

abolished, or that the Regional Director should not have assigned a woman staff member to a Bangladesh relief post sought by the Applicant.

VIII. The Applicant's allegations of prejudice on the part of the Regional Director are not substantiated by any evidence. On the contrary, efforts were actually made, in view of the Applicant's valuable experience and service, to place him elsewhere in anticipation of the expiration of his contract, even though there was no contractual obligation on the part of UNICEF to do so.

IX. While promotions are within administrative discretion and while the failure to promote the Applicant for the remaining three months of his service cannot be called an abuse of discretion, the Tribunal concurs with the conclusion of the Joint Appeals Board that the Regional Director's suppression of the recommendation made by the National Officer Staff Promotion Committee for the inclusion of the Applicant's name in the promotion register was not in keeping with good administrative practice. The Tribunal, therefore, orders the Respondent to place the recommendation in the Applicant's dossier and service record.

X. Subject to the Tribunal's order in the preceding paragraph, the application is rejected.

(Signatures):

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

Geneva, 19 April 1974

Roger STEVENS
Member

Jean HARDY
Executive Secretary

Judgement No. 182

(Original: English)

Case No. 176:
Harpignies

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

Request of a retired staff member of the United Nations that the latter maintain the purchasing power of his retirement pension by paying supplementary benefits to take into account rises in the cost of living and devaluation of the dollar.

Adoption, after the submission of the application, of resolution 3100 (XXVIII), in which the General Assembly ordered certain readjustments of pensions.—Maintenance of the application by the Applicant.

Applications for intervention by former United Nations staff members.—Applications admissible.—Application for intervention by a former official of ICAO.—Application not admissible.

Memoranda submitted by groups of staff or former staff members of the United Nations.—Inclusion of these memoranda in the dossier of the case.

Applicant's personal situation as a United Nations pensioner resident in Belgium.—Situation of United Nations pensioners resident in other countries.—Effects in some countries of the devaluation of the dollar, used as the monetary unit under the Pension Fund Regulations.—Measures adopted by the General Assembly to remedy the situation of retired staff members.—Consideration of the question by

the Joint Staff Pension Board and the Advisory Committee on Administrative and Budgetary Questions.—Adoption of General Assembly resolution 3100 (XXVIII).—Applicant's contention that there is an obligation on the part of the Secretary-General, as administrative head of the United Nations, to ensure the stability of the purchasing power of the Applicant's pension by granting him additional compensation.

Consideration of the legal basis of the Applicant's right to a pension.—Clause in the Applicant's contract providing for his participation in the Pension Fund.—For the rest, referral to the Staff Regulations and Rules as the law governing the contract.—Staff Regulation 6.1.—Referral to the Pension Fund Regulations.—Characteristics of the Pension Fund.—Limit of the obligations of the member organizations.—Limitation of the Respondent's financial obligations to those incumbent upon him under the Pension Fund Regulations and the resolutions of the General Assembly.—Article 48 of the Pension Fund Regulations.—The Respondent would be contractually liable if, through his action or omission, the Applicant's participation in the Pension Fund were to lose any practical significance or if the effects of such action or omission were so contrary to general principles of law applicable to pensions as to render the very notion of pension meaningless.

Consideration of the question whether the right to a pension gives the pensioner a right to the maintenance of the purchasing power of his pension.—Applicant's argument that since the pensions system is an integral part of the salary system and since the United Nations has applied the principle of adjustment of salaries in terms of purchasing power at the duty station, the same system should be applied to pensions.—Argument rejected, there being no principle of law requiring any uniformity between salaries and pensions, nor in particular any adjustment to a rise in the cost of living.—Judgements of the Administrative Tribunal of the League of Nations and the ILO Administrative Tribunal.—Purpose of the system of adjusting salaries to the varying cost of living at various duty stations.—The adjustment of pensions to the cost of living cannot be regarded as a rule of law so precise as to affect contractual responsibility.—Disadvantaged situation of the Applicant following the devaluation of the dollar.—This cannot be regarded as an infringement upon the Applicant's right to a pension for which the Respondent could be held liable.—Adoption of the dollar as a monetary unit by the general international organizations.—No specific duty imposed on the United Nations towards a retired staff member because of the inequality of treatment resulting for him from the devaluation of the dollar.—Conclusion of the Tribunal that the Applicant has not established that the right to a pension includes a right to maintenance of the purchasing power of the pension.

Application rejected.

