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UNITED NATIONS JURIDICAL YEARBOOK

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

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

Chapter V[1]

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

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

1. Judgement No. 690 (21 July 1995): Chileshe v. the Secretary-General of the United Nations[3]

Non-promotion to D-1 post—Review of a discretionary decision Question of end-of-career promotion—Delay in selection process was unfair

The Applicant, who was at the P-5 level, applied for the D-1 post of Director, Trade and Development, Finance Division, at the Economic Commission for Africa, a post he had occupied as Officer-in-Charge with effect from 21 December 1990. The Applicant also requested a special post allowance (SPA) at the D-1 level with effect from that date. After a second round of advertising the post, on 5 December 1991 the names of eight candidates including the Applicant's were forwarded to the Acting Executive Secretary. However, discussions as to the restructuring of ECA commenced in December 1991, resulting in the postponement of a decision on the selection of a candidate for the post. Although the Applicant was eventually recommended for the promotion by the Ad Hoc Committee on Professional Staff Careers, on 6 May 1992 the Acting Executive Secretary informed the Applicant that he would not be promoted because he was approaching retirement age—at the end of October 1992, which was extended three months to 31 January 1993.

The Applicant appealed the decision of the 16 July 1993 not to promote him retroactively to the D-1 level post. Instead, in accordance with the recommendation of the Joint Appeals Board, the Secretary-General decided that the Applicant following his retirement should be paid an indemnity equal to a special post allowance to the D-1 level for the period from 1 April 1991 until the date of the Applicant's separation from service. The Applicant appealed the decision to the Tribunal.

The Tribunal, relying on consistent jurisprudence holding that its review of discretionary decisions with respect to promotion was extremely limited, concluded, however that the Respondent's decision not to promote the Applicant retroactively was flawed. There was no wrongful motivation or mistake involved. In the view of the Tribunal, the decision not to make an end-of-career promotion was premised on a rational policy expressed in the Manual for Appointment and Promotion Committees. The Tribunal also observed that in a similar situation the International Labour Organization had stated:

> "…promotion is at the discretion of the Organization, which must be free to grant or withhold it in accordance with objective working requirements. It follows that any grants of promotions at the time of retirement is inher-

ently contrary to the Organization's interests because by then there can no longer be any question of taking on the higher level of responsibility that promotion entails. The Tribunal therefore holds that the Organization is right to follow the policy of refusing its staff promotion, which would have the sole effect of laying a burden of social costs on the institution as a whole without conferring on it any benefit in return." *In re Heritier*, ILOAT Judgement No. 1388 (1995).

At the same time, the Tribunal was of the opinion that there was an element of unfairness present in the treatment of the Applicant that was not adequately remedied by the grant of an SPA to him. The unfairness consisted of allowing nine months to elapse after readvertisement of the D-1 vacancy without selecting the best qualified candidate, who evidently was the Applicant. This was quite harmful to the Applicant as the Tribunal pointed out, because by the time the potential restructuring had been considered the Applicant was close enough to retirement to cause his likely promotion to fall by the wayside.

In view of the foregoing, the Tribunal awarded the Applicant $7,000 and rejected all other pleas.

2. Judgement No. 692 (21 July 1995): White, Le Ster, Marouf, Ben Fadhel, Dodino and Atar v. the Secretary-General of the International Maritime Organization[4]

Salary deduction for participation in a work stoppage—Staff rule provision must be interpreted in the context of the entire staff rule and not looked at in isolation—No entitlement to pay for a period a staff member does not work—Leave must be authorized

Upon recommendation of the Federation of International Civil Servants' Associations (FICSA), of which the International Maritime Organization Staff Association was an affiliate, the IMO Staff Assembly scheduled a one-half day work stoppage for Friday morning, 6 November 1992. The Applicants had half a day's pay deducted from their salaries as a result of their absenting themselves without leave for the period in question. Subsequently, they appealed this measure, contending that staff rule 105.1(d) applied in this case, and annual leave should have been deducted for the absence, rather than pay. The further ground put forward by the Applicants was that the deduction of salary was not only contrary to the staff rule, but also a disguised disciplinary sanction and so constituted an infringement of the Applicant's terms of appointment. The Applicants had contended that strikes could not be considered to be illegal and could not, in principle, result in disciplinary action; that the Administration could have properly deducted annual leave for the period of the strike under staff rule 2105.1(d), and only if the staff member concerned had no accrued annual leave could pay be withheld for the period of "unauthorized absence".

The Tribunal noted that staff ruled 105.1(d) stated:

"Any absence from duty not specifically covered by other provisions in these rules shall be charged to the staff member's accrued annual leave, if any; if the staff member has no accrued annual leave, it shall be considered as unauthorized and pay and allowances shall cease for the period of such absence."

While agreeing with the Applicant's interpretation of the staff rule—that persons who had annual leave had the right to have the absence charged against such annual leave—the Tribunal considered that the interpretation could not be taken in isolation in resolving the situation. In that regard, the Tribunal noted that staff rule 105.1(d) appeared under the heading "Annual Leave" and was preceded by the words contained in staff rule 105.1(b) "Leave may be taken only when authorized" and therefore it would be unrealistic to suggest that this stricture did not also apply to the absence from duty referred to in staff rule 105.1(d)

Therefore, the Tribunal concluded that the Respondent could not be faulted for acting as he had even though the specific wording of the rule may have been regarded as ambiguous. For that reason, the Tribunal found that the deduction of salary could not be regarded as a disciplinary sanction.

Moreover, the Tribunal recalled the position adopted in *Smith* (Judgement No. 249 (1975)), in which it was held:

> "… that staff regulation 1.2 provides that 'the whole time of staff members shall be at the disposal of the Secretary-General. The Secretary-General shall establish a normal working week'… It is therefore apparent that 'work' is the fundamental obligation of staff members. Receipt of salary is, moreover, the essential counterpart to work performed."
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> "The unauthorized absence from work or attendance at the place of work while failing to perform duties removes the basis for payment of salary."

Although the staff rules were silent on the matter of work stoppages, Smith recognized that there was no general principle of law to provide any entitlement to pay for a period during which an employee did not work. Furthermore, the Tribunal found that leave could be taken only when authorized. The Tribunal concluded that the unauthorized leave of 6 November should not be compensated, and therefore rejected the Applicant's pleas.

3. Judgement No. 696 (21 July 1995): De Brandt-Dioso v. the Secretary-General of the United Nations[5]

Reimbursement for theft while on mission—Question of acting within the scope of official duties—Special risks at United Nations missions—Question of negligence on the part of the staff member

The Applicant, who had been employed with the Organization since 1975, filed a claim for her loss, which occurred while on mission in Haiti, with the United Nations Headquarters Claims Board. The loss had occurred towards the end of her assignment with the United Nations Observer Group for the Verification of Elections in Haiti (ONUVEH). On 28 January 1991, the Applicant had withdrawn, in cash, the balance of her account with a bank in Haiti and had cashed her last mission subsistence allowance (MSA) cheques. She then parked her car in a busy market area in Port-au-Prince and a local youth who had accompanied her went to fetch wrapping materials, apparently leaving the door unlocked on the passenger side when he left the vehicle. The Applicant's handbag, containing approximately US$ 4,000 and 2,000 Haitian gourdes and an 18-carat-gold man's signet ring (with a value of approximately $1,800), was taken off the passenger seat by an unknown individual who had quietly opened the door of the car.

The Applicant's claim was denied and she appealed, contending that she was on official business and was not negligent when conducting it. The Respondent had maintained that the loss was a matter of common theft.

The Tribunal agreed with the applicant that she had been acting within the scope of her official duties when the theft occurred. The Applicant was using an official ONUVEH vehicle and was in the process of making final travel arrangements to leave the duty station after having closed her local bank account and cashed her last MSA cheques. As the Tribunal noted, staff members were required to close their bank accounts before leaving and therefore it was appropriate for the Applicant to be carrying a substantial amount of cash at the time of the theft.

The Tribunal considered that the steps undertaken by the Applicant at the time of the theft resulted from her being assigned to Haiti.

Hence, those steps were taken in connection with official duties. The Claims Board, in its recommendations, did not take sufficiently into consideration local conditions and special circumstances which placed the Applicant at a greater than normal risk. The Tribunal noted that not only the ONUVEH Notes for Guidance of Election Observers appeared to consider that staff assigned to Haiti should exercise great caution during their stay, but also the statement of the then Chief Administrative Officer of ONUVEH that the Applicant's loss was "the result of theft while being in a risky United Nations mission areas".

Regarding the issue of any negligence on the part of the Applicant, the Tribunal was of the view that the Applicant should have been more vigilant. Knowing that she was carrying a substantial amount of cash with her, she should have been more sensitive to her surroundings and made sure that once the local youth who had accompanied her had left the car, the door was firmly locked. Therefore, the Tribunal held that the Applicant was partly at fault for her loss, but, under the circumstances, it did not necessarily follow that she should have been precluded from obtaining any compensation.

With regard to the loss of the jewelry, the Applicant was not entitled to any compensation as administrative instruction ST/AT/149/Rev.3 plainly barred such a recovery. Concerning the loss of cash due to the particular circumstances at the duty station and the special provisions regarding financial arrangements for staff assignments for staff assigned to Haiti, the Tribunal was of the opinion that Consideration should be given by the Respondent to waiver of the $400 limit under the administrative instruction on reimbursement for cash, taking into account that the Applicant had already received some money from her insurance company. Therefore, the Tribunal remanded the case to the Claims Board for further consideration based on the above. All other pleas were rejected.

4. Judgement No. 707 (28 July 1995): Belas-Gianou v. the Secretary-General of the United Nations[6]

Non-renewal of fixed-term appointment—Claxton judgement—What constitutes sexual harassment—No entitlement to engage in rude or inappropriate behaviour—Scope of witness testimony within reasonable discretion of the Joint Appeals Board—Review of non-renewal decision—Question of retaliation—Question of dissenting opinion

The Applicant, a national of Algeria and Canada, had been in the service of the United Nations Population fund for Population Activities since 6 January 1990 as a Programme Officer at the P-3 level on a two year fixed-term appointment. Her appointment was extended for six months and for a further two months through 5 September 1992, when she was separated from the Organization. The Applicant appealed the decision to allow her fixed-term appointment to expire, contending that her non-renewal was in retaliation against her complaints that she had been sexually harassed by her superior. She also asserted that the Organization had failed to investigate her allegations appropriately and had violated her rights to due process. The Respondent contended that the Applicant had no right to or legal expectancy of, further employment with UNFPA upon the expiration of her fixed-term appointment, and that their performance reports were the subject of a full rebuttal process.

As the Tribunal noted in Judgement No. 560, *Claxton* (1992), allegations of sexual harassment and related retaliation were viewed by it with the utmost seriousness. In *Claxton*, the Tribunal had also indicated the essentiality of an investigation to determine what had occurred and whether it constituted sexual harassment. The Tribunal had also noted that it was the responsibility of the person alleging sexual harassment or related retaliation to produce convincing evidence to support of the allegations. In the present case, the Tribunal concluded that the Applicant had not sustained her burden of proof.

Considering the definition of sexual harassment, as contained in administrative instruction ST/AI/379 of 29 October 1992, the Tribunal observed that a finding of sexual harassment must be predicated on one or more of three elements: (*a*) either an unwelcome sexual advance, (*b*) unwelcome request for sexual favours, or (*c*) other unwelcome verbal or physical conduct of a sexual nature. In support of her allegations, the Applicant related a number of incidents involving her supervisor's engaging in verbal and physical conduct of a sexual nature, none of which she expressed to him as being unwelcome at the time they occurred or thereafter. The supervisor had denied the allegation, providing an explanation of various events referred to by the Applicant significantly different from hers, and the individuals she allegedly told did not agree that any claim of sexual harassment was brought to their attention or discussed by them with the Applicant. The Tribunal further observed that before the Organization could address claims of sexual harassment it had to be aware of them. Moreover, in the absence of some indication that the person whose conduct was drawn into question was either on notice or should reasonable have realized from the circumstances that the conduct was unwelcomed, might have been viewed as being of a sexual nature and as creating an offensive working environment, the Tribunal would have difficulty in finding that the individual involved had engaged in sexual harassment. This was especially true where conduct was described in vague terms or was ambiguous, may not have been motivated by improper intentions, and might well have ceased altogether upon request.

