

## Judgement No. 172

(Original: French)

**Case No. 166:**  
**Quémerais**

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

*Termination on the ground of abolition of post of a locally recruited staff member of the United Nations Children's Fund (UNICEF) holding a regular appointment.*

*Conditions under which a regular contract may be terminated.—Applicant's contention that his appointment was equivalent to a permanent appointment.—Purpose of regular appointments.—Similarities between regular appointments and permanent appointments.—Essential difference where termination conditions are concerned.—Impossibility of assimilating the Applicant with a staff member holding a permanent appointment for the purposes of a termination decision.—Impossibility of inferring such assimilation from the fact that the Applicant was promoted to the National Professional category.—Applicant was terminated as a result of a change in the activities of the European Office of UNICEF.—Proposals made to the Applicant in application of Staff Rule 109.1 (c).—In view of the complete elimination of a previous activity of the Office and the nature of the Applicant's assignment, the Respondent was entitled to terminate his appointment on the ground of abolition of post, but was obliged to observe Staff Rule 109.1 (c).—The Applicant could be terminated only if the application of that provision did not enable him to be retained in a suitable post.—Rejection of the Applicant's argument that the Respondent could not invoke Staff Regulation 9.1 (c) in support of the termination decision.—Consideration of the question whether the procedure followed for the purpose of assessing the Applicant's suitability for the post concerned was proper.—A trial period required.—Its justification.—Reports prepared by the Applicant's new supervisor.—Consideration of the question whether the procedure followed by the Respondent in arriving at the decision to terminate the Applicant's appointment on the basis of those reports was proper.—Convening of a Personnel Committee to review the Applicant's case.—Composition of the Committee.—Its propriety.—Review of the Applicant's case by the Committee.—The Committee itself did not carry out an evaluation of the Applicant's work and regarded the opinion of his supervisor as decisive.—The Applicant was in no way called upon to present his case to the Committee or to convey his opinion on the reports concerning him.—Conclusion of the Tribunal that the Applicant was not afforded the guarantees of due process before the Committee.—Consequently, the final termination decision is improper and must be rescinded.—Impossibility of ordering the Applicant's reinstatement, since he was locally recruited and the European Office of UNICEF was transferred from Paris to Geneva on 1 October 1972.—Award to the Applicant of an indemnity equal to the net base salary he would have been entitled to receive from the end of his appointment up to 30 September 1972.*

*All requests based on the assumption that the Applicant is entitled to a transfer to Geneva are rejected.—Request that a new certificate of service should be drawn up.—Respondent's statement agreeing to issue a new certificate to the Applicant.—Conditions to be fulfilled by the new certificate.—Request for the payment of a personal dependency allowance.—Request rejected, because the allowance is not included in the termination indemnity.—Request for the refund of any taxes which might be levied on the indemnities awarded by the Tribunal.—The Tribunal need not consider that request, since it does not pertain to a situation currently existing.—Award to the Applicant of \$500 as costs.—The other requests are rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice President, presiding; Mr. R. Venkataraman, President; Mr. Mutuale-Tshikantshe;

Whereas on 8 September 1972 Michel Quémerais, a former staff member of the United Nations specifically recruited for the United Nations Children's Fund, here-

inafter referred to as UNICEF, filed with the Tribunal an application the pleas of which read:

"The Tribunal is requested:

"1. To declare that it is competent to hear and pass judgement upon the present application;

"2. To declare that this application is receivable;

"3. To rescind the decision of 10 November 1970 terminating the Applicant's regular appointment, which decision was confirmed on 17 November 1970, following the decisions contained in the letter of 20 October 1969, and which was not rescinded by the Secretary-General notwithstanding the unanimous recommendation of the Joint Appeals Board;

"4. To order that the Applicant be reinstated and that he be offered the choice of being reinstated either in his post in the European Office of UNICEF, transferred to Geneva, *on the same basis* as that of Professional staff members of his category; or in an equivalent post corresponding to his seniority, without loss of professional benefits;

"5. To order that the Applicant be reinstated in the full enjoyment of his status of holder of a regular contract, which would become permanent following the transfer to Geneva of the European Office of UNICEF, and also in the rights, emoluments, privileges and benefits pertaining to such status (pension, annual leave, etc.) as if he had not been terminated;

"6. To order that facilities be granted to the Applicant to enable him to refund to the Pension Fund the amount received by him as a benefit on withdrawal, and that the amount of interest to be claimed by the Pension Fund for the period between the date of payment of the benefit and the date of the request for restoration of prior contributory service be paid by the Organization;

"*Alternatively:*

"7. To order, by virtue of article 9, paragraph 1, of the Statute of the Tribunal, that there be awarded to the Applicant, in lieu of reinstatement, on the date of expiration of the notice of non-reinstatement:

"An indemnity equivalent to the net amount of his salary for a five-year period, including the personal dependency allowance,

