

(5) The Applicant knew that the employment offered by the United Nations would be of rather short duration—one year—without any assurance of extension, and that it might be terminated upon one month's notice during the existence of the contract ;

(6) The reason cited for rescinding the offer of employment made to the Applicant might have been properly invoked by the Respondent if the Applicant's appointment had taken effect ;

(7) The case could have been settled sooner if, when the Applicant expressed the intention of going to court, the Respondent had informed him of the appeals channels open to him ;

(8) The amount of the indemnity offered by the Respondent corresponded to the agreed indemnity to which the Applicant would have been entitled if his appointment had taken effect and had been terminated immediately thereafter in accordance with the Staff Regulations and the Staff Rules.

XI. Having regard to all the circumstances of the case and to the fact that the prolongation of the litigation is due mainly to the attitude taken by the Respondent, the Tribunal decides that the Respondent should pay to the Applicant, in addition to the indemnity offered by the Deputy Director of Personnel in his letter of 17 February 1964, the sum of \$1,000.

XII. The Applicant's request that the Respondent should take a favourable view of his future candidacy for a long-term mission may not be the subject of a decision of the Tribunal.

XIII. The rest of the application is rejected.

*(Signatures)*

Suzanne BASTID

*President*

CROOK

*Vice-President*

Francis T. P. PLIMPTON

*Member*

L. IGNACIO-PINTO

*Alternate Member*

Jean HARDY

*Acting Executive Secretary*

*Geneva, 20 April 1967.*

## Judgement No. 107

*(Original : English)*

**Case No. 106 :**  
**Miss B**

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

*Non-renewal of a fixed-term appointment on medical grounds.*

*Request for rescission of the decision not to extend the appointment.—Candidates for employment in the United Nations must meet the medical standards established*

*by the Secretary-General and applied by the Medical Director.—Medical Director's conclusion that the Applicant did not satisfy these standards.—Tribunal not competent to enter into the merits of this conclusion.—Nature of fixed-term appointments.—Request rejected.*

*Request for an order establishing a proper medical procedure under which the medical opinion of the Administration may be contested.—Need for such a procedure in cases where staff members have acquired rights.—Candidates for service with the United Nations have a different status.—Request rejected.—Desirability of including in the Staff Rules clear rules defining the procedure to be followed in cases where the medical opinion of the Administration is contested and the applicability of such rules.*

*Request for the deletion in the Applicant's official status file, of any mention of the refusal to extend her appointment "on medical grounds".—Distinction between certificates of service issued to staff members and administrative documents intended for internal circulation.—Tribunal not competent as to the latter.—Request rejected.*

*Request for award of compensation to the Applicant under article 9 of the Statute of the Tribunal.—Request rejected.*

*Application rejected.*

#### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 18 July 1966, Miss B, the Applicant in the present case, and, at the time, a staff member of the United Nations, requested the President of the Tribunal, under Administrative Instruction ST/AI/163, to designate a counsel to assist her in drawing up and submitting an application to the Tribunal;

Whereas, on 26 July 1966, the President designated as counsel Mr. Carlos R. Weiss, a staff member of the United Nations;

Whereas, at the Applicant's request and with the Respondent's agreement, the President extended to 1 October 1966 the time-limit for the filing of the application;

Whereas, on 28 September 1966, the Applicant filed an application requesting the Tribunal:

"(a) To rescind the decision of the Secretary-General under which her [fixed-term] appointment was not extended 'on medical grounds';

"(b) To adopt a proper medical procedure under which the staff member and the administration each appoints a doctor and these two doctors in turn nominate a third doctor to constitute a panel to consider cases of termination 'for reasons of health';

"(c) To fix at the equivalent of two years' net base salary of the Applicant the amount of compensation to be paid to the Applicant for the injury sustained should the Secretary-General within thirty days of the notification of the judgement decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in her case;

"(d) To delete, in the Applicant's official status file, any mention of the refusal to extend her a new appointment 'on medical grounds'."

