

(2) Takes note of the Respondent's undertaking referred to in paragraph IV (a) above with regard to the Applicant's entitlement to annual leave;

(3) Orders the Respondent to pay to the Applicant the amounts in respect of salary and dependency allowance specified in paragraphs IV (b) and IV (c) above, together with the interest specified in paragraph IV (d) above;

(4) Orders the Respondent to pay to the Applicant the compensation awarded under paragraph V above;

(5) Notes the Respondent's agreement to pay the Applicant legal expenses as specified in paragraph VI above;

(6) Rejects the Applicant's other pleas.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

Suzanne BASTID
Vice-President

Jean HARDY
Executive Secretary

New York, 12 October 1972

Judgement No. 165

(Original: English)

Case No. 153:
**Kahale (Conditions of service
and reassignment)**

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

Request for compensation for conditions of service deemed to be contrary to terms of appointment.—Request for compensation for a reassignment decision and request for reinstatement of the staff member in his former post.

Applicant's complaints regarding his conditions of service.—Scope of the request before the Tribunal.—Staff Regulation 11.1—Staff Rule 111.3 (a).—Not having fulfilled the prior condition required under that Staff Rule, the Applicant had no basis for an appeal before the Joint Appeals Board.—Letter from the Applicant to the Secretary-General asking for an investigation outside the procedures contemplated by the Staff Rules.—Article 7.1 of the Statute of the Tribunal.—The alleged violations of the Applicant's conditions of service cannot be deemed to have been previously submitted to the Joint Appeals Board and accordingly they have not been properly raised before the Tribunal.—Examination of the substance and rejection of the more serious charges enumerated by the Applicant.—The conditions of service allegedly imposed on the Applicant did not constitute disciplinary measures obliging the Respondent to follow the procedures prescribed in chapter X of the Staff Regulations and Rules.—Tribunal's finding that the charges of violations of the Applicant's terms of appointment have not been established.—Request for the case to be remanded to the Joint Appeals Board for correction of procedure.—Request rejected.—Request for compensation under article 9.1 of the Statute of the Tribunal.—Request rejected.

Applicant's contention of the illegal enforcement of a legally ineffective decision of transfer.—The Tribunal must consider whether the Respondent acted in disregard of the Applicant's contractual rights after the date of that decision and, in particular, whether the Director of the Social Development Division was justified in relieving the Applicant of the duties he was performing at the time.—The Tribunal is entitled to rely on the evidence recorded in the investigation report.—The Tribunal agrees with the conclusion of that report concerning the Applicant's behaviour towards his staff.—The Director had reasons to feel worried about the progress of work in the Applicant's Section.—Staff Regulation 1.2.—The Director was justified in her decision to relieve the Applicant of certain functions.—Contention that the Director exceeded her competence by ordering the Applicant's transfer without the authorization of the Director of Personnel.—“Reassignment” and “transfer”.—It was a case of reassignment of duties not normally requiring the approval of the Director of Personnel.—Contention rejected.—Contention that disciplinary procedure was not followed.—Contention rejected, since no charge of misconduct was made and no suspension from duty ordered.—Charge that the Director of the Social Development Division was motivated by national prejudice.—Charge rejected.—Allegation concerning the intervention of the ambassador of a Member State in the employment situation of the Applicant.—Allegation rejected.—The decision of transfer is the Secretary-General's final decision in the case.—The Applicant, by confining his pleas to ancillary matters, cannot oust the jurisdiction of the Tribunal to pass judgement on the substance of the case.—The said decision is legal and valid, accordingly the question of paying any compensation does not arise.—Request that the Tribunal should remand the case for correction of procedure by the Joint Appeals Board.—Request rejected as serving no purpose.—Request for the Applicant's status quo ante to be restored.—The request is rejected as infructuous.

Request for compensation for delay.—Request rejected.

Unsatisfactory features in the case.—Since the Applicant was in pari delicto a remedy would not be justified.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Vice-President;

Whereas, on 27 October 1971, Georges Kahale, a staff member of the United Nations, filed an application the pleas of which read as follows:

“A.

“...
 “(1) *Conditions of service imposed upon Applicant in flagrant violation of his terms of appointment*

“*As to Procedure*

“15. Applicant respectfully requests the Administrative Tribunal:

“(a) To rule that Respondent's obligation to afford staff members the fundamental conditions of service embodied in the Staff Regulations and to protect them from administrative persecution and quasi-disciplinary action falls within the terms of appointment;

“(b) To rule that the JAB [Joint Appeals Board] failed to exercise jurisdiction and acted *ultra vires* in excluding the case from its consideration;

“(c) To rule that the Board's proceedings were vitiated by fundamental errors of procedure and should be declared null and void;

“(d) To order the case remanded for correction of procedure;

“(e) To order the payment to Applicant of a compensation equivalent to three months net base salary for the prejudice caused by the procedural delay;

“(f) To order that a compensation in the amount of two hundred and fifty dollars be granted to Applicant for legal costs.

“*As to the Substance*

“(a) To rule that the conditions of service and the quasi-disciplinary action imposed upon Applicant constituted an infringement upon the terms of his appointment;

“(b) To order the payment to Applicant of a compensation equivalent to the maximum amount envisaged under Article 9 (1) of its Statute for the injury sustained from the conditions of service imposed upon him, due account taken of the prejudicial consequences of the procedural delay;

“(c) To order that a compensation in the amount of two hundred and fifty dollars be granted to Applicant for legal costs.

