dismiss him.

The Tribunal observed that according to staff rule 960 and the general principles of international public service, the provisional nature of his position denied a probationer the safeguards enjoyed by an established official or by the holder of a fixed-term appointment or one without limit of time; since the purpose of probation was to find out whether the probationer was suited for service and should have his appointment confirmed, the Director-General could dismiss him if satisfied that he did not have the right qualifications.

The Tribunal was competent to review the lawfulness of any decision by the Director-

General to terminate a staff member's probation but could not replace with its own the executive head's opinion of a staff member's performance, conduct or fitness for international service.

Noting that in the case in question the impugned decision was not tainted with any of the flaws which would entitle it to interfere, the Tribunal dismissed the complaint.

34. JUDGEMENT NO. 319 (21 NOVEMBER 1977): SMARGIASSI-STEINMAN *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint by a staff member given local status at the time of her recruitment as a citizen of the country of the duty station relying on a subsequent change of nationality to obtain non-local status

At the time of her recruitment at the Headquarters of the Organization, in Rome, the complainant had been an Italian citizen and had been given the status of a "local" staff member. Some 12 years later she had become a United States citizen by naturalization, and having thereby lost her Italian nationality she had applied unsuccessfully for a change in her status from "local" to "non-local".

The Tribunal, when the case came before it, observed that at the time of her recruitment the complainant had been classed as a "local staff member" under staff rule 302.40611, being "on the effective day of appointment a national of the country of the duty station".

The complainant relied in the first place on the rule which said that the Organization should not recognize more than one nationality for each staff member. The Tribunal considered that that rule meant that a staff member should be treated as having one nationality only at any given time. The fact that the complainant had to be recognized as a United States citizen in 1974 did not mean that she must be deemed to have been one in 1962.

The complainant cited in the second place Manual Section 311.112, which said that a staff member's status, as established at the time of appointment, could be subsequently changed. The Tribunal considered, however, that the paragraph formed part of an "introduction" and was informative and not normative. It neither itself required anything to be done nor conferred a power of command on any person: it merely pointed out by way of introduction to the subject that a change of status might be caused by a number of factors which it specified and of which a change of nationality was one.

The complainant cited lastly a staff rule which provided that the status of a staff member in the General Service category would not be changed from non-local to local "except if he voluntarily acquires the nationality of the duty station". According to the complainant, it would be inconsistent if change of nationality were made effective to bring a staff member into the local status but was ineffective to take a staff member out of it. The Tribunal observed, however, that non-local status carried with it certain benefits appropriate to the fact that the staff member had left his own country to live, presumably temporarily, in another. The two rules which the complainant deemed inconsistent had the same object: to exclude from the benefits in question two separate categories of staff members, namely: (1) non-local staff members who adopted the nationality of the duty station, the exclusion in that case being based on the fact that the staff members concerned, having broken their links with their country of former nationality and changed their way of living, could be regarded as being no longer in need of the special benefits, and (2) local staff members who gave up the nationality of the country of the duty station, the exclusion being justified in their case by the fact that they did not thereby change their way of living and so were not thought to qualify for benefits framed to offset the consequences of expatriation.

35. JUDGEMENT NO. 320 (21 NOVEMBER 1977): GHAFFAR *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a decision terminating the appointment of a probationer — Judgement of the Tribunal quashing the decision because false conclusions had been drawn from the dossier and essential facts had not been taken into consideration and ordering the reinstatement of the complainant

The complainant impugned a decision terminating his employment at the end of his probationary period.

The Tribunal first noted that prior to his appointment for a probationary period, the complainant had served under five WHO representatives for nine years, at the end of which he had received a testimonial describing him as "conscientious, hard-working and devoted". The Tribunal then recalled that the decision not to confirm a probationary appointment fell within the discretionary authority of the Director-General, and that the Tribunal could interfere with it only on strictly limited grounds.