Whereas, in addition, the Applicant requested the Tribunal to order, in view

of the circumstances of the case, that her name should be omitted from the published versions of the judgement ;

Whereas, on 18 November 1966, the Respondent filed his answer ;

Whereas, on 16 December 1966, the Applicant filed written observations on the Respondent's answer ;

Whereas, on 17 January 1967, the Chief of the Rehabilitation Unit for the Disabled, who had been the Applicant's supervisor in the United Nations, addressed a letter to the President of the Tribunal ;

Whereas, at the Applicant's request, the above-mentioned letter was annexed to the application ;

Whereas, on 30 January 1967, the Respondent filed a reply to the Applicant's written observations ;

Whereas, on 18 February 1967, the Applicant requested that the Chief of the Rehabilitation Unit for the Disabled be heard as a witness under the procedure provided in article 10 of the Rules of the Tribunal ;

Whereas, on 2 March 1967, the Applicant withdrew that request ;

Whereas the facts in the case are as follows :

On 3 August 1965 the Applicant, who was a candidate for employment with the United Nations, was interviewed by the Health Service of the Organization and filled out a medical questionnaire. She also signed a " Release of Medical Information " authorizing doctors who had treated her in the past to furnish the Health Service " with any information requested, without restrictions of any kind, from the records of my case ". By a mimeographed form dated 6 August 1965, the Medical Director of the Health Service informed the Office of Personnel that the Applicant " is medically cleared for *short-term* employment *only* ". The word " *only* " was added in ink to the mimeographed form. On 10 August 1965 the Applicant received a three-month fixed-term appointment as a clerk-stenographer in the Department of Economic and Social Affairs. On 25 August 1965 the Medical Director wrote to the Office of Personnel that :

" ... [the Applicant] was medically cleared for *short-term employment only* on 6 August 1965. It was necessary for us to request information from her physician in [her home country] and on the basis of his report, we wish to confirm that she should not be considered for other than a short-term appointment. "

A note in the Applicant's file dated 27 September 1965 specified that " the ' short-term ' employment referred to [by the Medical Director] is a period of not more than six months ". On 16 November 1965 the Applicant received a further three-month fixed-term appointment. On 17 November 1965 an Administrative Officer made the following notation in her file :

" On the occasion of the extension of [the Applicant's] contract, I once more checked with Mrs. Wolff [of the Health Service] as to whether a medical examination would be in order at the end of six months. She informed me that [the Applicant] has taken the full medical and did not meet the standard and that her situation is not something that will improve in such a short period. I have informed the staff member accordingly. "

On the same day, the Applicant's supervisor, who was Chief of the Rehabilitation Unit for the Disabled, addressed to the Administrative Officer referred to above a memorandum reading :

" Referring to our conversation on the telephone, I strongly request

that [the Applicant's] case be reconsidered and I recommend her to be employed on the permanent staff.

"During the last three months she has shown great skill, worked very hard, and has had the most cordial relations in the Unit. I believe that the best evidence of the state of health is the practical performance of work and in everyday life."

On 18 November 1965 the Administrative Officer replied to that memorandum as follows :

" CONFIDENTIAL

"1. In reply to your memorandum of 17 November 1965 concerning [the Applicant], I wish to confirm to you at the outset that we have in no way questioned [the Applicant's] competence or performance as a Clerk-stenographer. What is involved here is not the performance of [the Applicant] so much as her suitability for a career appointment on medical grounds.

"2. Although I appreciate your genuine professional concern for a valued member of your Unit, I am nevertheless bound to respect the Medical Director's advice on this matter. I therefore regret to state that I am not authorized to either make comments on medical standards or recommend reconsideration of the medical judgement of the chief medical officer of the United Nations. However, in view of your strong protest over the telephone and in my office concerning the state of health of [the Applicant] and the medical advice of the Director of the Health Service, I am sending a copy of your memorandum together with a copy of my reply to the Health Service for whatever appropriate action they may wish to take."

