

State with which the Applicant is most closely associated. The Tribunal accordingly rejects the application.

(Signatures)

Suzanne BASTID  
*President*

Sture PETRÉN  
*Vice-President*

V. M. Perez PEROZO  
*Member*

Mani SANASEN  
*Executive Secretary*

New York, 3 December 1955

### Judgement No. 63

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

**Against: United Nations Relief  
and Works Agency for  
Palestine Refugees in  
the Near East**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; Mr. Sture Petré, Vice-President ; Mr. R. Venkataraman, 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 15 April 1952, filed an application with the Tribunal on 18 October 1954, requesting that the Tribunal order the payment of :

(a) Three months' salary in lieu of sick leave . . .	£ E	450
(b) Three months' salary as indemnity based on length of service . . . . .	£ E	450
(c) Special indemnity for improper termination and vexatious delay in the treatment of his case . . . .	£ E	10,000
		<hr/>
TOTAL		£ E 10,900

(d) Costs, in addition to the above claims ;

Whereas the Respondent, in his answer filed on 13 May 1955, raised the question of the Tribunal's competence to hear cases involving staff members of UNRWA ;

Whereas the Tribunal, in its Judgement No. 57 of 9 September

1955, decided that it had jurisdiction to consider the merits of the case ;

Whereas the Tribunal decided at the request of the Applicant and with the agreement of the Respondent to defer any further consideration of the merits of the case until its session in 1956 ;

Whereas the Tribunal heard the parties on the merits of the case in public sessions on 16 and 17 August 1956 ;

Whereas in the absence of verbatim records the parties provided, at the request of the Tribunal, written resumés of their statements before the Tribunal ;

Whereas at the request of the Tribunal the parties produced other documents as follows :

16 August: The Respondent submitted in the course of hearing copy of telegram dated 26 January 1953 ;

17 August: The Respondent submitted replies to questions put in public session and copy of Dr. Ford Robertson's report of 15 August 1952 ;

20 August: The Respondent submitted replies to three questions put by the Tribunal ;

21 August: The Applicant submitted replies to two questions put by the Tribunal on 20 August ;

21 August: The Respondent produced copies of Administrative Instructions Nos. 121 and 121.1 of UNRWA and employment forms 37, 37 (a), 38 and 38 (a) ;

22 August: The Respondent produced copies of further Administrative Instructions and documents numbered as follows: 105, 105.1, 105.2, 106, 106.1, 106.2, 111, 111.1, 111.2, 111.3, 111.4, 113.1, 113.2, 113.3, 113.4, 113.5, 113.6, 113.7, 113.8, 113.9, 117, 117.1, 117.2, 117.3, 117.4, 117.5, 117.6, 117.7, 117.8 & 136.3, 117.9, 119, 119.1, 119.2, 120, 121, 121.1, 121.2, 121.3, 123, 123.1, 123.2, 123.3, M/40/1 1 November 1954, M/40/1 20 December 1954, 123.4, 124, 124.1, 124.2, 124.3, 124.4, 124.5, 125, 125.1, 125.2, 125.3, 125.4, 125.5, 125.6, 129, 129.1, 129.2, 129.3, 131, 131.1, 134, 139, 140, 140.1, 140.2, 144 ;

23 August: The Respondent, to whom the Tribunal had put three questions on the preceding day (22 August) sent a cable which, *inter alia*, quoted an extract of a "formal memorandum dated 19 December 1951" ;

Whereas, on receiving copy of the Respondent's above communication of 23 August, the Applicant by letter dated 24 August requested adjournment of the case ;

Whereas the facts as to the Applicant are as follows :

