

XV. In view of the decisions taken above, the Tribunal finds that it is not necessary for it to pass judgement on the other conclusions of the Applicant.

*(Signatures)*

Suzanne BASTID

*President*

H. GROS ESPIELL

*Member*

Francis T. P. PLIMPTON

*Member*

*New York, 11 October 1966.*

L. IGNACIO-PINTO

*Alternate Member*

N. TESLENKO

*Executive Secretary*

### Judgement No. 104

*(Original : English)*

**Case No. 107 :  
Gillead**

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

*Summary dismissal for serious misconduct of a staff member holding a permanent appointment.*

*Conception of serious misconduct justifying summary dismissal under the terms of Staff Regulation 10.2.—Applicant's conduct examined to determine whether it constituted serious and patent misconduct.—Obligations imposed upon staff members by Staff Regulations 1.2, 1.4, 1.5 and 1.9.—Held that there was patent and serious misconduct.*

*Consideration of the question whether the Respondent should not have presented the case for the advice of the Joint Disciplinary Committee.—Seeking the advice of that Committee is appropriate in the normal course.—Tribunal unable, in view of the circumstances of the case, to disagree with the summary dismissal.*

*Application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; Mr. Venkataraman, Vice-President ; Mr. Louis Ignacio-Pinto, alternate member ;

Whereas, on 8 June 1966, Le Roy Foster Gillead, a former staff member of the United Nations and the Applicant herein, requested the President of the Administrative Tribunal to designate a counsel to assist him in drawing up and submitting an application to the Tribunal ;

Whereas, in pursuance of Administrative Instruction ST/AI/163, the President designated as counsel Miss Norma Roth, a staff member of the United Nations ;

Whereas, at the Applicant's request and with the Respondent's agreement,

the President extended to 15 October 1966 the time-limit for the filing of an application ;

Whereas, on 15 October 1966, the Applicant filed an application the pleas of which read :

“ The Applicant requests the Tribunal :

“ (a) To order the rescinding of the decision of 19 November 1965 by which the Secretary-General dismissed the Applicant summarily from his post for serious misconduct under the terms of Staff Regulation 10.2 ; and

“ (b) To order the payment of full salary to the Applicant from the date of dismissal to the date of the Tribunal's judgement.

“ The Applicant also requests the Tribunal, in the event that the Secretary-General decides to exercise the option given to him under article 9, paragraph 1, of the Statute of the Tribunal :

“ (a) To order the payment of full salary to the Applicant from the date of dismissal to the date of the Secretary-General's decision to exercise his option under article 9, paragraph 1 ; and

“ (b) To fix at the equivalent of one year's net base salary the amount of compensation to be paid to the Applicant under article 9, paragraph 1. ” ;

Whereas the Respondent filed his answer on 16 November 1966 ;

Whereas the Applicant filed written observations on 9 January 1967 ;

Whereas, on 7 February 1967, the President requested the Respondent to produce the Applicant's non-privileged confidential file, which contained documents referred to in the contested decision ;

Whereas, the Respondent produced the file on 15 February 1967 ;

Whereas, on 27 February 1967, the Applicant submitted an additional document ;

Whereas the facts in the case are as follows :

The Applicant joined the United Nations Secretariat in 1950 under a temporary-indefinite appointment. He first served as a guard and then as a clerk at the G-2 level. In 1953 he was promoted to the G-3 level. In 1955 he received a permanent appointment. In 1957 he was promoted to the G-4 level and assigned as a statistical clerk to the Department of Economic and Social Affairs. In 1963 and again in 1964 the Applicant protested against the fact that he had not been recommended for promotion to the G-5 level by Working Group I of the Appointment and Promotion Panel. After reviewing the case, the Group found that there was not sufficient ground for changing its initial recommendation. On 13 September 1963 the Applicant addressed to the Under-Secretary of the Department of Economic and Social Affairs a memorandum relating to the periodic reports issued on his work from 21 October 1959 to 2 March 1963, which had rated him as “ an efficient staff member giving complete satisfaction ”. In that memorandum the Applicant wrote, *inter alia*, that :

“ Due to the predominance of one ethnic group among the statistical clerks in this Bureau [i.e., the Bureau of General Economic Research and Policies to which the Applicant had been assigned], I strongly feel that I cannot, and have not been evaluated or rated objectively by either the First (my Supervisor) or Second (the Bureau's Director) Reporting Officers in the above-mentioned subject Periodic Reports. Therefore, my career development and promotional opportunities have been frustrated ; and, in the evaluations

made, my over-all qualities, qualifications, capabilities, duties and performance are under-rated and de-emphasized. Separate discussion with the above Officers on 3 September, has not altered my feelings."