On the same day the Administrative Officer transmitted to the Medical Director copies of the communications between him and the Applicant's supervisor. On 8 December 1965 the Administrative Officer made the following notation in the Applicant's file :

"Mrs. Wolff [of the Health Service] informed by telephone that Dr. Sze [the Medical Director] would not take any action on this [the memorandum dated 17 November 1965 from the Applicant's supervisor] and that his original recommendation still stands."

On 3 January 1966 the Administrative Officer sent to the Applicant's supervisor a copy of the following memorandum he had received from the Medical Director :

"In reference to your memorandum of 18 November 1965, enclosing copies of communications concerning [the Applicant], I wish to confirm that there is no change from our recommendation of 25 August 1965."

On 6 January 1966 the Administrative Officer informed the Applicant that her fixed-term appointment "cannot be extended on medical grounds". On 9 January 1966 the Applicant requested the Secretary-General under Staff Rule 111.3 to reconsider the decision not to extend her appointment. On 28 January 1966, having received no reply to that request, she took her case to the Joint Appeals Board. On 4 February 1966 the Director of Personnel wrote to her as follows :

"1. I have carefully examined your letter dated 9 January 1966 addressed to the Secretary-General, in which you requested reconsideration of the decision not to extend your employment with the United Nations. As you admit in your letter, a fixed-term appointment carries no expectancy of continued service or conversion to any other type of appointment. You were

further advised that an extension of your appointment could not be given to you on the advice of the Medical Director.

" 2. It would be useful to explain to you that the appointment of new recruits to the Organization is effected on the basis of suitability for international civil service. In determining such suitability, advice is requested of the Medical Director, Health Service. The Office of Personnel has been advised in your case that, on the basis of your medical history, it would be inadvisable to offer you anything but a short-term appointment. This information has been given to you as early as September 1965. Subsequently, on 10 November 1965, your short-term appointment was extended for a second period of three months, and you were then advised again that your appointment could not be extended beyond 9 February 1966. Nevertheless, you accepted the second short-term appointment with full knowledge of the said facts.

" 3. In view of the aforesaid, I regret to state that the decision not to extend your appointment beyond 9 February cannot be altered. I wish to assure you, however, that this decision in no way reflects on your excellent performance and good record, but I hope you will realize that employment with the United Nations is governed by certain standards established by the Staff Regulations and Rules.

" 4. Arrangements have been made by the Office of Personnel for you to meet with the Medical Director, Health Service, if you so desire. In such a case, you should make contact directly with him."

On 24 February 1966 the Applicant was given a fixed-term appointment for the period 10 February-29 April 1966. The following note by a member of the Office of Personnel is attached to the Letter of Appointment in the Applicant's file :

"When I gave [the Applicant] her new letter of appointment for signature, I explained to her that the extension stipulated in it is granted to her so that she may seek alternative employment or make other arrangements in case her appeal did not succeed. I told her that this, of course, is without any prejudice to her appeal."

On 26 April 1966 the Medical Director informed the Deputy Director of Personnel that : "we have no objection on medical grounds to extending [the Applicant's] appointment for another three months from 1 May 1966. It is our understanding that no further extensions will be considered". On 13 May 1966 the Applicant received a fixed-term appointment for the period 30 April-31 May 1966. On 21 April 1966 the Joint Appeals Board submitted its report on the case to the Secretary-General. The relevant parts of the report read as follows :

" 18. Mr. Aleksander Hulek, Chief of the Rehabilitation Unit, testified to the appellant's outstanding performance and devotion to work. As her immediate supervisor for the past nine months, he had observed no symptoms of illness of any kind in her. He reiterated his belief that 'the best evidence of the state of health is the practical performance of work and in everyday life'. He felt strongly, he said, that a grave injustice would be done to the appellant if she were to be separated 'on medical grounds'. He also brought to the attention of the Board an incident in which a routing slip signed by an administrative assistant of the Bureau of Social Affairs with the notation that no further extension of appointment was to be given to the appellant 'on medical grounds', was allowed to be openly circulated. Rumours about her

supposed illness soon spread around among her colleagues. In his view, for the appellant to leave the Organization in such an atmosphere would be most unfair to her.

