

It should be noted that in so doing the Applicant refers to the absence of any examination of his position and the inadequacy of the efforts made to find him employment.

The Tribunal, having already dealt with these two points, does not consider it necessary to institute the inquiry requested by the Applicant. Whatever the results of such an inquiry, the Tribunal does not see how they could affect the conclusions set forth in paragraphs 6 and 9 above.

13. For these reasons the Tribunal, while noting the failure to comply with an obligation under the Regulations, is bound to dismiss the application, there being no necessary legal connexion between such failure and the decision to terminate the Applicant.

*(Signatures)*

Suzanne BASTID  
*President*

Sture PETRÉN  
*Vice-President*

Djalal ABDOH  
*Member*

Omar LOUTFI  
*Alternate Member*

Mani SANASEN  
*Executive Secretary*

*New York, 14 December 1954*

## Judgement No. 56

**Case No. 58 :**  
**Aglion**

**Against: The Secretary-General  
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Sture Petré, Vice-President ; Mr. Jacob Mark Lashly ; Dr. Djalal Abdoh, alternate ;

Whereas Raoul Aglion, Resident Representative of the Technical Assistance Board at Port-au-Prince, Haiti, filed an application to the Tribunal on 23 August 1954 requesting :

(a) The rescission of the Secretary-General's decision of 3 April 1952 terminating the Applicant for abolition of post ;

(b) The revalidation of the terms of the permanent appointment then improperly terminated and the appointment of the Applicant to a post at his administrative level in the Secretariat with the promotions and increments to which he has been entitled from April 1952 ;

(c) If, in the view of the Tribunal, the Applicant's appointment to

his present post be considered a partial fulfilment of the Administration's obligation, then that the said appointment be regarded as being covered by the terms of the permanent appointment which was terminated on 3 April 1952, with the retroactive and future benefits adhering to such an appointment ;

Whereas in subsequent written statements filed with the Tribunal on 24 November 1954 and on 6 December 1954, he also requested the Tribunal :

(d) To confirm the unanimous decision of the Appeals Board dated 31 March 1954 ;

(e) To hold that there was at least one vacant post available for the Applicant as long ago as 28 May 1952 ;

(f) To rule that the Respondent should have at least offered that appointment to the Applicant on that date ; and further, since the appointment was offered at the end of June with effect from 15 July, to recommend that the appointment should be treated as a secondment according to the terms of the Applicant's permanent contract ;

(g) To rule that the Applicant has a right to the payment of rental allowance to the amount of \$1626.25 or, alternatively, order payment of subsistence allowance during the periods when the Applicant was called to Headquarters at New York ;

(h) To rule that the Respondent should respect the decision of the Special Committee for the Five-year Review of Permanent Contracts ;

(i) To order the destruction of a memorandum of 3 November 1954 written by the Executive Assistant to the Secretary-General and prohibit communication of it to any agency which might consider engaging the services of the Applicant ;

(j) To order the Respondent, in the event that he does not execute the decision of the Tribunal, to pay compensation to the Applicant to the amount of three years' net salary.

Whereas the Respondent filed his answer to the application on 3 November 1954 ;

Whereas the Respondent and the Applicant, in conformity with article 9 of the Tribunal's Rules, filed a further statement on 31 November 1954 and on 6 December 1954, respectively ;

Whereas further documents were filed by the Respondent in conformity with the same article on 1 December and 8 December 1954 ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations on 15 March 1946 under a temporary appointment, on secondment from the French Government, as Director in the Economic Survey and General Division of the Department of Economic Affairs. On 15 August 1946 he received a permanent contract. On 10 December 1946 he was transferred to the Executive Office of the Secretary-