It observed in that connexion that in reaching the decision that the complainant's performance was unsatisfactory, the Director-General and/or the officials whose conclusions he had accepted had relied exclusively on the opinion of the complainant's immediate superior, disregarding the factors that made that opinion unreliable. Moreover, they had drawn erroneous conclusions from the appraisal report prepared by that superior and had disregarded the conditions under which the complainant had worked, which had not been in accordance with his post description.

The Tribunal therefore quashed the impugned decision. It recalled in that connexion that when quashing a decision of that character, it did not invariably order the reinstatement of the officer concerned, since that might present practical difficulties. In the case in question, however, it considered that the complainant's long and excellent record of service to WHO, enhanced by his conduct in the trying circumstances of his probationary period, and by the clarity and moderation of his complaint, showed him to be an officer whom the Organization should be sorry to lose. It therefore ordered the reinstatement of the complainant and in addition awarded him one thousand dollars as costs.

36. JUDGEMENT NO. 321 (21 NOVEMBER 1977): RAJAN *v.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint impugning the non-renewal of a fixed-term contract — Decision of the Tribunal concluding that the impugned decision was lawful and that there was no fault incurring the liability of the Organization

The complainant had held a series of fixed-term contracts during the period June 1963–April 1972. By a letter of 22 September 1971, he had received explicit and formal confirmation of the expiry of his appointment on 30 April 1972. However, his appointment was subsequently extended on numerous occasions for short periods until 15 April 1972.

Before the Tribunal, the complainant impugned the decision by which the Director-General had refused, notwithstanding a contrary recommendation by the UNESCO Appeals Board, to renew his appointment.

The Tribunal observed that although the Director-General had stated in his letter that he was trying and would continue to try to find the complainant another suitable post, he had made no firm promise which might be deemed to carry legal force by, for example, amounting to a promise of an appointment.

The very fact that the Director-General had given the complainant several short extensions of appointment showed that the Organization had indeed tried to keep him on the staff. Considering, moreover, that it did not appear from the dossier that in rejecting the complainant's candidature for the many vacancies for which he had applied the

Director-General had been prompted by motives extraneous to the Organization's interest, the Tribunal found the impugned decision lawful and stated that in taking it, the Director-General had not committed any fault which incurred the Organization's liability.

37. JUDGEMENT NO. 322 (21 NOVEMBER 1977): BREUCKMANN *v.* EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Complaint concerning a request for a dependent child allowance submitted six years after the birth of the child — Refusal of the Organization to pay the allowance for the period prior to the application — Competence of the Tribunal to consider the complaint despite a provision of the basic treaty of Eurocontrol affirming the jurisdiction of national courts in respect of disputes between the Organization and its personnel — The Tribunal takes no account of municipal law unless it embodies general principles of law — Entitlement to family allowances, although not subject to a time-limit, must be exercised within a reasonable period in view of the purpose of that allowance and administrative requirements

On 26 September 1975 the complainant had told the Organization that by an act registered on 13 October 1969 he had recognized paternity of a daughter born out of wedlock on 1 August 1969 and asked that he be paid the dependent child allowance from the date of the child's birth and the educational allowance from 1 August 1975. However, the Director-General had decided that he should receive the two allowances only from 1 September 1975.

The Tribunal, when the case came before it, first noted that the complainant had challenged its competence by reference to the provisions of the Protocol of Signature of the "Eurocontrol" International Convention relating to Co-operation for the Safety of Air Navigation stating that "Nothing in the Convention or Statute annexed thereto shall be deemed to restrict the jurisdiction of national courts in respect of disputes between the Organisation and the personnel of the Agency". The Tribunal noted, however, that after the signature of the Protocol the Agency had, with approval of all the representatives of Member States, conferred on the ILO Administrative Tribunal competence to hear disputes relating to non-observance of the Staff Regulations and that that competence had been duly accepted by the Tribunal. Hence the Tribunal's competence derived from an international agreement which took precedence over rules unilaterally adopted by one of the parties.