Having said that, the Tribunal was of the opinion that, within the meaning of ST/AI/379, there was insufficient evidence of "verbal or physical conduct of a sexual nature" to have created an intimidating or hostile work environment. The incidents described by the Applicant in support of her claim were at most either ambiguous, or the possibility of a relationship between them and conduct of a sexual nature was both tenuous and remote, and in the opinion of the Tribunal, not the sort of conduct that appeared to the Tribunal to constitute sexual harassment contemplated by administrative instruction ST/AI/379.

In the view of the Tribunal, while some of the conduct of the Applicant's supervisor, as described by her and reported by others, as professionally belittling or insulting, while not tantamount to sexual harassment, doubtless reflected poor judgement, and was rude or inappropriate. Such incidents would surely warrant counselling and disciplinary measures, if repeated. For in the opinion of the Tribunal, no official was entitled to be disrespectful or rude or to engage in inappropriate conduct. At the same time, however, the Tribunal reiterated that it was important for a staff member who was aggrieved by any such behaviour to make a clear and unequivocal complaint promptly, if unable to have it stopped immediately by less formal measures. The Tribunal recognized that some burden was thus imposed on the aggrieved party, but unless problems of that nature were brought to light quickly and dealt with at an early stage, they would likely become worse and more difficult to deal with later.

The Tribunal also noted that the Joint Appeals Board report had reached the same conclusion that there was no sexual harassment.

Regarding the Applicant's contention that JAB had chosen not to hear from all the witnesses sought to be presented by the Applicant, the Tribunal pointed out that JAB, in the reasonable exercise of its discretion, might decide on the witnesses it wished to hear. It did so in the present case.

With respect to the non-renewal of the Applicant's fixed-term appointment, the Tribunal noted that, contrary to the Applicant's contentions, the expiration of a fixed-term appointment and its non-renewal were not tantamount to termination and therefore did not involve the same procedural or substantive requirements as a termination. The Tribunal had repeatedly held that it would not interfere with a decision by the Respondent to permit a fixed-term appointment to expire in the absence of proof that the decision was tainted by prejudice or other extraneous factors or that the staff member had a legal expectancy of a further appointment. In the present case, the Tribunal found no showing of any legal expectancy of a further appointment.

As to the question whether it was the Applicant's allegations or her performance that motivated the non-renewal decision, the Tribunal had reviewed the responses to numerous questions put by the Tribunal to the Applicant and some 20 persons, as well as the related communication from the Rebuttal Panel dissenting member and found no evidence that any of the Applicant's supervisors or second reporting officers during her first and second year were part of a conspiracy or a coincidental desire by each to retaliate against her for complaining about sexual harassment.

Furthermore, the Tribunal had reviewed the report of the Rebuttal Panel majority and dissent regarding the Applicant's performance and found no reason to conclude that the Panel majority had not fairly and objectively reviewed the performance evaluations. It was clear from a response to questions put by the Tribunal that it had taken into account the Applicant's description of her supervisor's use of the terms "dear" and "darling" and his discussion of personal problems with her, which had influenced the view of the dissenting member. That the majority disagreed with those views was not a reason for the Tribunal to conclude either that the majority was motivated by evil intentions or that it otherwise erred in its conclusions. The dissent had simply evaluated the Applicant's performance differently and was convinced that the issue of sexual harassment should have been given more attention.

The Tribunal reached the same conclusion as the JAB panel, namely that the evidence did not show that the non-renewal of the Applicant's contract had been motivated by retaliation for her complaint of sexual harassment. For the foregoing reasons, the application was rejected.

5. Judgement No. 712 (28 July 1995): Alba et al Ferndandex-Amon et al. v. the Secretary-General of the United Nations[7]

Non-consideration for career appointment—Question of financial constraints—No distinction between regular and extrabudgetary posts regarding consideration for career appointments

A number of staff and former staff of the Economic Commission for Latin America and the Caribbean filed appeals. The Tribunal ordered the joinder of the cases as they shared significant common issues of fact and law, and considered the case of the Applicant Alba as a representative case. The Applicant, who was a fixed-term appointment had more than five years of good service with ECLAC, contended that the Respondent had not carried out his obligations under Article 101, paragraph 1, of the United Nations Charter of the United Nations and General Assembly resolution 37/126 to grant him reasonable consideration for, and the opportunity of obtaining, a career appointment. The Respondent, on the other hand, contended that there was much evidence that Applicant had been accorded every reasonable consideration for a career appointment, but the lack of available funds had precluded the possibility of awarding career appointments.

The Tribunal noted that, after a suspension of the granting of permanent appointments owing to the critical financial situation, the staff rule which implemented General Assembly resolution 37/126 had been amended; the phrase "taking into account all the interests of the Organization" had been added. The Respondent had interpreted this provision to mean that reasonable consideration for a career appointment necessarily included whether the Organization had need of the staff member on a career appointment, and that need included whether there was a reasonable prospect of funding.

The Tribunal agreed that financial constraints of the Organization might be one of the factors to be considered in the granting of career appointments. However, in agreement with the Applicant, the Tribunal stated that within these financial constraints, there should be no distinctions, which ECLAC had made, between staff members based on whether or not a staff member's post was funded from the regular budget or was extrabudgetary. In the Tribunal's view, the practice of excluding all the staff on extrabudgetary posts even from consideration for career appointments was unfair and, as the Tribunal further pointed out, the General Assembly resolution had made no distinction among staff members in that regard. While the general framework might ultimately determine whether or not career appointments could be granted, the source of funding for an individual staff member's post could not justify the failure to even consider him or her for a career appointment after years of good service, if career appointments were being granted by the Organization.

The Tribunal, therefore, concluded that the Applicant and other similarly situated Applicants should be given every reasonable consideration for career appointments, in accordance with a system which did not distinguish between staff members on regular and extrabudgetary posts. For the Staff Members whose posts had already been abolished, they should be paid appropriate compensation. Had they been granted career appointments, their termination indemnity would have been based on length of service and therefore the Tribunal awarded them one month salary for each two years of their service, less the indemnities they had already received.

6. Judgement No. 713 (28 July 1995): Piquilloud v. the Secretary-General of the United Nations[8]

Receivability of appeal—Definition of "exceptional circumstances"—Reasons put forth by Applicant for waiver of time-bar must be given due consideration—Issue of administrative difficulties

The Applicant, a former national of China, entered the service of the Organization "on secondment from the Governments of China", for a fixed-term period of five years, expiring on 30 December 1989, at the P-2 level as an Associate Translator in the Chinese Translation Section of the United Nations Office at Geneva. She was promoted to the P-3 level as a Translator, effective 1 December 1986. The Applicant's performance, from 1 November 1986 to 29 February 1988, was rated "a good performance", and she received the same rating for her performance from 1 March 1988 to 31 December 1989. The Applicant signed the former performance report "with reservations", and rebutted the latter report. The rebuttal proceedings were completed on 21 June 1990, after the Applicant's separation from service.

On 1 August 1989, the Applicant wrote to the Personnel Officer inquiring into the renewal of her contract, which was to expire on 30 December 1989, and was informed on 21 September 1989 that her appointment would not be renewed. She would have worked for the Organization no less than five years by the end of the year and the retrenchment plan called for the abolition of one P-3 post in her section. In the meantime, the Applicant had married a Swiss/French citizen and had relinquished her Chinese nationality, and had acquired a master's degree in management. Moreover, no other post could be identified for her outside the Chinese Section.

On 6 February 1990, the Applicant wrote to the Secretary of the Joint Appeals Board inquiring as to the procedures to be followed before that body, and on 3 March 1990, after obtaining counsel from the United Nations Panel of Counsel, she requested review of the decision not to extend her appointment. The Joint Appeals Board Panel ultimately concluded that her appeal was not receivable because the time limits for filing an appeal had not been observed and there did not appear to be any exceptional circumstances for the waiver of those limits.

The Administrative Tribunal observed that, according to the practice followed by the Secretary-General, pursuant to staff rules 111.2(a) and 111.2(b), a waiver of time-bar in requests for re-examination of administrative decisions

contested by staff members of the Organization might be granted in "exceptional circumstances". According to the Tribunal's practice, those circumstances were defined as follows: "any circumstances beyond the control of the Appellant which prevent the staff member from submitting a request for review and filing of an appeal in time, may be deemed exceptional circumstance" (cf. Judgement No. 372, *Kayigamba* (1986)). The Tribunal further observed that the Applicant had been prevented from presenting her request in a timely manner, partly because of her status as a staff member on secondment subject to the system of rotation applied to seconded staff members by the Chinese Government, and partly because of the negligence of her counsel who was, notwithstanding, picked from among the members of the United Nations Panel of Counsel.

The Tribunal also considered that the time-bar would not preclude the examination of specific cases in the light of their respective merits. In the present case, the Secretary-General had not undertaken such an examination, and the Tribunal should not take the place of the Secretary-General in deciding whether the reasons given by the Applicant were sufficient for the waiver of the time-bar by virtue of "exceptional circumstances". However, it must make sure that her reasons were given due consideration.

In the present case, the non-renewal of the Applicant's contract had been motivated by the fact that no proposal for the renewal of her contract had been made by the Translation Service. According to the Chief of the Chinese Translation Section, preference had to be given, on account of the reduction of the number of posts, to two other Chinese staff members and thus the Applicant's employment would be terminated when her contract expired. In fact, at the time when his proposal was made, the Applicant had lost her Chinese nationality as a result of marrying a Swiss citizen. She had also ceased to be on secondment from the Government of her country of origin. In the opinion of the Tribunal, these facts could lead one to believe that the preference given to other Chinese staff members, those on secondment, was motivated less by consideration of the merits and performance of the candidates for renewal of their contracts than by their respective nationalities and administrative situations. However, the Tribunal could not determine with certitude what the result would have been if the Secretary-General, or the joint review group constituted following the rendering of Tribunal Judgement No. 482, *Qiu, Zho and Yao* (1990)—a case with similar issues as those in the present case—had examined the Applicant's case. The Tribunal, therefore could not order the reinstatement of the Applicant, whose contract had expired (cf. Judgement No. 559, *Vitkovski* (1992)).

Moreover, the Tribunal could not order that the Applicant's case be considered by the joint review group set up following the rendering of Judgement No. 482. The tribunal endorsed the Respondent's view that referring one case, that of the Applicant, to the review group would create insurmountable administrative difficulties. However, the Tribunal also noted that the Applicant's case was prejudiced by its not having been examined as it should have been, given the particular circumstances of her separation.

The tribunal fixed the amount of compensation to be paid to the Applicant for the prejudice that she suffered at 12 months' net base salary and rejected all other pleas.

7. Judgement No. 715 (28 July 1995): Thiam v. the Secretary-General of the United Nations[9]

Non-renewal of fixed-term appointment—Failure to take all aspects of staff member's circumstances into account—Claim for consequences of accident while on official mission—Importance of Advisory Board on Compensation Claims preparing a proper report—Claim for loss of personal effects—Staff rule 107.4(b)

The Applicant, who had been in the service of the Office of the United Nations High Commissioner for Refugees since 4 September 1978, at the P-3 level, had been given a positive evaluation and three of his supervisors had recommended him for an indefinite appointment.

However, as the Tribunal noted, he was not able to obtain such an appointment, in particular because of the unfavourable report drawn in October 1981 by the UNHCR representative in Cameroon. The report covered the Applicant's performance on the mission in June-September for the repatriation of Chadian refugees living in Cameroon. The Tribunal noted that the author of the report, like the Applicant, held an appointment at the P-3 level and was not the Applicant's supervisor.

When the Applicant's case came up again for the consideration before the Appointment and Promotion Board, in view of the discrepancies among various performance evaluation reports on the Applicant, the Board called on the Head of the Regional Bureau for Africa, for which the Applicant worked, to provide additional information on the Applicant. He recommended that the Applicant be extended for one year, on the grounds that the Applicant was unsuitable for an indefinite appointment. On the basis of that report, the Board recommended separation from service. The Applicant's contract was extended to 8 January 1985 for humanitarian reasons so as to enable him to benefit from his sick leave entitlement in consequence of his health problems.

The Applicant appealed the above decision and the Joint Appeals Board recommended compensation for unwarranted termination, which the Administration accepted. However, the Applicant was not satisfied and applied to the Tribunal. In the Tribunal's view, the discrepancies in the Applicant's various performance evaluation reports should have led the Administration to be more circumspect in assessing his professional qualities. The Tribunal also noted the negative influence of the report of the UNHCR representative in Cameroon, and it was that report which had led to the recommendation of non-renewal of the Applicant's contract despite other favourable reports prepared by his supervisors.