“(2) *The arbitrary enforcement of a legally ineffective decision to the detriment of Applicant's rights and interests*

“16. Applicant respectfully requests the Administrative Tribunal:

“*As to Procedure*

“(a) To rule that the proceedings of the JAB were vitiated by fundamental errors of procedure and should be considered null and void;

“(b) To rule that the JAB's Report in respect to this case as well as the Secretary-General's decision based thereon should be deemed null and void;

“(c) To remand the case for correction of procedure;

“(d) To order the payment to Applicant of an amount equivalent to three months net base salary as compensation for the prejudicial consequences of the procedural delay;

“(e) To order that in the interim period Applicant should be reinstated in the post from which he had been removed arbitrarily by virtue of a legally ineffective decision, without derogation to Respondent's right at a later stage to decide on Applicant's transfer in accordance with pertinent Staff Regulations;

“(f) To order that Applicant be granted the amount of two hundred and fifty dollars as compensation for legal costs.

“*As to Substance*

“(a) To rule that the arbitrary enforcement of Applicant's transfer without a legally effective decision constituted an infringement upon the terms of his appointment;

“(b) To order the payment to Applicant of a compensation equivalent to the maximum amount envisaged under Article 9 (1) of its Statute for the injury sustained from the arbitrary enforcement of a legally ineffective decision, due account taken of the prejudicial consequences of the procedural delay;

“(c) To order that Applicant be reinstated in the post from which he had been removed arbitrarily and illegally, without derogation to Respond-

ent's rights to transfer him at a later stage in accordance with pertinent Staff Regulations;

"(d) To order that a compensation in the amount of two hundred and fifty dollars be granted to Applicant for legal costs.

"B. ORAL PROCEEDINGS

"17. In view of the special circumstances of the case, it is Applicant's earnest hope that the Tribunal will hold oral proceedings . . .

"C. PRELIMINARY MEASURES

"18. Applicant respectfully requests the Administrative Tribunal to order the production of the records of discussions of the JAB as originally maintained by the Secretary of the Board in respect to this appeal, as well as the transcript of the sound-recording of the meeting held by the JAB on 15 April 1971. A series of documents so far withheld by the Administration may also be required, but Applicant would defer any such request pending Respondent's answer to this application.

"D. ALTERNATE PLEAS

"19. The pleas outlined in this application were made on the assumption that the Tribunal will either remand or pass judgement on the merits of the two cases covered by the appeal which Applicant had prosecuted in good faith ever since 9 June 1969. Should the appeal be considered non-receivable, then Applicant would be debarred by statute limitation to institute new proceedings and justice would be denied notwithstanding the flagrant character of the case .

"20. As regards the new dispute generated by the JAB, it is Applicant's earnest hope that the Tribunal will declare as null and void the Board's recommendation as well as the administrative action based thereon. But should the Tribunal intend to examine the substance of [the Director of the Social Development Division]'s decision of 8 May 1969, either in addition to or in substitution for the appeal as defined in this application, then Applicant would request authorization to submit a supplementary statement contesting its validity.";

Whereas the Respondent filed his answer on 17 January 1972;

Whereas, on 23 February 1972, the Applicant filed written observations amending the pleas outlined in paragraphs 15 and 16 of the application "so as to include, over and above the compensations claimed, proper relief for defamation of character and reputation", withdrawing the alternate pleas of the application, and requesting production of various records;

Whereas, on 19 and 25 September 1972, the Respondent submitted additional information at the request of the Tribunal;

Whereas, on 22 September 1972, the Applicant presented observations on the additional information submitted by the Respondent on 19 September 1972;

Whereas the Tribunal heard the parties at a public session held on 29 September 1972;

Whereas the Applicant filed an additional statement on 4 October 1972;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations in 1950 as a Social Affairs Officer and received a permanent appointment in 1955. On 1 January

1966 he became Acting Chief of the Social Defence Section; on 1 June 1967 he became Chief of that Section and, on 1 March 1968, he was promoted to the Senior Officer (P-5) level. In a letter to the Secretary-General dated 7 May 1969 but apparently sent on 10 or 11 May 1969, the Applicant complained that in the discharge of his functions he had been for some time "subjected to administrative pressure and systematic persecution, through a series of arbitrary measures" taken by the Director of the Social Development Division, and that he was convinced that these measures were "motivated by personal and perhaps vindictive factors"; after referring specifically to 14 alleged arbitrary measures, the letter stated:

"It is apparent that these measures have been specifically designed to ensure unbearable conditions of service which would force upon me either my resignation from the Secretariat or my transfer from the Social Defence Section, where I served for the last two decades. I believe, however, that it would be detrimental to the interests of the United Nations if I were to take such action under administrative pressure.",

and concluded with the following proposal:

"I have no doubt that an investigation into this matter would reveal to you, Sir, that the measures taken by [the Director of the Social Development Division] are motivated by prejudice. I place myself at the disposal of any impartial body assigned the responsibility of investigating this complaint, and I should be grateful if I were given the opportunity to provide the supporting evidence at hand."