The Applicant also recalled that "while working full time at the United Nations... I earned my Bachelor of Science degree...". He noted that he had not been recommended for promotion and added:

"It must be of some significance then, that of the twenty-nine clerks assigned here (1955-2 March 1963) the only consistent factor observed by me in regard to the promotion of statistical clerks, is that there appears to be a definitive cultural or racial identity between the Reporting Officers or the Economists whom they consult, and the statistical clerks who are promoted. Based on the Bureau's promotional reputation, the only consistent factor between the Officers and Economists and three qualified and eligible statistical clerks not recommended for promotion during these years, appears to be a lack of a definite cultural or racial identity."

After a lengthy exchange of correspondence between the Applicant and various officials, on 17 July 1964 the Acting Director of Personnel sent the Applicant a memorandum which stated *inter alia*:

"...the question of alleged bias has been thoroughly investigated by the Office of Personnel and found to be baseless and unjustified. It was completely injudicious on your part to make such irresponsible accusations without having positive evidence to substantiate them. Besides the injustice involved in such accusations towards your colleagues which is inconsistent with the spirit of the Charter, it is equally the responsibility of the Office of Personnel to protect staff members against unfounded accusations."

"You should therefore refrain from a repetition of irresponsible accusations against other staff members in the Secretariat. Otherwise, serious doubt will be cast on your judgement and your attitude toward your work, and it might well prove necessary for disciplinary action to be taken."

On 27 October 1964 the Applicant withdrew an appeal which he had submitted to the Joint Appeals Board on 25 June 1964. On 12 July 1965 the Applicant, who, in the meantime, had acquired an additional university degree—that of Bachelor of Laws—was informed by the Under-Secretary, Director of Personnel, that the Secretary-General had approved the inclusion of his name "on the register of staff members eligible for promotion to the Assistant Officer (P-1) level, as opportunity permits."

On 13 November 1965, the Applicant brought to the Delegation Station of the Distribution Section a package of sealed envelopes for distribution to delegations of the Member States. The envelopes contained a set of papers reproduced by the "ditto" process and bearing the following heading:

*"Restricted and confidential"*

United Nations  
General Assembly  
Twentieth session  
Fifth Committee  
Agenda item 84 (a)

Chairman of the Delegation  
Member States only  
  
15 November 1965  
*English only*"

The covering page, including a foot-note, read as follows :

" It is believed that the conditions of service for your nationals of the Secretariat Staff is of the interests of the United Nations and of the Member States.

" Mindful of this, the Organization's aims, its interests and of the ' Measures . . . on the Elimination of All Forms of Racial Discrimination ', and ' . . . Religious Intolerance, ' the recurring Nazi War Trials may serve as a reminder that, a responsible official's complicity by silence or by non-feasance, is not a defense for his lack of sensitivity, with or without duress, for the ' . . . dignity and worth of the human person . . . ' in the United Nations—Secretariat—or elsewhere.

" In this connexion and that all Staff Members take an oath to further the aims of the Organization, the facts in the attached documented case, entitled *Agenda Item 84* and dated as above, can be used to substantiate the need for improving the conditions of service for the staff in the Secretariat,<sup>1)</sup> from the implicit abuse of authority. "

" <sup>1</sup> Fifth Committee, 1035th meeting. United Nations General Assembly, Eighteenth Session, Official Records, the full statement by the distinguished representative of Colombia, Mr. Arboleda, former staff member. "

The main document in the set of papers was similarly headed and had the following title including a foot-note :

#### AGENDA ITEM 84

" Personnel questions :

" (a) Composition of the Secretariat-General Service category

" A comparison of the Composition

of the

Department of Economic and Social Affairs' Statistical Clerks

between the

Bureau of General Economic Research and Policies \*

and the

Statistical Office "