"*plus* his salary up to the aforesaid date and, on the basis of that date, the statutory termination indemnity, and the indemnity in respect of commutation of 60 days' accrued annual leave,

"*minus* the amount paid to the Applicant on 28 February 1971 as the termination indemnity and the indemnity in respect of commutation of 60 days' accrued annual leave, and

"*minus* his contribution to the Pension Fund for the period from the effective date of his termination up to the date of expiration of the notice of non-reinstatement;

"8. To order that, in the event of non-reinstatement, a certificate of service, drawn up in accordance with his request, indicating as the date of separation from the service the date of expiration of the notice of non-reinstatement, be issued to the Applicant;

"*In case the principal application is rejected*

"9. To order that the amounts of 873.56 francs and 2,533.33 francs, to which he was entitled at the time of termination of his regular contract, be paid to the Applicant as a personal dependency allowance;

*"In all cases*

"10. To order that an indemnity equivalent to one year's net salary, including the personal dependency allowance, be awarded to the Applicant for injury sustained, whether or not he is reinstated;

"11. To order that an indemnity equivalent to two months' net salary, including the personal dependency allowance, be awarded to the Applicant in reimbursement of the costs incurred for his defence before the Joint Appeals Board and the Tribunal, whether or not he is reinstated;

"12. To order that the amount of the indemnities to be paid to the Applicant be increased in proportion to the salary increases occurring up to the date of expiration of the notice of non-reinstatement, taking into account the changes in the official status of Professional staff members of his category, from which he would have benefited because of the transfer to Geneva of the European Office of UNICEF, and the periodic salary increments to which he would have been entitled;

"13. To order that the amount of any taxes which might be levied on the indemnities ordered by the Tribunal be refunded to the Applicant;

"14. To rule that the services of the Applicant be deemed not to have ceased from the effective date of the contested decision up to the date of reinstatement or, if reinstatement does not take place, up to the date of expiration of the notice of non-reinstatement;

"15. To order that all necessary steps be taken to ensure that the Applicant's status in the future is not prejudiced by the fact of the contested decision and the consequent proceedings, whether or not he is reinstated;

"16. To order oral proceedings for the purpose of hearing the parties."

Whereas the Respondent filed his answer on 1 December 1972;

Whereas, on 26 February 1973, the Applicant filed written observations in which he requested the Tribunal to:

"declare that as a result of his reclassification in the Professional category he should have been given a permanent appointment;

"order that his regular appointment should therefore be modified;

"alternatively, reaffirm that the rules governing regular appointments do not apply to appointments to posts in the Professional category, in accordance with Staff Rule 104.13 (b) (i)."

Whereas, on 22 March 1973, the Tribunal granted the parties a public hearing;

Whereas the Applicant submitted additional documents on 22 March 1973;

Whereas the Respondent submitted additional documents on 23 March 1973;

Whereas the Applicant filed additional observations on 26 March 1973;

Whereas the facts in the case are as follows:

The Applicant joined the service of UNICEF on 1 March 1960 as a Technician in the Food Conservation Division (later, Food Conservation Service) of the European Office at Paris under a two-year probationary appointment at level E of the General Service category. He was promoted to level F on 1 March 1961 and to level H on 1 January 1962. On 1 March 1962, he was granted a regular appointment. On 1 January 1963, he was promoted to level J of the National Professional category, a grade which was later to correspond to level A of the National Officers category. After UNICEF decided to discontinue the milk conservation activities to which the Applicant was assigned and to transfer his supervisor, the Director of the Administrative Division of UNICEF wrote to the Director of the European Office on 29 September 1969 instruct-

ing him to seek an alternative post for the Applicant in accordance with Staff Rule 109.1. On 15 October 1969, the Director of the European Office held a meeting with several Chiefs of Division in order to explore the possibilities of using the Applicant's services within the Office. On 20 October 1969, as a result of this meeting, the Director sent the Applicant the following letter:

"Your case was reviewed by a Special Committee consisting of several Chiefs of Division, because we wished to explore all the possibilities existing inside the European Office in order to mitigate the effects of the forthcoming termination of your present assignment following the discontinuation of this Office's milk conservation activities.

"This review indicates that there is only one possibility of retaining you in the European Office: by using your technical qualifications in the new Technical Assistant post being created in the Food Conservation Service headed by Mr. Buffa.

"A job description has been prepared for this post, as indicated in the attached copy. It will not be advertised in a vacancy notice if, as I hope, you accept the offer made to you. However, I draw your attention to the prescribed trial period.

"Your trial period will begin on 17 November and end on 31 January 1970. To enable you to complete this period in the best possible circumstances, you will be released from your present work not later than 14 November.

"Your future career will depend on the results of this trial period, because, if you were to prove unable to adapt yourself to these new duties, we should be obliged to confirm the notice of termination owing to abolition of your post, and your duties would end on 30 April 1969.

"I hope that you will accept this offer, and I should be grateful if you would inform me in writing of your agreement."