The Applicant entered the service of the United Nations Relief for Palestine Refugees (UNRPR) in February 1949 in a voluntary

capacity. On 1 May 1950 UNRPR was replaced by UNRWA (United Nations Relief and Works Agency for Palestine Refugees) and an undated "Notice of Employment" indicated that the Applicant was employed by UNRWA from 1 May 1950 as "Admin. & Liaison Officer" in Cairo. On 8 March 1951, the Applicant received a mission contract, effective as of 15 January 1951, in which he was appointed Manager of UNRWA's Cairo Office. On 19 November 1951 the Administration Division of UNRWA notified the Applicant that:

"Now that the category of 'Assimilated Internationals' has been eliminated, incumbents belonging to this category have been granted either International or Area status depending on the criteria set out in the Administrative Instruction. Thus, inasmuch as you are from the Area, locally recruited and your salary established in local currency, you have been designated as an Area staff member."

On 15 April 1952, the Acting Personnel Officer of UNRWA notified the Applicant of the termination of his services effective as of 31 May 1952 on the ground that his post had become redundant. The Applicant was also informed, by the same letter, that "Payment of one month's salary in lieu of notice will be made for the month of June 1952, which would otherwise have been the notice period to which you are entitled under the terms of your appointment with the Agency." On 30 May 1952, the Applicant wrote to UNRWA's Representative in Egypt stating that he could not "accept termination under prevailing circumstances" and that he would take sick leave. By letter of 6 June 1952, UNRWA's Acting Representative in Egypt advised the Applicant that he would have to undergo the usual terminal physical examination at Headquarters. The Applicant, by letter of 9 June 1952, protested against the termination of his services and requested payment for sick leave until recovery of health, for accrued annual leave, for overtime, for termination indemnity for length of service and for a special indemnity for unjustified termination. On 3 July 1952, the Administration Division replied that the termination decision must stand and that he would receive payment for accrued annual leave. It was also stated that "assuming that you are a refugee from Palestine you would not be entitled to an ex gratia payment in lieu of terminal indemnity". On 14 July 1952, the Applicant again requested the Administration Division for payment of indemnity on separation and indemnity for unjust termination. In August 1952 the Applicant underwent his terminal medical examination at Beirut. The physician who examined him recommended, in a report dated 15 August 1952, "I therefore strongly urge that he is granted another two months' sick leave". On 29 August 1952, the Administration Division advised the Applicant that he would be paid two months' salary in lieu of sick leave. The Applicant's counsel, by letter of 1 September 1952, rejected this offer and maintained the Applicant's previous claims. On 10 November 1952 the Applicant received one

month's salary in lieu of notice, two months' salary in lieu of sick leave and payment for accrued leave. On 11 November 1952 the Applicant claimed a further three months' salary in lieu of sick leave, as well as termination indemnity and special indemnity. The Applicant subsequently instituted proceedings in the local courts but the recognition of UNRWA's immunity by the Egyptian Government was requested by the Secretary-General of the United Nations.

In the meantime, the Applicant was considered for an appointment on the secretariat of the United Nations Technical Assistance Board (UNTAB), and in reply to an inquiry from the Board, the Director of UNRWA cabled to the Special Representative of UNTAB on 21 January 1953 as follows: "Reference your letter January sixteen stop in light of UNRWA experience and Egyptian attitude we would not repeat not support or favour proposed appointment". The reply from the Special Representative of UNTAB dated 26 January 1953 was as follows: "Grateful your cable stop now learn Hilpern proposes summon UNRWA in court for compensation, believe quite improper for UNTAB or other UN element to engage any individual under such circumstances".