The Tribunal fully endorsed the opinion of the JAB that the Respondent had failed to take into account the fact that the Applicant had an eye condition necessitating surgical intervention which could have saved his eye. On the basis of all these aspects, the Tribunal found that the Administration had not taken all the proper steps required in the particular circumstances of the Applicant's administrative situation, which led to his separation from service. The Tribunal found that the Applicant should receive compensation over and above what had already been granted to him.

The Applicant's second plea related to compensation for the consequences of the accident he sustained in Cameroon during his official mission. According to the Applicant, during his stay in Cameroon his right eye was hit by the door of his official vehicle. Ocular complications resulted, then a cataract and finally, a total loss of vision in the right eye. His claim for compensation was denied. The Respondent maintained that the Applicant's claim was time-barred because it was submitted in 1988 and therefore, had not been made within the four-month time limit specified in Appendix D to the Staff Rules. The Applicant had submitted his claim after a much longer period. The Tribunal, however, like JAB, believed that the Applicant should have been exempted from the time limits for humanitarian reasons, in view of the progression of the disease from which he suffered.

The Tribunal noted that the administrative appeals bodies had not made sufficient efforts to establish the causal link between the vehicular accident suffered by the Applicant during an official mission in Cameroon, the cataract he subsequently suffered and the blindness in his right eye which finally resulted. The Tribunal further noted the contradictory nature of the recommendation of the Advisory Board on Compensation Claims, which held that, on the one hand, the Claim for compensation was time-barred, and on the other, that the Applicant's accident was not service-incurred. The Tribunal considered that in declaring the claim time-barred, the Advisory Board on Compensation Claims had acted in an arbitrary manner and that this aspect of the case should be considered on its merits. The Tribunal found that the Advisory Board on Compensation Claims had not set forth its observation, conclusions and the reasons for its recommendations sufficiently clearly. For these reasons, the Tribunal remanded the case to the Advisory Board so that a proper report could be prepared, and if the results were not satisfactory to the Applicant, he could invoke the provisions of Appendix D to request the convening of a medical board.

The Applicant's third, and final, plea concerned compensation for the loss of his personal effects, following his separation from service and repatriation from Geneva to Dakar, Senegal, his country of origin. Because of the Applicant had not paid for storage costs of his personal effects awaiting shipment to Dakar, the moving company had sold some of his belongings and shipped the remainder to Vienna, where the Applicant subsequently had been authorized, on an exceptional basis, to ship them where he had new employment prospects, instead of Dakar. The Applicant never claimed his belongings in Vienna, but claimed payment of their value from UNHCR, which refused to grant any compensation. The Respondent contended that the Tribunal could not properly consider the issue since the Joint Appeals Board had not taken any position on the matter and it was time-barred.

The Tribunal found that the matter was receivable. The Applicant had submitted the claim to JAB, and subsequently to the Tribunal, within the prescribed time limits; the fact that the Board had not taken a position on the claim did into prevent the Tribunal from deeming it receivable.

On the merits, the Tribunal considered that the storage costs were his responsibility under staff rule 107.4(b) and that he had been warned by the moving company that his belongings would be sold if he declined to pay the charges. The Tribunal further considered that on his own accord the Applicant had not claimed his belongings on arrival in Vienna although he had been advised that

he would be responsible for the consequences of any delay in doing so. The Tribunal noted the fact that the Applicant had not personally instructed the company to ship and store his belongings, but that instead the shipment was made on the initiative of UNHCR did not preclude his responsibility. In the light of the foregoing, the Applicant must be held responsible for the loss of his personal effects, and his claim for compensation on this point was therefore rejected.

8. Judgement No. 718 (21 November 1995): Gavshin v. the Secretary-General of the United Nations[10]

Non-renewal of fixed-term appointment—Notice to staff member of proper performance evaluation—Entitlement to fair consideration for renewal and career appointment—Question of damages

The Applicant entered the service of the United Nations on 10 April 1985, on secondment from the Government of the Union of Soviet Socialist Republics on a fixed-term appointment, at the P-3 level as a Law of the Sea Officer in Kingston, Jamaica. His contract was renewed, and subsequently on 2 November 1991, he was informed that a new fixed-term appointment would be subject to either written confirmation that he had severed ties with his Government, or that if he did not wish to sever such ties he should notify the Organization so that it might seek the concurrence of his Government for a renewal. The Applicant advised the Senior Personnel Officer that he had severed ties with his Government. He then was informed on 29 February 1992 that such severance did not place an obligation on the Organization either to retain his services at the end of his then current fixed-term appointment or to grant him a permanent appointment. On August 1992, the Applicant was further informed that his contract would not be extended beyond the end of 1992, one of the reasons being that the Organization was being restructured and there was a necessity to free up posts for this purpose. The Applicant appealed.

Upon review of the case, the Tribunal noted that a memorandum dated 13 December 1993 from the Director of the Division for Ocean Affairs and the Law of the Sea disclosed that performance evaluation reports (PERs) for Soviet nationals were always positive and favourable, but that this accurately reflected the situation only in some cases. The Director had stated that it did not do so in the Applicant's case, and that his PERs, which showed overall "a very good performance", were not justified by the quality of his performance. The Tribunal was of the view that any question relating to the Applicant's performance should have been brought to his attention when he was asked to sever his ties with his Government

Moreover, the Tribunal noted that the Applicant had not been informed until after he had severed relations with his Government of the Organization's views of its obligations to him in regard to reappointing him. He had thus lost any contractual rights or opportunity that he might have had to further employment in his Government. Furthermore, the Applicant was then told that his appointment would not be extended because of restructuring within his Division which was not the real reason, the real reason being disapproval of his performance. The Applicant had served the Organization faithfully for eight years and his PERs were, as far as he could tell, uniformly positive, and in view of the

Tribunal, he was entitled to receive fair consideration due to him. The Respondent conceded that proper procedures had not been followed, but there was not supposition that had proper procedures had been followed, with respect to the completion of his PERs and the consideration to which he was entitled for a career appointment, he wold have been recommended for an extension of his fixed-term contract.

Acknowledging that it was not possible to know whether the Applicant would have obtained a further appointment or a career appointment after proper consideration, the Tribunal stated that the real point was that the Applicant, after having been misled, was never in a real sense afforded the opportunity to receive either appointment. Under those circumstances, the Tribunal considered that the Applicant's treatment by the Administration fell short of the standards to which it was required to adhere.

The Tribunal's independent assessment led it to conclude that the case presented a more extensive violation of the rights of the Applicant than the *Vitkovski* and *Rylkov* cases cited by JAB on the issue of damages. Here, the level of injury was considered by the Tribunal to be greater. The Tribunal awarded the applicant an amount equal to six months of his net base salary, at the rate in effect on the date of his separation from service, in addition to the 18 months he had already received in accordance with the earlier decision by the Secretary-General.

9. Judgement No. 722 (21 November 1995); Knight et al. v. the Secretary-General of the United Nations[11]

Promotion to the Professional category—Legality of the competitive examination for promotion to the Professional category—Function of the Administrative Tribunal—General Assembly authority to promulgate conditions of service—Competitive examination consistent with the Charter of the United Nations

The Applicants were staff members in the General Service category who filed an appeal from a decision of the Secretary-General dated 18 February 1994 rejecting their claims that they were unlawfully required to adhere to the competitive examination procedure, which was established pursuant to General Assembly resolution 33/143, in order to be eligible for promotion to the Professional category. They sought promotion to the Professional category on the basis of equity and merit.

Although the Applicants disclaimed any intention to assert that a specific General Assembly resolution contravened the Charter of the United Nations, in the view of the Tribunal this disclaimer as a practical matter contradicted the substance of the appeal. For the Tribunal to have held that the Applicants could be promoted without passing the competitive examination would have denied the General Assembly's power to mandate a competitive procedure, such as the competitive examination, which the General Assembly itself had recognized as the response to its resolution. It would have to have held further that the Respondent had acted unlawfully in implementing the General Assembly resolutions by establishing the competitive examination. Indeed, the Tribunal had upheld the legality of system in Judgement No. 266, *Capio* (1980).

The Applicants argued that promotion through the competitive examination was discriminatory vis-à-vis the General Service as a whole, that this category of staff instead of being judged on merit for career opportunities, had been treated unequally by comparison with other categories of staff and external candidates. However, the Tribunal considered that these contentions were of a policy nature and thus addressed to the wrong forum. The Tribunal's statute provides for the Tribunal to determine whether there had been non-observance of the terms of employment contracts, which included the competitive examination. The Applicant's sought a fundamental change in the system as a whole, i.e., in terms of their employment, but it was not the function of the Tribunal to substitute its views for those of the General Assembly or the Respondent on how best to manage the Organization.

In the view of the Tribunal, the General assembly had a rational basis for requiring a competitive examination procedure for promotion from the General Service to the Professional category, and equally rational was the differentiation between various categories of staff, such as Professional, Field Service categories and General Service. The Tribunal concluded that the General Assembly had the power to promulgate conditions of service for the staff. The International Court of Justice had so held in its advisory opinion of 20 July 1982, *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, International court of Justice Reports 1982*, p. 325, paragraph 68, which was entirely consistent with *Capio*.

Furthermore, the Tribunal considered that, since the competitive examination placed no improper restriction on the eligibility of any staff member for the competitive examination, it raised no questions under Article 8 of the United Nations. The Tribunal likewise saw no conflict between the competitive examination system and Article 101 of the Charter since the obvious purpose of a competitive examination was to seek the best qualified of the candidates being examined.

For the foregoing reasons, the application was rejected.

10. Judgement No. 742 (22 November 1995): Manson v. the Secretary-General of the United Nations[12]

Resignation treated as a summary dismissal—Requirement of notifying staff member if resignation is to be treated as such—Administrative responses to resignation of a staff member—Staff member must bet given opportunity to respond to any charges against him or her before action is taken—Question of gross negligence—Question of an effective resignation

The Applicant, who had served the Organization since 1962, took early retirement in 1986; amd after serving as a consultant on missions to the Sudan, Finland and Afghanistan, in 1989, he again became a staff member serving in Afghanistan, Cambodia and Liberia. In 1993, he was appointed Chief Administrative Officer of the United Nations Operation in Somalia (UNOSOM II), where he served until his separation on 14 May 1994. On 14 April 1994, the Applicant reported a theft of US$ 3.9 million from the premises of UNOSOM II. The cash had been kept in what was erroneously thought to be a secure drawer of a filing cabinet located in what was then being used as a cash office in Administration

Building B. The building was a prefabricated hut-like structure, in the main UNOSOM II compound (the United States Embassy compound). On 19 April 1994, a Headquarters investigation team was sent to investigate the theft. The team issued its report on 12 May 1994. In the meantime, on 11 May 1994, two Assistant Secretaries-General, during a telephone conversation, suggested to the Applicant that he tender his resignation, which the Applicant did on 12 May. The Under Secretary-General for Administration and Management accepted his resignation "on the understanding that your separation will be treated as though it had been affected as a summary dismissal". The Applicant appealed the decision.

The Tribunal noted that there was no dispute that the Applicant was not told during that telephone conversation that his resignation might be treated as summary dismissal, but that he was apparently led to believe that his resignation would not be accepted and that he would remain in Somalia to assist in a continuing investigation of the episode; in fact, he did remain there until 31 May 1994. The Tribunal further noted that the Applicant seemed to have thought that tendering his resignation would be viewed as a honourable step in recognizing his ultimate responsibility for the loss since he was the senior civilian officer responsible for the UNOSOM II administration. The Applicant was not, prior to the receipt of the summary dismissal decision, notified of any allegation against him, or was there any submission of the matter to a Joint Disciplinary Committee.

The Respondent sought to justify the 12 May 1994 decision on the ground that the Applicant, for more than a year prior to the date of the theft, was "grossly negligent in failing to take the most basic measures to ensure safe handling of the substantial cash amounts received and disbursed by the Mission, even after an audit report of October 1993 had pointed out to him an intolerable lack of appropriate security measures and the immediate need to take corrective action". The Respondent further contended that the resignation by the Applicant was an admission of the gross negligence referred to above and that, therefore, there was no need to adhere to staff rule 110.4(a) concerning disciplinary action.