On 22 October 1969, the Applicant informed the Director that he had no alternative but to agree to the suggestion. On 12 February 1970, the Applicant's new supervisor recommended, in an interim report on the Applicant's work, that the trial period should be extended by six months. On 5 October 1970, the Applicant's supervisor submitted his final report, in which he concluded that he could not consider the Applicant to be the collaborator he needed. On 6 October 1970, at the request of the Acting Director of the European Office, the Personnel Committee held a meeting to review the Applicant's case. On 6 and 7 October 1970, the Applicant submitted comments on the final report of his supervisor in letters addressed to the Director and the Chief of the Administrative Division of the European Office, respectively. On 21 October 1970, the Chief of the Administrative Division informed the Applicant that, after unsuccessfully exploring all the possibilities of transferring him to another service in the European Office, the Personnel Committee had requested that the possibility of a transfer to another region should also be explored, that that request had been transmitted to Headquarters in New York and that, if the Administrative Division at Headquarters was unable to offer the Applicant another post, he would be terminated owing to abolition of post, at three months' notice. On 24 October 1970, the Applicant sent a note of protest to the Director of the European Office. On 10 November 1970, the Acting Director informed the Applicant that a reply had been received from New York, that no transfer was possible in the absence of a suitable vacancy and that a decision would be taken about the Applicant in the course of a forthcoming visit by the Director of the Administrative Division to Paris. On 17 November 1970, the Chief of the Administrative Division notified the Applicant that his appointment would be terminated on 28 February 1971 but that, in order to facilitate his readjustment, he would be released from all duties forthwith. On 18 November 1970, the Applicant requested

the Secretary-General to reconsider that decision and on 19 December 1970, having received no reply from the Secretary-General, he submitted an appeal to the Joint Appeals Board. The Board submitted its report on 26 January 1972; its conclusions and recommendations were as follows:

*"Conclusions"*

"70. On the basis of the foregoing the Board concludes:

"(1) that there was no real abolition of post in the sense of Regulation 9.1 of the Statutes, which was invoked as a ground for termination;

"(2) that the trial period imposed on the Appellant, who was already the holder of a regular appointment, can only be regarded as an attempt to measure his capacities in a particular post but that even if unsuccessful under the circumstances it could not provide a legitimate basis for termination;

"(3) that the report following the new trial period shows evidence of being a highly personal evaluation by the Appellant's new supervisor and could not in itself be a ground for terminating the Appellant's appointment after more than ten years of satisfactory service;

"(4) that the possibilities of finding a new and suitable assignment for the Appellant after re-orientation of activities in the Food Conservation Service were not fully explored;

"(5) that the administrative decision to terminate the Appellant's appointment on the abovementioned grounds was therefore arbitrary and should be revoked.

*"Recommendations"*

"71. Taking into account the above findings and conclusions, the Board recommends:

"(1) That the Secretary-General should declare null and void the administrative decision to terminate the Appellant's appointment;

"(2) That the Appellant be reinstated in the post he occupied when the administrative decision was taken, or in an equivalent post of the same category, even if this requires transfer of a post from UNICEF Headquarters to the Paris Office;

"(3) That the services of the Appellant be considered as continuous from the date of the administrative decision until the date of his reinstatement;

"(4) That the Appellant be granted, retroactively to the date of the termination decision, all the rights and privileges he would have enjoyed if the administrative decision had never taken place including back pay for the intermediate period (less any separation payments or indemnities paid to the Appellant), pension rights, annual leave and any other rights recognized by the Staff Rules and Regulations to Staff members holding a regular appointment;

"(5) That the Appellant be reimbursed expenses incurred by him in connexion with his appeal;

"(6) Finally, the Board recommends that appropriate measures should be taken to ensure that the future position of the Appellant is not jeopardized as a result of the administrative decision or of the present appeal."

In letters dated 25 May and 9 June 1972, the United Nations Director of Personnel informed the Applicant that, after considering the case in the light of the Board's report, the Secretary-General had decided not to follow the recommendations contained in that report for the following reasons:

"As to the abolition of post, given as the reason for your termination and for

which the Board did not find sufficient proof, it was observed that, in any event, you were aware of the real reasons for your termination and that these reasons were sufficient to justify the action taken, under Staff Regulation 9.1 (c).

"The 'trial period' for which the Personnel Committee of UNICEF evaluated your work is not a supplementary probation period, as defined in the Staff Regulations and Staff Rules, but simply a reasonable method of evaluating your work in the service of UNICEF. Despite two unfavourable reports, the Director of the Office, taking into consideration your years of service, convened a meeting of the Personnel Committee to review your case and the possibilities of offering you alternative employment, even outside the European Office. When these endeavours proved unsuccessful, it was decided to terminate you in the interest of the Organization. Nothing in the facts of the case allows one to conclude, as the Board did, that the termination decision was taken arbitrarily. The fact that the case was submitted to a body in which the staff representatives participated precluded any arbitrariness in respect of this decision. Nor is there any evidence that the decision was based on any bias or on facts or circumstances not material to the case.

