

Judgement No. 70

Case No. 70 :
Radicopoulos

**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; the Honourable Mr. R. Venkataraman, alternate;

Whereas Nicolas Radicopoulos, former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, filed an application with the Tribunal on 25 September 1956, requesting the Tribunal to order:

(a) The rescission of the decision of 3 August 1954 to terminate his employment;

(b) Reinstatement in his former post with UNRWA with effect from the date of the decision of termination;

(c) Reimbursement for the expenses claimed by Applicant following his two allegedly service-incurred accidents;

(d) Alternatively, in the event that the Respondent should decline to rescind the decision of termination, the award of E£ 10,000 as compensation for wrongful termination and reimbursement for medical and other expenses Applicant incurred, including salary from 5 August to the end of October 1954, i.e. the period of the Applicant's surgical operation and convalescence, amounting to E£ 1,065 and 600 mills;

Whereas the Respondent filed his answer to the application on 13 December 1956;

Whereas the Applicant filed a second written statement with the Tribunal on 30 April 1957;

Whereas, in conformity with article 9 of the Rules of the Tribunal, the Respondent filed a further statement on 13 June 1957;

Whereas, in conformity with article 9 of the Rules of the Tribunal, the Secretary-General of the United Nations furnished a written statement on 15 July 1957 in response to questions put by the President;

Whereas the facts as to the case are as follows:

The Applicant entered the service of the United Nations Relief and Works Agency on 1 May 1950 as an area staff member with the functions of Assistant Finance Officer at Gaza. He subsequently became Field Finance Officer and, on 27 October 1952, was transferred to Cairo. The Applicant was granted the special status of staff members

assimilated to international officials, that is, he became entitled, in particular, to reimbursement of medical expenses in respect of service-incurred accidents in the same way as international staff members proper. On 2 October 1951 the Agency issued Administrative Instruction 106, classifying staff members into two categories, internationals and area staff and the Applicant was classified as an area staff member. On 18 July 1952 the Agency issued Administrative Instruction 121.1 stating that all area staff members not of Palestinian origin must sign a letter of appointment the text of which was attached to the Instruction, but the Applicant never complied with this instruction. On 13 October 1952, the Agency notified the Applicant that he would be granted from the date of his appointment the privileges enjoyed by the ex-assimilated staff members but that these would be the only privileges granted to him over and above those of regular area staff members. On 26 February, 26 March and 8 April 1953 the Applicant submitted medical certificates from his private physician in support of a request for leave and an electro-encephalograph. In his last certificate, the Applicant's physician suggested that Applicant's disability might be due to travel by air on duty and to severe intellectual work. On 15 April 1953 the Applicant applied for the re-imbursement of doctors' fees and hospital fees. This was refused on the ground that the Agency did not recognize his medical condition as being service-incurred. In May 1953 the Applicant produced additional certificates from three private physicians in support of his claim, and related to the Health Division that, in May or June 1950, while he was on official duty in Gaza, the office car "had an accident" and he had been "struck on the head" and lay unconscious for a few seconds. The Applicant was then advised that he would be required to submit evidence in support of his claim. On 5 December 1953 the Applicant informed the Health Division of his visit to the Athens Hospital for Mental Psychology diseases and, at the same time, requested that he be given a complete examination to determine whether he could continue his work or should be terminated for health reasons. On 22 and 23 January 1954 the Applicant was examined by a neurologist chosen by the Agency, who reported that he did not "think the trauma is the cause of his present epileptic fits" and that he did "not find any medical reason to terminate the (Applicant's) employment." The Applicant, by letter of 22 March 1954 contested these conclusions. Meanwhile the Applicant had submitted as evidence of the car incident a document dated 20 January 1954 from a member of the staff who recalled that in May or June 1950 the Applicant, on his return to the office, had stated that "a shock accident" had happened to the car. On 7 July 1954 the Applicant was involved in an accident in his office in Cairo in which a chair was involved, and he was taken to hospital in an unconscious condition. After the Applicant had been examined by three neurologists, the Agency's

