

thereby misled the Applicant from filing his application for validation of prior service.

VII. The Tribunal, in view of its conclusion regarding the receivability of the present application, does not pass judgement on these aspects of the case. It is for the appropriate bodies to consider these points if and when a case is submitted to them for decision.

VIII. For the foregoing considerations the application is rejected and no order is made as to costs.

IX. In view of its decision on the question of receivability, the Tribunal has not considered it necessary to examine the contentions raised by the Joint Staff Pension Board in its intervention.

(Signatures)

Suzanne BASTID

President

CROOK

Vice-President

R. VENKATARAMAN

Vice-President

L. IGNACIO-PINTO

Alternate Member

Jean HARDY

Executive Secretary

New York, 18 October 1967.

Judgement No. 110

(Original : English)

Case No. 108 :
Mankiewicz

**Against : The Secretary-General of
the International Civil
Aviation Organization**

Request by a former staff member of ICAO for recognition of his right to the salary and allowances to which he would have been entitled if the ICAO Council's decision amending the definition of dependents had not been applied to him or, alternatively, to a personal allowance.

Challenge by the Applicant to the legality of the ICAO Council decision of 17 June 1960 which amended the definition of dependents.—Barring of the Applicant by his failure to file an appeal with the Advisory Joint Appeals Board within fifteen days after receipt of the decision applying the amendment to his case.—Applicant's contention that he had a continually recurring right of appeal each time a payment was made to him.—Rejection of this contention, as the Applicant's alleged cause of action actually accrued on the date when the amendment was first applied to him.—On the merits, irrelevance of the Applicant's arguments challenging the legality of the Council's decision.—Exclusive competence of the Council in determining whether the facts presented to it form a sufficient foundation for its decisions.—Non-discriminatory character of the amendment.—The amendment as such did not have the effect of abolishing annual pay increments and future salary increases.—The Council's right to authorize the Secretary-General to specify the date on which the amendment would take effect and the manner of appli-

cation.—Non-retroactivity of the amendment.—Clause in Applicant's employment contract specifically stating that his appointment was subject to the provisions of the Service Code "as amended from time to time".

Alternative request for award to the Applicant of a personal allowance to make up for loss in take-home pay caused by the amendment.—Applicant's contention that the Secretary-General acted illegally by providing that any personal allowance should be offset by future salary increases.—Irrelevance of this contention as regards the period from 1 July 1960 to 15 March 1965, during which the Applicant's take-home pay was not lessened and was in fact increased.—Question of the Applicant's entitlement to a personal allowance from 15 March 1965.—No new loss as of 15 March 1965 in regard to the dependency allowance for his wife.—The decrease in post adjustment offset by the above-mentioned increase in the Applicant's take-home pay during the period 1 July 1960 to 15 March 1965.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, Vice-President, presiding ; Mr. Louis Ignacio-Pinto ; Mr. Francis T. P. Plimpton ; Mr. Zenon Rossides, alternate member ;

Whereas, on 7 July 1966, René H. Mankiewicz, a former staff member of the International Civil Aviation Organization, hereinafter called the ICAO, filed an application to the Tribunal concerning his entitlement to certain dependency benefits ;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal ;

Whereas, under paragraph 10 of that article, the Executive Secretary of the Tribunal returned it to the Applicant and called upon the Applicant to make the necessary corrections not later than 10 October 1966 ;

Whereas, with the agreement of the Respondent, the Executive Secretary extended to 5 November 1966 the time-limit for making the necessary corrections ;

Whereas the Applicant, after making the necessary corrections, again filed the application on 5 November 1966 ;

Whereas the pleas of the application request the Tribunal to set aside a decision of 22 June 1966 by the Secretary General of ICAO and to rule :

(a) That the Applicant has been entitled since 4 August 1964 to the salary and allowances to which he would have been entitled if the ICAO Council's decision of 17 June 1960 had not been applied to him ; and

(b) If the above-mentioned decision of the ICAO Council was regarded as valid and applicable to the Applicant, that the Applicant is entitled to the personal allowance referred to in Staff Notice No. 573 of 22 June 1960 ;