The Tribunal recalled that it took no account of municipal law except in so far as it embodied general principles of law. As to the matters in dispute, the provisions of municipal laws differed and the municipal laws cited by the parties were therefore immaterial.

The Tribunal then observed that since the Agency could not itself keep track of the private lives of its staff members, an official could not claim the family allowances provided for unless he reported the birth of any child or children for whom he was entitled. No time-limit was set for such notification and entitlement was not subject to a rule of limitation. But according to a service ruling, the Organisation reserved the right to take any suitable action where staff members failed to supply information on changes in their family situation or were late in doing so.

The Tribunal considered that that ruling was not at odds with the Staff Regulations but set a useful limit on their scope since it enabled the Organisation to refuse to pay family allowances to a staff member who failed to act within a reasonable period. The Tribunal considered that that interpretation of the rules was warranted on grounds of principle — since family allowances would meet their purpose only if paid regularly — and on practical grounds, relating to (1) the checking of the validity of applications for family allowances; (2) the requirements of sound budget management and (3) the difficulties involved, in the case of retroactive payments, in determining the exact amount of the

financial entitlement of the staff members concerned during the period prior to the submission of the application.

The Tribunal considered that in the case in question the complainant had provided no valid justification for the six years' delay in revealing the existence of his child born out of wedlock and had therefore failed to act within a reasonable period.

The Tribunal therefore dismissed the complaint.

38. JUDGEMENT NO. 323 (21 NOVEMBER 1977): CONNOLLY-BATTISTI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint contesting the method of calculating a salary adjustment rate — Question of the receivability of the complaint — Contention of the defendant Organization denying the existence of non-observance of the terms of appointment — Opinion of the Tribunal that a decision which, as a result of the application of an incorrect method of calculation, deprived a staff member of part of the adjustment to which he was entitled constitutes non-observance of the provisions of the terms of appointment — The freedom of choice which the regulations often leave the Organization regarding the methods of discharging its obligations undoubtedly allow the Administration to change its methods but until the change is made, an official is entitled to have the obligations in question discharged in the manner selected by the Administration itself — Argument of the defendant Organization contending the complaint is time-barred — Rejection of the theory that a decision of a governing body having an effect on the rights of staff members ipso facto *alters those rights from the moment it is made — A complaint may be made at any time if the Organization is in continuing breach of one of its obligations — Argument of the Organization contesting the competence of the Tribunal to consider a decision taken by a governing body in the exercise of its constitutional powers — Rejection by the Tribunal of a theory which would lead to the conclusion that a staff member's contract gives him no rights that a governing body cannot nullify — Quashing of the impugned decision in so far as it was based on an arbitrary method of calculation*

In order to take a decision on this case, concerning a question of salary adjustment rate, the Tribunal first took into consideration the following facts.

The salary scale for FAO General Service staff is fixed by the Director-General in accordance with staff regulation 301.134, which states:

> "The Director-General shall fix the salary scale for staff members in the General Service Category, normally on the basis of the best prevailing conditions of employment in the locality of the FAO Office concerned."

It is thus the duty of the Director-General to keep in touch with wage rates in different localities and to make such revisions as are necessary to keep pace with them. In fixing or revising the scale, the Director-General applies the Guiding Principles contained in annex F to the Staff Regulations. All revisions of the scale are preceded by a survey of the conditions of service in comparable jobs outside the Organization. Since surveys are made only once in every four years, interim adjustments should be made on the basis of the local wage index. The following paragraphs in the aforementioned Guiding Principles are pertinent:

> "49. In any event, whether adjustments are made on the basis of new surveys or of movement of indices, they should normally be made only when there is a case for a significant increase, normally 5 per cent or more . . .
>
> "50. In making interim adjustments, as distinct from changes based on new full-scale comprehensive surveys of outside conditions, it should not be necessary to re-examine fringe benefits."