" \* Renamed as Centre for Development Planning, Projections and Policies, ST/SGB/128/Amend. 4, 14 October 1965, and referred to hereinafter as the Bureau. "

After referring in turn to article 101 of the Charter, to Staff Regulation 4.2 and Staff Rule 104.5, and to the Preamble and Article 1 of the Charter, the document stated :

" . . . with regard for the ' Composition of the Secretariat, ' relevant excerpts, *Annex I*, from the Official Records of the Committee's 1035th, 1039th and 1043rd meetings, should be recalled with particularity—to compare the eight year pattern of ethnic and national composition of competent and qualified statistical clerks in the established posts between the Bureau of General Economic Research and Policies and the Statistical Office.

"... Both of these sub-departments are in the Department of Economic and Social Affairs. Yet, the Bureau's composition of competent and qualified statistical clerks have been overwhelmingly from an ethnic group of one race, one culture, one nationality, and one sex, *Annex II...*"

While the document did not give the Applicant's name, it referred to his discussions of 3 September 1963 and to his memorandum of 13 September 1963 and quoted extracts from the ensuing correspondence, in particular the memorandum dated 17 July 1964 from the Acting Director of Personnel. The document went on to say, *inter alia*, that :

"The ... insensitive responses below the Secretary-General by responsible officials to eight years of suspicious fortuitousness for as wide a 'Composition of the Secretariat' as possible, have adversely affected the reasonable expectations and aspirations of the concerned Secretariat staff as well as the interests and image of the United Nations."

The document suggested that the Fifth Committee should submit a draft resolution on the matter to the General Assembly and concluded with the following paragraph :

"... Finally, in the light of all the foregoing, the Bureau-created 'conditions of service' continues to deny '... the equal and inalienable right of ... everyone... to just and [equally] favourable conditions of work...' <sup>4</sup> in the United Nations Secretariat. Therefore, the appropriate action against each of this organ's officials who, through their mal, mis or non-feasance, have created or permitted these 'conditions of service,' <sup>5</sup> should be as the Committee deems necessary."

The foot-notes relating to the paragraph quoted above read :

"<sup>4</sup> United Nations Universal Declaration of Human Rights, paragraph 1 of its Preamble and Article 23 (1).

"<sup>5</sup> That is, the continual denial to the concerned staff of the multi-cultural environment in which to exchange their ideas and information while engaged in their United Nations work. Further, the parochial conditions here, blocks the promotion prospects for the prospective and present non-predominant clerks, by seniority alone."

The following annexes were attached to the document :

- "I. Excerpts from the United Nations General Assembly, Eighteenth Session, Official Records, Fifth Committee, 1035th, 1039th and 1043rd meetings.
- "II. Composition of the Statistical Clerks in the manning table posts for the Bureau of General Economic Research and Policies, as at 31 August 1958-1965.
- "III. The Bureau of General Economic Research and Policies' First Reporting Officers for each Statistical Clerk, 1954-1965.
- "IV. The staff member's 10 July 1964 Letter of transmittal to the Secretary-General."

After an investigation concerning the origin of the document the Applicant was interrogated on 17 November 1965 in the office of Mr. Thampi, Executive Officer of the Department of Economic and Social Affairs. The interrogation was recorded in a note reading as follows :

*“ Statement made by Mr. Leroy Gillead  
on 17 November 1965 at 10.00 a.m.*

“ At 10.00 a.m. on Wednesday, 17 November, Mr. Leroy Gillead met in Mr. Thampi's office with Mr. Thampi, Mr. Mills [Senior Officer, Office of Personnel] and Mr. Schoellkopf [Deputy Executive Officer of the Department of Economic and Social Affairs].