"For that reason, it was felt that the decision to terminate your appointment should be upheld, notwithstanding the recommendations of the Joint Appeals Board."

On 8 September 1972, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The alleged abolition of the Applicant's post was not consequential upon the abolition of the functions which he was performing, which functions were retained by the Respondent; nor was it the result of a cut in the budget or in the number of National Officer posts in UNICEF.

2. The so-called new post offered to the Applicant was his own post and no administrative change affecting him had occurred.

3. By seeking to impose a trial period on the Applicant when he already held a regular appointment, the Respondent violated the Staff Regulations and Staff Rules, the alleged trial period was unjustified, it was not accepted without objection and, in any event, the Respondent allowed it to elapse without taking a decision.

4. The reports prepared on the Applicant by his new supervisor are irregular, incorrect and biased.

5. By basing itself on incomplete and erroneous information, the Personnel Committee which examined the Applicant's case made recommendations which are not sufficient to correct the decision to terminate his regular appointment; a complete, reasonable and fair procedure was not followed prior to the termination, and the guarantees of impartiality and due process were not provided in the composition of the Personnel Committee.

6. The Respondent does not furnish proof that he took the necessary action to find the Applicant a new assignment, as was incumbent upon him, and did not follow the procedures provided for that purpose; the Respondent does not even furnish proof that he made sufficient effort to find the Applicant a post either during the period of notice or during the period between the date of the recommendation of the Joint Appeals Board and the date on which the Secretary-General rejected it.

7. After the separation of the Applicant from the service, the Respondent gave another reason for termination by invoking Staff Regulation 9.1 (c)—without offering the slightest evidence that the termination was in the interest of the United Nations—in order to justify *a posteriori* an illegal action and to withhold from the Tribunal the reasons for this action.

Whereas the Respondent's principal contentions are:

1. The Applicant did not hold a permanent appointment but a regular appointment, which does not offer the same guarantees of tenure and may be terminated "in the interest of the United Nations" under Staff Regulation 9.1 (c). That regulation confers on the Secretary-General a discretionary power in the matter of termination; his decision need not be supported by a statement of specific reasons or be preceded by any particular procedure; his discretionary power is in no way altered or diminished by explanations or reasons which, although not legally required, are generally given.

2. The contested decision was properly motivated. The reasons given to the Applicant reflected the true basis for the decision, they were given to the Applicant in good faith, the Applicant was fully aware of the circumstances which motivated the decision, and the circumstances justified the exercise of the discretionary power under Regulation 9.1 (c). In particular:

(a) "Abolition of post" was not a specious reason. Regardless of how "abolition of post" may be defined for the purpose of establishing the existence of a ground for termination under Staff Regulation 9.1 (a), the various references to "abolition of post" in the explanations given to the Applicant did not indicate an abuse of power, and the subsequent outside recruitment did not establish that the Applicant's termination was arbitrary;

(b) The result of the trial period was a legitimate consideration. A staff member holding a regular appointment who is not deemed suitable for work which he is assigned may be terminated in the interest of the Organization, and no misuse of power can be inferred from the fact that the Applicant's suitability for such work was evaluated after he received a regular appointment.

3. The Applicant's procedural rights were respected. In particular, there was nothing unfair or improper in the composition of the Personnel Committee, which in any event it was not obligatory to consult in the present case.

The Tribunal, having deliberated until 5 April 1973, now pronounces the following judgement:

I. The application is directed against the Respondent's decision of 25 May 1972 rejecting the Joint Appeals Board's recommendation of 26 January 1972 that the termination decision, of which the Applicant was notified on 17 November 1970, should be rescinded.

When the termination decision was taken, the Applicant had been employed in the European Office of UNICEF at Paris since 1960. Since 1 March 1962, he had held a regular appointment, with Paris as his duty station. The Applicant was classified in the General Service category, level H, in 1962 and had the status of a locally recruited staff member. On 1 January 1963, he was classified in the recently established National Professional category. In March 1969, Headquarters changed the name of this category to the National Officer category, retroactive to the date of its establishment. However, the Applicant's contract remained unchanged, and the parties agree that the basic issue in this case is the conditions under which a regular contract may be terminated.

II. The parties have set forth their views on this type of appointment. The Applicant has emphasized the special features of his own contract, which he contends made it "in reality a permanent contract".

The Tribunal notes that the purpose of regular contracts was defined in the following terms by the Secretary-General in 1953 (document A/2533, part II, chapter II, para. 96):

"Some predominantly local groups of staff would be granted in the same conditions a different type of appointment more suited to the nature of their

employment than the permanent appointment, but nevertheless clearly indicating the possibility of continuous long-term service."