Although the regulations place upon the Director-General the duty of fixing salary scales, it has been the practice in FAO for the appropriate decisions to be taken by the Council on the basis of recommendations by the Finance Committee, themselves based on proposals by the Director-General. The question therefore arises whether, in discharging his duty of fixing salary scales under staff regulation 301.134, the Director-General is required to act independently as he thinks right or is acting as Executive Officer and carrying out the decisions of the Council.

The Tribunal considered that the latter was the correct view, but added that that did not mean that the Council was substituted for the Director-General: staff regulation 301.134 required a decision by the Director-General but was as satisfied with a decision which he took on the instructions of the Council as with one which he took on his own responsibility.

In studying the factual background, the Tribunal found that a scheme of the sort envisaged by the Guiding Principles had been adopted by FAO in 1964 and that in relation to the interim adjustment the Council had approved a report of the Finance Committee specifying the wage index that was to be used. The base figure had been taken as the index figure on 1 January 1964 and it had been provided that salaries should be increased by 5 per cent at the beginning of the month following the month in which the index showed an increase of 5 per cent.

In October 1973, the FAO Council, having decided that the time had come for a new survey into Rome salary conditions, had appointed a panel of three persons to conduct a survey "within the framework of the Guiding Principles". In March 1974 the Panel had reported with their proposal for a revised salary schedule and with regard to the interim adjustment had recommended that in determining its amount account should be taken of certain factors, including the savings resulting to staff from the use of the FAO commissary, and that consequently the adjustment rate of 5 per cent which had been applied to General Service staff since 1964 should be reduced to 3 per cent for the next three increases.

The recommendation of the Panel had been adopted and implemented. The General Service staff went on strike and obtained certain concessions from the Director-General. The question subsequently came before the FAO Council once again and was referred to the Finance Committee. The Director-General informed that Committee that he had changed his opinion and would henceforth consider that commissary savings should be treated as a fringe benefit and left out of the interim adjustments. The Finance Committee did not agree with the Director-General's position and recommended that commissary savings should be reintroduced through adjustment to the salary index. That recommendation was accepted by the Council and the Director-General announced to the staff on 11 December 1974 that the rates of adjustment would be 3 per cent for grades G-1 to G-4 and 1 per cent for grades G-5 to G-7. An administrative circular applying those rates was issued on 27 May 1975. On 10 June 1975 the complainant appealed to the Director-General against the decision mentioned in the circular. In his reply, the Director-General noted that while the decision appealed against had been formally announced to the staff on 27 May 1975, it had been previously conveyed to the complainant in November 1974 and that the internal appeal, having been submitted after the expiry of the statutory two-week time-limit, was barred.

Before the Tribunal, the Organization contended that the complaint was irreceivable, arguing (1) that it was time-barred; (2) that the impugned decision, having been taken by one of the governing bodies of FAO in the exercise of its constitutional powers, represented a legislative enactment and was outside the jurisdiction of the Tribunal; and (3) that the decision was not a non-observance of the complainant's terms of appointment.

I. Considering the last argument first, the Tribunal noted that the complainant complained that the sum paid in accordance with the circular of 27 May 1975 was in-

sufficient. Either the sum payable was a portion of the salary to which the complainant was entitled or else it was an *ex gratia* payment. If the first of those alternatives was the correct one (as will be seen below, the Tribunal considered the second alternative in connexion with the second argument of the Organization set forth in the previous paragraph), the third argument failed, for a complaint that an installment of salary was less than it should be because incorrectly calculated was of the same nature as a complaint that salary had not been paid when due and hence that there had been a breach of the terms of appointment. The Tribunal noted that, in the case of incorrect calculation of the amount, it would be staff regulation 301.134 which was breached: the obligation incumbent on the Director-General under that article to fix salary scales on the basis of the best prevailing rates was of a very general character. The Director-General therefore had very wide discretion as to how he would carry it out, but he must have regard to the Guiding Principles. With regard to the principle that interim adjustments must be ascertained by reference to a wage index, it might be argued that that was not a command and that provided that the Organization acted in accordance with the principle it was not bound to adopt the exact method specified. The Organization contended that the wage index system had been introduced by the Council in 1964 and that the Council "by the same authority may vary, modify, substitute or extend the system at any time".