“ He was asked the following question : ‘ Is Mr. Gillead prepared to tell us orally what he knows about the origin of the document entitled ‘ Agenda Item 84 ’ dated 15 November 1965 ? ’

“ Mr. Gillead made the following statement which he requested be taken down verbatim :

“ As I understand the duties and obligations under the staff regulations, each staff member must act with only the interests of the Organization in mind. Therefore, in the earnest conviction of a staff member who believes that in his Bureau there is an apparent violation of the conditions of service from the implementation of the provisions under article 1 and 101 of the Charter ; and he communicates over five years of such facts to the proper authorities, without any corrective action on their part for over two years ; and when such serious and sensitive conditions involving apparent racial favouritism have been communicated to the Secretary-General in writing ; and there is nothing on the record from which it may be inferred that the Secretary-General has received the communication under these extraordinary circumstances ; or that he has endorsed the action or inaction of his subordinates for their interpretation and/or implementation of the aforementioned Articles ; then it is not just the staff member's duty and obligation but his loyalty to the Secretary-General in such serious matters, as well as for the interests and aims of the Organization, which should compel the staff member to use the utmost discretion, reasonable steps and methods, in good faith and in furtherance of the interests of the Organization/Secretariat to communicate the facts of an eight-year pattern of the alleged violation to the Organization's Governing Body who can deal with the situation appropriately or bring it finally to the attention of the Secretary-General. Such action, it is believed, is preferred than to allow the situation to continue unabated and in frustrating the image, aims and interests of the Organization.

“ It has been with the above in mind that this staff member acted in every respect with regard to the dittoed document entitled ‘ Agenda Item 84 ’ dated 15 November 1965.

“ With regard to this document, each and every phase of it was accomplished by this staff member. ”

On 19 November 1965 the Director of Personnel addressed to the Applicant a memorandum reading :

“ 1. I refer to your signed statement dated 17 November 1965 concerning the document which you caused to be distributed to the Chairmen of Member Delegations to the General Assembly. I note further that you have accepted responsibility for its contents.

“ 2. In view of the earnest efforts which have been made by senior officials of the Secretariat over long periods of time not only to investigate the grave charges you have persisted in making, and to consult with you

and reason with you concerning your personal preoccupations, but also to improve your own position in the Secretariat, it could only be a cause of great disappointment to learn that you had recklessly circulated to the General Assembly a document containing similar offensive, irresponsible and unsubstantiated charges against offices and officials of the Secretariat. Your document in fact quotes an earlier warning to you from the Acting Director of Personnel that these same accusations were unfounded and that their repetition could necessitate disciplinary action. More seriously still, your imitation of a General Assembly document heading, your reference in that heading to a Fifth Committee agenda item on Personnel Questions, and your clearly unauthorized use of the official channels for distribution of documents to delegations could have given the impression that an official submission was involved. Finally, quite apart from the objectionable character of much of the matter contained in your paper, you included within it a suggestion that the Fifth Committee submit to the General Assembly a resolution on the issue you claimed to present—a proposal not merely unauthorized by the Secretary-General but which by its very nature no staff member could make on his individual initiative without threatening to undermine Secretariat policies and disrupt General Assembly business. Equally, your action proved to be a source of real embarrassment to the Secretary-General.

“ 3. Accordingly, I regret to inform you that your actions in circulating irresponsible charges through official channels as a purported document relating to official subjects and containing on your personal initiative a proposal for General Assembly action all severally constituted grave violations of Staff Regulation 1.4 which reads as follows :

‘ Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status. ’

Your actions also involve an offense against Staff Regulation 1.5 which in its relevant part states :

‘ Staff members shall exercise the utmost discretion in regard to all matters of official business. ’

“ 4. As these violations without any doubt constitute serious misconduct within the meaning of Staff Regulation 10.2, the Secretary-General has decided that you should be summarily dismissed for serious misconduct under the terms of that regulation to take effect on your receipt of this notification.

“ 5. Bearing in mind your fifteen years of satisfactory service, the Secretary-General has decided, however, to recommend under Article 11 of the Regulations of the United Nations Joint Staff Pension Fund that you should be granted a lump sum equal to the benefits to which you would have been entitled under Article 10 had you ceased to be employed for reasons other than summary dismissal. ”

On 2 December 1965 the Applicant lodged an appeal under Staff Rule 111.3 (c) against the decision of summary dismissal notified to him by the Director of Personnel. On 2 May 1966 the Joint Appeals Board submitted to the Secretary-General its report on the case. The sections of the Report entitled "Considerations" and "Conclusions and Recommendations", including the foot-notes relating thereto, read as follows :

*" Considerations*

" 16. The facts of the case are not in dispute. During the twentieth session of the General Assembly, copies of an anonymous paper bearing close resemblance to General Assembly documents were circulated through the U.N. distribution channel to delegations of the Member States. The paper purported to show the racial imbalance in the staffing of a certain unit of the Secretariat and contained a proposal that the General Assembly take appropriate action to correct the situation. When the source of the document was traced to the appellant, he acknowledged its authorship and accepted full responsibility for its distribution. Thereupon, he was summarily dismissed for serious misconduct.