In a memorandum to the Applicant dated 8 May 1969, the Director of the Social Development Division informed him that, having reached the conclusion that in the interest of the work of the Organization the Applicant should be relieved of his duties as Chief of the Social Defence Section and given a new assignment within the Division, she had decided to transfer him, as from 15 May 1969, to a new post at the P-5 level in the Office of the Director with the functional title of Senior Officer for Special Assignments. By a letter dated 12 May 1969, the Applicant requested the Secretary-General to review the Director's decision concerning his transfer; he concluded his letter by stating that he saw some merit if the scope of the investigation envisaged in his letter of 7 May 1969 were to be broadened so as to determine his relative competence in the Social Development Division as well as the principles governing the administration of the Social Defence Section in relation to those which prevailed in other organizational units within the Division. Having received no reply within the following month, the Applicant lodged an appeal with the Joint Appeals Board on 9 June 1969. On 12 June 1969 the Secretary of the Board requested the Director of Personnel to designate a representative of the Secretary-General to submit a written answer to the appeal. On 19 June 1969 the Applicant asked the Secretary of the Board to make the necessary arrangements for the composition of the Board and its urgent consideration of the appeal. On 3 July 1969 the Secretary informed the Applicant of the composition of the Board. On the same day the Director of Personnel advised the Secretary that a representative of the Secretary-General in the appeal had been designated, that the Respondent's answer would be submitted as soon as possible, but that the case was still under review by the Office of Personnel. In the meantime the Chef de Cabinet had informed the Legal Counsel, by a memorandum dated 1 July 1969, that the Secretary-General had decided that the case should be personally investigated by the Legal Counsel in collaboration with the Office of Personnel. The Legal Counsel and the Director of Personnel thereafter interviewed the Applicant as well as the Director, the former Director

and the Deputy Director of the Social Development Division. The first interview took place on 15 July 1969 and the last on 25 November 1969. Throughout that period the proceedings before the Board were kept in abeyance. On 20 April 1970 the Applicant's counsel urged the Board to expedite the proceedings and, on 11 June 1970, he reiterated his request. On 18 June 1970 the representative of the Secretary-General in the case suggested that the Board should defer its consideration of the appeal on the grounds that the contested transfer had not yet become legally effective, that the investigation report would be submitted to the Secretary-General by the middle of August and that the Secretary-General would take a decision shortly thereafter. On 23 June 1970 the Applicant's counsel objected to that suggestion on the grounds that the appeal related not only to the transfer but also to the quasi-disciplinary measures taken against the Applicant and that the decision of transfer, although not legally effective, had been enforced *de facto*. On 15 September 1970 the Board requested the representative of the Secretary-General to submit an answer to the appeal by 24 September 1970. On 24 September 1970 the representative of the Secretary-General filed a "preliminary reply" in which he informed the Board, *inter alia*, that the inquiry requested by the Secretary-General had been completed and the report submitted to the Secretary-General, whose decision on the case was expected within a few days. On 24 September 1970 the Legal Counsel and the Director of Personnel submitted the investigation report to the Secretary-General. The conclusions of the report were that there was no evidence of improper motive on the part of the Director of the Social Development Division but that she had not handled the case by the correct procedure; that the Applicant bore a large share of responsibility for a chaotic and destructive situation which had come about in the Social Defence Section, and should not resume the functions of Chief of that Section; that the Applicant had made unsubstantiated charges against his Director, but that nevertheless it was not appropriate to submit his case to the Joint Disciplinary Committee; and that the Applicant should be transferred to another P-5 post within the Social Development Division with the functional title of Senior Adviser to the Director and Secretary of the Commission for Social Development. On 7 October 1970, the Secretary-General informed the Legal Counsel and the Director of Personnel that he was in agreement with the results of their inquiry and would be grateful if all necessary further action would be taken in this regard. On 3 December 1970, the Director of Personnel informed the Applicant that, on the basis of the investigation report, the Secretary-General had decided to transfer him, as of 7 December 1970, from the post of Chief of the Social Defence Section to the post referred to in the conclusions of that report. In a memorandum of 31 December 1970 addressed to the Director of Personnel, the Applicant appealed to the Secretary-General to review the decision of his transfer or to defer action on the case pending his comments on the investigation report. On 12 January 1971, the Director of Personnel replied that the Secretary-General saw nothing in the Applicant's memorandum that would warrant a further review. On 12 February 1971, the Applicant lodged with the Joint Appeals Board a second appeal, directed against the decision to transfer him to the post of Senior Adviser to the Director and Secretary of the Commission for Social Development. On 23 June 1971, in a statement to the Board regarding that appeal, he filed with the Board a third appeal, directed against a decision, effective from 10 June 1971, to appoint Mr. William Clifford as Chief of the Social Defence Programmes.

On 19 July 1971 the Joint Appeals Board submitted its report on the first appeal. The Board's conclusions and recommendations read as follows:

"Conclusions and Recommendations"

"70. The Board finds that the contested decision was properly taken and is valid. Consequently, the Board cannot recommend the rescission of that decision or the payment of compensation for the injury allegedly caused to the appellant by its enforcement.

"71. The appellant has requested compensation for the prejudicial consequences of the procedural delay. The Board observes that the appellant, by making no submission to the Board from 19 June 1969 to 20 April 1970, implicitly consented to the postponement of the appeal proceedings while the investigation ordered by the respondent was carried out. After 20 April 1970 the appellant complained repeatedly about the delay in the appeal proceedings but, according to the statement made to the Board by the Legal Counsel, the appellant during that period was discussing with Mr. Jansson and with the Legal Counsel the possibility of a solution through his reassignment or transfer to a post that he would consider acceptable. The Board regrets that the investigation was not completed more promptly. Nevertheless, considering that the investigation was undertaken at the appellant's request and recalling the appellant's statement at the hearing held on 10 September 1970 that he would welcome a solution which would not compel him to assert his rights by legal means, the Board does not consider the delay to have been so prejudicial to the appellant as to justify a recommendation for compensation, especially since he received his full salary and allowances throughout the period in question.

"72. Accordingly, the Board is unable to make any recommendation in support of the appeal."

On 29 July 1971, the Director for Policy Co-ordination in charge of the Office of Personnel advised the Applicant that the Secretary-General had decided to confirm the administrative decision of 8 May 1969 to reassign the Applicant from the post of Chief of the Social Defence Section to the post of Senior Officer for Special Assignments within the Office of the Director of the Social Development Division. On 27 October 1971 the Applicant filed with the Tribunal the application referred to earlier.