General as Special Adviser. In August 1947, he was orally advised of the abolition of his post and on 18 September 1947 was assigned to the work of Journal Survey, in the Executive Office, for the session of the General Assembly. On 6 October 1947, the Executive Assistant to the Secretary-General wrote to the Applicant informing him that "...every effort has been made to ascertain whether there is available a post on a level comparable to that of the one you have been occupying and suitable to your qualifications. However, an exhaustive investigation has proved that no such vacancy exists" and at the same time informed him of the termination of his appointment. On 15 October 1947, the Applicant replied pointing out that the Assistant Secretary-General in charge of Economic Affairs was ready to offer him a temporary post. On 29 October 1947, the Secretary-General appointed the Applicant as Principal Secretary of the Special Committee on the Greek Question for the duration of the work of that Committee. He also stated that "In the meantime, we shall investigate other appropriate openings for the period after the conclusion of the work of the Committee but I do want to make it clear that we cannot give you any definite assurance of an appointment at that time". The Applicant accepted this appointment by letter of 6 November 1947. On 29 January 1952, the Special Committee for the Five-year Review of Permanent Contracts reviewed the Applicant's appointment. In February 1952, the United Nations Special Committee on the Balkans (formerly Greek Question) was liquidated and the Applicant returned to Headquarters. By letter dated 3 April 1952, the Secretary-General terminated the Applicant's permanent appointment, as of 15 July 1952, because "there is no suitable post to which I can transfer you". On 12 May 1952, the Applicant addressed a memorandum to the Chairman of the Board of Review of Indeterminate Contracts requesting that the latter inform him of the decision taken by the Board with respect to the review of his permanent contract. On 8 July 1952, the Chairman of the Board of Review of Indeterminate Contracts forwarded the Applicant's request to the Director of the Bureau of Personnel asking the latter to reply to the Applicant directly. On 9 July 1952, the Director of the Bureau of Personnel wrote to the Applicant that the Special Committee for the Five-year Review of Permanent Contracts "after having examined the work you have performed as Principal Secretary of the United Nations Special Committee on the Balkans... believes that no modification should be brought to your status of international civil servant" (translation). Shortly before the date of termination of his permanent appointment, the Applicant was offered and accepted a five-month fixed-term appointment, beginning 16 July 1952, as Resident Representative with the Technical Assistance Board in Haiti. This contract was extended for the following periods : one month on 16 December 1952, one year on 16 January 1953, five months and fifteen days on 16 January 1954,

six months on 1 July 1954. On 28 July 1952, the Assistant Secretary-General for Administrative and Financial Services, who was corresponding with the Applicant in respect of a claim for rental allowance, wrote: "...you not only had no post at Headquarters during the period of your absence but... there was no reasonable prospect that you would have a post there on your return". The Applicant replied by letter dated 5 September 1952: "Thus it appears that the Secretary-General's letter of April 3, 1952, cancelling my indeterminate contract, on the basis that his head of Department had reported to him that there was no post for me has been based on a premise which is not correct, no investigation having been made by your Department". On 19 March 1954, the Joint Appeals Board, on the request of the Applicant, waived the time-limit, heard the Applicant, and on 31 March 1954 recommended that the "termination action of 1952 be cancelled, restoring Appellant to permanent contract status for the remainder of his assignment, and that during this period continuing efforts be made to find another suitable post for him in the Secretariat". The Applicant, having received no communication either from the Appeals Board or from the Secretary-General regarding his appeal, filed with the Administrative Tribunal on 12 July 1954 an application which he was asked to complete and correct. On 17 July 1954, the Applicant requested the Executive Secretary of the Administrative Tribunal to send him a copy of the report made by the Board of his appeal. This request was transmitted to the Secretary of the Appeals Board and a copy of the Joint Appeals Board report was sent to the Applicant on 27 August 1954.

Whereas the Applicant's principal contentions are :

1. The decision of 3 April 1952 to terminate the Applicant's permanent appointment violated Rule 104 of the former Staff Rules which were in effect at the time of termination. According to Judgement No. 2 of the Tribunal, the Administration is obliged to propose to staff members terminated for abolition of post other posts as close as possible in content and character to that previously occupied by the staff members. In Judgement No. 4, the Tribunal ruled in connexion with holders of temporary-indefinite appointments, that in the case of termination of staff members with service ratings of "satisfactory" or better, consideration for posts elsewhere in the Secretariat is a matter of justice and due process.

For staff members with permanent appointments, Rule 104 even required the Administration to seek a post wholly different in content from that abolished and, if necessary, to displace staff members holding temporary-indefinite appointments.