In the view of the Tribunal, when a potential disciplinary measure was being considered and a resignation had been suggested, the staff member must be warned before the resignation was accepted that it would or might have a disciplinary consequence so that he or she could make an informed decision on how to respond, in order to comply with the requirements of staff rule 110.4 or administrative instruction ST/AI/371. The Applicant had argued and furnished evidence to support his contention that the Respondent's decision was a reaction to political pressure and was aimed at deflecting criticism of the Organization by pinning the blame on a scapegoat. While the Tribunal would not speculate as to the Respondent's motivation, it stated that there was nothing which realistically precluded the Respondent from selecting from a number of options a course of action in response to receipt of the Applicant's resignation, i.e., (*a*) to accept the resignation as offered; (*b*) reject it; (*c*) to initiate termination proceedings for unsatisfactory performance under the Staff Rules; and (*e*) inquire of the staff member whether he wished to waive his rights under the Staff Rules, and was agreeable to the resignation being treated as a summary dismissal for serious misconduct.

The Tribunal further pointed out that the issue of whether there was justification for summary dismissal was clouded by the fact that such action was taken before the Applicant ever had an opportunity to see the report of the investigation team as it related to him. He could therefore not respond to it or to the conclusions drawn by the Secretary-General regarding audit observations, comments or recommendations. Thus, in the opinion of the Tribunal, it was impossible to know whether, if the Respondent had had the benefit of the Applicant's response before he acted, he would have reached the same conclusion and based a summary dismissal on it.

Concerning the question of whether the Applicant's conduct, taken as a whole, constituted gross negligence, resulting in the loss of $3.9 million, the Tribunal considered that gross negligence involved an "extreme and reckless failure to act as a reasonable person would with respect to a reasonably foreseeable risk". In the present case, the Tribunal was unable to find gross negligence by the Applicant.

In this regard, the Tribunal noted that the Applicant had made two suggestions to relieve UNOSOM II of the responsibility and risk of transferring and holding large sums of money, but these suggestions were rejected by United Nations Headquarters. The Tribunal further pointed out that the audit team had left Somalia, because of dangerous fighting and looting, before the final discussions could take place and that if such a discussion had been held with the Applicant, the auditors would have learned that a strong room in a concrete structure was nearing completion and that it addressed their basic cash security issues. The Tribunal further noted that the cash was stored overnight in the insecure file drawer in the prefabricated Administration building as a result of the decision of the cashier and not the Applicant. This also was a practice inherited from the former Chief Financial Officer and continued by an individual serving as Acting Chief Financial Officer at the time of the theft, because it was believed that the daily movement of cash between the storage room and the cashier's office presented security problems. The Applicant claimed that he was not aware of this arrangement, nor was he informed of the size of the cash buildup of 16 April 1994, which was the result of a combination of unforeseeable circumstances, i.e., a large amount of unanticipated cash received from a departing military contingent, and an erroneous estimate of cash requirements made by an inexperienced individual who had served on a interim basis for about two weeks as Acting Chief Financial Officer, following the departure of the former Chief Financial Officer, and before his successor arrived on 9 April 1994.

Although the Applicant had stated that he was unaware that over $4 million was being stored overnight in the insecure cashier's office, the Tribunal speculated that perhaps the Applicant should have established a reporting system to inform him directly of the levels of cash on hand, but that this was debatable in view of the presence of a Chief Financial Officer having primary responsibility for such details. In the view of the Tribunal, the Applicant's failure to do so did not constitute gross negligence. The theft was, in the opinion of the Tribunal, primarily attributable to wrong-headed decisions by others coupled with the fact that the Organization was attempting a very difficult mission in an extraordinarily adverse environment, without the number or the types of personnel required, the equipment required, and without the necessary military support, or essential infrastructure support.

As to the other relief sought by the Applicant, the Tribunal found that when the Applicantt tendered his resignation to the Under Secretary- General for Peacekeeping Operations, he necessarily assumed the risk that it might be accepted, despite intimations to the contrary from those who suggested that he resign. However, in the present case, the resignation stood without the "understanding" that it represented a summary dismissal. The Tribunal also found no merit in the Applicant's contention that since he was on loan from UNDP to the United Nations his resignation did not apply to UNDP.

The Tribunal held that the applicant was entitled to an award ($10,000) for moral injury resulting from the consequences of the failure to accord him due process, and to the amount, with interest, to which the Applicant was entitled on resignation that was not previously paid to him. All other pleas were rejected.

11. Judgement No. 744 (22 November 1995): Eren, Robertson, Sellberg and Thompson v. the Secretary-General of the United Nations[13]

Challenge to disciplinary measures—Imposing disciplinary measures based on issues not central to the case before the Joint Disciplinary Committee—Question of job performance being subject of a disciplinary proceeding—Suspension of staff members pending consideration of serious charges within reasonable discretion of the Organization

The Applicants, in their respective posts, dealt with the procurement of air transportation services for the United Nations. In May 1993, a complaint was made by Evergreen Helicopters, Inc., a United States company, alleging irregularities in United Nations procurement practices which, it was claimed, had resulted in awards to companies which were not the lowest bidders. Evergreen further alleged that those awards had gone principally to one Canadian helicopter broker, Skylink. After a preliminary investigation by the Administration, it was concluded that practically all of the 52 contracts reviewed showed noncompliance with established procurement procedures. Consequently, on 9 July 1993, the Applicants were charged with misconduct and suspended from duty with full pay, with immediate effect. They were escorted from their offices by Security officers to the gates of United Nations Headquarters and ceremoniously stripped of their grounds passes. Their cases were subsequently referred to a Joint Disciplinary Committee (JDC) which focused on action allegedly taken by them to favour Skylink. The Applicants were accused of having concealed relevant information and of having submitted to the Headquarters Committee on Contracts incomplete, misleading or inaccurate information, allegedly to induce the Committee to recommend the award of contracts to Skylink.

The JDC adopted its lengthy reports on 21 September 1994 and exonerated the Applicants in all respects of the charges of misconduct against them. The Tribunal noted that the JDC had pointed out occasional instances in the invitation, evaluation and reporting of proposals from potential contractors where it would have been desirable for the staff members involved to have made a follow-up phone call, or written a note to the file regarding contact with a vendor, or prepared presentations to the Headquarters Contracts Committee in a less summary fashion, and that there had been occasional inaccuracies in their pre-

sentations to the Committee; however, the JDC had found no evidence of wrongful intent on the part of the Applicants. The Tribunal further pointed out that the lapses noted by the JDC were understandable, in the light of the circumstances, such as understaffing and the urgency of the requisitions involved for the United Nations peacekeeping missions. In no instance did the JDC find that the Outcome with respect to any particular contract would have been different had these lapses not occurred.

In spite of the unanimous recommendation of the JDC that no disciplinary measure should be taken against the Applicants, and while accepting the findings of the JDC that no wrongful intent on the part of the Applicants had been established, the Secretary-General decided to impose disciplinary measures, on the grounds that performance lapses noted by the JDC were not excused by the absence of wrongful intent, and that the errors and omissions identified by the JDC should be "regarded as culpable". The disciplinary measures included a written censure, four steps-in-grade reduction and a two-year deferment of eligibility for within-grade-increment. The Applicants appealed the decision.

The central question before the Tribunal was whether the Secretary-General having accepted the factual findings of the JDC and its conclusion that Applicants were not guilty of the charges brought against them, could then validly impose disciplinary measures on the basis of incidental comments on what were essentially matters of performance.

In that regard, the Tribunal considered that the Secretary-General had imposed disciplinary measures on the Applicants on the basis of a charge not previously notified to them, that their performance was culpable because it was, in certain respects, below standard, which was fundamentally different from the charges before the JDC, i.e., wrongful intent to favour Skylink. It was true that he JDC had commented on what it apparently perceived as shortcoming in the Applicants' performance, but had done so solely in the context of far more serious charges, which were virtually criminal in nature. Neither the Applicants nor the JDC had been called upon to consider whether the Applicants' job performance, as such, was so deficient as to warrant disciplinary action, in the light of the extraordinary work circumstances prevailing and other mitigating factors, many of which were recognized by the JDC. Hence, in the opinion of the Tribunal, the Applicants were denied due process to which they were entitled under the Staff Rules of the United Nations. The disciplinary measures imposed on them were therefore unlawful.

The Tribunal considered that, in theory, the isolated comments of the JDC might have been the basis for new charges against the Applicants, and could have been referred to the JDC for consideration and for a recommendation as to whether they warranted disciplinary action. The Tribunal speculated that there might be instances when failures in performance were of such extreme dimension as to constitute misconduct for which disciplinary measures would be reasonable, but in the present case, the Tribunal did not find that the performance matters mentioned by the JDC were of this nature. This was particularly true in the present case where there appeared to be no evidence of any financial loss to the Organization, or that any outcome could have been different but for the Applicants' performance.

The Tribunal also found that relevant matters relating to the work performance of the Applicants did not appear to have been taken into account in the determination that their conduct was "culpable". Noting the absence of standards established for negotiated transportation service procurements, the Tribunal was of the view that legitimate questions arose as to whether and to what extent pressure-induced questions regarding procedural details in the procurement process could properly be deemed "culpable". Furthermore, the Tribunal considered that the Under-Secretary-General had urged rapid decision-making in emergency situations such as the ones relating to human rights, humanitarian affairs and peacekeeping and that it appeared to the Tribunal that the Applicants had acted in keeping with those views. In other words, what he later considered lapses in their performance could well have resulted directly from his sensible advice. The Tribunal therefore concluded that, in addition to the failure of due process, the disciplinary measures taken by the Respondent were not justified.

With regard to the suspension of the Applicants, pending the disposition of charges against them, the Tribunal found that such action was plainly within the reasonable discretion of the Respondent under the circumstances, considering the seriousness of the charges. The Respondent was entitled, at that state, to decide that retaining the Applicants in their posts might have posed a danger to the Organization.

In conclusion, the Tribunal found that the Applicants had been unfairly and improperly treated by the Respondent when he penalized them, despite the finding of their innocence by the JDC and his own acceptance of this finding. The Applicants had been deprived of the due process to which they were entitled and subjected to a serious irregularity of procedure. The Applicants had been harmed thereby, and their harm had been aggravated by the highly public nature of the Respondent's actions. In the light of the foregoing, the Tribunal rescinded the decisions of the Respondent and fixed compensation to be paid to each of the Applicants in the amount of one year's net base salary if the Secretary-General decided, in the interest of the United Nations, not to rescind the decisions which imposed, or would have imposed, disciplinary measures. It also ordered as compensation for the harm suffered by the Applicants that the Respondent pay the Applicants Eren, Robertson, and Thompson and the estate of Sellberg, who had passed away in the interim, (a) the sum of $20,000; and (b) the difference in remuneration and other emoluments between what was actually received by the Applicants and what they would have been entitled to, in the absence of disciplinary measures, from the date of their suspension from service to the date on which the Tribunal's judgement was implemented by the Respondent.

B. Decisions of the Administrative Tribunal of the International Labour Organization[14]

1. Judgement No. 1383 (1 February 1995): in re Rio Rumbaitis v. World Health Organization[15]

Non-selection to post—Eligibility to file an appeal—A candidate must meet minimum requirements of any notice to qualify for selection—Question of a fatally flawed appointment to a post which was subsequently abolished—Question of damages for material and moral injury

The complainant had been employed by the Regional Office for the Americas of the World Health Organization in Washington, DC since June 1988. In March 1990, she was working as a "Temporary Adviser" in the Health Situation and Trend Assessment Programme (HST) in the Health Promotion Unit under a one-month contract, which was extended by two months, when on 30 March, she applied for a vacancy for a grade P.4 post as AIDS education methodologist with HST. The notice gave as a minimum requirements, inter alia, a postgraduate degree in behaviour or social sciences. The Section Committee recommended three candidates, of which the complainant was not one and Dr. Rafael Mazin, who had a medical degree, was ultimately selected. When she appealed this decision to the regional Board of Appeal, the Board made a recommendation in her favour, but the Regional Director rejected it. On 7 May 1992, she appealed to the headquarters Board of Appeal. The Tribunal noted that both boards of appeal had held that she had the right of appeal and that the selected candidate did not have the minimum education qualifications required for the post, whereas she did. The Director-General rejected the recommendation of the headquarters Board on the grounds that the complaint did not have the right to appeal given the nature of her status with WHO and, in any event, the post in question was among 46 posts being abolished owing to cuts in the budget for the Global Programme on AIDS for the biennium 1994-1995.