The Applicant's counsel, having withdrawn his case before the Egyptian courts, then suggested in a letter to UNRWA dated 29 January 1953, that the case should be referred to arbitration. He addressed further communications to UNRWA on 9 April, 11 May and 18 September 1953. On 26 September 1953, the Acting Director of UNRWA wrote to the Applicant's counsel proposing that the dispute should be referred to an Appeals Board to be set up in accordance with United Nations practice. He also stated that if the Director's final decision should be unfavourable to the Applicant, it would be "open to him to appeal to the Administrative Tribunal in New York." On 20 January 1954 the Chairman of the Appeals Board notified the Applicant of the Board's rules including the following provision: "(e) Appeals against such decisions may be submitted to the Administrative Tribunal in accordance with the rules of this Tribunal." On 22 February 1954 the Applicant submitted a written statement to the Joint Appeals Board and on 23 June 1954, the Board recommended rejection of the appeal. On 30 June 1954 the Applicant's counsel cabled to the Chairman of the Board requesting a copy of the decision and on 13 July, he cabled a similar request to the Director of UNRWA. On the following day, the Applicant's counsel was handed a copy of the Board's recommendation by General Counsel for UNRWA. On 19 July the Applicant's counsel cabled to the Director of UNRWA "Please send decision Hilpern officially." By letter of 2 August 1954 to the Applicant's counsel, General Counsel for UNRWA confirmed the Director's acceptance of the recommendation of the Joint Appeals Board of 23 June 1954. On 18 October 1954, the Applicant instituted proceedings before the Administrative Tribunal.

Whereas the Applicant's principal contentions are as follows:

1. The Applicant was dismissed from the service of UNRWA on the alleged ground of redundancy whereas the post was in fact given, under the title of UNRWA Representative in Egypt, to a personal friend of the then Director of UNRWA.

2. While he was originally recruited by UNRWA on a "local" basis, the Applicant served under a "mission contract" as from 15 January 1951, and therefore enjoyed the status of an "international" employee with the rights and benefits pertaining thereto.

3. By its letter of 19 November 1951, UNRWA degraded the Applicant's status to that of a "local" employee and by unilaterally modifying his "mission contract" infringed the Applicant's acquired rights.

4. The Applicant's "mission contract" did not specifically provide for a termination indemnity but it was governed by United Nations regulations applicable to "international" employees and thus the Applicant was entitled to a termination indemnity.

5. While UNRWA had, at the material time, apparently not precisely formulated regulations regarding terms of appointment of "local" employees, the practice of UNRWA was clear from the specimen letter of dismissal dated 9 July 1952 (document 23). Under this practice, the "local" employee in question received a termination indemnity of 15 working days for each year of service from 1 May 1950, and thus the Applicant was at least entitled to two months' salary as termination indemnity, if he was regarded as a "local" employee. UNRWA failed to pay to the Applicant either the "international" or, alternatively, the "local" termination indemnity.

6. The Applicant claimed five months' salary as compensation for illness incurred in the service of UNRWA. He received two months' only because of a report dated 18 August 1952 by the Chief of UNRWA's Medical Division, Dr. Jerome Peterson, who in fact did not examine the Applicant. The reasons of the report were, however, not disclosed to the Applicant whose illness was *prima facie* "service incurred". In the absence of evidence to the contrary, the Applicant claims the full compensation.

7. The Applicant's claim for a further compensation equivalent to three months' salary is justified by UNRWA's delay in settling the case in spite of the warning given by Dr. Ford Robertson who examined him in August 1952 and who, in his report of 15 August 1952 to UNRWA's Health Division, stated: "Since his symptoms are largely traumatic, a rapid settlement of his affairs with the Organization would appreciably hasten full recovery and a return to usefulness."

8. It is an implied condition of any contract of service that the employer should give the employee a reference in respect of his period of service and that he should pay the terminal entitlements with

reasonable promptness. UNRWA failed to observe its obligations towards the Applicant in both these respects.

9. The proof of prejudice against the Applicant on the part of the then Director of UNRWA is contained in the telegram sent on 21 January 1953 by the Director to the United Nations Technical Assistance Board, and in which he recommended that the Applicant, despite his excellent record of service, should not be appointed on the staff of the Board. The reply from UNTAB indicated that the reason for his non-employment by UNTAB was that he had instituted legal action against UNRWA, whereas the Applicant had ventured to exercise his right of appeal only after his proposal for arbitration had been declined by the Agency.