On 30 November 1971, the Director of the Division of Personnel Administration, Office of Personnel, informed the Applicant that the confirmation notified to him on 29 July 1971, in connexion with his first appeal, by the Director for Policy Co-ordination was merely designed to clarify that between 15 May 1969 and 7 December 1970, the Applicant's functional title was properly "Senior Officer for Special Assignments" within the Office of the Director of the Social Development Division. On 25 February 1972 the Applicant lodged with the Joint Appeals Board a fourth appeal, directed against the administrative action embodied in that letter.

Whereas the Applicant's principal contentions are:

1. The Applicant was subjected to quasi-disciplinary measures and discriminatory conditions of service in flagrant defiance of his terms of appointment and of the principles governing the administration of the Secretariat. His rights and interests were further prejudiced by the protracted delay in the proceedings.
2. The legally ineffective decision concerning the Applicant's transfer was arbitrarily enforced to the detriment of his rights and interests:

(a) The discretionary power vested in the Secretary-General regarding staff assignments is not applicable in view of the legal position maintained by the Respondent in respect to the Applicant's transfer. Even if this discretionary power were applicable, it would not ensure the validity of the arbitrary enforcement of a legally ineffective decision;

(b) If the decision was meant to entrust the Applicant with a new task assignment, there was no reason for the Director of the Social Development Division to seek the approval of the Administration or for the Office of Personnel to withhold its approval pending investigation. If the decision implied the Applicant's transfer to a new post, then it should not have been illegally enforced;

(c) The Applicant was subjected to a *de facto* interruption of duty for which there is no legal basis in the Staff Rules or Regulations;

(d) While the need for flexibility in the administration of the Secretariat is acknowledged, it is questionable whether long-term assignments can be effected without any administrative decision taken in due form. In any event, it is incompatible with the elementary principles of public administration to empower the hierarchical superiors to effect such assignments verbally and at whim.

Whereas the Respondent's principal contentions are:

1. An examination of the Applicant's complaints regarding his conditions of service indicates that few, if any, can be characterized as relating to "conditions of service", and that in any event few, if any, are the types of matters to be adjudicated by the Tribunal. The Applicant fails to advance any evidence to support his repeated assertions that many of these "quasi-disciplinary" measures were motivated by a desire to punish or correct him.

2. The Secretary-General's decision communicated to the Applicant on 29 July 1971 did not violate any conditions of the Applicant's service or employment; it was within the discretionary authority of the Secretary-General and adequately and validly motivated, having been taken after consideration of the unanimous findings of the Joint Appeals Board and of the previously instituted special investigating group; and it was not vitiated by any abuse of authority or prejudice, either on the part of the Secretary-General or of the two review bodies he relied on, or on the part of the Applicant's Director, the charges against whom were thoroughly investigated and thereupon rejected by both these bodies.

3. The Applicant was not materially injured by the delay in disposing of his appeal, a delay for which he was himself at least partly responsible.

The Tribunal, having deliberated from 26 September to 20 October 1972, now pronounces the following judgement:

I. In support of his complaint relating to discriminatory conditions of service allegedly imposed on him, the Applicant enumerated 25 items during the oral proceedings on 29 September 1972. He thereby elaborated on his earlier presentation of 13 items included in his application to the Tribunal. Before embarking on an examination of the charges made by the Applicant, the Tribunal must examine the scope of the proceedings before it.

Under Staff Regulation 11.1, staff members may appeal against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules, or against disciplinary action. Under Staff Rule 111.3 (a),

"A staff member who, under the terms of Regulation 11.1, wishes to appeal an administrative decision, shall as a first step address a letter to the Secretary-General, requesting that the administrative decision be reviewed. Such a letter must be sent within one month from the time the staff member received notification of the decision in writing."

It does not appear from the pleadings that the Applicant observed the requirements of Staff Rule 111.3 (a) by addressing a letter to the Secretary-General, as a first step, requesting him to review any administrative decisions regarding the 25 charges. Not having initiated "the first step" as required under Staff Rule 111.3 (a), the Applicant had no basis for an appeal before the Joint Appeals Board.

II. The Applicant, however, submitted to the Secretary-General a letter dated 7 May 1969 complaining that he had been "subjected to administrative pressure and systematic persecution, through a series of arbitrary measures" taken by the Director of the Social Development Division; the letter concluded: "I have no doubt that an investigation into this matter would reveal to you, Sir, that the measures taken by [the Director] are motivated by prejudice . . .". In that letter the Applicant listed 14 items of alleged persecution relating to reduction of staff in the Social Defence Section; his removal from his functions as Secretary of the Commission for Social Development; his exclusion from participation in meetings of the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders and of an *ad hoc* Expert Group on social defence policies in relation to development planning; an attempt by the Director of the Social Development Division to merge the Social Defence Section and the Social Services Section, etc. As noted by the Joint Appeals Board, "many of the 14 measures listed by the appellant in his letter of 7 May 1969 to the Secretary-General had not taken the form of administrative decisions which would have been subject to appeal under Staff Regulation 11.1". The Tribunal observes further that the Applicant did not request review of any decisions as a first step within one month from the date of such decisions, but asked for an investigation of the charges outside the procedures contemplated by the Staff Rules.

Article 7, paragraph 1 of the Statute of the Tribunal reads in part:

"An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General".