The obligation imposed upon the Administration requires it to afford protection to the holder of a permanent appointment against fluctuation in the work of the United Nations and to ensure observance

of the principle of security of tenure by seeking a post for him elsewhere in the Secretariat.

The Applicant contends that even if Staff Rule 104 were not applicable, the doctrine of vested rights would entitle him to its benefits.

2. The former guarantees afforded to holders of permanent appointments in the event of abolition of post are maintained in the new Staff Rules. Staff Rule 109.1 b, which replaces former Staff Rule 104, states that in the event of abolition of posts, holders of permanent appointments "shall as a general rule be retained in preference to those holding temporary appointments subject to availability of suitable posts in which their services can be effectively utilized."

3. No attempt was made to seek a new post for the Applicant. This is established by the letter dated 28 July 1952 from the Assistant Secretary-General in charge of Administrative and Financial Services which stated that "there was no reasonable prospect that you would have a post on your return." This letter conflicts with the Secretary-General's letter of termination of 3 April 1952 in which it was stated that the possibility of placing the Applicant elsewhere had been explored.

4. It is claimed that even if there was a search, it was adversely influenced by a determination, previously arrived at, to terminate the Applicant's appointment. This prejudice against the Applicant was later confirmed by the memorandum of Mr. Cordier, Executive Assistant to the Secretary-General, dated 3 November 1954.

5. The Administration itself did not regard the appointment to the post of Resident Representative in Haiti as a fulfilment of its obligation under the rules to find the Applicant a post. In making the offer, it expressly stated that the appointment was not to be regarded as a reinstatement.

6. Even if it is assumed, contrary to fact, that the Applicant's assignment to the post in Haiti was made in order to fulfil the Administration's obligation towards him, then it is still contended that the assignment was entirely inadequate for this purpose. On this new assignment, the Applicant was given a series of fixed-term appointments whereas, in accordance with practice, the Administration could have seconded him to Haiti as a holder of a permanent appointment. The post of Resident Representative in Haiti was actually vacant before 15 July 1952, the date on which his notice of termination expired.

7. The Applicant did not seek employment in the United Nations but forsook a post in his national civil service at the urgent invitation of the Secretary-General. The work performed by the Applicant during four and a half years as Principal Secretary of the United Nations Special Committee on the Balkans was praised by all delegations. The

Assistant Secretary-General in charge of the Department of Economic Affairs, by letter of 24 November 1952, congratulated the Applicant on his good work as Acting Resident Representative of the Technical Assistance Board in Haiti.

Whereas the Respondent's answer is :

1. When the Applicant's post was abolished there were no vacancies in the United Nations for which he was suited.

2. The Respondent made persistent and earnest efforts to transfer the Applicant to another assignment within the Secretariat and to find him a post corresponding to his grade and abilities.

3. There was no prejudice against the Applicant ; on the contrary, the Respondent displayed endless patience and went far beyond his obligations under the Staff Regulations, in the attempt to find him alternative employment.

4. At the time it was taken, the decision to terminate the Applicant was justified by the fact that there were no posts available for which he was suited. The post of Resident Representative in Haiti, when offered to the Applicant, was not really vacant, as the holder of the post departed on temporary leave of absence.

5. The upholding of that decision, after the Applicant had been granted a temporary appointment as Resident Representative in Haiti, was based on an objective examination of the Applicant's file in the light of the relevant provisions of the Charter, and of the Staff Rules and Regulations applicable to permanent staff members.

6. The decision was not an arbitrary one, but on the contrary, was a considered action taken after careful consideration, on the one hand, of the Applicant's rights and, on the other hand, of the Secretary-General's obligations under the Charter and the above-mentioned Rules and Regulations as head of the Administration.

7. The Respondent has had many occasions to evaluate the Applicant's abilities and shortcomings during the latter's career with the United Nations and has thus observed that the Applicant, although he shows himself capable in posts which call on his diplomatic talents, is almost completely lacking in administrative abilities. Since the field in which the Applicant could find suitable employment is very limited at Headquarters, in the various overseas offices and missions, it was with good reason that the Respondent did not take action on the recommendations of the Joint Appeals Board and he has given sufficient grounds in fact and law for his refusal to reinstate the Applicant as a permanent staff member.