The Organization had contended that the complainant was not a staff member, but rather a "temporary adviser" under the Staff Rules and therefore not eligible to file an internal appeal. However, the Tribunal considered that under staff rule 1230.1 a "temporary adviser" was invited for short periods of not more than 60 consecutive days to give advice or assistance to the Organization, and that the complainant's contract had been extended resulting in her serving for over 90 days. Therefore, the Tribunal concluded that she was not a "temporary adviser'" but held at the material time a temporary short term appointment as a consultant, and therefore qualified as a "staff member" and was eligible to avail herself of the internal appeal procedures.

As to the merits of the case, the Tribunal noted that the Selection Committee and both boards of appeal had taken the view that the selected candidate's medical degree did not meet the minimum educational qualification of a postgraduate degree in any of the behavioral or social sciences. The Organization did not dispute that but argued instead that a medically qualified candidate was more suitable and that Dr. Mazin was the best qualified for the Post. In the opinion of the Tribunal, however, it was axiomatic that a candidate who did not fulfil the minimum requirements set out in a vacancy notice did not qualify for the selection. The impugned appointment was therefore fatally flawed in that respect.

Under those circumstances, the Tribunal would ordinarily set aside the selection process, but the Organization had abolished the post. The complainant pleaded that such abolition was just a manoeuvre to frustrate her complaint; that the unit had continued under a different name; and that the selected candidate had continued to work in a new position that was more suitable for a medical doctor. The Organization explained that programme changes and budget cuts required not only the abolition of the disputed post, but also the reassignment of many staff in the Professional category, that having abolished the post it had to apply the reduction-in-force procedure, and that the outcome was the appoint-

ment of Dr. Mazin to a new post. The Tribunal noted in that regard that the complainant herself had admitted that the Health Promotion Unit had lost almost all its credits for educational activities and her supervisor had been left with so few functions that she had to be reassigned to Brasilia. Therefore, in the Tribunal's view, a fresh process of selection for the disputed post being no longer possible, no useful purpose would then be served by quashing the impugned decision.

The complainant had requested damages for material and moral injury on account of the travesty of the irregularities and the humiliation she had suffered by not being fairly considered. However, the Tribunal considered that the complainant had been asked to draft a description of the post and admitted that she had drafted the description to fit her own qualifications and experience. Thus, while the gravamen of her complaint was that the proceedings of the Selection Committee were flawed because the aim was the selection of an unqualified candidate, she was on her own admission endeavouring from the outset to pervert the process to secure her own appointment. Further, she was not even Selection Committee's third choice. In the circumstances, the Tribunal was of the view that she was not entitled to any damages at all. However, since the complainant had established that the impugned decision was flawed, she was awarded US$ 2,000 in costs.

2. Judgement No. 1384 (1 February 1995): in re Waide v. World Health Organization16

Non-renewal of fixed-term contract—Question of reason for non-renewal—Burden of proof in misconduct cases—Right to defend oneself against adverse charges—Injury called for reinstatement

The complainant had been employed as a clerk at grade EM.05 in Distribution and Sales in the World Health Organization's Regional Office for the Eastern Mediterranean (EMRO) at Alexandria, Egypt, when his two-year fixed-term appointment was not renewed when it expired on 31 August 1991.

As a result of the theft of some computer equipment in November 1990, the Regional Office conducted an investigation and in March 1991 inititated disciplinary proceedings against the complainant. By letter dated 27 May 1991, the Regional Personnel Officer had informed him that the Organization was satisfied "beyond reasonable doubt" that he had committed the theft, and that he would be dismissed from 29 May with one month's pay in lieu of notice.

The complainant appealed first to the regional Board of Appeal, and then to the headquarters Board of Appeal. The headquarters Board of Appeal's report, finding "a high degree of contradiction in the statements" made in connection with the matter, disagreed with the finding of misconduct, which it held was "based on presumptive evidence only," and further held that the dismissal decision was "probably not the wisest and fairest decision". It recommended that the dismissal be converted to termination at the end of the complainant's appointment, i.e., 31 August 1991, on the grounds of loss of confidence in the complainant's suitability for employment in WHO. In a letter of 4 August 1993 to the complainant, the Director-General stated that although guilt had been established beyond a reasonable doubt, he accepted the recommendation. The complainant appealed the decision.

The Tribunal considered that though the impugned decision purported to "convert" the complainant's dismissal into the non-renewal of his fixed-term appointment, the Tribunal had consistently held, more recently in Judgement 1317 (in re *Amira*), that an organization was required to give a reason for non-renewal, and WHO had unequivocally stated that termination the present instance for "serious misconduct, which had led to loss of confidence". And in the opinion of the Tribunal, the finding that the complainant was guilty of theft could not stand.

In that regard, the Tribunal recalled its Judgement 635 (in re *Pallicino*), which stated that the complainant's denial of the alleged misconduct shifted the burden of proof to the organization. Although the Tribunal would not require absolute proof, it would accept a set of precise and concurring presumptions of the complainant's guilt. Upon review of the present case, the Tribunal recalled that both boards of appeal had recognized that there was at most mere suspicion that the complainant might have been involved in the theft, and that in view of the many discrepancies and omissions in the case against him the headquarters Board of Appeal had been unable to determine the relevant issues of fact.

Moreover, the Tribunal noted the many flaws in the procedure the Organization had followed in investigating the theft. Neither directly nor indirectly had the complainant been confronted with his accusers, and he had been deprived of the opportunity to press the points in his favour or to explain those against him. The Tribunal, citing Judgement 999 (in re *Sharma*), concluded that the complainant had been denied his right to defend himself before an adverse decision was taken.

Based on the foregoing, the Tribunal determined that the decision not to renew the complainant's contract could not stand and that the plea of loss of confidence which the Organization had based thereon must be rejected. The Tribunal noted that as the complainant's performance had been rated good to very good and as on 18 March 1990 he had been recommended for promotion the Organization, but for the wholly mistaken conclusion that he had been involved in theft, would have extended the complainant's fixed-term contact beyond August 1991 as a matter of course.

Moreover, the decision not to renew his contract, based as it was on a finding of theft, must have seriously harmed his moral and social standing and his prospects of finding other employment. And the flagrant disregard of his right of defence had caused him further moral injury. In the opinion of the Tribunal, the damage to the complainant's career and reputation was so grave that nothing short of reinstatement and the grant of further contract of employment would suffice. The Tribunal ordered that he be granted an appointment for a period of two years starting at the date of delivery of the judgement and an award of damages for moral injury of US$ 6,000. He was also awarded $4,000 in costs.

3. Judgement No. 1385 (1 February 1995): in re Burt v. International Labour Organization[17]

Non-selection to post—Entitlement to a fixed-term appointment under rule 3.5 of Short-term Rules—Contract to be applied in accordance with intention of the parties

The complainant, who was of British nationality, first served the International Labour Organization on a short-term contract from October to December 1987 to work on the *International Labour Organization Review*. He subsequently applied for the post of editor of the publication *Social and Labour Bulletin*, which would have afforded him a fixed-term contract of two years with a chance of renewal. Pending the outcome of the selection process, he accepted another short-term contract to serve as English-language editor of the *Bulletin* at grade P.4, from 4 March to 31 October 1991. On expiry of that contract he returned to the United Kingdom and on 6 April 1992, he resumed the editorship of the *Bulletin*, that short-term contract to expire on 31 March 1993.

In the meantime, he learned that the Selection Board had recommended appointing the complainant the English-language editor, but that the Director-General had decided to "suspend all action" in the appointment of an editor pending review of the *Bulletin*. By a letter of 13 December 1993, after he had lodged a complaint with the Tribunal, the complainant was informed that the selection process had been cancelled.

The Tribunal learned from a confidential minute of 19 March 1993 that the complainant, as well as his French-language counterpart, had been given short-term contracts with the appropriate breaks in service in order that staff rule 3.5 could not be applied, which would have meant that the terms and conditions of a fixed-term appointment would apply to the complainant as from the effective date of the contract which created one year or more of continuous service. In that regard, as ILO wished work on the *Bulletin* to continue without break until August 1993, the complainant had been given an "external collaboration contract" for the period from 5 to 30 April 1993, and from 3 May to 31 December 1993 the complainant continued to serve the Organization under short-term contracts, with no extension after 31 December 1993. The Tribunal noted that the complainant had carried out the same duties under the extension collaboration contract as under his short-term contracts.

On 17 August 1993, the complainant lodged an appeal, claiming that he had ranked first in the competition for the English-language editorship of the *Bulletin* and should have been granted a fixed-term appointment for two years. He maintained that in spite of the interposition of the extension collaboration contract he was entitled to the benefit of rule 3.5 of the Short-term Rules.

The Tribunal considered that the suspension and later cancellation of the competition for the English-language editor post was proper. The Director-General had reviewed the *Bulletin* in relation to another ILO publication, *Review*, and ultimately decided to eliminate the *Bulletin*, including a new section in the *Review* containing the kind of material previously published in the *Bulletin*. In other words, the post advertised for English-language editor of the *Bulletin* had ceased to exist, so that the complainant's claim to a two-year appointment to that post must fail.

As to the complainant's contention that as from 5 April 1993 he had become entitled to the terms and conditions of a fixed term appointment under rule 3.5 of the Short-term Rules, the Tribunal recalled that in Judgement 701 (in re *Bustos*) it was required to interpret and apply a contract an accordance with the intentions of parties. In the present case, the Tribunal concluded that the interruption of the complainant's appointment by the extension collaboration contract had merely been a device to deny him the protection of rule 3.5 without

forfeiting the benefit of his services. There being no change in the actual conditions of employment, the real intention was that he should continue to do the same work.

The Tribunal concluded that the external collaboration contract must be treated like any other of the complainant's short-term contracts, and that therefore his "total continuous contractual service" amounted to one year by 5 April 1993 and he thus became entitled under rule 3.5 to the terms and conditions of a fixed-term appointment. Since the complainant had succeeded on that count, the Tribunal awarded him 4,000 Swiss francs in costs.

4. Judgement No. 1386 (1 February 1995): in re Breban v. European Patent Organization[18]

Non-confirmation of appointment at end of probation—Decision to confirm such appointment is discretionary—Requirement of notification of precise description of duties—Question of personal supervision—Requirements of proper notice of criticism of job performance

The complainant was the successful applicant for a vacant post of clerk, and was given a probationary appointment at the B2 grade with the European Patent Organization (EPO), effective 1 January 1992. On 27 May 1992, a probation report was issued on the complainant which recommended not confirming his probation. His performance was found wanting and his relations with his colleagues were described as rigid and uncooperative. On 10 June 1992, the Principal Director of Patent Information informed the complainant that the President of the Office had decided in accordance with article 13(2) of the Service Regulations, not to confirm his appointment when the probation ended on 30 June 1992. The complainant request a three-month extension of his probation but this was denied, and he appealed.

At the outset, the Tribunal recalled that the administrative authority had the widest measure of discretion in confirming the appointment of a probationer, and that the purpose of such discretion was to ensure that the Organization might choose staff in full freedom and independence. The Tribunal would not intervene in the Administration's choice except in the event of abuse of authority or a clear mistake of law or fact. On the other hand, the probationer had every right to expect of the Administration that it would provide proper conditions for probation, and in that regard, the Tribunal noted several facts which had come to light in the internal appeal hearings and which had not been challenged which raised serious doubts as to whether that was the case.

The Tribunal first pointed out hat the complainant had never been given a precise description of his duties. The Administration's explanation that the job specifications were in the notice of vacancy for the post was not considered sufficient by the Tribunal. In the Tribunal's view, since a vacancy notice had to be in general enough terms to attract a wide variety of applicants, it could not be regarded as specific enough job description to be of use to the official.

The Tribunal also pointed out that the complainant had lacked personal supervision, and in this regard, noted that his main tutor had admitted to the Appeals Committee that he did not feel fully qualified to give the complainant guidance.

Furthermore, in the opinion of the Tribunal, the Administration was also at fault for not giving the complainant sufficient warning that there had been criticism of him and the success of his probation was in jeopardy. The Organization contended that he had received several oral warnings, but the Tribunal noted that contrary to the requirements of due administrative process, the file contained no evidence of such warnings or their date or substance, therefore, preventing the Tribunal from assessing their scope. There was a note, dated 28 February 1992, from the Administration to the complainant; however, the Tribunal was of the opinion that its cryptic nature could not be regarded as a valid administrative document, let alone a warning which might have carried weight in assessing the outcome of probation. The Tribunal pointed out that the only written and specific criticism was a note of 21 May 1992, which had not been communicated to the complainant, until after his appointment was terminated. The result of the administrative procedures followed in the present case was that the complainant had been impaired from his right of defence, and therefore the impugned decisions must be set aside.