It is clear from Staff Rules 104.13, 104.14 and 109.1 that the regular appointment is in some respects similar to the permanent appointment; for instance:

- (1) It is granted after a period of probation;
- (2) The staff member concerned must have shown that he meets the high standards of efficiency, competence and integrity established in the Charter;
- (3) The regular appointment is for an indefinite period and may last until retirement;
- (4) It is subject to a review at the end of five years;
- (5) In the event of abolition of posts or reduction of staff, staff members with regular appointments are placed in the same position as staff members with permanent appointments.

Furthermore, the three-month notice of termination was extended, by agreement with Headquarters, to staff of the UNICEF European Office holding regular appointments.

III. However, there is an essential difference between regular and permanent appointments where termination conditions are concerned. The rules applicable to permanent appointments are specified in Staff Regulation 9.1 (a). Under Staff Rule 104.13 (b), regular appointments are in general subject to the Staff Regulations and Staff Rules applicable to temporary appointments which are not for a fixed term. Consequently, this matter is governed by Staff Regulation 9.1 (c), under which "the Secretary-General may at any time terminate the appointment if, in his opinion, such action would be in the interest of the United Nations".

The Tribunal confines itself to noting that, as far as this aspect is concerned, the rules applicable to regular appointments are different from those which apply to permanent appointments. It also notes that the Applicant's letter of appointment contains the following specific provision:

*"Tenure of Appointment"*

"A Regular Appointment is for an indefinite period and may last until retirement. It may be terminated on 30 days' notice in writing, in accordance with the relevant provisions of the Staff Regulations and Staff Rules.

"Should the appointment be thus terminated, the Secretary-General will pay such indemnity as may be provided for under the Staff Regulations and the Staff Rules. There is no entitlement to either notice period or indemnity payment in the event of summary dismissal for serious misconduct. The Regular Appointment is subject to review every five years."

Consequently, it cannot be maintained that, for the purposes of a termination decision, the Applicant should be assimilated with a staff member holding a permanent appointment.

IV. Nor can such assimilation be inferred from the fact that in 1963 the Applicant was promoted to level J of the National Professional category. It is true that Staff Rule 104.13 (b) explicitly provides for regular appointments to be granted only to staff members in the General Service and Manual Worker categories, "when warranted by specific circumstances, especially such circumstances of a local nature". However, the fact that the Applicant was classified in a new category does not permit the inference to be drawn that his contractual status was *ipso facto* modified, when there is not necessarily any link between the type of contract and the nature of duties and no new letter of appointment was drawn up.

V. The Applicant was terminated as a result of a change in the activities for which



the European Office of UNICEF was responsible. It was decided to discontinue the milk conservation activities which had hitherto been one of the major areas of responsibility of the Food Conservation Service and to orient the Service's work towards weaning food conservation. As a result of this, the Applicant's supervisor was transferred to Abidjan and there ceased to be any justification for the existence of the post held by the Applicant, who, as Technical Assistant, had been mainly involved with milk conservation activities since joining the service of UNICEF.

This situation had been foreseen since 1968. On 14 April 1969, the Director of the European Office, commenting on one of the Applicant's periodic reports, wrote the following:

"On several occasions I have spoken to Mr. Quémérais about his present situation and future in UNICEF. This uncertainty about his future has never prevented Mr. Quémérais from conscientiously performing his duties. The problem of his reassignment will arise with the departure of his immediate supervisor. I think that Mr. Quémérais will be able to adapt quickly to his new duties and that he is to be relied on because his professional skills are excellent."

On 20 October 1969, the Director informed the Applicant of suggestions made by a Special Committee in order to "retain [him] in the European Office", and thus to "mitigate the effects of the forthcoming termination of [his] present assignment following the discontinuation of this Office's milk conservation activities".

The Tribunal notes that this meeting was held after the Director of the Administrative Division of UNICEF in a letter dated 29 September 1969, gave instructions to the Director of the European Office on the basis of Staff Rule 109.1.

Consequently, in the Respondent's view the offer made to the Applicant with respect to the "new Technical Assistant post being created in the Food Conservation Service headed by Mr. Buffa" constituted implementation of Staff Rule 109.1. Since this offer was conditional on the "results" of a "trial period", its acceptance by the Applicant did not finally resolve his situation. It was after the "results of the trial period" were known that the Respondent came to the conclusion that the Applicant could not remain in that post and that, in the absence of other possibilities for employment, his appointment was terminated.

VI. The Applicant has contended that, in the present case, there had been no abolition of post or reduction of staff that might justify termination, and this view was upheld by the Joint Appeals Board.

The Tribunal notes that although, strictly speaking, there was no change in the number of posts budgeted for and no reduction in the number of persons employed, a new orientation was nevertheless given to a UNICEF operational activity. While such a change has no practical consequences for certain posts, that may not be so in the case of a Technical Assistant, because the techniques used are different and the specific problems to be resolved in relations with the recipients of UNICEF services are no longer the same.