Whereas, on 8 November 1966, the Applicant requested the President of the Tribunal to designate a counsel to assist him in presenting his case to the Tribunal ;

Whereas, on 21 November 1966, the President, in pursuance of United Nations Administrative Instruction ST/AI/163, designated as counsel Mr. Rodriguez-Delgado, a staff member of the United Nations ;

Whereas the Respondent filed his answer on 8 December 1966 ;

Whereas, on 13 January 1967, the Applicant requested the Tribunal to hold oral proceedings ;

Whereas the Applicant withdrew that request on 16 February 1967 ;
Whereas the Applicant filed written observations on 17 March 1967 ;
Whereas the facts in the case are as follows :

Since 15 July 1959, the Applicant had been the holder of a permanent appointment, specified to be subject to the provisions of the ICAO Service Code in force and as amended from time to time, as an ICAO official in the professional category at P-4 level (First Officer). Under the provisions of the ICAO Service Code then in force (3rd Edition), he was entitled to a dependency allowance of \$200 per year for his wife and to a dependency allowance of \$300 per year for his dependent son (Part V, paragraph 3) ; he was also entitled to a post adjustment at the rate applicable to staff members with one or more primary dependents, which, for the grade of the Applicant and for Class 5 in which Montreal—his duty station—had been placed, amounted to \$1,525 per year (Part III, article III, paragraph 4).

On 11 April 1960 the Secretary General of ICAO, as has been explained in Judgement No. 82 of the United Nations Administrative Tribunal, proposed to the Council in document C-WP/3129 that it make a series of amendments to the Service Code giving new definitions of dependency. With regard to the definition of a dependent spouse, while the Service Code then in force defined the spouse as a dependent irrespective of her personal income, the provisions proposed by the Secretary General specified that a spouse would not be considered as a dependent within the meaning of the Service Code unless her income was less than a certain figure. In the same document, the Secretary General requested the Council to give him the authority to pay personal allowances in order to avoid a reduction in the net salary of officials who would be affected by the new dependency definitions. Moreover, he added that in the case of Headquarters officials in the professional category, any reduction in salary would be avoided if the Council decided, at the same time, to transfer Montreal from Class 5 to Class 6. On 16 June 1960, the Council transferred Montreal from Class 5 to Class 6, with effect from 1 May 1960. This decision increased from \$1,525 to \$1,825 the post adjustment paid to the Applicant. On 17 June 1960, the Council adopted, in the version which had been meanwhile given to them by a Working Group, the amendments submitted by the Secretary General in document C-WP/3129. These amendments were incorporated in the Service Code (3rd Edition) by Amendment No. 3. At the same time, the Council granted to the Secretary General "full authority to implement [these amendments], including determination of the effective date and payment of any necessary personal allowances to staff members adversely affected by them." All staff members were informed of the adoption of the new system by Staff Notice 573 of 22 June 1960, the relevant parts of which read as follows :

**" SALARY ADJUSTMENTS FOR HEADQUARTERS STAFF
AND NEW DEPENDENCY DEFINITION**

" 1. During its current session the Council gave its approval to the following :

" (a) An upward adjustment of the salaries of Professional and higher categories staff at Montreal, effected by placing Montreal in Class 6 (+ 25 %)

of the post adjustment scale (Page III-5 of the ICAO Service Code), with effect from 1 May 1960 ;

“(b) A five per cent upward adjustment of salaries of the General Service Category staff at Headquarters... ;

“(c) A new definition of dependency... ; in approving the new dependency definition, Council vested in me the authority to determine its effective date, and under that authority I have decided to introduce the new dependency definition effective 1 July 1960.

“2. The adjustments referred to in (a) and (b) of Paragraph 1 above will be reflected in the payroll at the end of June, including retroactive payments to the effective dates of the adjustments.

“3. Regarding the new dependency definition staff members who wish to study in greater detail its significance and effect in comparison with the old dependency definition, are referred to paragraph 5 of C-WP/3129 available from the Registry and Distribution Unit on request.

“4. In order to implement the new dependency definition, certain information will be required from staff and to that end a form of application for dependency benefits (Revised Form P-10) is being circulated to staff (and is also available from the Registry and Distribution Unit). This form is to be completed in duplicate and returned to the Organization and Personnel Branch *as soon as possible and in any event not later than 8 July 1960* (except for staff absent on mission or leave who should fill in and submit the form immediately upon return).