" 17. It is clear that the decision of summary dismissal came as a direct consequence of the distribution of the dittoed document for which the appellant alone was responsible. The Board notes that the appellant has not attributed any improper motive to the disciplinary action except to suggest that the Administration may have resorted to the drastic measure of summary dismissal out of a sense of impatience and irritation at the charges and allegations that he documented in the dittoed paper. In the opinion of the Board, the appellant's complaints as set out in the document are not relevant to the case under consideration. The Board feels that the appellant's actions can be and should be judged on their merits. Thus, the issue before the Board narrows down to whether the decision of summary dismissal is justifiable on the basis of the document and the manner of its distribution, regardless of its contents.

" 18. It can hardly be disputed that, in producing and causing to be distributed to delegations of the Member States an imitation document containing information regarding internal administrative matters and an unauthorized proposal for General Assembly action, the appellant has conducted himself in a manner unbecoming of an international civil servant. There is also no question that prompt and effective action was required for the Secretary-General to cope with such a flagrant breach of discipline. The Secretary-General chose to apply the measure of summary dismissal as the means of bringing about the immediate separation of the appellant from the service of the Organization.

" 19. The Board recognizes that the Secretary-General's action was taken under the authority of Staff Regulation 10.2 which permits the summary dismissal of a staff member for serious misconduct.<sup>1</sup> Summary dismissal, by

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<sup>1</sup> Staff Regulation 10.2 provides, *inter alia*, that the Secretary-General 'may summarily dismiss a member of the staff for serious misconduct'.



definition, dispenses with recourse to the disciplinary procedure. This is recognized in Staff Rule 110.3 (b).<sup>2</sup>

" 20. At the same time, the Board is aware of the guidelines laid down by the Administrative Tribunal for the purpose of defining the concept of serious misconduct which warrants summary dismissal. According to the Tribunal, the summary dismissal procedure was intended to deal with 'acts obviously incompatible with continued membership of the staff' and the normal disciplinary procedure should be dispensed with only in cases 'where the misconduct is patent and where the interest of the service requires immediate and final separation'.<sup>3</sup>

" 21. The Board unanimously agrees that in the present case the appellant's conduct was of such a nature as may warrant the conclusion that he should be separated from the service. It agrees that his misconduct was patent and that it obviously was incompatible with continued service in the Secretariat. The Board does not feel, however, that the evidence placed before it has conclusively shows that the interest of the United Nations required immediate and final separation effected by summary dismissal. The Board therefore notes with regret that the Secretary-General did not consider that the interests of both the Organization and the staff member might have been better served if the staff member had been suspended from duty while the case was presented for the advice of the Joint Disciplinary Committee.

#### *" Conclusions and Recommendations*

" 22. The Board is nevertheless of the unanimous opinion that Staff Regulation 10.2 and Staff Rule 110.3 (b) cited above invest the Secretary-General with the discretionary authority to determine whether 'serious misconduct' has occurred and to impose summary dismissal accordingly. In the present case he has invoked that authority. The Board does not find that either that authority or the motivation for its exercise has been effectively challenged. For these reasons, the Board unanimously decides to make no recommendation in support of the appeal."

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<sup>2</sup> Staff Rule 110.3 (b) reads :

' Except in cases of summary dismissal, no staff member serving at Headquarters shall be subject to disciplinary measures until the matter has been referred for advice to the Joint Disciplinary Committee ; provided that referral to the Joint Disciplinary Committee may be waived by mutual agreement of the staff member concerned and the Secretary-General ' " .

<sup>3</sup> See Judgements of the United Nations Administrative Tribunal, Nos. 29, 31, 33, 34, 35, 36, 37 and 53. "

On 27 May 1966, the Director of Personnel transmitted to the Applicant a copy of the report of the Joint Appeals Board and informed him that the Secretary-General had decided " to maintain the administrative decision of summary dismissal ". On 15 October 1966, the Applicant filed the application referred to earlier.