Whereas the Respondent's principal contentions are :

1. The Applicant's duties as Office Manager in Cairo were mainly administrative and he was specifically excluded from dealing with policy matters. He was terminated for redundancy after a Representative for the Country had been appointed, and only after a search for a vacancy suitable to the Applicant's qualifications had been made throughout the Agency.

2. The Director of UNRWA sent the telegram of 21 January 1953 recommending that the Applicant be not appointed to UNTAB because the Applicant had instituted proceedings in the Egyptian courts instead of asking the Agency to set up an internal appeals machinery in accordance with United Nations procedure.

3. The Respondent recognizes that there were delays in dealing with the Applicant's case, but that they were not unreasonable and could not give rise to special damages. The Applicant's attempt, from November 1952 to October 1953, to bring a suit against the Agency in the Egyptian courts, caused considerable trouble and confused the question of establishing appropriate internal appeals machinery in the Agency.

4. There was no reference to local law in the Applicant's contract of 8 March 1951 and such reference cannot be presumed but must be explicit. The Applicant in fact received better treatment from the Agency than he would have done under local law.

5. The Applicant was not entitled to a termination indemnity because his contract excluded it and he was never at any time an "International" staff member. The one month's salary granted to him on termination was an *ex gratia* payment and was approximately equivalent to what he would have received under local law and exactly what he would have received as an "International" staff member.

6. By his contract of 8 March 1951, the Applicant acquired the status of an "Assimilated International" staff member. This was a hybrid category of local staff who received more annual and sick-leave entitlements than other local staff. The Applicant cannot claim that he

was transferred from the "locally-recruited" category to the "International" category merely because, in its letter of 13 March 1951, the Agency informed him that the new contract superseded "your original contract whereby you were employed on a 'local' basis".

7. As regards the Applicant's claim for a further payment of three months' salary in lieu of sick-leave, after receiving an *ex gratia* payment of two months', the Respondent states that under the United Nations system unused sick-leave conveys no entitlement to payment at date of separation. Dr. Robertson's report was not shown to the Applicant in August 1952, or at any date thereafter since it is the Agency's practice not to divulge confidential medical reports. The Agency's medical authorities properly determined that the Applicant's psychiatric condition could not be considered as "service incurred".

8. The Respondent therefore submits that each and every claim put forward by the Applicant is unfounded and should be rejected by the Tribunal.

The Tribunal having deliberated until 30 August 1956, now pronounces the following judgement:

#### *Termination indemnity*

1. The determination of the Applicant's entitlement to termination indemnity is dependent on his status as staff member of the United Nations Relief and Works Agency. The Tribunal recognizes that UNRWA is of a temporary nature, depending on voluntary contributions intended for the benefit of Palestine refugees, and with complete autonomy over its budgetary and financial organization. In considering the claim of the Applicant, due regard has therefore to be paid to the nature of the Agency, its organization and functions.

2. The Applicant claims that his contract dated 8 March 1951 (document No. 3), read with the letter of the Agency dated 13 March 1951 (document No. 5), supersedes his previous employment on a "Local Basis" and creates him a UNRWA staff member having "International Status". He further contends that his classification as a member of the "Area Staff" on 19 November 1951 (document No. 11), being an unilateral action taken by the Agency, is not binding on him. The Applicant claims that as a staff member having "International Status" he is entitled to termination indemnity equal to three months' salary.

3. The rules applicable to the staff members of UNRWA have been embodied in an agreement between the Secretary-General of the United Nations and the Director of the Agency, which agreement has been referred to in the preliminary judgement (No. 57) in this case. By an amendment to that agreement dated 12 April 1951, the Director was empowered to grant "temporary-indefinite" appointments to

those members of the staff who were on Mission appointments. From the personal file of the Applicant, it appears that after he signed the contract dated 8 March 1951, he inquired why he had not been given a "temporary-indefinite" contract. In a reply dated 2 August 1951, the Chief of the Administration Division stated that "in the organization plan for the Agency, as approved by the Deputy-Director, no provision was made for a temporary-indefinite contract in your (Applicant's) case."