“5. The new dependency definition may result in certain cases—especially in the case of staff members who now receive dependency benefits in respect of a wife if the wife's gross income exceeds the amount of \$2,986—in loss of entitlement to certain dependency benefits or of a part thereof. In such cases, and to the extent to which any reduction of the dependency benefits exceeds in any individual case the gain resulting from the upwards adjustment of salaries, referred to in (a) and (b) of paragraph 1 above, it is my intention to pay, under the authority vested in me by the Council, to the staff members affected a personal allowance to be gradually offset by any future increases in the staff member's salary consequent upon the earning of salary increments, of promotion, or of any future general salary increase.

“... ”

Since the Applicant failed to complete the form referred to in paragraph 4 quoted above, the Chief of the Organization and Personnel Branch informed him, by a notice of personnel action dated 29 September 1961, that payment of the dependency allowance in respect of his wife, provisionally made since 1 July 1960, was discontinued effective on 1 October 1961. On 20 December 1961, the Applicant requested that this decision be reviewed by the Bureau of Administration. On 27 December 1961, the Chief of the Organization and Personnel Branch informed him that he saw no ground for review of the decision and that, in the absence of proposals on the part of the Applicant as to the method of recovery of dependency allowance payments made in respect of his wife for the period 1 July 1960—30 September 1961, it would be necessary to recover them in one sum by deduction from the Applicant's January 1962 pay cheque. This provision concerning the method of recovery was confirmed by a notice of personnel action of 28 December 1961 signed on behalf of the Chief of the Organization and

Personnel Branch. When the deduction was made, the Applicant, on 11 January 1962, protested to the Director of the Bureau of Administration, stating also that in order to prevent the exception that he was barred by time from pursuing the issue he appealed thereby against the decisions of the Chief of the Organization and Personnel Branch dated 27 and 28 December 1961 respectively. However, he never pursued the matter further.

While he had lost his entitlement to a dependency allowance for his wife as a result of the new definition of dependency, the Applicant had kept his entitlement to a dependency allowance for his dependent son. Indeed, the latter allowance had been increased by \$100 per year under Part V, paragraph 3, of the Service Code (3rd Edition) which provided in effect that this allowance should be so increased if the allowance for a wife was not paid. Furthermore, on account of his dependent son, he had remained entitled to a post adjustment at the rate applicable to staff members with one or more primary dependents. In 1965, however, his son having reached the age of 21, the Applicant lost both the dependency allowance in respect of his son and the dependency rate of post adjustment. On 29 July 1965, he sent to the Chief of the Personnel Branch the following memorandum :

" 1. I have just noted that my pay cheque for July included a dependence allowance with respect to my son Francis. He reached the age of 21 on 15 March 1965 but continues his university education at the University of Montreal.

" 2. In view of the foregoing. I believe that an adjustment should be made for the periods after the end of the scholastic year 1964-1965, taking however in account paragraph 5 of Staff Notice 573 of 22 June 1960, since I have not received a dependence allowance with respect to my wife following the decisions of the Council mentioned in the said Staff Notice. "

On 4 August 1965, the Chief of the Personnel Branch replied as follows :

" With reference to your memorandum of 29 July 1965, please find enclosed your copy of the Notice of Personnel Action related to discontinuation of the dependency allowance in respect of your son, Francis, from the date on which he reached age twenty-one.

" You will notice that no adjustment has been made under paragraph 5 of staff Notice No. 573 considering that the loss in dependency benefits has been more than offset by increases in your emoluments since 1 July 1960, the effective date on which the dependency definition was incorporated in the Service Code. "

On the same day, the Applicant requested a review of the above decision by the following memorandum addressed to the Secretary General :

" In accordance with para. 3 of GSI [General Secretariat Instruction] 1.4.7, I request that the decision of Chief, Personnel Branch of 4 August 1965 be reviewed.