Field Health Officer reported on 27 July 1954 that in the opinion of the specialists consulted the Applicant's fall had probably been due to an epileptic fit. On 3 August 1954 the Administration notified the Applicant of the termination of his services on medical grounds, effective 4 August 1954. The Applicant was also informed, by the same letter, that he would be paid his salary and foreign resident's allowance up to 4 August 1954, and for four weeks' sick leave and accrued annual leave. The letter further stated: "As the amount due to you under the terms of the Acting Director's circular of 4 May 1954 is greater than that you would receive by way of terminal indemnity under the Egyptian law you will receive the indemnity plus the difference by way of ex-gratia payment." On 3 August 1954, the Applicant's counsel protested against the termination, stating that the Agency's decision was against Egyptian law and juridical practice, which provided that an employer could not terminate a contract during an illness incurred while in service. On 10 August 1954, the Applicant underwent an operation and he presented a medical certificate dated 21 September 1954 testifying to "progressive diminution of the epileptic crises and improvement of the mental condition of patient." In March 1955, the Applicant instituted proceedings against the Agency in the local courts. The Agency invoked its immunity as a bar to proceedings in the local courts. On 11 November 1955, the Applicant suggested that his case be referred to an Appeals Board.

The Agency agreed and sent to Applicant's counsel, on 29 December 1955, the terms of reference for an *ad hoc* Joint Appeals Board, of three persons, one nominated by the Director, one nominated by the Applicant and a Headquarters staff member co-opted as chairman by the mutual consent of the first two. These terms included the following provisions:

"XIII. A unanimous recommendation by the Board which is accepted by the Director shall debar the applicant in the case concerned from any further appeal to a special panel of adjudicators, as provided in paragraph XIV below.

"XIV. When either the recommendations of the Board are not unanimous or the Director decides not to accept a unanimous recommendation of the Board, the applicant may appeal to an adjudicator, whose decision shall be final. This adjudicator shall be a member of a special panel of impartial adjudicators of high professional standing, established by the Director, from persons unconnected with the UNRWA."

The Applicant's counsel wrote, on 14 January 1956, to the Agency: "I agree with the rules relating to the Appeals Board except as regards any further appeal which might be made against its decision. In fact, after the judgement rendered by the Administrative Tribunal in the Walter Hilpern case, I think that such an appeal is within the Tribunal's competence." On 16 February 1956, the Applicant sub-

mitted a written statement to the Joint Appeals Board and on 23 May 1956 the Board unanimously rejected the Applicant's claims as having no legal justification but recommended, on humanitarian grounds, that if Applicant were found physically fit and should there be a post available for him, he be given employment, subject to signing a waiver relieving the Agency from all his claims against it. The Agency, on 21 June 1956, informed Applicant's counsel that the Director had accepted the Board's recommendations. The Agency offered to arrange for a full medical examination of the Applicant, adding that, if he were considered fit for service, the Agency would find him employment as soon as a suitable vacancy occurred. In reply, the Applicant's counsel requested on 30 June 1956 that, subject to a satisfactory medical examination, the Applicant should be employed immediately on the same terms and conditions as he enjoyed prior to his termination. On 20 August 1956 the Respondent agreed to the Applicant's desires as to the form of the medical examination but indicated that the Agency could not guarantee that if the medical examination were satisfactory it would re-employ him on the terms suggested, since this would depend upon the availability and nature of any post available. On 14 September 1956, the Applicant declared that he could not accept mere promises and decided to lay the matter before the Administrative Tribunal of the United Nations. This he did on 25 September 1956.

Whereas the Applicant's principal contentions are :

1. The termination of the Applicant's appointment on medical grounds was based upon a wrong diagnosis made by the Agency's own doctors. They stated that he suffered from true epilepsy, an incurable disease, whereas the Applicant's doctors agreed that his illness was due to a trauma. The diagnosis of the Agency's doctors was later proved to be wrong by the result of the trepanning operation performed on 10 August 1954. The termination of his appointment was therefore unfounded.

2. The difference of opinion between the Agency's doctors and those of the Applicant should, according to the law relating to labour and in particular article 45 of the Egyptian Legislative Decree No. 317 of 1952, have been settled by adjudication.

3. Up to March 1953 the Applicant was always in good health. The Applicant's illness was directly connected with the injuries which he had suffered in two accidents during his employment. The first occurred at Gaza in 1950 in a jeep belonging to the Respondent and the second at the Agency's Cairo office in 1954 as a result of the Applicant's chair being in a bad state of repair.

4. Even if it should be found that the Agency was not responsible for the Applicant's illness, it would still be liable to pay his medical

expenses under article 28 of the Egyptian Legislative Decree No. 317 of 1952.