*“ Conclusions and Recommendations*

“ 19. The Board notes that the Secretary-General has full discretionary power not to extend a fixed-term appointment. He is under no obligation to give reasons for non-renewal of such a contract. In the present case, however, a specific reason, namely ‘on medical grounds’, has been given for the non-renewal of the appellant’s contract. The appellant has contested this administrative decision, alleging a denial of due process in that she has not been afforded a fair and reasonable opportunity to refute the medical grounds on which the decision was based. She has therefore requested that her case be referred to a medical referee in order to determine her suitability for further employment in the Organization.

“ 20. Staff Regulation 4.6 provides that ‘the Secretary-General shall establish appropriate medical standards which staff members shall be required to meet before appointment’. In the establishment and application of the medical standards, it is only proper for the Secretary-General to rely on the advice of the Medical Director. In the present case, he has followed the Medical Director’s recommendation that the appellant was not eligible for more than short-term appointment under the medical standards of the United Nations. In his testimony, the Medical Director assured the Board that his judgement was based on a careful evaluation of medical information concerning the appellant that had come to his knowledge. The Board does not consider itself competent to enter into the merits of medical findings in this case. In its view, the Medical Director’s conclusion regarding the appellant’s suitability for a career appointment must be accepted as final.

“ 21. The Board recalls that, in some previous cases involving health questions, it made recommendations with a view to ensuring that a staff member who contested the findings of the Medical Director regarding his health had the opportunity of submitting such dispute to an independent review by a competent medical authority or board. The Board is also aware of the concern of the Administrative Tribunal, as expressed in some of its Judgements in recent years, over the need for the establishment of a medical review procedure in the application of the Staff Rules regarding health questions. The Board does not believe, however, that there should be recourse to such a procedure in the present case. In its opinion, a distinction must be made between a medical determination affecting a staff member’s acquired and vested rights, such as in the matter of termination of a permanent appointment for health reasons under Staff Regulation 9.1 (a), and a medical finding for the purpose of determining the eligibility for an appointment or an extension of appointment. In the former case, due process may require the securing of an independent medical opinion in the establishment of the reason for the administrative decision taken. In the latter case, however, a candidate has no inherent right to employment. The Staff Rules and Regulations require no justification to be offered for the denial of an appointment or of an extension of appointment and no requirement of due process therefore arises. This situation is not altered in any relevant way by the fact that a reason

was in fact given for the non-renewal of a fixed-term appointment. In the opinion of the Board, the decision as to a candidate's fitness for employment from the point of view of health condition, as from the point of view of other qualifications, must be left with the Secretary-General on the recommendation of his appropriate advisers. It would be going too far, if the Medical Director's judgement regarding the suitability for an appointment or an extension of appointment were subject to review merely on the contention that it conflicts with opinions of outside physicians, who may not be familiar with the conditions of service in the United Nations.

" 22. While the appellant has no enforceable right against the Organization for further employment, there are certain elements in her case which deserve special consideration on compassionate grounds.

" 23. During the period of nearly nine months of her service with the Organization, the appellant has established herself as an exceptionally competent, hard-working and dedicated staff member. But for the health factor, she seems to possess all the qualifications that make for a good international civil servant. There is no doubt that her separation from the service will be a loss to the Organization. The Board also understands the disappointment which she must have felt at the denial of the opportunity of pursuing a career in the service of the United Nations.

" 24. The outstanding record of the appellant's performance for the last nine months may be taken as a sign of her present apparent state of good health. The Board learned also that letters of reference from the appellant's former employers did not indicate any adverse effect that her health condition might have had on her capacity to work. At the time when the appellant's state of health was apparently good and when she had successfully demonstrated that her capacity to work had in no way been impaired by her health condition, it is regrettable, the Board feels, that she was served notice that her contract could not be extended 'on medical grounds'. Her fixed-term appointment could have been left to run its course without such a notice. To advance 'medical grounds' as the reason for the non-renewal of her contract could conceivably have the effect, among other things, of jeopardizing the prospect of her future employment. The Board also noted with concern the incident of the routing slip, as related to the Board by the appellant's supervisor, which may have subjected the appellant to grave embarrassment (see paragraph 18 above).