" 1. I understand para. 5 of GSI 1.3.2 to mean that the dependency allowance is discontinued at the end of the scholastic year and not at the 22nd birthday of the child, if occurring before ; *see* also para. 8 of GSI 1.3.3, the definition of ' dependent child ' (para. 2.1 (b) and 2.4 of Part VII of the Service Code) being the same for the purposes of the dependency allowance and the education grant (paras. 3 and 6 respectively of Part V of the Service Code).

" 2. I submit that I am entitled to a personal allowance under para. 5 of Staff Notice No. 573, for the following reasons.

" 2.1 The discontinuance of the dependency allowance with respect to my son has the result that, as from the date of its discontinuance, I shall suffer a financial loss because I shall be entitled to post adjustment for single persons instead of receiving post adjustment for staff members with dependents, for the sole reason that, consequent to the decisions of the Council referred to in the said Staff Notice No. 573, ICAO does not consider my wife as dependent any more. Indeed, being married, I still would be entitled to the higher post adjustment, were it not for the said decisions of the Council.¹ The difference in net emoluments should be covered by a personal allowance under para. 5 of that Staff Notice.

" 2.2 The reason of the provisions in the said para. 5, I submit, is that staff members should not suffer financial loss through the coming into effect of the Council decisions with respect to the definition of dependents, particularly the definition of 'dependent spouse'. Some staff members, including myself, had entered the service of ICAO under terms which considered married staff members as staff members with dependents, irrespective of whether the spouse had an income. When the Council changed these terms by the decisions referred to in Staff Notice No. 573, it did not exempt staff already in the service of ICAO from the application of these changes which, thus, had retrospective effect. But it was understood that any financial loss resulting from these modifications of the terms of employment would be set off by a personal allowance to be amortized in the manner described at the said para. 5. The loss which I am suffering only now by being transferred from one post adjustment category to another, while occurring belatedly, is nevertheless a direct result of the Council decisions referred to in Staff Notice No. 573 and does therefore entitle me to the personal allowance described aforementioned.

" 3. The statement in the letter of Chief/Personnel of 4 August 1965 'that the loss in dependency benefits has been more than offset by increases in your emoluments since 1 July 1960' is, I submit, beside the point. Although the new dependents definition became effective on 1 July 1960, the 'loss of entitlement to certain dependency benefits or of a part thereof' mentioned in Staff Notice No. 573 arises only now and does 'exceed... the gain resulting from the post adjustments of salaries referred to in (a) and (b) of para. 1 above', thus establishing the conditions for the granting of a personal allowance under para. 5 of Staff Notice 573. Needless to say that an allowance to which entitlement arises only now cannot have been offset by prior increases in emoluments."

On 24 September 1965, the Secretary General addressed to the Applicant the following reply :

" I refer to your memorandum of 4 August 1965 requesting a review of the decision communicated to you by letter of even date by Chief, Personnel

¹ "The coming into force of the said decisions of the Council had already entailed, in 1960, a first financial loss for me, namely \$100 per annum, when the dependency allowance with respect to my wife was discontinued. The present request deals with another direct effect of these decisions on my entitlements, resulting in a further financial loss."

with respect to allowances payable by the Organization in relation to your dependents.

" I have carefully reviewed your comments on the decision and consider that the original ruling was well founded for the following reasons :

" 1. As regards the effective date of cessation to entitlement for a dependency allowance in respect of your son, paragraph 2.1 (b) of Part VII of the Service Code clearly provides that such allowance is only payable up to the time at which the child reaches age 21. Though, basically, the definition of dependency in paragraph 2.4 of Part VII of the Service Code for the purpose of payment of the education grant is the same as that applicable in respect of payment of the dependency allowance, it is nevertheless modified by the specific provisions of paragraph 7, Part V of the Code which extends the period for payment of the grant to the end of the scholastic year in which the child reaches age 21. No similar extension is provided for as regards the dependency allowance. Concerning paragraph 5 of GSI 1.3.2 referred to by you, its scope is naturally not to establish an entitlement which would be contrary to the Service Code. It merely purports to state that between ages 18 and 21 the allowance is paid retroactively at the end of the school year and not currently or in advance.