5. The Agency recognized the applicability of Egyptian law in the calculation of the Applicant's termination indemnity (Annex No. 35). In the event of wrongful termination, the Tribunal should, therefore, award, in addition to the normal indemnity based on length of service, a termination indemnity calculated according to length of service, material and moral damage suffered and the nature of employment.

6. The regulations issued by the Agency subsequent to the Applicant's appointment are not binding on the Applicant as he did not expressly accept them.

7. The Applicant contests the Respondent's view that the ruling with respect to the Tribunal's competence in judgement No. 57 (Hilpern) is not applicable. He maintains that the Tribunal declared itself competent to consider an appeal against the Agency.

8. In submitting his case to the Joint Appeals Board the Applicant formally reserved his right to appeal to the Tribunal.

9. Only if the recommendations of the Joint Appeals Board are interpreted literally can it be said that it rejected the Applicant's appeal. In any case its opinion was not conclusive in law because it recognized it was not qualified to form a valid opinion on the medical aspects of the case, and was therefore obliged to defer to the Chief Medical Officer's opinion.

Whereas the Respondent's principal contentions are :

1. The application is irreceivable. A member of the Agency staff cannot be considered to be an official belonging to the United Nations Secretariat with the right to make an application to the Tribunal by virtue of article 2 of its Statute.

2. Judgement No. 57 (Hilpern) cannot be cited as a precedent in this case, because it was based upon special considerations of fact. The Tribunal also refrained from deciding the question of principle.

3. The terms of reference of the *ad hoc* Joint Appeals Board provided for further appeal to an adjudicator and thus expressly excluded an application to the Administrative Tribunal.

4. The legal status of the Applicant who was employed by an international organization is governed by the administrative provisions of the Organization. The provisions governing the conditions of employment are binding without the consent of the individual concerned.

5. On Form 37 (A), applicable to the Applicant, it was stated that he was entitled to the separation indemnity for which the law of the country in which he was employed provides. In all other respects Egyptian law was inapplicable to the Applicant's conditions of employment.

6. The termination was made on medical grounds indicated in Annex No. 74, and the Applicant's claim for special indemnity is therefore unfounded.

7. The Applicant has failed to provide evidence as to the car accident which he alleges occurred in 1950. His claim for expenses is therefore unfounded.

8. The accident in the office in Cairo did not, as alleged by the Applicant, take place while he was alone, but in the presence of a witness. From the evidence of this witness it is clear that the epileptic condition of the Applicant was the cause of the accident. It was therefore not service-incurred. His claim for expenses is therefore unfounded.

9. Even if it could be shown that either of these accidents were service-incurred the Applicant has not discharged the burden of proof upon him establishing a cause-and-effect relationship between either of the accidents and his epileptic condition.

10. The statements of witnesses, and other facts, show that the Applicant suffered from epilepsy prior to joining the staff of the Agency. He was therefore not in good health. The Applicant realized that his disability might warrant termination of his appointment because he raised this matter in a letter dated 5 December 1953 (Annex No. 18).

11. The Applicant's own doctors did not support his theory of a trauma being the cause of his illness.

12. When the Applicant claimed that he was completely cured, the Agency offered to arrange for a full medical examination and to find employment for him if a suitable vacancy arose in the Agency. The Applicant's request for immediate employment, in the event of a satisfactory examination, could not be accepted from the administrative point of view.

The Tribunal having deliberated until 23 August 1957, now pronounces the following judgement:

1. The competence of the Tribunal is contested by the Respondent on three grounds:

i. The Applicant, a former official of the Agency, cannot be regarded as a member of the United Nations Secretariat with respect to whom the Tribunal would have competence under article 2 of its Statute.

ii. The circumstances which enabled the Tribunal to recognize its competence with respect to an official of the Agency in Judgement No. 57 (Hilpern) are not repeated in this case.

iii. Under certain conditions, the Applicant had a different remedy

by way of appeal against the decision adopted pursuant to the recommendation of the Appeals Board.

2. The Tribunal notes that the United Nations Relief and Works Agency for Palestine Refugees in the Near East was established by General Assembly resolution 302 (IV) under article 22 of the Charter authorizing the Assembly to establish subsidiary organs.