The Tribunal therefore considers that a change in the field of activity of the Organization such as to bring about the complete elimination of a previous activity could, because of the nature of the Applicant's assignment, justify the Respondent's terminating his appointment on the ground of abolition of post, but that the Respondent was obliged to observe Staff Rule 109.1 (c), as he in fact acknowledged by himself assimilating abolition of an assignment to abolition of post.

VII. It follows from the foregoing that the Applicant could be terminated on the basis of Staff Regulation 9.1 (c) only if the application of Rule 109.1 (c) did not enable him to be retained in a suitable post in which his services could be effectively utilized.

The notice of termination of 17 November 1970 merely indicates that there is no

suitable vacancy. Following the report of the Joint Appeals Board recommending that the decision to terminate should be declared null and void, the Respondent decided, on 25 May 1972, not to follow that recommendation. On 9 June 1972, however, the Respondent felt obliged to give a detailed explanation of the "real reasons" for termination in which he based himself essentially on the evaluation of the Applicant's work by the Personnel Committee and the safeguards against arbitrariness afforded to the Applicant by the participation of staff representatives.

Thus, in his final decision, the Respondent formally invoked the procedure which was followed to evaluate the Applicant's suitability for the post in question.

VIII. Before considering the propriety of this procedure, the Tribunal must dispose of a contention by the Applicant relating to the reasons invoked by the Respondent in support of the contested decision.

In his letter of 9 June 1972, the Respondent stated that the reasons indicated by him were sufficient to justify the termination action under Staff Regulation 9.1 (c). The Applicant contends that, by invoking that regulation, the Respondent changed reasons during the termination procedure in contravention of the rule *allegans contraria non audiendus est* and that the Respondent cannot use the authority granted under Staff Regulation 9.1 (c) within the extremely broad limits which he seeks to give it, under pain of removing any possibility of his acts being controlled by the Tribunal.

The Tribunal cannot accept this argument. Staff Rule 109.1 (c) establishes an obligation in the event of abolition of posts or reduction of staff, to retain staff members with permanent or regular appointments in preference to others, "subject to the availability of suitable posts in which their services can be effectively utilized". If this condition is not fulfilled, the staff member in question may be terminated under Staff Regulation 9.1 (a), if he holds a permanent appointment, and under the very general provisions of Staff Regulation 9.1 (c), if he holds a regular appointment. In the latter case, the right to terminate on the basis of Regulation 9.1 (c) can therefore be exercised only if it is not possible to retain the staff member concerned in accordance with Staff Rule 109.1 (c).

In the present case, after rejecting the recommendations of the Joint Appeals Board on 25 May 1972, the Respondent, in a further communication of 9 June 1972, indicated "the considerations on which this negative decision was based" and the reasons "sufficient" to justify termination "under Staff Regulation 9.1 (c)". The Tribunal notes that these reasons related essentially to the Applicant's unsuitability for the post envisaged for him. If the reasons had been valid, there is no doubt that the Respondent would have been entitled to terminate the Applicant's appointment.

IX. The Tribunal has now to consider whether the Applicant's suitability for the purposes of Staff Rule 109.1 (c) was assessed according to a proper procedure.

The Applicant has contended that the Respondent had no right to subject him to a further trial period and make his retention conditional on the results of that period. The Joint Appeals Board upheld that view and stated in its report:

"To state that on the results of the trial period would depend the Appellant's career is, in the opinion of the Board, inadmissible and a violation of the letter and the spirit of the Staff Regulations and Rules."

The Tribunal notes that, under Staff Rule 109.1 (c), the preference given to staff members with regular appointments is made contingent upon the existence of reasonable conditions for adaptation to the post in question: the retention of such staff members is "subject to the availability of suitable posts in which their services can be effectively utilized". It may in general be useful to verify such adaptation over a certain period and hence to defer a final decision. In this respect, the trial period of 2½ months originally stipulated appears reasonable. The extension of that period was doubtless

justified by the absences on travel of the Applicant's supervisor. In any event, the supervisor's concern to have the opportunity to form an honest opinion cannot be deemed to have prejudiced the Applicant's rights.

X. The final report of 5 October 1970 reaches a negative conclusion regarding the possibility of retaining the Applicant as Technical Assistant in the Food Conservation Service. The Personnel Committee, meeting on 6 October 1970, was informed by the Acting Director of the European Office that "unfortunately, Mr. Buffa reports (copy attached) that Mr. Quémerais is not adapted to the post for which he was on trial. The Committee was, therefore, asked to again examine Mr. Quémerais' case." The Committee found that there was no alternative post for the Applicant in the European Office. A suggestion was made for employing the Applicant on a temporary basis during the period of notice, and it was decided to ask Headquarters whether it would be possible to transfer the Applicant elsewhere.

XI. The Joint Appeals Board criticized the report following the new trial period and stated that it "shows evidence of being a highly personal evaluation by the Appellant's new supervisor and could not in itself be a ground for terminating the Appellant's appointment after more than ten years of satisfactory service".