" 2. You were not considered eligible for a personal allowance under paragraph 5 of Staff Notice 573 considering that the purpose of such an allowance is, and has always been, to ensure that when less favourable conditions of service are introduced, the effect of these should at no time result in a reduction of the net emoluments (take-home pay) of the staff member as compared to the level of emoluments he was enjoying prior to the time at which the restrictions are introduced. As explained in the second paragraph of C/PER's letter to you of 4 August 1965, the loss in dependency benefits you are now suffering has been more than offset by increases in your emoluments since 1 July 1960 and, therefore, since your present emoluments are more than those paid to you before 1 July 1960, you are not entitled to an adjustment. "

On 28 September 1965, the Applicant resigned from service. On the same day, he brought the dispute before the Advisory Joint Appeals Board which, on 17 June 1966, adopted the following findings and conclusions :

" Findings and conclusions

" 9. The Board is unable to agree with the Appellant that he was entitled to a personal allowance, under the provisions of Staff Notice No. 573, from 15 March 1965 when he lost the dependency rate of post adjustment with respect to his son who attained the age of 21 on that date. The object of authorizing the Secretary General to grant personal allowances to certain staff members was to mitigate the cases of financial hardship that might arise on the date of implementation of the new dependency definitions, namely, 1 July 1960. Thus a person adversely affected by introduction of the new set of definitions from the date of transition from the old to the new system—for example, by losing the dependency rate of post adjustment—was to be compensated by grant of a personal allowance which would make up for him any loss in take-home pay that he would have otherwise incurred from the date of the changeover. This interpretation is confirmed by the further

conditions prescribed in para. 5 of the said Notice to the effect that such an allowance was 'to be gradually offset by any future increases in the staff member's salary upon earning of salary increments, of promotion, or any further general salary increases'. The Board cannot agree with the argument advanced by the Appellant that the Secretary General was not authorized to do the latter because the decision of the Council did not specifically mention that point. It was enough, in the opinion of the Board, that the Secretary-General was given 'full authority to implement' the amendments to the ICAO Service Code as recommended by the Secretary General and accepted by the Working Group on the Revision of the ICAO Service Code, and that the Secretary-General had explained generally, in C-WP/3129, the way he was going to implement the new regulations 'with a substantial degree of discretion to avoid reduction of total emoluments of staff' by paying to the staff in certain cases 'a personal allowance to be gradually offset by any future increases in the staff member's salary' (Para. 6 of the paper). The further argument that the amendment of the Service Code amounted to applying retrospectively the new definitions to staff members who were in service at the date of the changeover, is without force. The effect of the amendments was to take place in the future, and retrospectivity has reference only to the past.

"10. The Board finds that the decision taken by the Chief, Personnel Branch, dated 4 August 1965, in the case of the Appellant, which was upheld by the Secretary General on review by his letter to the Appellant dated 24 September 1965, was correct, and that para. 5 of the Staff Notice No. 573 was properly applied to him.

"11. The Board, in considering the appeal, took cognizance of the ruling in Judgement No. 82, *Puvrez v. The Secretary-General of the International Civil Aviation Organization*, in which the United Nations Administrative Tribunal clearly recognized, in the following words, the authority of the Council to make changes in the definition of dependency affecting the entitlement of existing staff members :

'VIII. The grant of the dependency allowance and the post adjustment was linked by the Council to a certain definition of dependent spouse ; it follows from what has just been stated that the Council had the power to adopt another definition in 1960 by statutory action without the staff members who had a right to the previous system being entitled to continue to enjoy the benefits of that system after the entry into force of the amendment in question.' (Judgement No. 82—UN Administrative Tribunal)

This disposes of any doubt about the validity of the action taken by the Secretary General in issuing Staff Notice No. 573 giving in detail the way he intended to implement the Council's decision of 17 June 1960. The Board took account of the Appellant's contention that he had presented arguments additional to those which had been submitted to the United Nations Administrative Tribunal on behalf of Mr. Puvrez. However, the Board has not found any new ground that would justify departing from the ruling of the Tribunal in that case.