4. It follows therefore that the Applicant was well aware that in the matter of classifications he was subject to the rules applicable to the staff.

5. The Respondent's contention that under Administrative Instruction No. 106 (document No. 67) the Applicant was placed in the status of "Area Staff" when he had previously been an "Assimilated International", also confirms that the Applicant's status was not purely contractual but in part contractual and in part statutory.

6. The Applicant was recruited on a "Local Basis" and then placed in the status of "Assimilated International" and finally classified as a member of the "Area Staff". The result of this legal position is that the Applicant's claim for termination indemnity has to be examined both with reference to his contract and the rules applicable to such "Area Staff".

7. The Respondent's denial of the Applicant's claim for termination indemnity is based on clause 3 of the Letter of Appointment (document No. 3). In paragraph 7 of the Respondent's answer, he contends that "This is the contract which constitutes the 'law of the parties'."

8. The Respondent, however, states that the Applicant's contract was drawn up by using a form which was also employed for the "International Staff" but in the case of an "Assimilated International" staff member, certain passages were deleted from that form.

9. A study of the complete text of this form indicates that even in the case of an "International" staff member there is no provision for termination indemnity, but that it provides for repatriation grant.

10. The Respondent also admitted that "International" staff members are entitled to termination indemnity, and that this indemnity is payable under the general rules not mentioned in the contract. If the terms of the contract did not exclude a claim for termination indemnity of an "International" staff member, it can be equally argued that an "Assimilated International" staff member may not be excluded from such a claim by the terms of the contract.

11. It follows that the Letter of Appointment is not therefore the sole basis of the legal position between the parties.

12. It must, however, be recognized that since there is no provision in the contract for payment of termination indemnity, the Applicant



cannot claim to have acquired a right to this indemnity. Consequently, as a result of his classification in the category of "Area Staff" under Administrative Instruction No. 106, he can claim only the general benefits applicable to such "Area Staff".

13. The Respondent contends that the Applicant was given notice of termination on 15 April 1952 effective from 31 May 1952 and a further salary of one month and that the payment of one month's salary *ex gratia* approximates with what he would have obtained under the local law.

14. In the event of termination, the Staff Regulations of the United Nations make a distinction between notice of termination and termination indemnity calculated according to the length of service (present Regulation 9.3 a) :

"If the Secretary-General terminates an appointment the staff member shall be given such notice and such indemnity payment as may be applicable under the Staff Regulations and Staff Rules. Payments of termination indemnity shall be made by the Secretary-General in accordance with the rates and conditions specified in Annex III to the present regulations."

Under the present Rule 109.3, the Administration is under an obligation to give three months' notice of termination to a staff member who is permanent and not less than 30 days' notice or such notice as may be stipulated in the Letter of Appointment in the case of a staff member who is temporary. This notice may be replaced by an indemnity equivalent to the salary which the staff member would have received had the date of termination been at the end of the notice period.

15. The letter of termination (document No. 63) specifically states that

"Payment of one month's salary in lieu of notice will be made for the month of June 1952, which would otherwise have been the notice period to which you are entitled under the terms of your appointment with the Agency."

The Agency had clearly indicated the legal basis for the payment made: it being an indemnity in lieu of notice and not a termination indemnity.

16. The Tribunal construes the document No. 63 as follows: on 15 April 1952 the Agency informed the Applicant of its intention to terminate his services with effect from 31 May 1952 and granted one month's salary in lieu of notice for the months of June 1952. The Tribunal therefore decides that payment of salary for the month of June was an indemnity in lieu of notice and not an *ex gratia* payment for termination.