The complainant had south reinstatement in his post; however, in the view of the Tribunal, reinstatement, which could only mean reinstatement for a further probationary period, in the present case would have raised insurmountable practical difficulties because of the time that had elapsed since the date of his dismissal on 1 July 1992. The complainant was entitled to full compensation for the material and moral injury he had sustained. As regards material damages, the Tribunal ordered EPO to pay him an amount equivalent to the emoluments he would have earned from the date of dismissal until the end of the month in which the Tribunal delivered the present judgement. Furthermore, because of the moral injury in relation not only to his family and private life but also to his career prospects, the Tribunal awarded him 25,000 French francs. He was also awarded 25,000 French francs in costs.

5. Judgement No. 1390 (1 February 1995): in re More v. European Organization for Safety of Air Navigation (Eurocontrol Agency)[19]

Non-selection to post—Career promotion versus selection to a higher-level post—Reasons for rejection of internal candidate's application must be plausible—Notification of reasons for rejection of internal candidate's application

The complainant, who was a junior administrative assistant in the General Accounts section of the European Organization for Safety of Air Navigation (Euroconrol Agency), had applied for the post of senior administrative assistant, at grade B2/B3, and under certain circumstances, at grade B4 or B5. There were two parallel application procedures for the post, one for staff members and one for non-staff members, and the complainant was the only internal candidate. His application was rejected, and an external candidate was chosen. He appealed his non-selection.

In considering the merits of the case, the Tribunal recalled its Judgment 1223 (in re *Kirstetter No. 2*) and more recently Judgement 1359 (in re *Cassaignau No. 4*) that the distinction between the two application procedures had the effect of debarring Eurocontrol officials from any possibility of having their applications considered by a Selection Board in accordance with articles 30 and 31 of the Staff Regulations. In the present case, as the Agency admitted, the

complainant's application had been considered and discarded by his supervisors before the official selection procedure and in secrecy. The Agency's contention was that the quota of promotions for the current year had been exhausted and there was thus no need for the Promotion Board to meet. However, as the Tribunal noted, the vacancy notice offered Eurocontrol officials the possibility of specific promotion to an advertised post, as against career promotion for which there was a set quota. In that regard, what was required was a meeting not of the Promotion Board but of the Selection Board, in accordance with the Staff Regulations, since the complainant was applying for a vacant post.

In the view of the Tribunal, the complainant was correct in protesting that his qualifications had not been properly examined and that the reasons given for the decision rejecting his application were implausible. The Tribunal noted that by advertising the post at grade B2/B3 the Administration was clearly seeking high proficiency in accountancy and data processing. But by reserving the right to appoint some at grade B4—the complainant's grade—or grade B5 it showed that it was nevertheless willing to be rather less demanding if need be. In any event, it had no reason to reject the complainant on the ground that he lacked academic qualifications since the vacancy notice mentioned no such requirement and stated that practical experience would suffice. Nor might it properly contend that he lacked professional experience: he was already working in what the Agency itself termed "the highly specialized field of accountancy".

In answer to the question to what extent must an administration substantiate its decisions, the Tribunal was of the view that in the present situation a distinction must be drawn between the rejection of an external application, particularly where a competition had attracted many candidates, and the rejection of an application by a serving official. In the latter case, the Organization had a duty to maintain the relations of trust it had with the staff member, and although it must remain free to choose how it would notify the reasons to him, it must be wary of damaging his career prospects.

For the reasons set forth above, the Tribunal concluded that the whole selection procedure must be quashed, including the individual decisions rejecting the complainant's applications and the decision to appoint the external candidate, with the Agency taking steps to ensure that the unit continued to function in the meantime and to protect the external candidate from any injury she might suffer for the quashing of an appointment she had accepted in good faith. The Tribunal ordered that the case be sent back to Eurocontrol for resumption of the selection procedure in keeping with the rules.

6. Judgemtn No. 1391 (1 February 1995): in re Van der Peet (No. 18) v. European Paten Organisation[20]

Complaint against disciplinary action—Freedom of speech in the context of judicial proceedings—Questions of a staff member's abuse of process or perversion of the right of appeal

The complainant, a national of the Netherlands, who had been employed by the European Patent Organization (EPO) in its Directorate-General 4 in Munich as a patent examiner at grade A3, had already filed 17 complaints, on the first of which the Tribunal ruled, in Judgement 568, in 1983. In the present case, he sought the quashing of a disciplinary decision by EPO that he be rel-

egated in step by 12 months for breach of article 14(1) of the Service Regulations, requiring a staff member to conduct himself solely with the interests of the Organization in mind.

The Disciplinary Committee had held in its report of 11 February 1992 that the complainant had failed to comply with article 14(1): three statements made by him in a letter of appeal dated 22 February 1989 to the Netherlands State Council and nine in pleadings to the Tribunal in his fifteenth complaint were "unacceptable" in that they "impugned the honesty, honour and integrity of people carrying out their duties" and in making them he had "exceed the level of what reasonably can be accepted in the circumstances".

On appeal, the Appeals Committee referred also to article 16(1), which required an employee to "abstain from any act, and in particular any public expression of opinion which may reflect on the dignity of his office". The Committee held that in its report of 1 December 1993 he had failed to exercise care over the language of his pleadings; that it was damaging to the dignity of the international civil service in general and to the reputation of the Organization in particular; and that the "expressions used were incompatible with the decorum appropriate to his status as an international civil servant". It recommended dismissing his appeal, and by letter of 13 January 1994 the complainant was informed that the President had decided to dismiss his appeal. The complainant appealed to the Tribunal.

The Tribunal considered that decisions taken by the Organization were subject to review on grounds such as bias, bad faith, malice and abuse of authority. In the present case, the Tribunal noted that the complainant was entitled to allege and attempt to establish such grounds when defending his interests. A fair decision could not be reached upon such matters by an internal appeals body or by the Tribunal if witnesses, parties and their representatives were unable to speak candidly and without the risk of incurring a penalty for what they may say, and especially if one party was unduly inhibited by the fear that failure to prove his case might make him liable to disciplinary action by the other party. Accordingly, the view of the Tribunal, the question at issue was the extent of the freedom of speech that the litigant should enjoy and of the immunity that attached to judicial proceedings.

The Tribunal noted that the test applied by the Disciplinary Committee placed an undue burden on the complainant, in that if he was to avoid the risk of disciplinary action he must prove the truth of his allegations. In the opinion of Tribunal, the mere failure to prove the truth of his allegations did not mean that he had either abused his freedom of speech or forfeited the immunity for privilege of judicial proceedings. Furthermore, a litigant whose submissions contained language that was unacceptable, or ill-chosen, or damaging, or unseemly, did not thereby lose the immunity that attach to statements made in judicial proceedings, however much the breach of good taste may be deplored.

In the view of the Tribunal, disciplinary action would be justified only if the staff member's conduct amounted to abuse of process or to a perversion of the right of appeal. In that regard, the Tribunal noted that in Judgement 1065 the Tribunal had held that the complainant's language was "offensive" and "inadmissible" but not that it was an abuse of process, and the Disciplinary Committee in the present case too had found his language "unacceptable" but not an abuse of process. The Tribunal concluded that in absence of a finding of abuse

of process the disciplinary sanction imposed on the complainant must be set aside. The Tribunal made no award for moral damages, which the complainant had requested, but did award him 500 German marks in costs.

7. Judgement No. 1403 (1 February 1995): in re Tejera Hernandez v. European Organization for the Safety of Air Navigation (Eurocontrol Agency)[21]

Request for a typist allowance—Question of receivability—Principle of equal treatment—A practice may become enforceable

The complainant joined the staff of Eurocontrol on 1 December 1992 as an assistant clerical officer, and on 13 January 1993 she applied for the "typist's allowance" under article 4a, section 2a of rule No. 7 concerning remuneration. This allowance was granted not only to grade C typists and secretaries but also to grade C "clerical officers", whose duties included the use of a typewriter for 60 per cent or of a computer keyboard for 50 percent of their working time. When she received no answer from administration, she appealed, claiming allowance as from 1 December 1992 plus interest on the arrears; and on 10 June 1994, the Director General decided to pay her the allowance from 1 December 1992. That prompted the complainant to state in her rejoinder that she was withdrawing her claim to payment of the allowance but pressing her claims to interest and moral damages. The Organization retorted that her complaint was irreceivable, insofar as it concerned those two claims, since they were not part of her internal "complaint".

As to the Organization's claim of irreceivability regarding the issue of moral damages on account of that not being part of her internal "complaint", the Tribunal explained that Euroconrol was mistaken. The complainant was attributing moral injury to its failure to answer her original claim of 13 January 1993 to the allowance or the internal "complaint" she had lodged on 11 August 1993, which she claimed had left her with no explanation of its refusal and no idea about how to plead her case, leaving her helpless and disheartened. In other words, she obviously could not have claimed damages on that account in her internal "complaint".

The Organization had also contended that the complainant's claim for payment of interest on arrears was irreceivable. Citing a previous judgement and article 92 of the Staff Regulations, which requires a litigant to first submit his claim to the Administration before lodging an internal "complaint", the Tribunal pointed out that the complainant had done this but that Eurocontrol had not answered her. And equal treatment required that an organization should pay interest on any arrears of the allowance. The tribunal concluded that her appeal was receivable on that score, too.

Eurocontrol objected to the merits of her claim to interest on the grounds that it had no rule requiring such payment. This plea failed, for as the Tribunal recalled above, the principle of equal treatment embodied in the Staff Regulations meant in the present case that Eurocontrol must pay interest on the arrears so as to restore parity between those who received the allowance at the due dates and those who received it much later. Furthermore, that there was delay in paying the complainant the allowance did not preclude the payment of interest whether Eurocontrol was the cause of the delay or not, which Eurocontrol had claimed it was not.

The Tribunal noted that Eurocontrol recognized that it granted the allowance also to clerical officers on their application, whenever they fulfilled the requirement spending three fifths of their working time typing or half of it using a computer keyboard, and the Tribunal was satisfied that Eurocontrol's practice regarding grant of the allowance to clerical officer depended on the fulfilment of objective criteria. The Tribunal, citing earlier judgements, further noted that an organization might be bound where a practice was one that the staff had come to rely on, and the practice would be enforceable if it was intended to have a contractual effect. In the present case, the Tribunal concluded that the practice had become part of personnel policy and it was common ground that Eurocontrol followed it wherever a clerical officer put in a claim to the allowance.

The decision to suspend payment of the allowance in January 1992, in the view of the Tribunal, did not affect the validity of the obligation that the practice of payment to clerical officers placed on the Organization, there being no decision duly taken by the competent authority to extinguish that obligation.

The Tribunal concluded that payment of the allowance to the complainant was a matter, not of discretion, but of obligation, and Eurocontrol's delay in discharging it entitled her to interest. Her claim to an award of damages for moral injury was not granted, since Eurocontrol had paid her the allowance on 10 June 1994. But since her main claim succeeded, she was awarded 5,000 Belgian francs in costs.

8. Judgemtn No. 1407 (1 February 1995): in re Diotallevi (No. 3) v. World Tourism Organization[22]

Complaint against title change—Ranking of "Assistant" over "Secretary" was consistent practice—Question of covert disciplinary action

The complainant had served the World Tourism Organization since 1984 and had the title of "Assistant" when she applied for a transfer in September 1991. The complainant subsequently was transferred from Press and Publications to Regional Representation, with no change in her appointment, grade or salary. From a staff list issued on 15 May 1993, she discovered that the title of her post was "acting secretary for Technical Cooperation". The complainant requested that her title be changed back to assistant and when the request was refused, she appealed.

After declaring the appeal receivable, the Tribunal noted that the complainant, in support of her claim, alleged a difference, commonly acknowledged in national and international administrations alike, between "secretary" and "assistant": what each did and the levels of training and competence required of each was different. The complainant observed that the title she received under her original contract in 1984 was "clerk", a post at the time graded higher than "secretary". The reforms in 1986 had replaced the title of "clerk" with "assistant", a title which she then held for eight years until her temporary assignment on 26 May 1992 as "acting secretary".

The Organization contended that the complainant's distinction between "secretary" and assistant" was mere quibbling, that a title was not a legal concept. In consideration of the matter, the Tribunal's review of the list appended to the Secretary-General's circular of 11 August 1982 about the structure of the staff and bodies showed that in every department there were three distinct cat-

egories of post: "assistant", "clerk" and "secretary," in that order. The "assistant" posts were assigned only to senior officers, and the "clerks" were ordinarily listed above the "secretaries". Such ranking was, as the Tribunal further observed, maintained in the reforms of 25 August 1986: though the "clerk" title was replaced by "assistants" they were above "secretaries" whenever there were both in the same unit, whether the assistant's grade was higher than the secretary's or even the same.