8. The applicant will not suffer any loss by the termination of his appointment with the United Nations as his status as a French official will permit him to resume his post in the French Administration.

The Tribunal having deliberated from 20 November until 13 December 1954, now renders the following judgement :

1. The Respondent contends that the appeal should not have been received by the Tribunal upon the ground that the Joint Appeals Board had granted an extension after the Applicant's time-limit had expired, by reason of his claim to have discovered new evidence contained in a letter from the Assistant Secretary-General for Administrative and Financial Services, dated 28 July 1952. In view of the opinion expressed by the Board, that the letter in question failed to support the Applicant's contention, it might have been expected that the request for extension would then have been denied and the matter would have ended there. The Tribunal notes that the extension was granted, as the Appeals Board had the right to do, and that its action in doing so is not reviewable by the Tribunal.

2. In their written statements the parties have given at length a recital of the services and merits of the Applicant, including the opinions held of him by his superiors, and have fully commented thereon.

The Tribunal observes, however, that the reason argued for the termination of the Applicant's appointment was the abolition of his post and not unsatisfactory services. It is to be pointed out that the Applicant, who entered the service of the Organization on 15 March 1946, had his permanent contract confirmed on 14 March 1947, and that the Special Committee for the Five-year Review of Permanent Contracts informed the Secretary-General on 2 February 1952 :

"The Committee met on the 29th of January 1952, to consider the case of Mr. Aglion. After an interview with Mr. Aglion and a full review of the file, it does not appear to the Committee that the performance of Mr. Aglion can justify a change in his present status. The Committee was informed of the difficulties of reassignment of Mr. Aglion when his present function is terminated. This, however, is not its concern."

It therefore will be unnecessary for the Tribunal to consider the professional merits of the Applicant.

3. It is not contested by the parties that at the time the decision to terminate was taken, on 3 April 1952, the Staff Rule then applicable to termination due to abolition of posts was Rule 104, which reads as follows :

"In the termination of appointments due to reduction in force or abolition of posts, due consideration shall be given to the terms of the appointments, competence and integrity, nationality from the point of view of over-all geographical distribution, and length of service."

Nor is it contested that the interpretation and conditions of the Administrative Manual concerning that rule were as set forth below :

*"Interpretation and conditions"*<sup>1</sup>*"Order of termination"*

"When it is necessary to terminate staff members because of abolition of posts or budgetary cuts, the following considerations shall be applied :

"— the holder of an indeterminate appointment or a fixed-term appointment which has more than three months to run shall be terminated only if it is impossible to find a suitable vacancy elsewhere in which his skill and experience can be used to the fullest extent. To make room for such a person, a staff member holding temporary-indefinite appointment shall be terminated. Holders of indeterminate appointments have priority over holders of fixed-term appointments ;

"— the holder of a temporary-indefinite appointment or a fixed-term appointment with less than three months to run shall be terminated unless there is a thoroughly suitable vacancy elsewhere in which the Bureau of Personnel can place him without prejudice to the possibility of filling it with a holder of a higher priority appointment or with a better qualified external candidate ;

"— terminations of all types of appointments shall take into account the following in the order named : competence and integrity ; nationality from the point of view of over-all geographical distribution, in cases where staff members have not completed five years of service ;

"— length of service."

It is evident that under the foregoing Staff Rule and the interpretation being applied by the Secretary-General at the time involved here, the Secretary-General was required to make a reasonably diligent and effective search for any vacant post to which the holder of an indeterminate contract whose post had been abolished could be assigned.

4. The Respondent, relying upon a memorandum from the Director of Personnel to the Secretary-General dated 3 April 1952, contended that the necessary inquiries were made, but without success. The Applicant, however, cites the terms of the letter from the Assistant Secretary-General for Administrative and Financial Services, dated 28 July 1952, in which it was said that "there was no reasonable prospect" that the Applicant would have a post on his return (from Greece), and infers therefrom that suitable inquiries with a view to finding him a post had not in fact been made, and that to his mind the letter revealed the existence of a definite desire for his leaving the Organization prompted by other and more personal reasons.