The Tribunal observed that that statement raised a large question which it did not intend to decide completely. However, even assuming that the argument that the Organization was not bound to adopt the method prescribed by the Guiding Principles was correct, it did not follow that it might thereafter vary the system at any time. The regulations often left the Organization free to choose its own method of discharging its obligations, but once settled, the method chosen became, until it was altered, part of the obligations of the Organization. By giving reasonable notice, the Organization could change the method, provided of course that the new method complied with the general terms of the obligation. But until the change was made, an official was entitled to have the obligation discharged in the manner selected by the Organization itself, and to complain if it was not. However, the method proposed in the Guiding Principles and adopted by the Organization had never been changed. On the contrary, it had been followed for a decade and the terms of reference of the Panel had been to keep within that framework.

II. The Tribunal next considered the Organization's argument that the appeal had been time-barred: according to the Tribunal, that argument was based on two misconceptions. The first was that a decision of the Council which would inevitably have an effect upon an official's rights *ipso facto* altered those rights from the moment it was made and before it was executed. The Tribunal set against that argument the specific provisions of staff regulation 301.134 mentioned above. It also observed that the Council in general, in its dealings with the staff, acted through the Director-General to whom, under the Constitution, the staff was responsible, and who, under the General Rules, carried out the Council's decisions. Council decisions on staff members were to be read as an instruction to the Director-General, whose duty it was to put them into a form intelligible to the official. It was the Director-General's decision which the official was entitled to have and which constituted the decision for the purposes of the time-bar imposed by staff rule 303.131.

The Organization's contention that the complaint was time-barred was based on a second misconception: first, an Organization which repeatedly breached one of its obligations took a new decision to that effect on each occasion and each breach, whatever its nature, was cause for complaint. And when an Organization was in continuing breach of one of its obligations, a complaint based on that breach could be made at any time, it being understood that relief would not be given against any past consequences of the breach. Of course, a decision that was no more than a reiteration of a previous decision did not give rise to a new cause for complaint, but a decision which added a new breach to a series of breaches could not be considered a mere reiteration. Still less could it be considered — as argued by the Organization in this case — that if a breach was com-

mitted in pursuance of a policy previously announced, however long the period between the date of the announcement and the decision giving cause for complaint, any official who had not complained within two weeks of the announcement had lost his or her right forever. In the opinion of the Tribunal, the complainant had complied with staff rule 303.131 by dispatching her internal appeal within two weeks of the decision impugned.

III. With regard to the second argument, alleging that the impugned decision was outside the jurisdiction of the Tribunal because it had been taken by one of the governing bodies of FAO in the exercise of its constitutional powers, the Tribunal observed (1) that there was no definition of what was meant by the term "governing body"; (2) that article V.3 of the Constitution gave the FAO Council such powers as the Conference, the supreme body of FAO, might delegate to it, and (3) that there was no assertion in the Organization's reply of the delegation of any power that would justify the Council in depriving any official of any part of the salary to which he or she was entitled under the regulations. The Tribunal also observed:

> ". . . . the relations between the Organization and an official are governed by a contract made by the Director-General under the authority conferred upon him by General Rule XXXIX.1 and in which there are incorporated the Staff Regulations. The conception of a legislative enactment, in so far as it applies to matters within the jurisdiction of the Tribunal, means the power to alter unilaterally by a general enactment the relationship created by the contract. The Tribunal has recognised this power to the extent that it may affect those terms of the contract which appertain to the structure and functioning of the international civil service and to benefits of an impersonal nature and subject to variation, but not to the extent to which it purports to affect the individual terms and conditions of an official in consideration of which he accepted appointment. For reasons which appear below it is unnecessary to apply this distinction to the facts of this case."