The Tribunal was satisfied based on the foregoing evidence, that even though there was no formal text laying down the precedence of "assistant" over "secretary" such ranking was a practice of the Organization so consistent as to bear out the existence of a general rule. In the Tribunal's view, therefore, the complainant could properly plead that for eight years without break she had performed the duties and had held the title of "assistant" and that only with her consent or by virtue of disciplinary action might she suffer such change in status.

Regarding the complainant's charge of covert disciplinary action against her, the Tribunal disagreed. Though the Organization described her behaviour as "irritating", there was no reason to impute to it any desire to punish her for proper exercise of her rights. She herself had applied for the transfer and it had caused her no loss of pay or grade or responsibility.

The Tribunal concluded that the impugned decision could not stand. Although, as stated above, the decision had not caused her material injury, it did cause her moral injury which warranted compensation. In that regard, the Tribunal observed that the Joint Appeals Committee seemed to acknowledge as much in its comment that to treat "secretary" and "assistant" as interchangeable titles might be confusing to people outside the Organization and that her new title might prove damaging to her, and that the Organization admitted that by implication: it did not mention her title in the certificates it had given her after the charge, whereas the earlier ones did. She was awarded 5,000 French francs and 5,000 French francs in costs.

9. Judgement No. 1419 (1 February 1995): in re Meylan, Sjobert, Urban and Warmels v. the European Southern Observatory[23]

Complaint against partial adjustment of salary—Duty to abide by the general principles of the international civil service—Question of assumption of a duty by an Organization to its staff—The safeguards of objectivity and stability afforded by administrative arrangements for staff cannot be removed because of prevailing circumstances

The complainants were officials at grades 7 to 9 and belonged to the international staff of the European Southern Observatory (ESO). On 2 December 1982, the ESO Council had decided to base periodic adjustments in the salaries and allowances of international staff on the procedures for adjustment followed in the coordinated Organizations, which was codified with the adoption of article R IV 1.01 of the Staff Regulations. The coordinated Organizations decided to give effect to an adjustment of salaries on 1 July 1992, but on 1 April 1993 the Council took the decision to grant only two-thirds of the adjustment because of opposition to implementing the full adjustment by the Finance Committee. The complainants lodged appeals against their pay slips for April 1993 and in

letters dated 4 August the Administration gave them leave to bring their case directly before the Tribunal. The complainants submitted that the impugned decision was in breach of article R IV 1.01 of the Staff Regulations. In their view, the Council was not freed to scuttle a policy it had previously adopted without an express amendment to that effect.

After declaring the appeal receivable, the Tribunal addressed the merits of the case. The Observatory contended that its governing body, the Council, had "supreme authority" to set staff pay. In addressing this contention, the Tribunal, citing an earlier judgement, stated that though an international organization might freely determine conditions of service and the structure of its secretariat, it had a duty as employer once its structure had been established. ESO further contended that having never actually joined the coordinated Organizations, it had no external obligation to comply with their decisions. However on 2 December 1982, as the Tribunal recalled, the Observatory had decided that it would in future adjust staff pay in keeping with the procedure followed in the Coordinated Organizations, thereby assuming a duty to its staff which, in the absence of rules of its own, was now one of the safeguards of their administrative position.

The Organization further claimed that article R IV 1.01 of its Staff Regulations afforded a mere "guide" and as such was not binding. However, the Tribunal rejected this plea, which in its view was an attempt to render void in law ESO's decisions on staff pay and to refuse its staff the safeguard of stability they might properly expect from their status and contracts of service. The Tribunal further stated that the article could not weaken the force of the policy decision that had been taken in 1982. The worlds "shall use as a guide" in the first clause of the article, while allowing some latitude inasmuch as a decision by the Coordinated Organizations, was to be incorporated mutatis mutandis into ESO's own salary scales, but according to the Tribunal, they could not be read as leaving the ESO free to adopt such a decision only in part, or not at all. Making reference to earlier judgements, the Tribunal made the point that so long as the current arrangements held good, its staff were entitled to safeguards of objectivity and stability which they afforded. ESO might not remove such safeguards because of prevailing circumstances or a mere wish to do so.

The Tribunal concluded that the Council had acted arbitrarily in lowering by one third the amount of the adjustment that the staff were entitled to by virtue of decision of the Coordinated Organizations. The case was sent back to ESO so that it might take new decisions granting the complainants, and interveners, as from 1 July 1992, the difference between the sums they were actually paid and the sums they would have earned had the adjustment been applied in full. The complainants were also awarded 25,000 French francs in costs.

10. Judgement No. 1432 (6 July 1995): in re Aboo-Baker v. World Health Organisation[24]

Complaint against non-extension of appointment—Sick leave requests from the staff member's doctor cannot postpone expiry of short-term appointment—Question of a legally binding employment contract—Effect of an ultra vires *decision to recruit*

The complainant joined the staff of the World Health Organization in 1985 as a consultant. In 1986, WHO granted her a two year fixed-term appointment at grade P.5 at Brazzaville, first as a medical officer, then as a "technical adviser to the Regional Director" of its Regional Office for Africa. She became ill and was transferred to a post at headquarters in Geneva, effective 1 January 1989. By letter of 27 September 1991, the Director of Personnel informed her that for budgetary reasons her appointment would be terminated on 31 December 1991. She requested to be placed on the list of staff available for any vacancies. She underwent end-of-service medical examination on 5 November 1991 and was granted leave in December to go on holiday, and went to her country of birth, Mauritius. Because she was to return to Geneva for several days' work after the holiday, she had not yet gone through the end-of service formalities. While in Mauritius, 23 December 1991, she sent an application for leave without pay which the Organization received on 22 January 1992 and on 24 December 1991 she received a doctor's certificate recommending one month's sick leave. By a second certificate, the doctor recommended an extension of the sick leave until 24 January 1992.

On 29 January 1992, the complainant received an offer from the WHO Regional Director for Africa of reassignment to a post at Brazzaville, which she accepted subject to medical clearance in Europe. She returned to Geneva in late February for medical tests, which showed that it would have been unwise for her to go to any tropical clime. At about the same time, in circumstances on which the evidence did not shed light, she received an invitation, seemingly from the Regional Director, to take up a post at Windhoek. With airline tickets issued by order of the Regional Office, she set off for Windhoek on 8 March 1992, and received written confirmation of the offer in Windhoek. She fell ill after one month and was sent back to Geneva on 10 April 1992.

She soon learned that, despite the Regional Office's backing, Personnel were refusing to acknowledge her appointment in Namibia, and took the view that she had no contract of service with the Organization. After her appeals to both the regional and the headquarters Board of Appeal, the Director-General authorized the recovery of any sums paid to her on account of her stint in Namibia but granted her the pay and travel allowance to which she would have been entitled as a short-term consultant at grade P.5 over the period she was in Namibia.

The complainant submitted that she was to be treated as having been on leave up to 7 March 1992 and from 8 March held an appointment in Namibia which was binding on WHO. WHO responded that her contract of service had ended on 31 December 1991 and therefore she had no entitlement to leave thereafter. On this issue, the Tribunal agreed with WHO; there was no doubt but that her assignment to the division of Mental Health at headquarters, ended on 31 December 1991: she was given due notice of non-renewal and had undergone the end-of-service medical examination. The certificates from her doctor could not postpone the scheduled date of expiry of her contract.

The complainant also had requested that if she could not receive sick leave she should at least be treated as having been on leave without pay, from 1 January to 7 March 1992, in accordance with staff rule 470.1, which stated that a staff member who was re-employed within one year of the termination of his/her appointment might at the option of the Organization be reinstated, the intervening absence begin charged to annual leave and leave without pay. WHO had

contended that staff 470.1 did not apply because the Organization had not re-employed her: it had not signed a contract with her; there was no agreement, not even an oral one about the essential terms of any appointment; she had not unconditionally accepted its initial offer of the post; and medical clearance was a prerequisite of any contract.

The Tribunal, on the other hand, was satisfied that even though there was no formal written agreement between the Organization and the complainant, all the conditions that the case law required were met for the existence of a legally binding contract. First, a personnel officer had given the complainant notice by a memorandum of 29 January 1992 of the decision by the Regional Director for Africa to reassign her to a post at Brazzaville, which she acknowledged. Secondly, on her return to Geneva, she had been given airline tickets on the instructions of the Regional Office for Africa, and that was what had induced her to go to Namibia. While in Windhoek, the personnel officer had sent her a memorandum dated 13 March 1992 expressly referring to the appointment to post 3.3789 and attaching a post description. Moreover, the evidence showed that she had accepted the post and that the Organization had treated her as a staff member.

In the view of the Tribunal, it was immaterial to the fact of recruitment that the decision to recruit her might have been taken *ultra vires* or might not have followed the necessary formalities. The Organization must bear the consequences of any decision taken by someone it had itself appointed for the purpose, in this case, the Regional Director for Africa. Furthermore, the lack of prior medical clearance for a new post did not amount to a fatal flaw in the mutual agreement between the WHO agents and the complainant, and in any event she had undergone a medical examination on 5 November 1991.

From the foregoing, the Tribunal concluded that the Organization had re-employed her, and therefore she should have been granted leave without pay from 1 January to 7 March 1992 in accordance with staff rule 470.1. She was further entitled to pay from 8 March to 7 March 1994, plus interest from the date at which each sum fell due, and she was reinstated in her pension rights for the same period. The Tribunal also concluded that WHO's attitude towards her amounted to a moral injury, and set the amount *ex aequo et bono* at 10,000 Swiss francs. She was also awarded 7,500 Swiss francs in costs.

C. Decisions of the World Bank Administrative Tribuanl[25]

1. Decision No. 142 (19 May 1995): Winston Carew v. International Bank for Reconstruction and Development[26]

Termination based on serious misconduct—Question of due process in investigation of overtime claims fraud—Proportionality in offence and disciplinary measure imposed—Consistent imposition of disciplinary measures versus case-by-case basis

The Applicant was a Production and Control Assistant in the Printing and Graphics Division Services Department, at level 14. As part of his job, the Applicant was responsible for photocopying in the Print Shop and was available for overtime work on the Photocopying machines for jobs needed on a rush

basis. In November 1992, the Print Shop Supervisor had cautioned the Print Shop staff about overtime abuse; and, in May 1993, an investigation of allegations of abuse of overtime was carried out. The Respondent, having concluded that the Applicant had engaged in serious misconduct, terminated the Applicant's services as of 29 October 1993, later extended to 30 November 1993. The Respondent claimed that the Applicant on numerous occasions between November 1992 and April 1993 had submitted false overtime claims and led the Respondent to pay him more than that to which he was entitled. The Applicant denied the charges and appealed the termination decision.

The Applicant's principal ground of contention was that there was no sufficient evidence that the Applicant had intentionally defrauded the Bank and that the entry-and-exit logs, which were compared to his overtime claims, were neither a reliable nor a complete reflections of the overtime actually worked by him. The Tribunal observed that there were considerable discrepancies between the number of hours that the Applicant had claimed as overtime and the security logs for his early arrival and late departure times, all of which were itemized in the memorandum dated 6 July 1993 from the Ethics Officer to the Applicant. The memorandum documented that the Applicant claimed and received from the Bank overtime pay for a number of hours in which he could not have been on the Bank's premises. The Tribunal further noted that the Applicant's attempts to explain the discrepancy to the Ethics Officer and the Director, Personnel Management Department, both of whom were able to observe his demeanor, found his explanations unacceptable. Furthermore, the Appeals Committee considered lengthy submissions made on his behalf and concluded that the explanations were implausible. And in his application and reply to the Tribunal the Applicant reiterated his twice-failed explanations for the discrepancies between his overtime claims and the security logs.

The Applicant contended that the security logs were unreliable; however, upon review of the matter the Tribunal concluded that the logs offered a sufficiently accurate measure of recorded time spent on the Bank premises, which in the present case did not match the claims for overtime. The Tribunal also concluded that the Applicant's assertions that he worked additional overtime were not reflected in the Bank's logs—because, principally, of his parking outside the Bank premises and his entry and departure through unmonitored entrances—were outweighed by evidence to the contrary and were therefore not to be credited. Accordingly, the Tribunal found that the Applicant had defrauded the Respondent and, consequently, that the Respondent's finding of misconduct against the Applicant was warranted.