The Tribunal is not called upon to express an opinion on the contents of either that or the preceding report or on the assessments of the Applicant's work made therein. However, it is incumbent upon it to determine whether the procedure followed by the Respondent in arriving at the decision to terminate the Applicant's appointment on the basis of those reports—a procedure on which the letter of 9 June 1972 is founded—was proper.

XII. When the final report of the Applicant's supervisor was submitted, an enlarged Personnel Committee was convened on 6 October 1970 to review the Applicant's case. Present were five Chiefs of Division, the Chairman of the Staff Association and a member of the Staff Association. The Respondent indicated in the oral proceedings that the Personnel Committee is the equivalent, in local UNICEF offices, of the Appointment and Promotion Board. Under Staff Rule 104.14 (a) (i), its composition and functions are generally comparable to those of the Board and its function is to advise the Administration in the case of staff members recruited specifically for service with UNICEF.

The Applicant criticized the composition of the Personnel Committee, which was presided over by his Chief of Service and one of whose members was the second Technical Assistant of that Service. The Respondent stated that, in an office totalling approximately 80 persons, it is difficult and not necessarily desirable to exclude all colleagues in the Division or Service and all persons in the line of authority of staff members under consideration.

The Tribunal notes that the persons who signed the minutes of the meeting had been members of the Personnel Committee since 24 March 1970 and that the presence of the Chief of the Greeting Card Operation could be justified by the suggestion regarding employment for the Applicant during the period of notice of termination. The Tribunal also notes the statement, in the Respondent's answer, that "the presence of Mr. Buffa . . . served the useful purpose of giving further consideration to Applicant for other assignments in the European Office". Nothing in the minutes of the meeting makes it possible to assess whether Mr. Buffa's presence did serve any such purpose. In any event, the composition of the Committee cannot, in the opinion of the Tribunal, be regarded as improper *per se*.

XIII. The Tribunal now has to consider the conditions under which the meeting of 6 October 1970 took place. It notes that, according to the letter of 9 June 1972, the Personnel Committee "evaluated" the Applicant's work during the trial period, which

was described as being a "reasonable method of evaluating" the Applicant's work "in the service of UNICEF". This letter emphasizes that the Personnel Committee was convened "despite two unfavourable reports . . . to review [the Applicant's] case and the possibilities of offering [him] alternative employment, even outside the European Office . . . The fact that the case was submitted to a body in which the staff representatives participated precluded any arbitrariness in respect of [the] decision" to terminate the Applicant's appointment.

The Tribunal notes the Respondent's insistence that the "trial period" was not a supplementary probation period. Consequently, the review of the Applicant's suitability did not necessarily have to meet the requirements of Staff Rules 104.13 and 104.14. Nevertheless, the Tribunal finds that, by its composition and its procedure, the Personnel Committee was in a valid position to review the Applicant's situation for the purposes of the application of Staff Rule 109.1 (c).

XIV. The Tribunal must, however, note that the minutes of the meeting do not show that the Personnel Committee itself carried out an evaluation of the Applicant's work. According to the minutes, the Chairman outlined the circumstances in which the Applicant had been placed under Mr. Buffa for a trial period. The terms used indicate that the Applicant's future would depend entirely on Mr. Buffa's report. The Chairman concluded:

"Unfortunately, Mr. Buffa reports (copy attached) that Mr. Quémerais is not adapted to the post for which he was on trial. The Committee was, therefore, asked to again examine Mr. Quémerais' case."

The minutes show clearly that the Committee regarded Mr. Buffa's opinion as decisive and made no attempt to question it. In no way was the Applicant called upon to present his case in writing or in person to the Committee or to convey his opinion on the reports concerning him. Such a situation is particularly inadmissible in view of the fact that, as is stated by the Respondent, Mr. Buffa was present at the meeting.

The Tribunal cannot regard as proper an evaluation of a staff member's work which might lead to the termination of his appointment when it is entrusted to a body comparable to the Appointment and Promotion Board and that body is not put in a position to be informed of the observations of the staff member concerned as well as the complaints about him. In the present case, contrary to what is stated in the letter of 9 June 1972, the Personnel Committee did not make any real evaluation of the Applicant's work; the participation of staff representatives cannot remedy the fact that the Committee was not in a position to carry out an evaluation in accordance with the elementary principles of due process and in fact made no attempt to do so.

The Tribunal therefore concludes that, the Respondent having elected to submit the Applicant's case to the Personnel Committee following Mr. Buffa's report, the Applicant was not afforded the guarantees of due process before that Committee. Consequently, the final termination decision, which the Respondent bases on the evaluation of the Applicant's work by the Committee, is improper and must be rescinded.