Thirdly, the Tribunal observed that in the case in question there was no evidence that the Council had been prepared to use a legislative power to override the Guiding Principles. In fact, there was every reason to believe that the Council's concern and that of the Finance Committee had been that their decisions should be in accordance with the Guiding Principles. If one argued — as did the Organization, in a bald statement undeveloped by any argument — that the decision was outside the jurisdiction of the Tribunal because it was a legislative act, that meant that there was no control whatsoever over the dealings of an executive body such as the Council with the staff of the Organization and there was no point in inquiring whether they were in accordance with the regulations, which the Council had no need to observe. Since the Director-General, in his dealings with the staff, was subject to the control of the Council, the logical conclusion was that an official's contract gave him no rights which the Council could not nullify and in particular that he was paid his salary *ex gratia* and not as a matter of contract. In the opinion of the Tribunal that was not the law.

As to the merits, the Tribunal considered that the only conclusion it could draw from the dossier was that the calculation upon which the decision impugned had been founded had been made arbitrarily and in disregard of the Guiding Principles and of the system which the Council had itself laid down.

It therefore quashed the decision in question.

39. JUDGEMENT NO. 324 (21 NOVEMBER 1977): MAGASSOUBA *v.* INTERNATIONAL COMPUTING CENTRE (WORLD HEALTH ORGANIZATION)

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 — Failure of the complainant in his basic duties which alone warranted the refusal to renew his contract

The complainant impugned a decision of the Director-General refusing to renew his fixed-term contract. The Organization accused him of having carried out a programming exercise and thus putting at risk the accuracy of data stored by the computer of the International Computing Centre.

The Tribunal noted that the impugned decision was of a discretionary nature and could be quashed only if it was tainted by very specific flaws.

The complainant first argued that the Organization had committed errors of fact. The Tribunal noted, however, that the complainant himself had admitted that in presuming to put through a test run he had not followed the instructions of his supervisors, who had expressly refused him permission to do so. Since the use of a computer by an unqualified or unscrupulous person might lead to errors or breaches of confidence, it was important to require every single employee of a body such as the Centre to show strict respect for the limits of his duties; the complainant had been employed as an operator and in exceeding his functions as such had failed in a basic duty and whatever the actual consequences of his conduct might have been, it warranted the decision not to renew his appointment.

The complainant contended that the limited scope of the transfer to which he had been subjected following the misconduct with which he had been charged showed that he had not committed misconduct serious enough to warrant not renewing his appointment. The Tribunal observed, however, that the Organization, having transferred the complainant to a post in which he was closely watched, had had no reason to impose on him a more severe penalty such as dismissal, and that it shown consideration rather than inconsistency. The Tribunal also found groundless the charges of discrimination, disregard of essential facts and abuse of authority made by the complainant and therefore dismissed the complaint.

40. Judgement No. 325 (21 November 1977): Verdrager *v.* World Health Organization

Complaint by a staff member dismissed for having successively refused two transfers — Review of the applicable texts and the general principles of international public service affirming the priority of the general interest over individual interests — Right of the Director-General to terminate the appointment of a staff member having committed a grave breach of duty

The complainant impugned a decision by the Organization terminating his appointment in accordance with staff rule 970 for having successively refused two transfers.

The Tribunal recalled that under staff regulation 1.2 "All staff members are subject to the authority of the Director-General and to assignment by him to any of the activities or offices" of WHO. It also referred to staff rule 410.1, according to which "All staff members are subject to assignment by the Director-General to any activity or office of the Organization" and to staff rule 465.2, which states that "A staff member may be reassigned whenever it is in the interest of the Organization to do so". The Tribunal stressed that those texts were in keeping with the general principles of international public service, which affirmed the priority of the general interest, represented in each organization by the Director-General, over individual interests.