In that resolution, the Assembly laid down regulations relating to the staff of the Agency. In doing so, it exercised its power under Article 101, paragraph 1, of the Charter to establish regulations relating to the staff of the United Nations. By reason of the functions peculiar to the Agency, however, the Assembly confined itself to establishing the legal status of the Director and laying down the procedure to be followed in issuing regulations concerning the staff.

It follows from this resolution that the staff of the Agency is placed under the legislative authority of the Assembly, like the whole of the staff referred to in Chapter XV of the Charter, but no provision of that Chapter obliges the Assembly to establish uniform rules for all who serve the United Nations.

3. In order to reach a decision regarding its competence, it is necessary for the Tribunal to ascertain whether the legal rules applicable to the Applicant under resolution 302 (IV) include the right to make applications to the Tribunal. The Tribunal recognizes that that right may be denied in certain cases. The rules applicable to the local staff of the Agency, drawn up by agreement between the Secretary-General and the Director of the Agency and in force since 1 July 1957, provide for an adjudication procedure which, in the opinion of the competent authorities, answers the needs mentioned by the International Court of Justice in its advisory opinion of 13 July 1954 on the effect of awards of compensation made by the United Nations Administrative Tribunal, viz., "It would, in the opinion of the Court, hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant pre-occupation of the United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any dispute which may arise between it and them." (Reports, 1954, page 57).

But no evidence was produced before the Tribunal to show that, before the entry into force of those rules, on 1 July 1957, a similar "general provision" had been agreed upon between the Secretary-General and the Director of the Agency and carried into effect.

4. On 29 December 1955, the Respondent sent to the Applicant a copy of the terms of reference of an Appeals Board, of which paragraphs XIII and XIV were worded as follows:

"XIII. A unanimous recommendation by the Board which is

accepted by the Director shall debar the applicant in the case concerned from any further appeal to a special panel of adjudicators as provided in paragraph XIV below.

“XIV. When either the recommendations of the Board are not unanimous or the Director decides not to accept a unanimous recommendation of the Board the applicant may appeal to an adjudicator whose decision shall be final. This adjudicator shall be a member of a special panel of impartial adjudicators of high professional standing, established by the Director, from persons unconnected with the UNWRA.”

On 14 January 1956, however, the Applicant's Counsel announced that he was not in agreement with those provisions and, relying on Judgement No. 57 he indicated that in his opinion an appeal was within the competence of the Tribunal.

There can be no question therefore of an agreement having been reached between the parties to accept possible adjudication on the terms proposed by the Respondent. In the absence of any general provision to that effect, therefore, the terms of reference of the Appeals Board are not in themselves sufficient to exclude the competence of the Tribunal if it can be established by other means.

5. The purpose of the exchange of letters between Mr. Byron Price, Assistant Secretary-General in charge of Administrative and Financial Services of the United Nations, and Major-General Kennedy, Director of the Agency, dated 28 June and 15 September 1950, was to apply the provisions of paragraph 9 (b) of resolution 302 (IV).

According to the communication of 28 June 1950 (paragraph (a)) the whole of Chapter 15 of the Staff Rules of the United Nations, together with the interpretations and conditions of application forming the subject matter of the draft Manual for Missions published on 19 January 1950, should, in the absence of express provision to the contrary, be applicable to the staff of the Agency. Chapter 15 of the Staff Rules referred to Chapter 10, which provided for the right of appeal to the Administrative Tribunal (article 149 of the Staff Rules).

The right of the staff of missions to appeal to the Tribunal was, it is true, deleted from the Staff Rules on 17 August 1950, but it was restored on 1 July 1951. If therefore it is considered that the agreement relates to the provisions in force at the time when Mr. Byron Price made his proposal, it must be admitted that the staff of the Agency still have that right.

If, on the other hand, the Agreement is regarded as relating to a particular chapter of the Staff Rules, the right was restored after being suspended for some months.

In its Judgement No. 57 (Hilpern), the Tribunal referred both to the opinion of the Secretary-General and to the statement by the Acting

Director of the Agency and the terms of reference of the Appeals Board established to deal with this case. It reached the following conclusion: "It is clear, therefore, that at this stage at least, the Secretary-General and the Director of the Agency were in agreement that the United Nations Staff Regulations and Rules concerning the right of appeal to the Tribunal were available to the applicant." In making that statement, the Tribunal found that the authorities competent to determine which United Nations Staff Regulations and Rules were applicable to the staff of the Agency were in agreement as to the Applicant's right to bring his case before the Tribunal.