Award to the Applicant of \$500 in lieu of costs.

The applications for intervention deemed admissible are rejected on merits.

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 9 July 1973, Robert Henri Harpignies, a former staff member of the United Nations, filed an application the pleas of which read:

"1. Applicant respectfully requests the Tribunal to rescind Respondent's negative decision of 8 June, confirmed on 12 June 1973 and to order Respondent specifically to perform the United Nations' obligation to maintain unchanged the purchasing power of Applicant's pension benefits.

"2. Consequently, Applicant requests the Tribunal to order Respondent to repair the prejudice caused to Applicant as a result of the United Nations' failure to observe the above-mentioned obligation. Applicant's prejudice amounts to a sum of 165,761.00 b.f. [Belgian francs] for the period extending from 1 July 1971 up to and including May 1973 . . . , it being understood that the figure of 165,761.00 b.f. is bound to increase until such time as the United Nations observes its obligation to maintain unimpaired the real value of Applicant's pension benefits.

"3. Applicant further requests the Tribunal to order the United Nations to pay to Applicant each month following the date of the judgement to be pro-

nounced in the present case, a sum equivalent to the difference between the pension benefits received from the Pension Board and the amount which such benefits should reach in order to maintain their purchasing power unchanged.

"4. Applicant finally requests the Tribunal to order Respondent to pay to Applicant a sum of 50,000.00 b.f. as partial compensation for the costs incurred by Applicant in preparing the present proceedings.";

Whereas applications for intervention in the case were submitted by the following retired staff members of the following international organizations on the dates indicated:

Jehan de Noüe (United Nations)	10 July 1973
Michael H. Higgins (United Nations)	11 July 1973
Charles Kaufmann (United Nations)	12 July 1973
Léon Debaud (United Nations)	12 July 1973
Pierre Stoeckel (United Nations)	12 July 1973
Olga Birukoff (United Nations)	12 July 1973
Georges M. Lambert-Lamond (United Nations)	13 July 1973
Alexander W. Rattray (World Health Organization and United Nations)	13 July 1973
Juliette Studer (United Nations)	14 July 1973
Robert P. Schwarz (United Nations)	15 July 1973
Marie-Louise Barriot (United Nations)	16 July 1973
Ernest Musy (United Nations)	16 July 1973
Marguerite Duret (United Nations)	17 July 1973
René Genier (United Nations)	17 July 1973
Clovis Geynes (United Nations)	18 July 1973
Paule-Juliette Klein (United Nations)	18 July 1973
Marguerite Zumthor (United Nations)	18 July 1973
Victor Tedesco (United Nations)	19 July 1973
Simonne V. Mans (United Nations)	19 July 1973
Justin L. Montagné (United Nations)	20 July 1973
Elisabeth Marion (United Nations)	20 July 1973
Daniel-Robert Berger (United Nations)	21 July 1973
Henry Granville Fletcher (United Nations)	23 July 1973
Constantine F. MacGuire (United Nations)	23 July 1973
Yvonne Grandjean (United Nations)	25 July 1973
Juliette Dumont (United Nations)	25 July 1973
Lilly Stoïloff (United Nations)	27 July 1973
Jean L. Francillard (United Nations)	27 July 1973
Robert Nivelles (United Nations)	29 July 1973
Jean Barberot (United Nations)	30 July 1973
Marguerite Bally (United Nations)	4 August 1973
Henri Grivel (United Nations)	7 August 1973
Oswald-Charles Bernardinelli (United Nations and World Health Organization)	8 August 1973
Marguerite Brun (United Nations)	14 August 1973
Louisa Chatelain (United Nations)	15 August 1973
Jules Goy (United Nations)	27 August 1973
Robert Ashton (International Civil Aviation Organization)	31 August 1973
May Miriam Le Touzel (United Nations)	24 September 1973
Pierre Bron (United Nations)	8 October 1973
John Rawson (United Nations)	13 November 1973;

Whereas, on 17 August 1973, the Applicant's application was transmitted to the United Nations Joint Staff Pension Board in accordance with article 21 of the Rules of the Tribunal;

Whereas the Respondent filed his answer on 7 September 1973;

Whereas, on 10 and 13 September 1973 respectively, the Applicant addressed to the President of the Tribunal two letters in which he suggested that oral proceedings should be held and requested production of various documents;

Whereas the Applicant made a formal request for oral proceedings on 10 January 1974;

Whereas the President granted that request on 25 January 1974;

Whereas, on 6 February 1974, the Applicant filed written observations and amended the pleas of his application as follows:

“(a) The second sentence of paragraph 2 of the original pleas should be amended according to . . . new calculations It should consequently read as follows:

“ ‘Applicant’s prejudice amounts to a net sum of 182.867,28 b.f. for the period extending from 1-7-1971 through 31-12-1973 . . . after deduction of the adjustments designed to compensate pensioners for losses suffered by them as a result of monetary realignments, it being understood that the prejudice is bound to increase until such time as the Respondent Organization respects its obligation to maintain unimpaired the real value of Applicant’s pension benefits.’