" 25. While agreeing that the appellant has no legal right to have her contract extended and that it would not be justifiable to apply an independent medical review procedure to her case, the Board believes that, in recognition of her excellent performance and devotion to work and in view of the unfortunate situation brought about by the ineptitude with which some aspects of her case have been conducted, a way should be found to allow the appellant's separation from the service to come about as a result of the expiration of her contract, rather than on any specific grounds. With this in view, the Board unanimously recommends that the appellant be offered an extension of her fixed-term appointment for another period of three months, to expire on 29 July 1966 as a matter of course."

On 26 May 1966 the Director of Personnel addressed to the Applicant the following memorandum :

## "PERSONAL AND CONFIDENTIAL"

"I attach hereto a copy of the report of the Joint Appeals Board to the Secretary-General, incorporating the Board's conclusions and recommendation regarding the appeal filed by you against the Secretary-General's decision not to extend your fixed-term appointment. The Board has concluded 'that the Appellant has no legal right to have her contract extended and that it would not be justifiable to apply an independent medical review procedure to her case'. The Secretary-General has decided to accept these findings as disposing of the appeal.

"Irrespective of the aforesaid, it is proposed, as an act of administrative discretion, to grant you a final extension of your appointment through 29 July 1966. This, it is hoped, will allow you an adequate period of adjustment while seeking other employment."

On 13 June 1966 the Applicant was given a fixed-term appointment for the period 1 June-29 July 1966. On 28 July the appointment was extended to 8 August 1966. On that day the Applicant left the service of the United Nations since no further extensions were given. On 28 September 1966 she filed the application referred to earlier.

Whereas the Applicant's principal contentions are :

1. The Respondent had the discretionary power to refuse an extension of the Applicant's fixed-term appointment without giving any reasons. He did not, however, exercise that power since he specified that the decision not to extend the appointment was based on medical grounds. He was therefore under an obligation to substantiate the grounds indicated by him and to follow an appropriate medical procedure in order to ascertain the state of the Applicant's mental and physical health.

2. The decision not to extend the Applicant's fixed-term appointment was based solely on a recommendation of the United Nations Health Service. Except for a chest X-ray, however, the Health Service had not examined the Applicant but relied exclusively on a report from a psychiatrist who had treated her three years earlier in her home country. Its recommendation, and hence the contested decision, cannot but be regarded as arbitrary in view of the recognized unreliability of psychiatric diagnoses and prognoses.

3. The recommendation of the Health Service is contrary to the views of the Applicant's supervisor, who praised her performance and stated that she had the most cordial relations with her co-workers. It is also contrary to the findings of the United States authorities which granted the Applicant an immigration visa after a thorough investigation of her medical record.

4. The Applicant was denied due process in that :

(a) She was not informed of the facts relied on by the Respondent in the contested decision.

(b) She was denied access to her medical record and, in particular, to the report of the psychiatrist which formed the basis of the contested decision. She was thus prevented from ascertaining the authenticity and validity of the report and from contesting the information contained therein.

(c) The Respondent refused to receive and consider medical evidence offered by the Applicant.

5. The fact that the Respondent invoked medical grounds to explain his



decision not to extend the Applicant's appointment—a fact which the Administration took no pains to conceal from her co-workers—will inevitably prejudice her prospects for further employment.

Whereas the principal contentions of the Respondent are :

1. Under Staff Regulation 4.6 the Secretary-General alone has authority to determine both the medical standards to be met for appointment with the United Nations and the sufficiency of any particular medical evidence used to show that those standards have been met.

2. The Applicant was classified "for short-term appointment only" before receiving her first appointment. That classification, which was one of the bases on which she was appointed, preceded any contractual relationship and cannot, therefore, give rise to any valid allegation of non-observance of her contract of employment or terms of appointment.