6. In the present instance, the Applicant brought his case before the Egyptian courts after his dismissal.

The Respondent invoked immunity from jurisdiction, as he had done in the Hilpern case. He expressed the view that the two cases were absolutely analogous.

In the course of the Respondent's representations to the Egyptian authorities, it appeared to be of the greatest importance that the Respondent should be able to give the assurance that internal remedies were open to the person concerned. These representations were made at the very time when the Agency was maintaining before the Tribunal the Tribunal's lack of competence to deal with the Hilpern case. The various documents emanating from the Respondent at that time expressed contradictory views on the legal position with respect to the remedies available to a staff members of the Agency and to their nature and legal basis. None of those documents warrants an assertion that the interpretation of the legal position given both by the Secretary-General and by the Acting Director and Director of the Agency and referred to by the Tribunal in its Judgement No. 57 has been replaced by a new agreement on this point.

7. Since the case was withdrawn from the Egyptian courts on 11 November 1955, the Applicant's Counsel presented to the Respondent a request that the case should be referred to the Appeals Board (Comité d'Appel). He was careful to include the following statement: "You will then have to make your decision in the light of these considerations; and my client may be entitled to appeal to the Administrative Tribunal, which, as you know, has rendered a decision dated 9 September 1955 affirming its competence in disputes between UNRWA and its staff."

On 26 November, the General Counsel of the Agency replied: "The Director, in accordance with the request on behalf of your client contained in your aforesaid letter, is making immediate arrangements to set up an *ad hoc* Joint Appeals Board, along the lines of the internal administrative procedure of the United Nations."

No observation or reservation was made by him regarding a possible

appeal to the Tribunal. The reference to the internal procedure applied by the United Nations clearly indicated that the Appeals Board should remain a purely administrative and advisory body. Thus the importance and necessity of further jurisdictional appeal was maintained and no objection was raised by the Respondent in this connexion.

It was only in the terms of reference for the Appeals Board addressed to the Applicant on 29 December 1955 that the provisions of paragraphs XIII and XIV expressing quite a different procedure was first contemplated; and the Applicant's counsel made express reservations with regard to those paragraphs on 14 January 1956. The Respondent was no doubt entitled to propose new rules of procedure; but since those rules were not accepted by the person concerned, and since the procedure thus established on an *ad hoc* basis was not of a mandatory nature, the applicant could not be deprived, by such a proposal, of the right of appeal which he enjoyed under the regulations mentioned above relating to the Agency's staff.

8. The Tribunal, therefore, considers that since no mandatory provisions instituting another procedure had been laid down at the time of the application, it is competent to deal with the application on the basis of the agreement established under resolution 302 (IV), in accordance with the interpretation placed upon that resolution and described in Judgement No. 57.

9. The Applicant asks the Tribunal to rescind the decision of 3 August 1954 to terminate his appointment as being based on an erroneous view of his state of health. Should the tribunal decline to do so, he claims to be entitled under article 39 of Egyptian Law No. 317 of 1952 as to Personal Employment Contracts, to compensation for wrongful dismissal.

He also claims refund of medical etc. . . . expenses incurred in 1953 and 1954 as a result of accidents which he alleges he sustained while on duty. Alternatively, in the event of the Agency not being held liable for these alleged accidents, he claims refund of these expenses under article 28 of the above-mentioned Egyptian Law, which makes the employer liable for the cost of medical treatment.

In order to consider these claims, the Tribunal must first ascertain what rules governed the relations between the Applicant and the Agency.

10. According to the Applicant, these relations are governed by the Egyptian Law No. 317, of 8 December 1952, on employment contracts, as the law of the country in which the employment contract was entered into and in which the Applicant had his legal domicile.

The Applicant claims that he cannot be bound by regulations of the Agency issued after his appointment, unless he expressly accepted them.

11. The Tribunal notes the Respondent's admission that, when the Applicant was appointed on 1 May 1950, he did not sign a letter of appointment. Moreover, it is not contested that, when Administrative Instruction No. 121.1, which was issued by the Agency on 18 July 1952, provided for new letters of appointment to be drawn up for local staff, the Applicant did not sign one.

On the other hand, after the abolition of the "Assimilated Internationals" category a special decision in the Applicant's favour was taken by the Personnel Review Committee, and notified to him by letter of 13 October 1952 (Annex No. 6). Under that decision, the Applicant, although on the area staff, was granted certain special privileges applicable to officials previously regarded as "assimilated international" staff, including the same entitlement to refund of medical expenses for service-incurred accidents and disabilities as that enjoyed by the "internationals".