"12. As to the alternative contention of the Appellant that the decision of the Council dated 17 June 1960 on the new definition of dependency was null and void, the Board is of the opinion that the appeal is barred by time in view of Rule 4, read with Rule 3, of GSI-1.4.7 for the reasons clearly

stated in para. 7 of the comments of the Representative of the Secretary General dated 18 February 1966. The Board, in view of this finding, does not deem it necessary to give its opinion on the arguments advanced by the Appellant and the Representative of the Secretary General on the substance of that aspect of the appeal.

“ Recommendation

“ 13. In view of the findings and conclusions given above the Board recommends that the appeal be rejected. ”

The Secretary-General having agreed with this recommendation on 22 June 1966, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are :

1. The right of appeal is not barred by time since the decision which the Applicant is contesting is the Secretary General's decision of 24 September 1965. As to the Council's decision of 17 June 1960 and Staff Notice 573 enforcing it, their nullity is not affected by any lapse of time or by the acquiescence of an individual. Moreover, the loss the Applicant has incurred as a result of the application of the Council decision of 17 June 1960 is a continuing loss since it is repeated every month.

2. The Council's decision of 17 June 1960 is null and void for the following reasons :

- (a) It was not based on a full knowledge of the facts ;
- (b) It makes an unjustified discrimination among ICAO staff members ;
- (c) It has the effect of abolishing for an indefinite period, in respect of some staff members, both the annual salary increments and any future salary increase ;
- (d) The Council did not determine itself the date of the entry into force and the mode of application of its decision ;
- (e) The Council had no right to interfere with the clauses relating to dependency allowances and involving the application of one or the other rate of post adjustment, which are in essence contractual—as may be inferred from Judgement No. 61 of the ILO Administrative Tribunal—although they appear in the Service Code.

3. As to the alternative claim :

(a) As a result of the discontinuance of the dependency allowance with respect to his son, the Applicant suffered a financial loss because he became entitled to the single rate of post adjustment, for the sole reason that consequent to the Council's decision ICAO did not consider his wife as dependent any more. The difference in net emoluments should be covered by a personal allowance ;

(b) The Applicant had entered the service of ICAO under terms which considered married staff members as staff members with dependents. When the Council changed these terms it did not exempt staff already in the service of ICAO from the application of these changes, but it was understood that any financial loss would be set off by a personal allowance ;

(c) The increases in the Applicant's emoluments since 1 July 1960 cannot be used to offset the reduction in his take-home pay from 15 March 1965 onwards. Furthermore, paragraph 5 of Staff Notice 573 states that the personal allowance will be offset by “ future increases in the staff member's salary ” ;

(d) The Secretary General is not entitled to offset the personal allowance even

with future salary increases, since the Council neither debated nor authorized the arrangements proposed in this respect by the Secretary-General ;

(e) In accordance with the principle expressed in Judgement No. 51 of the ILO Administrative Tribunal, the Secretary-General cannot offset by salary increases the losses incurred by the Applicant as a result of the application of the Council's decision of 17 June 1960.

Whereas the Respondent's principal contentions are :

1. The Applicant's claim for payment of a dependency allowance on account of his wife is barred by time. The decision dated 29 September 1961 was not in respect of only some particular past month, but a decision that the allowance be discontinued for the future. The decision was at no time set aside by any authority and was in fact reaffirmed in December 1961. The Applicant did not file an appeal against any of these decisions with the Advisory Joint Appeals Board in accordance with GSI-1.4.7 and, in accordance with paragraph 4 thereof, lost his right of appeal. These decisions are final and binding and cannot be evaded by a plea of recurring cause of action.

2. This claim is not well founded on the merits :

(a) The Applicant acquiesced in the application to him of the Council's decision of 17 June 1960 by accepting an additional benefit of \$100 per year for his dependent child, which additional benefit arose solely by reason of the application of the decisions mentioned in paragraph 1 above that he was not entitled to dependency benefit on account of his wife. He is thus estopped from impugning the last mentioned decisions or the Council decision in question which those decisions implemented ;

(b) The validity of the Council's decision of 17 June 1960 in its application to existing staff members was upheld by the United Nations Administrative Tribunal in its Judgement No. 82. In that Judgement, the Tribunal, noting that a certain definition of dependent was applied in respect of the spouses of staff members, stated, in paragraph VIII, that "the Council had the power to adopt another definition in 1960 by statutory action" ;

(c) The various arguments which seek, in effect, the reversal of the Tribunal's decisions in Judgement No. 82 are without substance or relevance.