3. The contested decision was taken in the exercise of the Secretary-General's discretionary power not to offer an appointment. The mere fact that the Applicant was informed that it was by reason of her medical history that she was not being offered a further appointment did not restrict in any way the Secretary-General's authority or discretion and did not create any procedural rights for the Applicant. The Secretary-General was therefore not required to disclose the medical standards being applied or the detailed reasons for the conclusion that the Applicant did not meet those standards.

4. Like any other candidate for appointment or re-appointment, the Applicant had no right of access to information obtained in confidence from third persons for the purpose of assessing her suitability for employment, whether under medical standards or any other criteria. Moreover, if the information received from two doctors in her home country had been disclosed to the Applicant, that could have involved a breach of confidence as between doctors sending authorized privileged communications to one another in the exercise of their professional duty.

5. No question of due process can arise in the present case since the contested decision related only to the Secretary-General's discretion to offer an appointment.

The Tribunal, having deliberated from 11 to 21 April 1967, now pronounces the following judgement :

I. The Applicant requests the Tribunal to rescind the decision of the Secretary-General under which her fixed-term appointment was not extended on medical grounds.

Staff Regulation 4.6 reads as follows :

"The Secretary-General shall establish appropriate medical standards which staff members shall be required to meet before appointment."

Every candidate for employment in the United Nations has to meet the medical standards so established. The application of these standards is the responsibility of the Chief Medical Officer.

Shortly after the first interview of the Applicant, the Office of Personnel was informed by the Health Service that the Applicant was "medically cleared for *short-term appointment only*". In a letter dated 25 August 1965 to the Office of Personnel, the Medical Director, Health Service, further stated : "... It was necessary for us to request information from her physician in [her home country] and on the basis of his report, we wish to confirm that she should not be considered for other than a short-term appointment." The Applicant appears to

have been informed of this as early as September 1965. In a letter dated 4 February 1966 from the Director of Personnel to the Applicant, it is stated as follows :

“ . . . The Office of Personnel has been advised in your case that, on the basis of your medical history, it would be inadvisable to offer you anything but a short-term appointment. This information has been given to you as early as September 1965. Subsequently, on 10 November 1965, your short-term appointment was extended for a second period of three months, and you were then advised again that your appointment could not be extended beyond 9 February 1966. Nevertheless, you accepted the second short-term appointment with full knowledge of the said facts.”

There is nothing on record to show that, at this stage, the Applicant either contested the Medical Director's opinion or the prior medical history on which the decision was based. It is obvious from the above that in the view of the Medical Director the Applicant did not satisfy the medical standards required by the United Nations and therefore did not qualify for a career appointment with the Organization.

In Case No. 71, Judgement No. 69, the Tribunal held that it “ could not regard itself as a body competent to express views on the accuracy of the diagnoses or conclusions of the medical profession. The Tribunal therefore cannot proceed to a review on medical grounds of the Secretary-General's decision based upon the Medical Director's recommendation. . . ”. The Tribunal therefore considers that it is not competent to enter into the merits of the Medical Director's conclusion regarding the suitability of the Applicant for appointment with the United Nations.

Staff Rule 104.12 (b) states that “ . . . The Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment ”.

A staff member has no claim that a fixed-term appointment shall be extended or converted into any other type of appointment. When the Respondent informed the Applicant that her fixed-term appointment was not extended on “ medical grounds ” the Respondent was only stating what the Applicant already knew. The Respondent was under no obligation to give reasons for not extending the fixed-term appointment. On the basis of Staff Regulation 4.6 and Staff Rule 104.12 (b) the Tribunal holds that the contested decision cannot be rescinded.

II. The Applicant contends that a proper medical procedure should be adopted “ under which the staff member and the administration each appoints a doctor and these two doctors in turn nominate a third doctor to constitute a panel to consider cases of termination ‘ for reasons of health ’ ”.