17. On the findings of the Tribunal that the Applicant was a member of the "Area Staff" and that only salary in lieu of notice

and no termination indemnity has been paid to him, the question arises as to what, if any, were the termination benefits which the members of the "Area Staff" were entitled to on separation at the time of the termination of the Applicant's service.

18. The Applicant claims as an alternative plea that even on the basis of his classification as member of the "Area Staff", he is entitled to an "indemnity based on length of service, as prescribed by Egyptian law" (vide page 16 of the English translation of the application).

19. The Applicant further supported his contention by specific reference to a precedent where the Agency offered "termination dues of fifteen working days' salary ... for each year of service" (document No. 23).

20. The Respondent, in his answer, stated that "if Egyptian labour law had been applicable to the Applicant's contract, he would have received less than what he was actually paid by the Agency" (vide paragraph 52 of the answer).

21. At the oral hearing, the Respondent was asked to explain the circumstances in which termination dues were paid in the case mentioned in document No. 23. The Respondent stated that UNRWA's "new policy" regarding termination indemnity for non-refugee contracts came into force on 1 July 1952. The termination referred to in document 23 was effected by letter dated 9 July 1952, and the staff member in question was therefore given the termination indemnity. The Respondent agreed to submit the texts of the contracts and all instructions and information relevant thereto, together with copies of all the staff or administrative instructions issued with regard to staff matters.

22. On 21 August 1956, the Respondent submitted copies of the new contracts in UNRWA forms 37, 37(a), 38 and 38(a) together with Administrative Instructions No. 121 dated 10 June 1952 and No. 121.1 dated 18 July 1952, and a file which was stated to be comprehensive and to contain all relevant administrative and staff instructions.

23. As these documents did not clarify whether "Area Staff" were entitled to any termination dues prior to 1 July 1952, the Respondent was asked a specific question in writing on 22 August 1956 as follows:

"What was the practice of UNRWA with respect to payment of termination indemnity to the Non-Refugee Area Staff members of the Agency before 1 July 1952?"

24. The Respondent, who had asserted at the oral hearing that there were no termination benefits to "Area Staff" before the new contracts came into existence on 1 July 1952, however, furnished by cable on 23 August 1956 an extract from what was stated to be "a formal memorandum from the then chief administrative officer of the

Agency to all country representatives dated 19 December 1951". The extract is as follows :

"No terminal emoluments will be paid to Area Staff unless they are bona fide nationals of the country and were at no time Palestinian refugees. In the rare case of the bona fide national of the country, such a staff member will be entitled to the terminal emoluments prescribed by the local national labour laws of the country. Where no such labour law exists, no terminal emoluments will be paid".

25. The Applicant's counsel was duly apprised of the communications exchanged between the Tribunal and the Respondent for his comments. The Applicant submitted a letter dated 24 August asking that consideration of this matter may be adjourned in order to enable him to make his submission to the Tribunal regarding the "formal memorandum" dated 19 December 1951.

#### *Special indemnity*

26. The Applicant claims £E 10,000 special indemnity for "unjust and unwarranted termination" of the employment. The Applicant contends that he had served the Agency loyally and with devotion and that his services were highly appreciated (vide documents Nos. 55, 12, 20, 56). The Director of UNRWA had deprived him of employment with other United Nations organizations by sending the telegram to the UNTAB.

27. During the oral hearing, the Applicant did not seriously contest the plea of the Respondent that his post became redundant. The UNRWA itself is a temporary agency. Clause (f) sub-clause iv of the Agreement between the Secretary-General and the Agency specifically provides that the "United Nations will not be responsible for the subsequent placement or employment of any person not formerly on the staff of the Secretariat."

28. The Applicant's complaint that the telegram of 21 January 1953 from the Director of UNRWA to the Special Representative of the United Nations Technical Assistance Board (UNTAB) (document No. 38) deprived him of future employment with the United Nations, failed to take into account the right of an employer or Director to give his confidential opinion about an employee. The Special Representative of UNTAB also concurred in the view that it was undesirable to employ an individual who has resorted to legal proceedings against a United Nations organ (document No. 79). In any event, since the Applicant's services terminated in May 1952, there was no obligation on the part of the Agency to secure employment for its former staff member in January 1953 long after the termination of the service.