It follows from a reading of Staff Regulation 11.1, Staff Rule 111.3 (a) and article 7, paragraph 1 of the Statute of the Tribunal that before the Tribunal takes cognizance of an application from a staff member there should be an administrative decision and a request by the staff member for its review by the Secretary-General. The Tribunal observes that in the present case there was no appealable administrative decision in respect of any of the 25 items listed by the Applicant and no request for review of any such decision by the Secretary-General. Therefore, the alleged violations of the Applicant's conditions of service were not properly before the Joint Appeals Board and cannot be deemed to have been "previously submitted" to the Board under article 7, paragraph 1 of the Statute of the Tribunal.

III. The Tribunal accordingly finds that the alleged violations of the Applicant's conditions of service have not been properly raised before it.

IV. Nevertheless, the Tribunal has examined the substance of the more serious charges enumerated by the Applicant during the oral proceedings. Items 1

and 2 relate to a "strike" and "open mutiny and rebellious activity" in the Social Defence Section "instigated in the Director's Office" and "organized against the Applicant by the Director's Special Assistant, in co-operation with an inter-regional adviser in the Director's Office". That there was a breakdown of work in the Applicant's Section between the Fall of 1968 and the Spring of 1969 is not in dispute. While the Applicant asserts that the situation was "instigated" in the Director's Office, the Respondent points out that it was brought about by the Applicant's own conduct, personality and way of handling the staff. In support of his contention, the Applicant relies on the findings in the investigation report that "the fact that neither she [the Director] nor [the Deputy Director] did anything about it between November 1968 and April 1969 is strong evidence that [the Director]'s sympathy lay with the strikers", that the Director held frequent meetings with the staff members of the Applicant's Section, and that one staff member led and encouraged the others to complain against him. The Tribunal, however, does not find evidence to sustain the plea that the strike situation was instigated by the Director or her Office. It seems incredible to the Tribunal that the Director, who was responsible for the effective discharge of the functions of her department and who would ultimately receive the blame for any failure, would have instigated or condoned indiscipline among the staff of the Applicant's Section.

Items 7, 8, 10, 21 and 23 relate to the inducement, immunity or protection alleged to have been afforded to staff members for the purpose of encouraging hostile behaviour against the Applicant, of extracting slanderous and defamatory petitions against him, and of submitting secret evaluation reports on his professional qualifications and performance as Chief of Section. Here again the Tribunal finds no evidence that either the Director or her Office offered any inducement or immunity to staff members to complain against the Applicant. The fact that one staff member who led the others in taking the complaint to the Director was subsequently appointed Special Assistant to the Director is no proof that the staff members were induced to complain against the Applicant.

Items 11 (invasion of privacy), 13 (disruption of telephone communications), 14 (mail censorship) and 15 (deprivation of secretarial assistance) were found on examination by the Tribunal to be exaggerations of trivialities arising out of the Applicant's confused employment situation. Item 24 relates to the exclusion of the Applicant from participation in the preparatory work of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The evidence on this point (which is dealt with later in the Judgement) shows that the preparation of the papers for the Congress was delayed and that, in the opinion of the Director, the Applicant was not in a position to complete the work within time. In any event, the Applicant had no right to be assigned to any particular work or to attend any particular conference, and his exclusion from the work related to the Congress cannot be deemed to be a violation of his conditions of service.

The Tribunal also finds no substance in item 3, as it has not been established that any threat was used to prevent the Applicant from having recourse to appeal proceedings, or in item 4, as the evidence shows that the alleged *de facto* suspension from duty was in a measure due to the Applicant's own limitations. Item 19, relating to qualitative and quantitative reduction of staff in the Section, and item 16, relating to the merger of posts, fall within the administrative competence of the Respondent and are not violations of the conditions of service of the Applicant.

V. The Applicant also characterizes the conditions of service allegedly imposed on him as "para-disciplinary action" or "quasi-disciplinary measures". He apparently realizes that such conditions of service do not strictly fall under the category of disciplinary measures contemplated in chapter X of the Staff Regulations and Rules and therefore uses the expressions "para-disciplinary" action and "quasi-disciplinary" measures. As stated by the Respondent, no charge of misconduct was made against the Applicant; nor was he excluded from attending the office by way of suspension from duty under Staff Rule 110.4. It was therefore not necessary for the Respondent to follow the procedures prescribed in chapter X of the Staff Regulations and Rules in respect of any of the complaints enumerated by the Applicant.

The Tribunal accordingly holds that there has been no violation of the Applicant's conditions of service on the ground that the procedures under chapter X of the Staff Regulations and Rules have not been complied with.

VI. The Tribunal therefore finds, as to substance, that the charges of violations of the Applicant's terms of appointment under Article 101 of the Charter or under the Staff Regulations and Rules have not been established.

VII. The Applicant asks the Tribunal to rule that the Joint Appeals Board erred in excluding from its consideration of the case the substance of his charges of violations of his conditions of service, and to order a remand of the case for correction of procedure and the payment of compensation. The Tribunal has already found in paragraph II of the Judgement that the so-called violations of the Applicant's conditions of service were not appealable administrative decisions under Staff Regulation 11.1 and Staff Rule 111.3 (a). The Tribunal therefore endorses the conclusions of the Board in this regard and rejects the plea.

VIII. The Applicant also requests payment of compensation under article 9, paragraph 1 of the Statute of the Tribunal for injury arising out of the conditions of service imposed upon him. As the Tribunal has reached the conclusion that the so-called violations of his conditions of service were not appealable administrative decisions properly raised before the Joint Appeals Board and the Tribunal, and as the Tribunal has found in substance that the charges of violations of the Applicant's conditions of service have not been established, the plea is rejected.