The Tribunal in earlier judgements has emphasized the need for proper review procedure in cases where the staff member contests the medical opinion of the Administration. This applies to cases such as termination of appointment under Regulation 9.1 (a) “ for reasons of health ”. A staff member who holds a permanent appointment or whose probationary period has been completed has certain acquired and vested rights to continued employment, and such rights cannot be lightly disturbed without complying with due process. But no candidate for service with the United Nations has any inherent right to employment. In the present case, the Joint Appeals Board has set out the legal situation clearly as under :

“ 21. The Board recalls that, in some previous cases involving health questions, it made recommendations with a view to ensuring that a staff member who contested the findings of the Medical Director regarding his

health had the opportunity of submitting such dispute to an independent review by a competent medical authority or board. The Board is also aware of the concern of the Administrative Tribunal, as expressed in some of its Judgements in recent years, over the need for the establishment of a medical review procedure in the application of the Staff Rules regarding health questions. The Board does not believe, however, that there should be recourse to such a procedure in the present case. In its opinion, a distinction must be made between a medical determination affecting a staff member's acquired and vested rights, such as in the matter of termination of a permanent appointment for health reasons under Staff Regulation 9.1 (a), and a medical finding for the purpose of determining the eligibility for an appointment or an extension of appointment. In the former case, due process may require the securing of an independent medical opinion in the establishment of the reason for the administrative decision taken. In the latter case, however, a candidate has no inherent right to employment. The Staff Rules and Regulations require no justification to be offered for the denial of an appointment or of an extension of appointment and no requirement of due process therefore arises. This situation is not altered in any relevant way by the fact that a reason was in fact given for the non-renewal of a fixed-term appointment. In the opinion of the Board, the decision as to a candidate's fitness for employment from the point of view of health condition, as from the point of view of other qualifications, must be left with the Secretary-General on the recommendation of his appropriate advisers. It would be going too far, if the Medical Director's judgement regarding the suitability for an appointment or an extension of appointment were subject to review merely on the contention that it conflicts with opinions of outside physicians, who may not be familiar with the conditions of service in the United Nations."

The Tribunal endorses the above conclusion and holds that the Applicant cannot ask for the establishment of any medical procedure in her case.

III. The Tribunal, however, wishes to observe that over the past ten years, it has dealt with this problem and felt that it would be in the general interest if there existed within the Staff Rules a clear procedure as to the rights of staff members in health cases.

For instance, in 1957, in Case No. 70 (Judgement No. 70), the Tribunal noted that the Administration was prepared, "on humanitarian grounds", to arrange that the Applicant (in that case) be examined by a board of three doctors, one chosen by the Agency concerned, one by the Applicant and the third jointly selected by those two after their appointment, even though there were no rules for such a procedure to be followed.

Again in 1957, the Tribunal in Case No. 71 (Judgement No. 69) commented :

"An examination of the Staff Regulations and Rules discloses no provision for recourse to the employment of a medical referee by the Administration in cases of conflict of medical opinion."

In Case No. 82 (Judgement No. 83), in 1961, the Tribunal stated :

"The Tribunal notes that the Staff Rules and Regulations do not specify the exact procedure to be followed in the case of termination of a permanent appointment for reasons of health. Nor do they provide for a procedure, in case a staff member contests the findings of the Medical Director. However, in the event of a difference between a staff member and the Secretary-General

regarding sick leave, Staff Rule 106.2 provides that, upon the request of the staff member, the matter shall be referred to an independent practitioner or a medical board acceptable to both the Secretary-General and the staff member. The Tribunal observes that a similar rule relating to termination of appointment on health grounds might be appropriate."

In that Judgement the case was remanded for correction of the procedure used by the Respondent in arriving at the decision that the Applicant was incapacitated for further service, and the matter came again before the Tribunal for final decision.