Whereas the principal contentions of the Applicant are :

1. In adopting the present text of Staff Regulation 10.2, the General Assembly intended that summary dismissal should be imposed only in exceptional cases when the interest of the service required immediate and final separation, and not in the majority of disciplinary cases. This intention had been respected by

the Secretary-General in previous cases involving misconduct more serious than the one with which the Applicant was charged.

2. While the desirability of applying a more or less severe disciplinary measure is a matter within the Secretary-General's discretion, his characterization of an action as "serious misconduct", which alone justifies summary dismissal without referral to the Joint Disciplinary Committee, is subject to judicial review by the Administrative Tribunal.

3. The Administrative Tribunal has laid down the rule that the disciplinary procedure may be dispensed with only in those cases where the misconduct was patent and where the interest of the service required immediate and final separation.

4. The interest of the United Nations did not require immediate and final separation of the Applicant from service by summary dismissal and would have been better served if the Applicant had been suspended from duty while his case was presented for the advice of the Joint Disciplinary Committee.

5. The Secretary-General does not have discretionary authority to impose the severe penalty of summary dismissal in cases where the interest of the service does not require immediate and final separation.

6. If the determination that the interest of the service requires summary dismissal is left entirely to the Secretary-General's discretion, the selection of the cases in which the most severe penalty is to be applied may become entirely arbitrary.

Whereas the principal contentions of the Respondent are :

1. The summary dismissal of the Applicant was consistent with the authority and discretion expressly reserved to the Secretary-General in Staff Regulation 10.2.

2. The question at issue is not whether the Tribunal considers summary dismissal to have been more or less justified in this case than in some previous cases, but whether the Secretary-General could reasonably have concluded that the Applicant's actions constituted serious misconduct warranting immediate dismissal in the Organization's interest.

3. The very nature and purpose of Staff Regulation 10.2 require recognition of the Secretary-General's responsibility and discretion to evaluate the seriousness of a staff member's misconduct as well as its compatibility or incompatibility with continued service, and to decide on the action to be taken in the Organization's interest.

4. The Applicant has not established that the contested decision was improperly motivated or was arbitrary.

The Tribunal, having deliberated from 3 to 14 April 1967, now pronounces the following judgement :

I. The Applicant requests the Tribunal "to order the rescinding of the decision of 19 November 1965 by which the Secretary-General dismissed the Applicant summarily from his post for serious misconduct under the terms of Staff Regulation 10.2".

The Applicant maintains that "the General Assembly intended that summary dismissal should be imposed only in exceptional cases when the interest of the service required immediate and final separation, and not in the majority of disciplinary cases." He claims that "in the present case, the interest of the service did not require the Applicant's immediate and final separation", that "the alleged misconduct was the only blemish on his long performance record"

and that he acted "naively and misguidedly, in the sincere conviction that he was promoting the best interests of the United Nations". He holds that "there would not have been any real risk involved in referring the Applicant's case to the Joint Disciplinary Committee for its advice" and that the Secretary-General could have made use, if necessary, of his right to suspend the Applicant from duty.

The Applicant also refers to the case dealt with in Judgement No. 74. He points out that he "is not a professional officer, is charged with only one act of misconduct—an act which was far less embarrassing to the Secretary-General [than the act referred to in Judgement No. 74], which did not come to the attention of the public or Press, and which dealt with a matter of internal administration rather than with a highly sensitive political issue."

II. On the other hand, the Respondent contends that "the very nature and purpose of Staff Regulation 10.2 require recognition of the Secretary-General's responsibility and discretion to evaluate the seriousness of a staff member's misconduct as well as its compatibility or incompatibility with continued service, and to decide on the action to be taken in the Organization's interest". Nevertheless, the Respondent points out that the letter of dismissal explaining the reasons for the decision taken by him "refutes the Applicant's general allegation that the Secretary-General was acting arbitrarily".