If the posts refused by the complainant had had to be filled urgently — and it did not appear from the dossier that such had not been the case — the complainant had been bound to take up the new assignment, save in exceptional circumstances such as had not existed in this case. The Director-General had therefore been entitled, by virtue of the text quoted above, to terminate the appointment of the complainant, whose refusal on strictly personal grounds to take up posts to which he had been assigned constituted a grave breach of duty.

Lastly, noting that the Organization had duly completed the essential adequate formality of prior consultation, and that the abuse of authority alleged by the complainant had not been established, the Tribunal dismissed the complaint.

41. JUDGEMENT NO. 326 (21 NOVEMBER 1977): PRICE *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint impugning a decision rejecting the application of a staff member for a post with the Organization — Charges based on the composition of the selection committee and the alleged failure of the committee to have regard to a provision concerning the appointment to vacancies of persons already in the service of the Organization

The complainant, who held a career service appointment, impugned a decision rejecting his application for a post with the Organization which had become vacant. He contended that the proceedings of the regional selection committee on whose recommendation his application had been rejected were defective in three respects.

He contended that the committee had not been properly constituted in accordance with the rules applicable to senior staff selection committees. The Tribunal considered, however, that the applicable texts left it to the Regional Director to decide whether in any particular case the selection should be made by a senior staff selection committee or by such other committee as might be deemed appropriate.

The complainant also cited a provision which stated "Vacancies shall be filled by promotion of persons already in the service of the Organization in preference to persons from outside". The Tribunal considered it impossible to give any precise meaning to that requirement. It was for the members of the selection committee to pay due regard to the various factors to be taken into consideration and only if it could be shown that a factor had been willfully disregarded — a condition which had not been met in the case in question — could the Tribunal begin to entertain any complaints.

Lastly, the complainant contended that since no appraisal reports relating to him had been filed between 1970 and 1975, the material before the selection committee had been incomplete. The Tribunal observed, however, that the members of the committee had all confirmed that the absence of the report had not entered into their deliberations.

Since the impugned decision was not tainted by any of the alleged flaws, the Tribunal dismissed the complaint.

42. JUDGEMENT NO. 327 (21 NOVEMBER 1977): ZIMMER v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint following an internal appeal considered by the defendant Organization to have been erroneously declared receivable by the internal appeals body — Decision of the Tribunal concluding that the internal appeal was proper — That decision does not settle the question of the receivability of the complaint itself but settles a preliminary point on which receivability of the complaint depends — Limits of the Tribunal's power of review with regard to a decision described by the complainant as a decision to dismiss her which was in fact a decision not to renew a fixed-term contract

The complainant impugned a decision by the Organization relating to her employment. She had previously submitted an appeal to the Appeals Board, which had declared the appeal receivable — contrary to the view of the Organization — but had nevertheless recommended that it be dismissed.

As to the question of receivability, the Tribunal recalled that under article VII, paragraph 1, of its Statute, a complaint was receivable only if the internal means of redress had been exhausted. The Tribunal accordingly had to consider whether the com-

plainant had correctly followed the internal procedure open to her. Thus the Tribunal stated:

> "A complainant may properly contend that the internal appeals bodies wrongly refused to hear an appeal submitted to them and that the complaint lodged with the Tribunal is therefore receivable; or an organization may correctly argue that those bodies acted improperly in ruling on the merits of an appeal and that the complaint is therefore irreceivable.
>
> "In ruling on such contentions the Tribunal does not, as the Organization appears to believe, admit the receivability of the complaint itself but merely settles a preliminary point on which the receivability of the complaint depends."

In the case in question, the Tribunal considered that the complainant had properly submitted her appeal to the Appeals Board and had therefore met the requirement that the internal means of redress should have been exhausted. Noting that the other conditions of receivability had been met, the Tribunal ruled on the merits.

It observed that the complainant had held a fixed-term contract and not, as she contended, a contract of indeterminate duration, so that the question at issue involved the renewal of her contract and not dismissal.