The Applicant also contended that his right of due process had been infringed because he had not been confronted with the evidence on which the adverse conclusion against him had been reached. The Tribunal observed that the record contradicted that contention. The Applicant had been confronted with the 18 discrepancies between his overtime claims and the security logs and had been allowed to proffer explanations both orally and in writing to the formal memorandum dated 6 July 1993 from the Ethics Officer. The Tribunal further observed that after the Applicant had responded at some length to the queries in the memorandum he had provided additional information upon consultation with the Staff Association. The Tribunal concluded from the foregoing that the Applicant had been afforded due process.

Concerning the proportionality between the Applicant's wrongdoing and the Bank's decision to terminate his services, the Tribunal considered that, in accordance with rule 8.01, section 4.01, the imposition of disciplinary measures was to be determined on "a case-by-case basis", taking into account, inter alia, the seriousness of the matter extenuating circumstances the situation of the staff member and the frequency of conduct for which disciplinary measures might be imposed. The Tribunal considered that fraud was always a most serious matter. That was particularly true where, even if the amounts improperly claimed as compensation were not large, the conduct consisted of repeated acts of unethical behaviour. However, in the Tribunal's view, if other elements envisaged in the relevant staff rule were taken into account the disciplinary measure imposed by the Bank was significantly disproportionate to the misconduct in the present case. Here, the Tribunal noted the long service of the Applicant as a staff member of the Bank for a period of 14 years, his diligent performance in the discharge of duties and the positive performance reviews and evaluations he had received. Moreover, the Tribunal noted as well that the amount of money improperly claimed for alleged overtime work was modest and that the Applicant's employment was not one involving higher management responsibilities.

The Tribunal therefore concluded that termination of employment, in those circumstances, was not proportionate to the Applicant's misconduct. This conclusion was further reinforced by the Tribunal's examination of staff rule 8.01, section 4.02, which set forth a wide range of possible disciplinary sanctions, of which termination of service was obviously the most severe. The Respondent had asserted that, despite the severity of termination, such had been the discipline which in earlier instances had been consistently imposed upon staff members found guilty of fraud. Although it would be appropriate in many cases to terminate the employment of a staff member who had committed fraud, a mechanical and uniform imposition of this discipline was inconsistent with the obligation that staff rule 89.01, section 4.01, imposed upon the Bank to impose disciplinary measures "on a case-by case basis", taking into account the various factors listed there.

For the above reasons, the Tribunal decided to quash the decision of the Respondent terminating the employment of the Applicant; and, in the event that no further action was to be taken by the Respondent in the case, the Applicant was to be compensated by a sum equivalent to six months' net pay. He was also awarded costs of US$ 2,000.

2. Decision No. 145 (9 November 1995): Dominique Sjamsubahri v. International Bank for Reconstruction and Development[27]

Complaint against oral reprimand—Case of "interpersonal" misconduct—Question of due process observed in the case

The application arose out of complaints made against the Applicant, a level 24 staff member, by another staff member, "the complainant". The complaints against the Applicant were lodged in conjunction with a complaint against the Bank regarding what the complainant saw as an improper failure on the part of the Bank to grant him a promotion. The complaint led to an extended investigation by the Bank's Ethics Officer, who submitted a lengthy report to the Vice President, Management and Personnel Services, who ultimately decided that the Applicant should receive the disciplinary penalty of an oral reprimand for her behaviour, which was noted in a memorandum dated 9 February 1993.

The Applicant requested from the Director, Personnel Management Department, a copy of the Report of the Ethics Officer. The request was denied the Applicant initiated the procedure for administrative review, requesting the reversal of the adverse decision. That request having been denied, the Applicant approached the Appeals Committee, which recommended the withdrawal of the oral censure; but, this recommendation was not accepted by the Vice President, Management and Personnel Services. The Applicant appealed to the Tribunal, claiming that due process had not been observed in the investigation by the Ethics Officer and thereafter.

The Tribunal noted that under the relevant rules, a complaint by a staff member of what might be called "interpersonal" misconduct could not automatically trigger proceedings. The Bank would have to decide whether there was sufficient substance to the complaint in terms of both evidence and gravity to warrant taking the matter further. In the present case, the Tribunal further noted that the Bank appeared simply to have accepted the complaints made by the complainant as a proper basis for starting a full-scale disciplinary investigation without considering whether there was sufficient prima facie evidence and, if there were, whether the seriousness of the matter alleged was likely to justify the extended degree of examination that then followed.

In that regard, the Tribunal observed that the Bank had failed to consider that the Applicant had served in her department for some seven years with an unblemished record, and that the Bank had not appeared to have attributed any significance to the fact that the complaints made against the Applicant were evidently closely connected with the complainant's dissatisfaction at not having been promoted. The Tribunal further observed that there was no justification for the Director, Internal Audit Department, to have requested, the Ethics Officer to have agreed, that only witnesses currently employed at the Bank should be interviewed.

A serious procedural defect in the process, pointed out by the Tribunal, was the refusal of the Vice President Management and Personnel Services to give the Applicant a copy of the Ethic Officer's Report of the investigation, until her initiation of proceedings before the Appeals Committee on 4 August 1993. In that connection, the Tribunal explained that the fact that staff rule 8.01 did not expressly require the Ethics Officer to provide an applicant with a copy of his report did not mean that there was no such requirement, and the failure to communicate the report meant that the requirements of due had not been satisfied.

From the foregoing, the Tribunal concluded that the proceedings against the Applicant had been flawed at a number of significant points, and therefore the report of the Ethics Officer dated 10 November 1992 must be treated as nullity, as must all measures flowing from it.

As regards the question of the Applicant's claims for damages for loss of career opportunity for which she claimed she had been slated, adverse effects on her health and legal fees, the Tribunal first noted that there was no evidence that the question of the Applicant's promotion had been effected by the investigation or by any other challengeable reason. The Tribunal also noted that the Applicant had not produced any evidence of damages to her health specifically attributable to the manner in which the investigation had been conducted. However, the Tribunal was of the view that the Applicant should be compensated for

the distress to which she had undoubtedly been exposed by proceedings so significantly flawed as was the case here. The Tribunal therefore awarded her $70,000 and legal costs of $5,000.

3. Decision No. 146 (9 November 1995): Valora Addy v. International Bank for Reconstruction and Developement[28]

Claim for re-employment on a regular appointment—Question of application of amended rule to existing staff—Effect of after-the-fact reasons for non-consideration for appointment

The Applicant had left the Bank in 1988 and rejoined as a consultant in 1992. After an initial six-month appointment as a consultant, the Applicant was given a 12-month appointment, which was extended for 6 months to expire on 2 August 1994 and another 6 months expiring on 31 January 1995. On 21 January 1994, the Applicant applied for a regular position with the Bank and was informed that she was not entitled to be considered for such a position because she had left the Bank's employment in 1988 with financial assistance under staff rule 7.01. The Bank again informed her, by letter dated 8 April 1994, that a new policy had been introduced under which she could not be rehired to a regular staff position because she had earlier left the Bank with a financial package.

The Tribunal noted that the relevant rule 4.01, section 8.03, in effect prior to April 1994, provided that any re-employment of a staff member required the written authorization of the departmental director or vice-president of the hiring unit. In April 1994, the Bank amended staff rule 4.01, section 8.03, to preclude persons whose contracts had been terminated pursuant to staff rule 7.01 from being considered for a regular appointment.

The Tribunal considered that the legal issue was whether the Bank could apply the new rule to the Applicant, and recalled Decision No. 1, *de Merode* (1981), wherein the Tribunal had held that the Bank might not apply an amended rule to existing staff if that rule changed conditions of employment which were fundamental and essential. In the present circumstances, the Tribunal was of the view that the right to be considered for a regular appointment was not a fundamental or an essential element of the terms of employment of the Applicant, the reason being that any employee of the Bank who chose to leave with a separation package was hardly likely to be anticipating re-employment or the conditions that the Bank would have placed upon such re-employment. In other words, the circumstances and terms under which a departing staff member was to be re-employed were too peripheral, speculative and remote to be regarded as fundamental and essential elements of his or her terms of employment.

However, the Tribunal observed that the Bank, in declining to consider the Applicant for a regular position, had invoked a rule which was not in force in January and was going to be effective only in April. Furthermore, this breach was not affected by the Bank's later argument that the Applicant had not been considered because she lacked the skill, qualifications and experience required for the regular position concerned.

In view of the above flaw, the Tribunal decided that it would be improper to quash the Bank's decision both because its refusal to consider her for a regular appointment could not practicably be undone and because, even had she

been considered, the rehiring might not have materialized on other grounds. The Tribunal awarded the Applicant compensation in the amount of $8,000 and legal costs of $2,000 and dismissed all other pleas.

Notes

[1]In view of the large number of judgements which were rendered in 1995 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the four Tribunals, namely, judgements Nos. 688 to 746 of the United Nations Administrative Tribunal, judgements Nos. 1377 to 1463 of the Administrative Tribunal of the International Labour Organization and decisions Nos. 141 to 146 of the World Bank Administrative Tribunal, see, respectively: documents AT/DEC/688 to 476; *Judgements of the Administrative Tribunal of the International Labour Organization*: 78th and 79th Ordinary Sessions; and *World Bank Administrative Tribunal Reports*, 1995.

[2]Under article 2 of its statue, the United Nations Administrative Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

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

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

[3]Jerome Ackerman, President; and Mikuin Leliel Balanda and Mayer Babay, Members.

[4]Samar Sen, Vice-President, presiding; and Hubert Thierry and Francis Spain, Members.

[5]Jerome Ackerman, President; and Francis Spain and Mayer Gabay, Members.

[6]Ibid.

[7]Samar Sen, Vice-President, presiding; and Hubert Thierry and Francis Spain, Members.

[8]Ibid.

[9]Samar Sen, Vice-President, presiding; and Mikuin Leliel Balanda and Hubert Thierry.

[10]Jerome Ackerman, President; and Francis Spain and Mayer Gabay, Members.

[11]Jerome Ackerman, President; and Hubert Thierry and Mayer Gabay, Members.

[12]Jerome Ackerman, President; and Francis Spain, and Mayer Gabay, Members.

[13]Jerome Ackerman, President; and Hubert Thierry and Francis Spain, Members.

[14]The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Laobur Organization and of the other international organizations that have recognized the competence of the Tribunal, namely as at 31 December 1995, the World Health Organization (including the Pan American Health Organization), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union,

the European Patent Organization, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization,the African Training and Research Centre in Administration for Development, the Intergovernmental Organization for International Carriage by Rail, the International Centre for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization Interpol, the International Fund for Agricultural Development, the International Union for the Protection of New Varieties of Plants, the Customs Cooperation Council, the Court of Justice of the European Free Trade Association and the Surveillance Authority of the European Free Trade Association. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization.

The Tribunal is open to any official of the above-mentioned organizations, even if his/her employment has ceased, to any person on whom the official's rights have devolved on his/her death and to any other person who can show that he/she is entitled to some right under the terms of appointment of a deceased official or under provision of the staff regulations upon which the official could rely.

[15]Sir William Douglas, President; Miss Mella Carroll and Mr. Mark Fernando, Judges.

[16]Ibid.

[17]Ibid.

[18]Sir William Douglas, President: Edilbert Razafindralambo and Pierre Pescatore, Judges.

[19]Ibid.

[20]Sir William Douglas, President; Miss Mella Carroll and Mr. Mark Fernando, Judges.

[21]Sir William Douglas, President; Edilbert Razafindralambo and Pierre Pescatore, Judges.

[22]Sir William Douglas, President; Michel Gentot, Vice-President; and Edilbert Razafindralambo, Judge.

[23]Sir William Douglas, President; Michel Gentot, Vice-President; and Pierre Pescatore, Judges.

[24]Sir William Douglas, President; Michel Gentot, Vice-President; and Edilbert Razafindralambo, Judge.

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

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

[26]A. Kamal Abul-Magd, President; Elihu Lauterpacht and Robert A. Gorman, Vice-Presidents; and Fred K. Apaloo, Francisco Orrego Vicuna, Thio Su Mien and Prosper Weil, Judges.

[27]A. Kamal Abul-Magd, President; Elihu Lauterpact and Robert A. Gorman, Vice-Presidents; and Bola A. Ajibola, Francisco Orrego Vicuna, Thio Su Mien and Prosper Weil, Judges

[28]Ibid.