29. In a memorandum to the Tribunal submitted on 21 August

1956, counsel for the Applicant claims that, under Egyptian law, the Applicant would receive :

“if the terminal indemnity is paid as a result of the court order, the employee’s salary in full, up to the date of the court order, plus terminal indemnity”.

30. The Applicant also contends that if the dismissal is the fault of the employer, the employee is entitled to compensation in full for the actual damage he has suffered as a result of the dismissal. The Applicant submits that, under Egyptian law, dismissal for redundancy is considered to be the fault of the employer.

#### *Sick leave*

31. The Applicant claims sick leave or salary in lieu thereof for a period of three months in addition to two months granted by the Agency. In support thereof, the Applicant relies on his contract and the letter dated 19 November 1951 (document No. 11) which specifies that the Applicant shall be credited with 25 working days’ sick leave for each year. The Applicant further claims that he is entitled to accumulate the sick leave in the absence of any agreement to the contrary.

32. The Tribunal has already reached the conclusion that in deciding the nature of the Contract of Service of the Applicant, not only his contract but the relevant rules and regulations and other interpretations and conditions applicable to him should be taken into consideration. Administrative Instruction No. 117 dated 7 March 1952 (document No. 69) contains the leave rules applicable to “Area Staff” of the Agency. Paragraph 8 of said document reads as follows :

“Entitlement. At the beginning of each year of service, every employee shall receive a sick leave credit of 18 working days. Any unused portion of this credit will lapse at the end of the service year concerned. Unused sick leave is not reimbursable in cash on separation, nor is it otherwise compensatable.”

33. Besides, sick leave is an authorized leave of absence to which a staff member is entitled during the period of his service.

It therefore follows that the Applicant cannot accumulate the sick leave and claim it at any time.

34. The Applicant claims that the “routine exit medical examination” was delayed from 31 May 1952 to 15 August 1952 and that the Applicant should therefore be granted sick leave for the period he was awaiting medical examination. Some delay was caused by the absence of the Medical Officer at Cairo and by arranging the medical examination at Beirut, the circumstances being purely fortuitous.

35. It is further contended that Dr. Ford Robertson, who examined the Applicant, recommended “another” two months’ sick leave on

15 August 1952 (document No. 80) and therefore the Applicant claims to be entitled to five months' sick leave. But the Chief of the Medical Division, Dr. Peterson, who examined the various medical reports, proposed that two months' sick leave, or the equivalent thereof in money, be granted to the Applicant.

36. The Tribunal notes that the report of Dr. Ford Robertson was made to another medical officer and that the final decision on this matter was made by the Chief of the Medical Division. The Tribunal cannot enter into the relative merits of the medical reports, but accepts the final decision of the Chief of the Medical Division.

37. The only question that remains to be decided is whether, under the Rules of the Agency or under the local laws of Egypt, if applicable to the Applicant, he could claim any compensation as sickness benefit.

### *Delays*

38. The Tribunal cannot help feeling that there have been extraordinary delays in the settlement of this dispute. The Applicant agreed to refer the dispute to arbitration as early as 24 September 1952 (document No. 35) but no indication was given by the Agency about resort to internal appeals machinery such as the Joint Appeals Board. It was only after the suit was filed in the Egyptian Courts, pleas of immunity taken, suit withdrawn, and further letters addressed, that the Agency agreed on 26 September 1953 to refer the dispute to an *ad hoc* Joint Appeals Board (document No. 43). Even then the recommendation of the Board was not made until 23 June 1954.

39. The Respondent contends that the delay was due to the Applicant resorting to the Egyptian courts without seeking internal remedies. Since no such internal remedies existed or were suggested by the Agency even after repeated notices of legal action were issued, the Applicant had no alternative but to resort to the Egyptian courts.