3. As to the alternative claim, it calls into question the offsetting of the personal allowance by any future increases in a staff member's salary. The Administrative Tribunal, in its Judgement No. 82, paragraphs X to XII, upheld the validity of the personal allowance "and the conditions for the granting thereof".

The Tribunal, having deliberated from 2 to 20 October 1967, now pronounces the following judgement :

I. The facts in the case, as stated above, are not in dispute.

II. The Applicant challenges the legality of the ICAO Council decision of 17 June 1960, which amended the definition in the ICAO Service Code (3rd Edition) of dependents so as to deprive him of a dependency allowance for his wife (who apparently had independent income such as to classify her as a non-dependent). The administrative decision implementing the amendment as to his case was rendered on 29 September 1961 and reaffirmed on 27 and 28 December 1961 ; a representation on 11 January 1962 to the Director of the Bureau of Administration was never pursued. No appeal against any of these decisions was filed by the Applicant within fifteen days after receipt thereof with the Advisory

Joint Appeals Board as required by GSI-1.4.7 paragraph 3, and any appeal by the Applicant is therefore barred pursuant to paragraph 4.

III. There is no substance in the Applicant's contention that he had a continually recurring right of appeal each time a reduced payment (reduced as a result of the elimination of the dependency allowance for his wife) was made to him. His alleged cause of action actually accrued on the date when the Service Code amendment was first administratively applied to him, and he was first deprived of the dependency allowance for his wife ; his appeal against the decision should have been filed within the prescribed time-limit after receipt of the decision. The decision was one which governed all subsequent payments, and no new decision was involved at the time of any subsequent payment ; therefore, no new right of appeal arose at the time of any such subsequent payment.

IV. Furthermore, on the merits, the Applicant's challenge to the legality of the Council's amendment of the Service Code is without foundation. As the Tribunal decided in Judgement No. 82, *Puvrez v. The Secretary-General of ICAO*, the Council clearly had the power to amend the Service Code's definition of dependency and the Applicant has produced no valid new argument to the contrary.

(a) The Applicant argues that the Council's amendment was not based on full knowledge of the facts. It is not the function of the Tribunal to pass on the adequacy of the facts presented to the Council as the basis for its decisions. The Council is its own judge as to whether the facts presented to it form a sufficient foundation for its decisions.

(b) The Applicant contends that the amendment unjustifiably discriminates among staff members. However, the amendment is applicable, without discrimination, to all members ; the question of policy as to whether wives with independent income should or should not be considered dependents is one for the Council to decide.

(c) The Applicant contends that the amendment has the effect of abolishing, for an indefinite period, annual pay increments and future salary increases for staff members. However, the amendment as such had no such effect ; it is true that personal allowances under Staff Notice 573 were to be offset by such increments and increases, but, as indicated below, this did not affect the Applicant, who received no personal allowance and was not entitled to one.

(d) The Applicant then argues that the amendment is inapplicable because the Council did not decide on the date of its entry into force or the manner of application. However, the Council was clearly within its rights in authorizing the Secretary General to specify the date on which the amendment would take effect and to implement the same.

(e) The Applicant argues that the amendment was retroactive. This is not so ; it was prospective, since it took effect only as to dependency allowances to be made after its effective date, 1 July 1960.

(f) The Applicant contends in effect that the provisions of the Service Code as in force at the time of his employment formed part of his contractual rights, and that the amendment unlawfully interfered with those rights. However, the Applicant's employment contract of 23 July 1959 specifically stated that it was subject to the provisions of the Service Code in force and " as amended from time to time ".

V. The Applicant further contends that the Secretary General acted illegally by providing in paragraph 5 of Staff Notice 573 that any personal allowance (to

make up for loss in take-home pay caused by the Service Code amendment) shall be offset by future salary increases. The contention is not relevant to the case as regards the period from 1 July 1960 to 15 March 1965, when his son became 21, as the loss of his dependency allowance for his wife occasioned by the amendment was exceeded by the increase in his post adjustment occasioned by the change of Montreal from Class 5 to Class 6 and by the increase in the dependency allowance for his son under Service Code Part V paragraph 3 (b) by reason of the fact that he no longer received a dependency allowance for his wife. His take-home pay was therefore not lessened (in fact it was increased) and he was not entitled to any personal allowance ; accordingly, there was no offset.