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<sup>1</sup> *Administrative Manual*, Chapter 6, Section 6.



5. As a preliminary question, it must be determined by the Tribunal how long the Respondent's inquiries should continue before the stipulations of Staff Rule 104 may be said to have been satisfied.

Obviously one of two possible dates must be selected in this case: either the date of the notice of termination, or the effective date for the termination of the appointment.

The Respondent, while not expressly standing on this point, apparently takes the view that the inquiries, the results of which are described in the memorandum from the Director of Personnel, dated 3 April 1952, as having been conducted prior to that date, constituted a sufficient discharge of his duties in that regard. The Applicant, on the other hand, argues that the post of Resident Representative in Haiti had become temporarily vacant before the expiry of the notice period, and that this presented an opportunity to satisfy the conditions of Staff Rule 104. The argument implies that in the Applicant's view, the search for a suitable post should have been continued after the beginning of the notice period and carried on until the effective date of the termination.

The Tribunal observes that during the notice period staff members continue to enjoy all the rights and duties deriving from the Staff Rules and Regulations; it therefore follows that the Administration is under the duty, pursuant to Staff Rule 104, to continue its inquiries until the end of the service of holders of permanent contracts with the Organization.

In fact, that is the position which the Respondent seems to have taken toward the Applicant in a comparable situation in the year 1947 when, after serving notice of termination on 6 October 1947, he offered the Applicant on 29 October 1947 the post of Secretary to the United Nations Special Committee on the Balkans, which was accepted, and the appointment made.

It appears from the file that the post of Resident Representative in Haiti was open on 28 May 1952, before the expiry of the notice period. In the light of the foregoing considerations, it is the opinion of the Tribunal that this post, if it met the requirements of Staff Rule 104, ought to have been offered to the Applicant, as the holder of a permanent contract.

6. With regard to the nature of this post, the Administration, in the documents in the case, mentions only one reason why it should not have been filled under Staff Rule 104, namely, that it was not in fact a vacancy to be filled but simply the temporary replacement of the incumbent during his absence on leave for personal reasons.

Neither in the Staff Regulations nor in the Staff Rules is there any provision which would prevent a holder of a permanent contract from being appointed to a post available for only a few months, if the member wishes to accept it and if, in other respects, the post satisfies

the terms of Staff Rule 104. By reason of the nature of the United Nations activities there are bound to be unstable posts which have to be filled for short times only; it does not follow, however, that permanent contract holders may not be appointed to such posts.

7. For the Secretary-General to recognize the prior right of the Applicant to this post would have been clearly within the spirit and meaning of the Report of the Preparatory Commission of the United Nations of 1946 concerning Duration of Appointments, and consonant with the well-established employment policy of the United Nations to offer such assurance of tenure as to encourage members of the staff holding indeterminate contracts to make their careers in the Secretariat.

8. The record indicates that the temporary post in Haiti, discovered on or prior to 28 May 1952, was not offered to the Applicant as a permanent contract holder. When the existence and circumstances of the post were made known to him, he was given an opportunity to accept appointment to it under a fixed-term contract only.

9. The post was that of Acting Resident Representative in Haiti under the Technical Assistance Board. At the time involved here, the practices of the Secretariat were fairly uniform with reference to the conditions of employment which would prevail in the case of a staff member moving to the service of the Technical Assistance Board.

Within the same year, as of 31 December 1952, the United Nations and the Technical Assistance Board reduced the subject to a formal agreement and specific written understandings, doubtless for the purpose of clarifying the record.

It is noted that this agreement undertakes to make available to the Technical Assistance Board Secretariat, United Nations staff members under one of three types of arrangement, namely: *secondment*, *loan*, or *transfer* (TAB/R/225, 8 January 1953).

It was further provided between the contracting parties that "persons seconded from the United Nations or participating organizations, would enjoy any re-employment rights obtaining at the time of secondment from such agency to the TAB secretariat, and such rights, it is considered, would be preserved in accordance with the principles set forth in this paper,..."