III. In earlier judgements the Tribunal has held that "misconduct punishable under Staff Regulation 10 could be either misconduct committed in the exercise of a staff member's professional duties or acts committed outside his professional activities but prohibited by provisions creating general obligations for staff members". The Tribunal has also held that in all such cases it is "called upon to consider whether the allegations against the Applicant constituted serious misconduct justifying his summary dismissal by the Secretary-General without reference to the Joint Disciplinary Committee". The Tribunal has observed that "the conception of serious misconduct... was introduced... to deal with acts obviously incompatible with continued membership of the staff", and "the disciplinary procedure should be dispensed with only in those cases where the misconduct is patent and where the interest of the service requires immediate and final dismissal".

Accordingly, in dealing with the present application, which maintains that the Secretary-General has made improper use of the powers he has under Staff Regulation 10.2, the Tribunal must first determine whether the conduct with which the Applicant is charged can be described as "serious misconduct", and whether that misconduct was patent.

IV. The Tribunal notes that the communication of the Director of Personnel of 19 November 1965 informing the Applicant of his summary dismissal described the acts of which he was accused as "actions in circulating irresponsible charges through official channels as a purported document relating to official subjects and containing on your personal initiative a proposal for General Assembly action...". The Tribunal observes that the Applicant is accused of having circulated to the delegations of Member States, through the channels for the distribution of official documents, a set of papers whose external presentation and heading was similar to that of General Assembly documents. Those papers contained the views of a staff member—not named—on the composition of the staff of the Bureau of General Economic Research and Policies, an account of the representations

he had made, the answers he had received from senior officials of the Organization and a suggestion that the Fifth Committee should submit to the General Assembly "a resolution declaring that the ethnic and national composition of statistical clerks in this Bureau, is in direct contravention of the ethics, spirit, letter and intent of the Preamble and Article 1 of the Charter."

The Applicant, when called upon by the Administration to explain what he knew about the origin of those papers, acknowledged in a statement made on 17 November 1965 before three senior officials that he was solely responsible for their preparation and circulation. He explained that he had felt obliged "to communicate the facts of an eight-year pattern of the alleged violation to the Organization's Governing Body who can deal with the situation appropriately or bring it finally to the attention of the Secretary-General".

V. The Tribunal notes that the Applicant, who had been employed by the United Nations since 1950, rose to the level of G-4 in the General Service category. During that period, the Applicant was attending courses of study and obtained the degrees of Bachelor of Science in Accounting and Bachelor of Laws. On 12 July 1965 the Director of Personnel informed him that the Secretary-General had approved "the inclusion of [his] name on the register of staff members eligible for promotion to the Assistant Officer (P-1) level, as opportunity permits".

A staff member with such a record of service could not have been unaware that the Delegation Station of the Distribution Section is a service of the Organization that should not be used for private communications to delegations—even on the assumption that such communications were in themselves unobjectionable. The distribution of private papers through the official distribution channel by a staff member was possible only by an abuse of his position.

The papers were headed as follows :

*"Restricted and confidential"*

"United Nations  
General Assembly  
Twentieth session  
*Fifth Committee*  
Agenda item 84 (a)

"Chairman of the Delegation  
Member States only  
  
15 November 1965  
*English only*"

Agenda item 84 (a) referred to in that heading appeared in the agenda of the twentieth session of the General Assembly and concerned personnel questions. The Tribunal believes therefore that the external presentation of the papers was deliberately designed to mislead the delegations into thinking that they were official United Nations documents.

Though even a cursory reading of the papers would have indicated that they conveyed the personal views of an unnamed staff member on certain problems relating to a department of the Secretariat, yet the language employed questioning the methods of recruitment of staff for the Bureau of General Economic Research and Policies, charging the Bureau with violation of the "letter, ethics, intent and spirit of Article 1 and 101 of the United Nations Charter" and calling for Committee action against "each of [the Secretariat] officials who, through their mal, mis or non-feasance, have created or permitted these conditions of service",

could not but prejudice the minds of delegations of Member States against the Administration.

VI. The Tribunal notes that the Applicant's views on this point had been set forth on various occasions in writing and orally to his superiors in connexion with complaints about his position in the Organization. These views were considered by the Administration and detailed replies were made. On 17 July 1964, the Acting Director of Personnel drew the Applicant's attention to the fact that repetition of unfounded accusations could necessitate disciplinary action against him. Nevertheless, four months after he had been informed "that the Secretary-General has approved the inclusion of [his] name on the register of staff members eligible for promotion to the Assistant Officer (P-1) level", the Applicant took the action which led to his summary dismissal.