The decision also included a clause to the effect that the grant of these special privileges did not change the status of the Applicant who remained a member of the "area staff". In these circumstances it cannot be argued that the Applicant's relationship with the Agency was governed solely by Egyptian law. There was no special agreement to that effect between him and the Agency. He enjoyed the privileges granted by the Agency to staff members of his category. The general regulations laid down by the Agency, and in particular those contained in Administrative Instruction No. 121.1, therefore applied to him.

12. According to Administrative Instruction No. 121.1 and Form 37A, the Agency had the right to terminate the Applicant's appointment with one month's notice. The only reference to local law concerns the compensation to be paid in the event of termination, which is in the following terms:

"Cash payment on separation will be in accordance with laws of the country in which you are employed."

This limited reference to the compensation to be paid on termination must be interpreted in the light of the termination indemnity system laid down in the United Nations Staff Regulations and Staff Rules. In this case, therefore, there can be no question of compensation other than lump-sum compensation based on length of service.

As to this matter, accordingly, the Tribunal considers that Egyptian law applied to the Applicant only as regards the assessment of the termination indemnity. The Respondent's obligations, in the event of "service-incurred injuries or disabilities", were as specified in the communication sent to him by the Agency on 13 October 1952.

13. The Tribunal must therefore ascertain whether the Applicant's condition arose in the course of and as a consequence of his employment with the Agency and whether, as a result, the Applicant became

entitled to the reimbursement of his medical expenses in accordance with the terms of the letter of 13 October 1952. The Tribunal has also to determine whether the Applicant's termination on medical grounds, decided on 3 August 1954, amounts to wrongful dismissal.

14. It was not until 1953 that the Agency became aware that the Applicant was suffering from an epileptic condition.

The Applicant, in his replies to questions on joining the service, had returned a negative reply to the question whether he had ever suffered from epilepsy. This, the Respondent alleges, was the wilful withholding of material information essential to any medical man seeking to reach a decision on the medical and health requirements of a staff member. The Tribunal does not consider that an Applicant for a post is necessarily withholding information, by returning such an answer to such a question, if he has been informed by his doctor only that he is suffering from "petit-mal"; for it is possible that many sufferers from "petit-mal" remain unaware that this is a form of epilepsy. Accordingly, on that issue, the Tribunal will abstain from passing judgement.

15. The Applicant, in his principal submissions, maintains that "from 1 May 1950 to the end of March 1953", he had "remained in perfect health". The Applicant claims that the first time he knew of his ill-health condition was in March 1953, when he "began to suffer from severe migraine headaches and attacks of giddiness".

But the Respondent has produced a copy of a cable despatched by the Applicant from Gaza on 30 January 1952, addressed to the Chief Administrative Officer at Beirut, in the following terms:

"Please buy one bottle Epanutine capsules medicine stop trade-mark Park Davis stop not available Gaza stop badly needed stop expected tomorrows plane for Radicopoulos stop thanks stop"

The Respondent has also shown that, when these capsules are supplied, there is enclosed with them a printed form of medical guidance in the usual way in the following terms:

"'Epanutin' is anti-convulsant with relatively little hypnotic effect and is used in the control of epilepsy. It will prevent or greatly decrease the incidence and severity of convulsive seizures in a substantial percentage of cases without hypnotic or narcotizing effects".

It is thus clear to the Tribunal that, whatever the Applicant may have known in 1950, he clearly knew in January 1952 that he badly needed an anti-convulsant used in the control of epilepsy. From this, it follows that the Applicant's claim that the first time he knew of the illness was when he developed migraine headaches and attacks of giddiness in March 1953 is as difficult to understand as is his statement that he had remained in perfect health until March 1953.

16. The Respondent's first knowledge of the condition of the Applicant is contained in medical certificates and correspondence in 1953.

The Applicant claims that he entered the Papayoannou Hospital in Cairo for treatment on 2 March 1953. In fact, however, that is the date on which he re-entered that hospital, for there has been produced a certificate dated 25 February 1953 saying that he "would re-enter". A further certificate was also submitted dated 17 February. This certificate, like another from a further medical adviser dated 26 March 1953, gives a clinical diagnosis of Left Jacksonian Fits of the duration of two years.