Moreover, it is provided also in article III C.6 of this over-all undertaking that "United Nations staff members serving under permanent appointment would normally be *seconded* (or loaned) for service with Technical Assistance Board, unless the staff member would, himself, prefer to be transferred" (*italics added*).

10. While there was no written agreement, such as the one referred to, in force at the time the temporary post in Haiti came to the notice of the Secretary-General, it is scarcely to be doubted that the practice of the Secretariat in dealing with the Technical Assistance Board

followed the pattern which, within the year, was to be made explicit by these formal undertakings between the parties.

11. Upon that assumption it appears to have been the clear duty of the Secretary-General to have informed the Applicant of the existence of the vacancy and to have offered him an opportunity to accept it on secondment which, under the rule previously quoted, was the normal practice which would have enabled him to accept the post and continue to enjoy the benefits and the emoluments provided by the rules governing his status as holder of an indeterminate contract with the United Nations.

This was true for the reason that according to the Staff Rules of the United Nations Secretariat in effect at the time (ST/AFS/SGB/81/Rev.7, 26 May 1952, Staff Rules, Part I.1, page 6, Retention of Rights)

“(a) Regular staff members *detailed or transferred* to work in central administrative or indirect operational posts in the technical assistance establishments shall retain all rights under the terms of their appointments in the organization” (italics added).

As the Applicant could have been offered the post in Haiti under his permanent contract and the arrangements used when United Nations staff members are made available to the Technical Assistance Board, the Tribunal arrives at the conclusion that the failure to make such an offer to the Applicant was not in conformity with Staff Rule 104.

12. The letter of the Director of Personnel, dated 14 July 1952, offering the post to the Applicant on a temporary basis states “this appointment will bear no relationship to your previous appointment in the United Nations Secretariat, and is not to be considered a reinstatement”.

It is contended by the Respondent that the formal acceptance of the post under those conditions served to ratify the termination and to foreclose whatever claims he might otherwise have had to rights, benefits and emoluments under his indeterminate contract with the United Nations.

13. The Staff Regulations afford a staff member, who considers that the Secretary-General has infringed upon his rights under the Staff Rules and Regulations, the right to apply to the Tribunal.

The fact remains that, even after acceptance of the fixed-term appointment by the Applicant, the decision of termination of 3 April 1952 stands and that the Applicant retains his entire right, under the Staff Regulations, to ask for rescission.

14. The employment of a staff member upon the basis of an indeterminate appointment carries with it certain continuing and cumulative rights, benefits, and emoluments which are incidental to that status. These are provided by the integral law of the United

Nations consisting of the Charter, Regulations adopted by the General Assembly, Staff Rules promulgated by the Secretary-General, and the Statute and Rules of the Administrative Tribunal. It is not within the power or competence of the Secretary-General to withdraw or withhold these rights, benefits or emoluments, except only by appropriate action authorized under the established legal procedures for termination of indeterminate appointments. There can be no doubt that the Secretary-General has the power to terminate the permanent contract of a staff member upon the ground that the post which he occupies has been or is being abolished. But the right to exercise this power is not unlimited. It is conditioned, under the provisions of Staff Rule 104 and established employment policies and practices, upon the further fact that no other suitable post can be found for the permanent contract holder. In this case the record discloses that there was a post available before the expiration of the notice period of termination which, as subsequent events proved, was deemed suitable for the Applicant, both by the Secretary-General and by the Applicant himself.

The words used in the fixed-term appointment contract meant only that the Administration did not intend to reverse its previous decision to dismiss the Applicant for abolition of post. It is possible that at that time it was not quite clear to the Administration that the existence of the post of Haiti really placed the Administration in the position of being obliged to reverse the decision of termination.

Even though the Applicant had understood the conditions under which the appointment was offered to him, nevertheless he did not specifically surrender his right to contest the decision of 3 April 1952.

15. The Tribunal holds that the discovery of the Haitian post had the effect of imposing upon the Administration a duty not to pursue the notice of termination further, leaving the Secretary-General no alternative but to place it at the disposal of the Applicant, as the controlling Rules and practices required. The right to this assignment included the retention by the Applicant of the rights, emoluments and benefits which are afforded to all staff members appointed and serving under indeterminate contracts. It follows that any later attempt to attach conditions not warranted by the Regulations and Rules governing the transaction was ineffectual to accomplish the surrender or relinquishment of the rights of the Applicant.