Being of a discretionary nature, the decision not to renew a fixed-term contract could be quashed only if tainted by specific flaws. Since the complainant had not alleged the existence of any flaw which entitled the Tribunal to interfere in exercise of its limited power of review, the complaint was dismissed.

43. Judgement No. 328 (21 November 1977): Conrad, Argote-Vizcarra, Ordoñez, Carrillo-Fuller, Rodriguez, Gandolfo, Alcade-Beckner and Blaise *v.* Pan-American Health Organization (PAHO) (World Health Organization)

Decision replacing the local status given the complainants at the time of their recruitment by international status — Date to be taken into consideration in calculating the sums due to the complainants in respect of benefits linked to international recruitment

By its Judgement No. 272[40], concerning staff members who, although recruited outside the United Nations, had been given local status by PAHO in Washington, the Tribunal had decided, in the case of the complainant herself, that, for the purpose of establishing entitlements under the Staff Regulations and Rules, the place of residence of the complainant should be determined as having been at Lima. In the case of the interveners, the Tribunal had decided to remit their cases to the Director-General so that he might amend the recruitment form so as to show in each case the correct and agreed residence immediately prior to appointment.

No agreement having been reached between the complainants and the Administration, in particular on the date from which their international recruitment should be deemed to have taken effect, the case was referred to the Tribunal.

The Organization pointed out that the complainants' first claim for entitlement and benefits linked to "international recruitment" had been made on 1 July 1974. Relying on staff rule 280.7, which bars any claim for payment of benefits alleged to be due over 12 months before the date on which payment ought originally to have been made, the Organization refused to take the measures it had taken in connexion with the recognition of the "international recruitment" of the complainants retroactive beyond 1 July 1973. The dispute thus concerned the benefits relating to the period prior to 1 July 1973.

The Tribunal considered that if it could be established that the Organization had acted in such a way as to mislead the complainants in bad faith concerning their rights, the aforementioned provision could not be applied. Thus the crucial question was whether

[40] See *Juridical Yearbook*, 1976, p. 148.

or not the complainants had been deceived. In that connexion, it was not impossible that they had known what they were doing and had accepted local status because they believed, probably correctly, that unless they did so they would not get the appointments they wanted. The dossier contained no allegation of concealment or bad faith and there was therefore nothing to prevent the application of staff rule 280.7.

The Tribunal therefore dismissed the complaints.

44. JUDGEMENT NO. 329 (21 NOVEMBER 1977): QUANSAH *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint considered irreceivable because of expiry of the time-limit

On 20 October 1975 the complainant had been informed that his contract would not be extended beyond its expiry date, i.e. 31 December 1975. On 6 April 1976 he contested that decision, which according to him had been prompted by adverse reports on him by his supervisor. On 26 May 1976 the Deputy Director-General of ILO in charge of administration informed him that that had not been the case.

The Tribunal, to which the case was referred by a complaint of 5 October 1976, stated that even on the hypothesis that the decision of 26 May 1976 had not merely confirmed that of 29 October 1975 and could be regarded as a new decision dismissing an informal appeal of 6 April 1976, any appeal against it ought to have been lodged with the Tribunal within 90 days after the date of its notification, which could not be later than 17 June 1976, the date when the complainant had acknowledged receipt of it. Since the complaint had not been lodged until 26 September 1976 it had been submitted after the 90-day time-limit had lapsed and was thus irreceivable.

45. JUDGEMENT NO. 330 (21 NOVEMBER 1977): PELTRE *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a decision refusing promotion — Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned a decision refusing him promotion. The Tribunal recalled that decisions on promotion were generally discretionary and could thus be quashed only if they were tainted by very specific flaws. Moreover, in the case in question the applicable texts showed an intention not to put any close restraint on the Director-General.

The Tribunal concluded from the dossier (1) that the complainant's case had been given careful consideration, (2) that his report showed him to be a staff member of somewhat average quality, and (3) that he had not suffered any unfair treatment. The Tribunal therefore dismissed the complaint.