40. Even in the settlement of accrued leave, the Agency unnecessarily delayed the matter. At the time of the termination, the Agency contended that the Applicant was entitled to accrued leave only from 15 January 1951. On 3 July 1952 (document No. 22) the Agency agreed that the Applicant was entitled to accrued leave from 1 May 1950. But on 29 August 1952 (document No. 33) the Agency again offered accrued leave only from 15 January 1951. Though the Applicant pointed out the discrepancy in his letter dated 1 September 1952 (document No. 34), this was not corrected until 31 October 1952 (document No. 36) and payment was not made until 10 November 1952.

41. The Tribunal feels that the Applicant was denied payment of the sums due to him far too long.

*Conclusion*

42. The Tribunal is unable to proceed to final judgement in the case for the following reasons :

(a) All the Regulations, Rules and Instructions governing the "Area" or "local" staff employed in the Agency have not been placed before the Tribunal ;

(b) The full text of the "formal memorandum" dated 19 December 1951 is not made available ;

(c) The interpretation of the words "bona fide national" within the meaning of the memorandum dated 19 December 1951 is in considerable doubt ;

(d) The relevant local labour laws of Egypt in respect of normal terminations, terminations for redundancy, terminations due to illness and compensation for illness arising out of employment, etc., are not before the Tribunal.

43. In order to determine the rights of the Applicant on the finding that he was a member of the "Area staff" governed by the regulations and rules applicable to such staff in the employment of the Agency as of 31 May 1952 and all of the matters referred to above, the Tribunal has decided to call for documents and information from the Respondent as follows :

1. (a) All formal memoranda (of the type dated 19 December 1951) relating to the members of the staff in the Agency up to 1 July 1952.

(b) All other administrative instructions, rules etc., relating to the staff up to 1 July 1952.

2. (a) The interpretation by the Agency of the term "bona fide national", occurring in the "formal memorandum" dated 19 December 1951.

(b) Whether the Applicant was placed in the category of "bona fide national" of the country (Egypt) as contemplated in the said memorandum.

3. In the light of the memorandum dated 19 December 1951, what form of contract would the Applicant have been required to execute after 1 July 1952 had he continued in service ?

4. All local labour laws of Egypt relating to

(a) Normal terminations of service

(b) Terminations for redundancy

(c) Terminations due to illness

(d) Compensation for illness arising out of employment.

5. (a) All Rules and Instructions of the Agency relating to "routine exit physical examination."

(b) All Rules and Instructions relating to the Agency's liability in

respect of any health condition of a staff member connected with or resulting from his service with the Agency.

(c) The procedure followed by the Agency with regard to the ascertainment of such health conditions.

44. The Tribunal therefore decides to adjourn consideration of this case.

(Signatures)

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

Sture PETRÉN  
*Vice-President*

R. VENKATARAMAN  
*Alternate*

Mani SANASEN  
*Executive Secretary*

Geneva, 30 August 1956

## Judgement No. 64

**Case No. 66 :**  
**Stepczynski**

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

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of the Lord Crook, Vice-President, presiding ; Mr. Sture Petré, Vice-President ; Mr. R. Venkataraman ;

Whereas Stefan Léon Stepczynski, staff member of the Permanent Central Opium Board of the United Nations at Geneva, filed an application to the Tribunal on 23 January 1956 requesting :

(a) That his appeal to the Joint Appeals Board be declared receivable ;

(b) That the Tribunal, if it decides to deal with the substance of the Applicant's case, should rule that the Applicant had not resided at Geneva for three years before his appointment to the United Nations and that he should therefore be given the benefit of semi-local status ;

Whereas the Respondent filed his answer to the application on 2 May 1956 ;

Whereas the Tribunal heard the parties in public session on 14 August 1956 ;

Whereas the facts as to the Applicant are as follows :