VI. As to the period from and after 15 March 1965, the Applicant contends that he was entitled, under the provisions of Staff Notice 573, to a personal allowance from 15 March 1965 (when he lost the dependency allowance for his son), on the ground that he *then* suffered financial loss.

(a) It is true that as from 15 March 1965 he received no dependency allowance at all—whereas were it not for the amendment of 1 July 1960 of the Service Code he would have been entitled to a dependency allowance for his wife. But the loss of the dependency allowance for his wife in fact had occurred as of 1 July 1960 and continued thereafter—there was no new loss in that regard as of 15 March 1965. And, as indicated in paragraph V above, that loss from 1 July 1960 to 15 March 1965 had been exceeded by increases in his post adjustment and in the dependency allowance for his son.

(b) It is also true that as of 15 March 1965, the rate of his post adjustment was decreased from that applicable to a staff member with a primary dependent (wife or child) to that applicable to one with no such primary dependent. But his service with ICAO was terminated 28 September 1965, and the amount of such decrease during the intervening 6½ months from 15 March 1965 to that date was clearly offset by the net increase in post adjustment and dependency allowance, referred to in paragraph V above, he had received from 1 July 1960 to 15 March 1965. Accordingly, assuming that Staff Notice 573 is considered applicable to a loss occurring almost five years after its promulgation, the Applicant in fact had incurred no loss at all at the time of his leaving the staff and was entitled to no personal allowance under the Notice ; therefore, no offset of annual pay increments or salary increases was involved.

VII. For the above reasons the application is rejected.

(Signatures)

R. VENKATARAMAN
Vice-President, presiding

L. IGNACIO-PINTO
Member

Francis T. P. PLIMPTON
Member

Z. ROSSIDES
Alternate Member

Jean HARDY
Executive Secretary

New York, 20 October 1967.

STATEMENT BY MR. VENKATARAMAN

(Original : English)

While agreeing with the foregoing decision, I am of opinion that Staff Notice 573 was intended to mitigate the hardship, if any, caused at the time of the implementation of the amended definition of dependency in July 1960. According to the said Staff Notice any loss in dependency allowance occurring on the date of transition from the old to the new system had to be compensated by grant of a personal allowance. In my opinion, the Notice had no relevancy to any loss occurring in the future and had no application to situations that might arise afterwards.

(Signature)

R. VENKATARAMAN

Judgement No. 111*(Original : English)***Case No. 114 :****Ashton (Reimbursement of income tax.)****Against : The Secretary-General of the International Civil Aviation Organization**

Request for rescission of a decision not to reimburse to a technical assistance official of ICAO the sums to be paid by him to the United Kingdom authorities as income tax on an annuity paid to a dependent under a Court Order.

Consideration of the question whether the Applicant is entitled to obtain from the Respondent reimbursement for the tax assessed by the United Kingdom authorities or to secure reduction in the Staff Assessment Plan applicable to him.—Argument based on the United Kingdom Diplomatic Privileges (ICAO) Order in Council.—The tax in question is not on the emoluments received by the Applicant but on the annuity payments received by the beneficiary under the Court Order.—Purport of, and procedure laid down by, Section 170 of the United Kingdom Income Tax Act (1952).—Applicant's obligation to bear the burden of the dependent's tax himself.—Impossibility of considering this tax as an income tax on the Applicant's emoluments.—Argument based on the Applicant's original contract.—Appointment of Applicant as a member of the regular staff of ICAO.—Unnecessary to go into the question whether regular staff members of ICAO are entitled to reimbursement of national income tax paid on their emoluments.—Argument based on Judgement No. 88 of the Tribunal.—Rejection of the Applicant's contention that he has been subject to double taxation.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, Vice-President, presiding ; Mr. Louis Ignacio-Pinto ; Mr. Francis T. P. Plimpton ; Mr. Zenon Rossides, alternate member ;