IX. The Applicant next contends that the illegal enforcement of a legally ineffective decision of transfer constituted an infringement upon the terms of his employment. On the facts which are not in dispute, the following situation emerges. By a memorandum dated 8 May 1969, the Director of the Social Development Division conveyed to the Applicant the decision to relieve him of his duties as Chief of the Social Defence Section and to transfer him, as from 15 May 1969, to a new post at the P-5 level in the Office of the Director with the functional title of Senior Officer for Special Assignments. The representative of the Respondent stated before the Joint Appeals Board that the Office of Personnel withheld its approval of the personnel action form proposing the transfer and that the transfer against which the Applicant was appealing had "not yet become legally effective". The Secretary-General confirmed the initial decision of transfer on 29 July 1971. In the meantime, the Applicant had been transferred, as of 7 December 1970, from the post of Chief of the Social Defence Section to the post of Senior Adviser to the Director and Secretary of the Commission for Social Development. From 8 May 1969 to 7 December 1970 the Applicant was therefore officially the Chief

of the Social Defence Section. He alleges, however, that during this period he was not allowed to perform the functions of Chief of that Section, that one staff member was appointed as *de facto* officer in charge of the Section, and that another staff member was designated as Executive Secretary of the Congress on the Prevention of Crime and the Treatment of Offenders. It appears furthermore that the Applicant was not given any material assignment during that period. The Applicant therefore argues that the decision of transfer, although stated to be not legally effective, was illegally enforced against him.

X. The Respondent acknowledges that there was a *de facto* interruption of the Applicant's duties as Chief of the Social Defence Section during that period but justifies it on the grounds that there was a breakdown of work in the Section led by the Applicant, that the staff refused to co-operate with him, that preparations for the Congress fell into arrears and that, within the discretionary authority vested in a supervisor, it was open to the Director of the Social Development Division to relieve the Applicant of certain functions or invest him with other assignments.

XI. The Tribunal must therefore consider whether the Respondent acted in disregard of the Applicant's contractual rights after 8 May 1969 and, in particular, whether the Director was justified in relieving the Applicant of the duties he was performing at the time.

The Tribunal notes that, after receiving the Applicant's letter of 7 May 1969, the Secretary-General decided that the case should be investigated by the Legal Counsel in collaboration with the Office of Personnel. The report of the investigating group has been produced as a document in the case. The Tribunal has carefully examined the procedure followed by the investigating group to gather information regarding the Applicant's complaints. While it does not regard itself bound by the conclusions of the investigation report, the Tribunal is of the opinion, after considering the observations submitted by the Applicant on this matter, that it is entitled to rely on the evidence recorded in the investigation report.

XII. The Tribunal observes that dissatisfaction with the Applicant on the part of the staff members of his Section reached a climax in November 1968 when the staff members brought their grievances against the Applicant to the Director of the Social Development Division and asked her to remedy the situation. The Applicant admits that the staff members were on strike and refused to co-operate with him during this period. He states that he had good relations with his staff before the Director came to office and relies on a memorandum prepared by the staff members on 4 May 1967 in support of his promotion. He alleges that in spite of his memoranda to the Deputy Director complaining against the non-co-operation of the staff, the Director took no notice or action. On the facts the Tribunal finds that the work of the Applicant's Section had come to a halt and that, when the Deputy Director took over in April 1969, the work advanced rapidly. The evidence before the investigating group, which examined the Applicant, the Director and other officials concerned, shows that the Applicant was both aggressive and sarcastic and that his handling of the staff was destructive of morale and productivity. While the periodic reports by the Applicant's superiors uniformly gave him a high rating as to competence, initiative and judgement, the former Director of the Division stated in evidence before the investigating group that the Applicant "had trouble in supervising his staff" and that "he was good on the conference procedures, on the preparation of papers, but in the

conference itself, in the meetings, he had a chronic problem of teamwork". The Deputy Director of the Division, who held a high opinion of the Applicant's competence, stated in evidence that the Applicant "tended to think of people as either quite good or quite idiotic" and that he had told the Applicant that he "was not a genius and his staff were not nincompoops". On a review of the evidence, the Tribunal agrees with the conclusion of the investigating group that the Applicant's conduct and behaviour "made him intolerable to his staff" and that "their contribution was reduced far below what it could have been".

XIII. The principal reason for the Director's action relieving the Applicant of his duties as Chief of the Social Defence Section is stated to be that serious delays in the preparations for the Congress which was to be held in 1970 had occurred, and that the work of the Section was in arrears. The Applicant has strongly contested the allegations and has purported to explain the reasons for the delays. But the evidence shows that the agenda for the 1970 Congress, which should have been finalized in 1967-68, was not done until June 1969. The Applicant pleads that the delay was due to objections raised by a Member State to certain items on the agenda. The Tribunal observes, however, that such objections do not explain the delay in the finalization of the agenda by 1967 or mid-1968 since they were raised later. The Director also complained that she had requested the preparation of certain papers for the meetings of a consultative group and that these papers were not submitted to her until the day prior to her leaving for Europe. The Applicant's plea of staff limitation in the Section cannot absolve him of his responsibility in the matter.

The Tribunal notes that the Deputy Director, in his evidence before the investigating group, summed up the situation as follows: "In fact there were delays, and two expert meetings, one of which had already been postponed once, were scheduled for June; something drastic had to be done in order to complete preparations for them". The Tribunal therefore concludes that the Director had reasons to feel worried about the progress of the work and about the Applicant's ability to complete it. In the exercise of her judgement and discretion, she found it necessary to relieve the Applicant of his duties as Chief of the Social Defence Section; she felt that it was within her competence to do so under Staff Regulation 1.2.