On 15 April 1953, the Applicant submitted an account for doctors' fees and hospital fees with a request for reimbursement by the Agency, which accounts were returned by the Agency on 17 April, on the ground that his medical condition was not considered by the Health Division to be service-incurred and therefore that the fees in question were not the responsibility of the Agency. This statement was confirmed in a letter dated 24 April 1953.

17. On 15 May 1953, the Applicant first mentioned to the Health Division the alleged car accident in May or June 1950 in which he had been "struck on the head and lay unconscious for a few seconds or minutes".

The Tribunal notes that it was not until this date that any record of any such an alleged accident appears anywhere. In the statement of 27 May 1953 describing this incident, the Applicant indicated "the only person who may remember and certify this is Mr. Yacoub Zarifa who was my assistant". The Applicant further referred to this matter in a letter dated 24 December 1953 in which he said "I can easily prove it happened in 1950".

The only evidence submitted as proof by the Applicant is a document by the same Yacoub T. Zarifa, dated 20 January 1954, in the following terms:

"To whom it may concern

"This is to certify that some time during May or June at the time when the UN took over from the Quakers here in Gaza Mr. NICOLA RADICOPOULOS was paying out in the camps the salaries together with Mr. Kanaan Abu Khadra and when he was back to the Office, Mr. Radicopoulos stated that a shock accident happened to them in the car".

Respondent submitted additional material on this matter as follows:

(a) A further statement by the aforesaid Mr. Y. T. Zarifa, dated 8 March 1956 (to clarify his earlier statement of 20 January 1954) in the following terms:

"With regard to the statement I made on 20th January 1954, I wish to make it clear that I did not personally witness any accident or incident and merely remember Mr. Radicopoulos informing me that some form of accident had happened to him while he was out on a salary paying trip".

(b) A statement, dated 9 March 1956, by Mr. W. R. Lucas, under whom the Applicant served from the time of his recruitment until September 1950, in the following terms:

"I never heard of any vehicle accident in which Radicopoulos was involved".

The Tribunal was further seized of evidence, submitted by the Respondent, as to the existence, prior to May 1950, of a condition in the health of the Applicant, for instance:

(a) Mr. W. R. Lucas, present Field Common Services Officer, Jordan; stated:

"It was known to me in Gaza during the period up to May 1st, 1950 and in Cairo and Gaza thereafter that he suffered from an apparent nervous disability which was reflected in attacks of a stiffening of the body and a loss of speech. The attacks only lasted a few seconds in each case. I cannot say how regular they were but they were a factor in dealing with him".

(b) Mr. Y. T. Zarifa, present Field Officer, Gaza, stated:

"To the best of my knowledge and belief, prior to May 1950, during the time Mr. Radicopoulos and I were working in Gaza with the Quakers, I recall that he was having a slight attack, with a noise in the throat, of what he was calling nervousness with a very slight movement forward. This attack used to last for a second. He used not to miss anything of the conversation during this attack. This attack was, as I remember, once or twice a week".

The Respondent also produced:

(a) A report by Dr. Yule, Field Health Officer, Gaza, as follows:

"I have observed the above since my arrival in Gaza in September 1950. Although he never consulted me with regard to his health I can state that he has suffered from 'petit-mal' since the above date. Frequently in my office he has had as many as 2-3 fits in the course of 15 minutes. The fits last for about 2-3 seconds and on becoming again normal there is no loss of the trend of the conversation".

(b) A report by Dr. L. Findlay, Chief of the Health Division, which stated:

"On the 30th January 1956 I had an occasion to meet Mr. Alwin Holtz of the Administration staff of the American University of Beirut. In 1950 Mr. Holtz had been a member of the Quaker Unit in Gaza and in May 1950 he was transferred for a short period of

service to UNRWA. In our discussion Mr. Holtz referred to several of his former colleagues of that period in Gaza and mentioned his association with Mr. Radicopoulos with whom I gathered he had enjoyed a very good working relationship. Without suggestion on my part Mr. Holtz made a conversational reference to the peculiar nervous attacks which he associated with Mr. Radicopoulos. Under the circumstances this reference was of interest to me, and in answer then to my direct questions on the subject Mr. Holtz stated that these attacks occurred frequently, that they occurred prior to May 1950 and that the attack consisted of a momentary stiffening of the body”.