VII. The Tribunal notes that the action taken by the Applicant during the session of the General Assembly was deliberately planned to reach the delegations of the Member States, that its purpose was to cause them to take action either in the Fifth Committee or in the form of requests for explanation addressed directly to the Secretary-General or to his staff. It was, in short, an attempt to intervene in the relations between principal organs of the Organization. To achieve his ends, the Applicant deliberately used official channels and made his allegations in the form of a General Assembly document.

Under Staff Regulation 1.2, staff members are subject to the authority of the Secretary-General. Under Regulation 1.4, they "shall conduct themselves at all times in a manner befitting their status as international civil servants" and, under Regulation 1.5, they "shall exercise the utmost discretion in regard to all matters of official business". Besides, members of the Secretariat solemnly undertake (Regulation 1.9) to regulate their conduct "with the interests of the United Nations only in view".

The Tribunal finds therefore that in view of the obligations imposed upon staff members by the above provisions, the action taken by the Applicant in November 1965 constituted, by reason of the aims pursued and the means employed, misconduct, both patent and serious.

VIII. The next question that falls to be decided is whether the Respondent should not have presented the case for the advice of the Joint Disciplinary Committee.

The Applicant pleads that the interest of the United Nations did not require his immediate and final separation, and that the Respondent should have referred the case to the Joint Disciplinary Committee, suspending him from duty pending investigation. He argues that the delegations could not have mistaken the nature of the document, that the matter did not occasion any publicity and that there was no risk that he would distribute similar documents. The Applicant further refers to the opinion of the Joint Appeals Board to the effect that "the Board therefore notes with regret that the Secretary-General did not consider that the interests of both the Organization and the staff member might have been better served if the staff member had been suspended from duty while the case was presented for the advice of the Joint Disciplinary Committee."

IX. The Tribunal is of opinion that seeking the advice of the Joint Disciplinary Committee is appropriate in the normal course. But in this case, at the meeting which took place on 17 November 1965 with three senior officials, the

Applicant took full responsibility for the circulation of the papers. As noted earlier, he maintained, in a statement taken down verbatim at his request, that it was his duty "to communicate the facts of an eight-year pattern of the alleged violation to the Organization's Governing Body who can deal with the situation appropriately or bring it finally to the attention of the Secretary-General."

In view of the gross misbehaviour of the Applicant and his admission of responsibility for the action initiated by him and the timing of the action when the General Assembly was in session, deliberately to prejudice the delegations against the Administration, the Tribunal is unable to disagree with the summary dismissal of the Applicant under Staff Regulation 10.2 ordered by the Respondent.

X. For the foregoing reasons, the Tribunal rejects the Application.

*(Signatures)*

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

R. VENKATARAMAN  
*Vice-President*

L. IGNACIO-PINTO  
*Alternate Member*

N. TESLENKO  
*Executive Secretary*

Geneva, 14 April 1967.

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## Judgement No. 105

*(Original : English)*

**Case No. 104 :**  
**Francis**

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

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*Request for rescission of a decision of the Joint Appeals Board ruling that an appeal was not receivable.*

*Decision of the Board ruling that an appeal by a locally recruited staff member of a TAB field office was not receivable as it was not presented within the time-limits prescribed by Staff Rule 111.3.—Agreement between the Applicant and the Respondent requesting the Board to consider the appeal on its merits.—New decision of the Board reaffirming its earlier decision.*

*Question of the validity of the Board's decision.—Applicability to the Applicant of Staff Rules 101.1 to 112.8.—Scope of Staff Rule 111.3 relating to the time-limits for submitting appeals to the Board.—Its inapplicability to staff members working in offices away from Headquarters.—Lacuna in the Rules as to the time-limits for appeal procedures to be followed by these staff members.—Contested decision unacceptable.*

*Agreement between the Applicant and the Respondent.—Its force and validity.—Tribunal competent to hear the application on the substance.—Interpretation of the reservations made by the parties to that agreement.*

*Claim for award of compensation to the Applicant under article 9.2 of the Statute of the Tribunal.—Claim rejected.*