In Judgement No. 91, in the above case, the Tribunal recorded, in 1964, as follows :

"In its Judgement No. 83, the Tribunal observed that 'the Applicant has been denied due process in that a proper medical procedure was not followed by the Respondent'. The Tribunal notes with satisfaction that a medical procedure has now been adopted in which the staff member and the Administration each appoints a doctor and these two doctors in turn nominate a third doctor to constitute a panel to consider cases of termination 'for reasons of health'. Had this procedure been followed earlier and all material made available, the prolonged litigation in this case might have been avoided."

In Case No. 98 (Judgement No. 99), the Tribunal, in 1966, again referred to Judgement No. 83 and to the fact that "the Staff Rules in this respect have not been changed".

The Tribunal has thought it necessary to recall these Judgements of the past ten years, since it is apparent that specific rules would be of help. Had there been in existence clear rules which defined the procedure to be followed in cases where the medical opinion of the Administration is contested and the applicability of such rules to different categories of staff, then questions such as those raised in the present case would not have arisen.

IV. The Applicant requests the Tribunal to delete in the Applicant's official status file any mention of the refusal to extend her appointment "on medical grounds".

The Tribunal considers that the undue publicity given to the "medical grounds" as the reason for non-extension of the Applicant's fixed-term contract is unfortunate. The Tribunal regrets the open circulation of a routing slip signed by an administrative assistant of the Bureau of Social Affairs with the endorsement that no further extension was to be given to the Applicant "on medical grounds".

In its Judgement No. 49, the Tribunal ruled that the certificate of service issued to a staff member on leaving the service should "use the very words which have been put in the periodic reports by the superior...". Again in Judgement No. 97, the Tribunal ordered that in the certificate of service no mention should be made of a dismissal which was subsequently rescinded. These cases relate to the issue of certificates to whomsoever it may concern under Staff Rule 109.11. But in Judgement No. 56, the Tribunal held that "it is not within its competence to decide upon the destruction of any administrative document". There is no authority for the Tribunal to interfere with the notations and comments on files and documents intended for internal circulation within the Organization.

Accordingly the Tribunal rejects the request.

V. In view of the above conclusions, no question of compensation under article 9 of the Statute of the Tribunal arises in the case.

VI. For the foregoing reasons the Tribunal rejects the application.

VII. At the request of the Applicant, the Tribunal orders that the name of the Applicant shall be omitted from the published versions of the Judgement.

*(Signatures)*

Suzanne BASTID

*President*

CROOK

*Vice-President*

R. VENKATARAMAN

*Vice-President*

L. IGNACIO-PINTO

*Alternate Member*

Jean HARDY

*Acting Executive Secretary*

Geneva, 21 April 1967.

## Judgement No. 108

*(Original : English)*

**Case No. 109 :**  
**Khamis**

**Against : The United Nations Joint  
Staff Pension Board**

*Request by a Staff member of FAO that his prior period of employment be restored as pensionable service.*

*Rejection by the FAO Staff Pension Committee, under article XII of the regulations of the Pension Fund in force at the time, of a request by the Applicant for the restoration of his prior period of employment, on the ground that his participation in the Pension Fund had been interrupted for a period longer than three years.—Deletion, by a 1963 amendment to the said article XII, of the provision relating to length of interruption of service.—Question of the Applicant's entitlement to restoration of his prior service by virtue of article XII as amended.*

*Interpretation of the words "If a former participant again becomes a participant".—No restrictive wording excluding persons who had been participants before the amendment.—Legal effects of the General Assembly's decision fixing the effective date of the amendment.—Unacceptability of the contention based on the fact that the General Assembly did not specifically state that the amendment was to be retroactive.—Absurdity and inequities to which the Respondent's interpretation would lead.—Purport of article XXXVII of the regulations of the Pension Fund, relating to amendments.—Scope of the principle of law against "retroactive" construction of texts.—Conclusion that neither the text of article XXXVII nor the principles governing non-retroactivity contradict the application of the amended article XII to the Applicant.*

*Rescission of the decision of the Joint Staff Pension Board and of the decision of the FAO Staff Pension Committee denying the Applicant's request for restoration of prior pensionable service.—Restoration of the prior service of the Applicant for the period 30 July 1949 to 29 September 1953.*