The Tribunal, from a review of the material facts recited in the preceding paragraphs, is unable to reach any conclusion that the epilepsy from which the Applicant is suffering was caused by any event in the service of UNRWA.

18. Later, on 7 July 1954, the Applicant was taken to the Greek Hospital, after an incident which had happened in the office. In a statement he made to the police at that time, he said “While I was in my office, I tried to sit on a chair. I put my arm on the arm of the chair. The arm of the chair broke and I fell on the floor, hitting my head”. In reply to a police question, he stated: “There was nobody there at the time”. But, says the Respondent, the incident was in fact witnessed by Mr. Issa Dauleh, a Palestinian refugee who was en route at the time through Cairo for placement in Qatar. Mr. Dauleh’s statement is as follows:

“I went in Mr. Radicopoulos’s office, and he took my Laissez-passer. Mr. Radicopoulos rang the bell in order to order some coffee for me. He then sat in a chair opposite me in front of the desk, and then, while he was reading my Laissez-passer, I saw him having a seizure and leaning on the side of the chair. The arm gave way and Mr. Radicopoulos fell toward the desk. I tried to prevent his falling on the floor, but could not do so; because Mr. Radicopoulos was heavy and the accident happened suddenly. Mr. Radicopoulos was so near the desk when he fell that I think he must have hit on the desk, but it all happened so fast that I am unable to describe the exact details.”

In the light of all the facts and all the material quoted above, the Tribunal is unable to reach the conclusion that this accident was service-incurred.

19. In the preceding paragraphs, the Tribunal has recorded the evidential material as to happenings and the conclusions to be drawn therefrom. In doing so, the Tribunal quite deliberately separated such material from the medical evidence.

The Tribunal had the benefit of copies of all the certificates and

expressions of view of eminent members of the medical profession, both privately employed by the Applicant and employed by the UNRWA in his interests, and those of the Health Division of the UNRWA. It was decided to terminate his employment for reasons to do with his state of health.

The Tribunal notes that, as early as 5 December 1953, the Applicant himself proposed that he should have a complete check on his health status to determine whether he was fit to continue work or should "be terminated for health reasons".

The Respondent terminated the Applicant's appointment on the basis of advice given to the Director-General by the Chief of the Health Division. The Tribunal has taken note of the detailed account of the manner in which the Chief of the Health Division was led to give this advice. The lengthy document dated 15 March 1956, written by this official, gives the whole of the Applicant's medical history and describes the efforts made, the diagnoses reached, and the conclusions formed by the various surgeons, neurologists, doctors, etc. consulted. The Tribunal cannot accept that, in taking the decision based on the evidence and recommendations before him, the Director-General was prejudiced or actuated by improper motives. Consequently, it cannot be said that the decision to terminate the Applicant's appointment amounted to wrongful dismissal.

20. The Tribunal further notes that the Joint Appeals Board, consisting of a Chairman and two persons, one of whom was nominated by the Applicant, reached an unanimous conclusion rejecting the Applicant's claims for cancellation of the decision to terminate him or, alternatively, for compensation. The Board, however, recommended:

"should he now be found physically fit, preferably by the same Cairo doctors, and should there be a post available for him, that his employment by the Agency be subject to (sic) on the following conditions, that he sign a waiver relieving the Agency from all claims against it.

"Finding no legal justification for any of his claims, our recommendation is based solely on humanitarian grounds, which we strongly urge the Director to consider in this particular case".

This recommendation was accepted by the Director and the Agency then informed the Applicant, in a letter dated 21 June, that it was prepared to arrange for him to have a full medical examination. In subsequent correspondence, the Director pointed out that, although in no way bound to accept the subsidiary recommendation, he had decided to do so on humanitarian grounds. Accordingly, the Agency was prepared to arrange that the Applicant be examined by a board of three doctors, one chosen by the Agency, one by the Applicant and the third jointly selected by those two after their appointment, while

those three doctors would be authorized, if they considered it necessary, to secure a further medical specialist's opinion. This offer the Applicant was not prepared to accept.

21. For these reasons the Tribunal rejects the application.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Sture PETRÉN
Vice-President

Mani SANASEN
Executive Secretary

Geneva, 23 August 1957

Statement by Mr. R. Venkataraman

I have read the final draft of the judgement in this case in English and I concur with the decision.

(Signature)
R. VENKATARAMAN

Geneva, 22 August 1957