XV. Having reached this conclusion with regard to the post of Technical Assistant in the Food Conservation Service of the European Office at Paris, the Tribunal has no need to deal with the question whether the Applicant, not being deemed suitable for that post, could be considered for other posts. The letter of 9 June 1972 states that the Director of the European Office requested the Personnel Committee to review the possibilities of offering the Applicant alternative employment, even outside the European Office. The Tribunal notes that the minutes of the Committee's meeting do not reveal anything of the kind and that the Committee confined itself to requesting that the Administration should examine such a possibility with Headquarters. It is in fact clear that the Personnel Committee could not

make any precise suggestion regarding employment outside the European Office and that in addition the Applicant, having been recruited locally, was covered by Staff Rule 109.1 (c) (ii) (a):

“The provisions of paragraph (i) above in so far as they relate to locally recruited staff members shall be deemed to have been satisfied if such locally recruited staff members have received consideration for suitable posts available at their duty stations.”

XVI. As a locally recruited staff member, the Applicant was entitled to remain in service only so long as the European Office had its headquarters in Paris. Since the European Office was transferred to Geneva on 1 October 1972, the conclusion set forth in paragraph XIV above does not afford a basis for ordering the Applicant's reinstatement. That being so, and in accordance with previous judgements of the Tribunal, the rescinding of the termination decision shall entitle the Applicant, in lieu of reinstatement, to an indemnity which the Tribunal hereby fixes at the net base salary which the Applicant would have been entitled to receive from the end of his appointment (28 February 1971) up to 30 September 1972; the Applicant shall retain possession of the amounts paid to him in connexion with the notice of termination and the termination indemnity.

XVII. For the same reasons, the Tribunal rejects all requests based on the assumption that the Applicant is entitled to a transfer to Geneva.

XVIII. With regard to the request that a new certificate of service should be drawn up, the Tribunal takes note of the fact that the Respondent agrees to issue to the Applicant a new certificate in which the final paragraph of the revised certificate would be replaced by the final paragraph of the original certificate. The new certificate must comply with the principles laid down by the Tribunal in its Judgements Nos. 49 and 112 and must show as the date of separation from service the date on which the Applicant's appointment terminated, namely, 28 February 1971.

XIX. With regard to the request for payment of a “personal” dependency allowance, the Tribunal notes that the Applicant intends this expression to mean the dependency allowance. Since this allowance is not included in the termination indemnity provided for in Staff Rule 109.4 the Tribunal rejects the request.

XX. The Tribunal has no need to consider the request for the refund of any taxes which might be levied on the indemnities awarded by the Tribunal, since this request does not pertain to a situation now existing.

XXI. The Applicant requested payment of an indemnity equivalent to two months' net salary in reimbursement of the costs incurred by him before the Joint Appeals Board and the Tribunal.

The Tribunal notes that the Applicant could have had his case presented by a staff member acting as counsel.

The Tribunal, having regard to its resolution of 14 December 1950, and considering the nature and circumstances of the case, orders the Respondent to pay the Applicant the sum of \$500 as costs.

XXII. The other requests are rejected.

*(Signatures):*

Suzanne BASTID  
*Vice-President, presiding*  
R. VENKATARAMAN  
*President*  
Geneva, 5 April 1973

MUTUALE-TSHIKANTSHE  
*Member*

Jean HARDY  
*Executive Secretary*

## STATEMENT BY MR. R. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

Geneva, 5 April 1973

(Signature)  
R. VENKATARAMAN

## Judgement No. 173

(Original: English)

Case No. 172:  
Papaleontiou

Against: The Secretary-General  
of the United Nations

*Non-renewal of a fixed-term appointment.*

*Stipulation in the letter of appointment that the appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.—No contractual right to renewal.—Applicant's contention that he was entitled to a renewal of his appointment by virtue of two memoranda from the Administration of the United Nations Truce Supervision Organization in Palestine (UNTSO).—Analysis of these memoranda.—The Tribunal cannot hold that there was an express or an implied commitment by UNTSO for the renewal of the Applicant's appointment.—Contention of the Applicant that a periodic report on which the contested decision was based was vindictive or motivated by extraneous considerations.—Contention rejected.—Request that the Applicant's former supervisor should submit a report on his performance.—Request rejected, since the views of that staff member have no relevance to the case.—Allegation of the Applicant that the Respondent took discriminatory action against him by not allowing him to take his family with him to successive duty stations.—Allegation unfounded.—Application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Bentham Stevens;

Whereas on 11 October 1972, Leontios C. Papaleontiou, a former staff member of the United Nations, filed with the Tribunal an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 2 January 1973;

Whereas, in the pleas of the application, the Applicant requests the Tribunal "to take the following action, in the name of justice, and in the light of my present application:

"(a) Request Mr. Eric Bayerl, who was my immediate Supervisor in UNTSO Jerusalem, to submit a report on my performance.

"(b) to give weight to the contents of three Periodic Reports which I received in UNMOGIP and which cover more than the two thirds of my assignment in the Field Service.