Staff Regulation 1.2 reads in part as follows:

"Staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations. They are responsible to him in the exercise of their functions. The whole time of staff members shall be at the disposal of the Secretary-General . . .".

Thus it is obvious that the Secretary-General may relieve a staff member of certain duties or invest the staff member with other duties according to the exigencies of the service, of which he is the sole judge. This power may be exercised by supervisory officers in the normal course of administration. Pending the investigation ordered by the Secretary-General at the request of the Applicant, approval of the personnel action form concerning the transfer was withheld and consequently the Applicant retained his functional title as Chief of the Social Defence Section. There is no indication, however, that while consent to the transfer was withheld, the normal supervisory functions of the Director over the Applicant had been stayed or suspended. In view of its conclusions that the Director had reason to be dissatisfied with the state of preparations for the Congress and with the work in the Applicant's Section, the Tribunal considers that she was justified under Staff Regulation 1.2 in relieving the Applicant of certain functions.

XIV. From a procedural standpoint, the Applicant argues that the Director

of the Social Development Division exceeded her competence by ordering his "transfer" without the authorization of the Director of Personnel and that her action was therefore void. The Respondent replies that, although the terms "re-assignment" and "transfer" have been used interchangeably by the Administration in this case, these two terms have different legal implications. He refers to the "Training and Reference Manual of Procedure for Personnel Clerks and Secretaries", which defines a reassignment as "the movement of a staff member to a different function at the same salary level within the same major organizational unit" and a transfer as "the movement of a staff member from one major organizational unit to another". He points out that, while in practice the Director of Personnel has to approve all movements from one major organizational unit to another, shifts within the same major organizational unit do not normally require the approval of the Director of Personnel. Since the Applicant was relieved of his duties as Chief of the Social Defence Section and assigned to a post of Senior Officer for Special Assignments within the same organizational unit and at the same salary level, this was a case of reassignment of duties not normally requiring the approval of the Director of Personnel. But in view of the memoranda submitted by the Applicant to the Secretary-General and in view of the investigation ordered thereon, the Office of Personnel, as noted earlier, withheld the personnel action form concerning the transfer. Nevertheless, the initial action taken by the Director of the Social Development Division was within her authority and the Tribunal holds therefore that the Applicant's plea that the Director exceeded her competence cannot be sustained.

XV. The Applicant also contends that the non-assignment of specific duties to him amounted to suspension from duty and that, under Staff Rule 110.4, such suspension could not be ordered unless a charge of misconduct was made against him pending an investigation into the matter. As observed earlier, however, the Tribunal is of the opinion that no disciplinary measures were initiated against the Applicant within the meaning of chapter X of the Staff Regulations and Rules and that the assignment of functions pursuant to the decision of 8 May 1969 was within the discretionary powers vested in the Respondent under Staff Regulation 1.2. Since no charge of misconduct was made and no suspension from duty ordered, the Tribunal holds there was no need to follow the procedure prescribed by chapter X of the Staff Regulations and Rules.

XVI. The Applicant further charges that the measures taken by the Director of the Social Development Division were motivated by national prejudice. In support of this allegation he asserts that the Director had expressed strong political convictions, made provocative remarks insulting to the Applicant's national pride and dignity, and showed administrative favours to those who shared her political views. The Tribunal, however, finds no substance in the Applicant's charge. The Director no doubt held strong political views and expressed them openly on several occasions, but there is nothing in the record to show that she had any prejudice against certain nationals or that she resorted to persecution of the Applicant because of any such prejudice. Indeed the Applicant himself conceded in a statement relating to political motivation appended to his written observations that this statement "might not be sufficient by itself to establish that the decision of my transfer had necessarily been motivated by prejudice". The Tribunal concludes that the charge of prejudice or political motivation has not been proved.

XVII. The Applicant also alleges that his transfer was brought about with the intervention of the ambassador of a Member State. In April 1969 the

Applicant complained about the conduct of a staff member of his Section, a national of that Member State, saying that the staff member was seeking and receiving instructions from his Government and was trying to exercise a veto on any decision taken by the Section if it was in conflict with the views of his Government. The Respondent points out that the staff member was reprimanded on that account. While the evidence shows that the staff member concerned felt obligated to conform to the views of his Government and sometimes acted accordingly, the allegation concerning the intervention of the ambassador in the employment situation of the Applicant has not been established by positive evidence.

XVIII. The Tribunal therefore holds that the Applicant's allegations of improper or extraneous motivation on the part of the Director must be rejected.

XIX. The Tribunal observes that on 29 July 1971 the Secretary-General confirmed the administrative decision of 8 May 1969 reassigning the Applicant from the post of Chief of the Social Defence Section to the post of Senior Officer for Special Assignments within the Office of the Director of the Social Development Division. That administrative decision, as confirmed on 29 July 1971, is the Secretary-General's final decision in the case. According to the Statute of the Tribunal, the Applicant may only seek rescission of that final decision and relief on ancillary matters connected therewith. The Applicant, however, seeks relief on matters such as the alleged violation of his conditions of service or the enforcement of an allegedly ineffective order, without contesting the Secretary-General's final decision. The Applicant, by confining his pleas to such ancillary matters, cannot oust the jurisdiction of the Tribunal to pass judgement on the substance of the case.

XX. In view of the findings in the case that the administrative decision of 8 May 1969 was justified on the merits, that it was within the administrative competence of the Director of the Social Development Division, and that it was not motivated by prejudice or extraneous considerations, the Tribunal rules that the said administrative decision, confirmed by the Secretary-General on 29 July 1971, is legal and valid. Accordingly the question of the payment of any compensation does not arise.