16. The Applicant's status should not be affected by his assignment to a post by the United Nations with the Technical Assistance Board, but such assignment should be held to have occurred in the course of his continuing career under his indeterminate contract, and the completion of the mission upon which he is engaged should be followed by his return to whatever career duties in the Secretariat may be found suitable to him.

17. The Tribunal finds that the application is well founded, and hereby rescinds the termination, of which notice was given to the Applicant by the Secretary-General as of 3 April 1952, effective as of 15 July 1952 and directs that the Secretary-General reinstate the Applicant in the full enjoyment of his appointed status as indeterminate contract holder, and it is further directed that he be restored to all the rights, emoluments and benefits appertaining thereto, as fully and completely as though no termination of his appointment had been made.

18. If, within the period of thirty days following the receipt by the Secretary-General of notice of this judgement, the Secretary-General shall decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in his case, the Tribunal is required by the provisions of article 9 of its Statute to fix the amount of compensation to be paid to the Applicant for the injury sustained by him through his termination, and by the decision of the Secretary-General to take no further action to restore his former status as holder of an indeterminate contract. Such amount would include the loss of remuneration representing the difference between the Applicant's earnings in Haiti and the earnings he would have received as a holder of a permanent contract, including any within-grade increases in the interval between the date of termination and this judgement as well as the adjustment of all other benefits provided in the Regulations and Rules.

19. As to the injury sustained as a result of the Applicant's separation by decision of the Secretary-General, under article 9 of the Statute of the Tribunal, the Tribunal notes that the General Assembly has established by Regulations (Chapter IX) a system of payments as *Termination Indemnity*. In the present case, the situation of the Applicant is particularly favourable since he has been employed in his present assignment to Haiti throughout the whole period from the effective date of his termination, with emoluments fairly comparable with those which he would otherwise have enjoyed. The evidence indicates that his future prospects are favourable: the Tribunal was apprised during its proceedings that the Applicant has received a new fixed-term contract in Haiti up to 31 May 1955 and it is also aware that the Applicant is entitled to resume his career in his national civil service.

20. The Tribunal therefore orders that the amount specified in the table of Termination Indemnity computed as of the date of this judgement shall be paid to the Applicant as compensation for prospective damages sustained, together with the sum representing the aforesaid difference in his earnings from the date of termination to the date of this judgement.

It will be for the Administration to compute the total sum payable to the Applicant in conformity with the foregoing together with any

other emoluments and benefits otherwise payable under the Regulations and accrued as of the date of this judgement.

21. In the Applicant's reply to the Respondent's Rejoinder filed on 6 December 1954, the Applicant has requested that the decision of the Secretary-General refusing a rental allowance of \$1626.25 be reviewed and that the Tribunal order payment of this amount. The Tribunal finds that this item was not referred to the Appeals Board which did not pass upon it in its recommendation of 31 March 1954, and that therefore the request is not receivable.

22. The Applicant also requests the destruction of the memorandum of 3 November 1954 (Annex No. 24) and the prohibition of its communication to any agency which might consider engaging the Applicant's services. The Tribunal holds that it is not within its competence to decide upon the destruction of any administrative document. The Tribunal considers, however, that in view of the nature of the document, which was addressed to the Secretary-General, it was intended for internal Secretariat use and accordingly should not be brought to the notice of any third party.

*(Signatures)*

Suzanne BASTID  
*President*

Sture PETRÉN  
*Vice-President*

J. M. LASHLY  
*Member*

Djalal ABDOH  
*Alternate Member*

Mani SANASEN  
*Executive Secretary*

*New York, 14 December 1954*

### Judgement No. 57

**Case No. 60 :**  
**Hilpern**

**Against: The Secretary-General  
of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; Mr. Sture Petrén, Vice-President ; Mr. Jacob Mark Lashly, alternate ;

Whereas Walter Hilpern, former Manager of the Cairo Office of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, whose contract was terminated by decision of