XXI. The Applicant contends that, while his pleas before the Joint Appeals Board were limited to compensation for the violation of his conditions of service and for the illegal enforcement of a legally ineffective decision of transfer, the Board erred in holding that the appeal was directed against the decision of transfer dated 8 May 1969. The Applicant accordingly requests the Tribunal to remand the case for correction of procedure by the Board.

In the light of its ruling in paragraph XX above, the Tribunal decides that the plea that the proceedings of the Joint Appeals Board were vitiated by errors of procedure is of no relevance. The Tribunal further observes that even assuming the validity of the Applicant's plea, a remand of the case would serve no purpose since the Tribunal has reached on the merits the conclusions that there was no violation of the Applicant's conditions of service, that there was no illegal enforcement of any ineffective order, and that the administrative decision of 8 May 1969 was valid.

XXII. Since the Applicant was transferred, as of 7 December 1970, from the post of Chief of the Social Defence Section to the post of Senior Adviser to the Director and Secretary of the Commission for Social Development, the Tribunal

holds that the present application in so far as it seeks to restore the Applicant's *status quo ante* as Chief of the Social Defence Section is infructuous.

XXIII. The Applicant contends that he has suffered prejudice as a result of the inordinate delay in the disposal of his case and asks for substantial compensation.

It is no doubt true that the appeal to the Board, filed by the Applicant on 9 June 1969, was disposed of on 19 July 1971 only and that in the meantime some administrative changes concerning the Applicant had taken place. But the Tribunal observes that, by trying to pursue two remedies concurrently, one before the investigating group and another before the Joint Appeals Board, the Applicant himself contributed a great deal to the confusion in the proceedings before the Board. If he was keen on his appeal before the Board, he could have requested withdrawal of his complaint from the investigating group. On the contrary, as pointed out by the Board, the Applicant acquiesced in the postponement of the consideration of his appeal from 19 June 1969 to 20 April 1970 while the investigation was carried out. It may also be noted that the Applicant seems to have been in two minds, hoping for an advantageous settlement and at the same time pressing for an expeditious disposal of his appeal. In any event, during this period he was drawing his salary and suffered no financial loss on account of the long proceedings.

XXIV. For all these reasons, the Tribunal rejects the Applicant's request for compensation for delay.

XXV. The Tribunal feels nevertheless that there were a number of unsatisfactory features in this case. Firstly, a senior staff member was practically kept idle without material assignments for about 19 months. Secondly, there was a breakdown of supervisory functions and, in spite of the Applicant's complaints regarding the non-co-operation of staff members of his Section, the Director of the Social Development Division did nothing to remedy the situation. Thirdly, the Director did not discuss with the Applicant the problems relating to the staff members concerned or to the delay in the preparation of urgent papers. However, as the Applicant himself was responsible in a large measure to the unsatisfactory situation prevailing in his Section, the Tribunal considers that the Applicant was *in pari delicto* and awards no remedy.

XXVI. The Tribunal therefore rules:

A. On the pleas relating to conditions of service:

(1) That the alleged violations of the Applicant's conditions of service are not appealable administrative decisions and that there was no basis for an appeal before the Joint Appeals Board;

(2) That the request for remand of the case to the Joint Appeals Board for correction of procedure, as well as the request for compensation for prejudice caused by procedural delay, be rejected;

(3) That the complaint of violation of conditions of service has not been properly raised before the Tribunal;

(4) That the alleged violations of conditions of service have not been established and do not constitute an infringement of the Applicant's terms of employment, the Charter, the Staff Regulations or the Staff Rules;

(5) That the Applicant's claim for compensation for such alleged violations fails; and

(6) That the request for costs be rejected.

B. On the pleas relating to the arbitrary enforcement of a legally ineffective decision:

(1) That the assignment of duties pursuant to the decision of 8 May 1969 was justified on the merits and was within the competence of the Director of the Social Development Division under Staff Regulation 1.2;

(2) That the claims for compensation fail;

(3) That the request for reinstatement in the post of Chief of the Social Defence Section be rejected;

(4) That the administrative decision of 8 May 1969, confirmed on 29 July 1971, is legal and valid;

(5) That in view of the decision on the merits, the question of irregularity of procedure before the Joint Appeals Board does not arise; and

(6) That the request for costs be rejected.

XXVII. The application is therefore rejected.

(Signatures)

R. VENKATARAMAN

President

Suzanne BASTID

Vice-President

Francis T. P. PLIMPTON

Vice-President

Jean HARDY

Executive Secretary

New York, 20 October 1972

Judgement No. 166

(Original: English)

Case No. 161:

**Kahale (Request for remand
of case)**

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

Request to remand a case to the Joint Appeals Board for correction of procedure.

Scope of the application.—Article 9, paragraphs 1 and 2, of the Statute of the Tribunal.—Article 18, paragraph 2 of the Rules of the Tribunal.—An application to the Tribunal must be such as to enable the Tribunal to proceed to a determination of the merits of the case.—Application not receivable, since the Applicant merely requests a remand of the case to the Joint Appeals Board for correction of procedure.

The Applicant contests the regularity of the procedure followed by the Joint Appeals Board.—Complaint that the Applicant was not informed in advance of the composition of the Board.—Complaint rejected, because the Applicant was orally informed of the Board's composition.—Contention of failure to notify the Applicant in writing.—Contention rejected in the absence of prejudice to the Applicant and since he raised no objection.—Charge regarding the selection of members of the Board.—Wide discretion of the Chairman responsible for the distribution of cases.—Charge rejected.—Contention that the same Joint Appeals Board was selected to consider two