“(b) With respect to paragraph 3 of his original pleas, Applicant calls the Tribunal’s attention to the fact that the R.P.A.I. [Revised Pension Adjustment Index] which has been in effect from 1-1-1974 on, is actually an average of Post Adjustments which, at least for the Geneva, Paris, The Hague and Vienna duty stations include a certain number of classes reflecting the depreciation of the dollar vis à vis local currencies. Therefore, the R.P.A.I. itself is influenced to a certain extent by purely monetary factors. In order to calculate accurately the prejudice suffered by Applicant from 1-1-74 on, it would be necessary to ascertain the proportion of R.P.A.I. which reflects said monetary factors, which Applicant can not do by himself in the absence of relevant data in the possession of the Pension Board. Once these data are known, the part of R.P.A.I. representing the monetary factor should be subtracted from the pension benefits received by Applicant; the resulting balance would be his basic pension benefits adjusted on the basis of cost of living factors exclusively. That balance would represent Applicant’s entitlements, disregarding the element, monetary fluctuations.

“The prejudice sustained by Applicant from 1-1-24 would amount to the difference between the amount received by him in b.f. for the net balance of his benefits (determined according to the method just mentioned) and the amount he should have received for that net balance on the basis of the rate of exchange of 50 b.f. per dollar.”;

Whereas information pertinent to the case was furnished by the Staff Association of the United Nations at Geneva on 22 March 1974, by the Association of Former International Civil Servants on 8 April 1974 and by the Staff Union of the United Nations at Geneva on 9 April 1974;

Whereas, on 25 March 1974, the Applicant submitted additional documents and the following addendum to paragraph 4 of the pleas of his application:

“Applicant wishes to call the Tribunal’s attention to the fact that the present case is actually in the nature of a class action and that it has demanded a considerable amount of correspondences, drafting of memoranda and studies, meetings with a great variety of individuals, representatives of associations or unions of the staff of the various organizations associated with the United Nations Pension Fund, and also frequent travelling, including one day of stay in New York in January 1974 and two days (*per diem*) in Geneva for the purpose of presenting the case, for which expenses and costs Applicant has already received partial repayment from

CAFIG (Committee of International Civil Servants in Geneva). It is therefore understood that Applicant would reimburse CAFIG up to the amount he has received from it.”;

Whereas the Tribunal heard the parties at a public session held on 10 April 1974;

Whereas, on 10 April 1974, the Applicant submitted additional documents and withdrew paragraph 2 of the original pleas and paragraph a of the amended pleas of his application;

Whereas the facts in the case are as follows:

On 10 April 1973 the Applicant, a retired staff member whose pension benefits had decreased in real value as a result of devaluations of the United States dollar, submitted a claim for compensation in a letter to the Secretary-General reading in part:

“In my capacity of staff member whose appointment has ceased and who is retired, I have the honour to request you to take a decision on my claim that I be paid compensation for the losses I have incurred as a result of the unilateral decrease of the real value of the pension benefits paid to me in the currency of my country of residence [Belgium], such losses to be determined on the basis of the rate of exchange of the US dollar on May 1st 1971 vis-à-vis the local currency in question. I further request you to take appropriate action to ensure that my future pension benefits be paid to me on the same basis.

“The unilateral decrease of the real value of my benefits constitutes a violation of one of the essential terms of my original appointment. It is indeed incontrovertible that when I accepted appointment, neither you, nor I ever envisaged or intended that the real value of my emoluments could be decreased unilaterally for whatever reason, all the more so since, at that time, the US dollar was a genuine reserve currency and a universally accepted unit of account.

“I wish to emphasize that, at the time of my appointment, the Organization knew that my emoluments would have to be paid in the currency of the country of my duty station and later, of my country of residence. I would not have accepted appointment, had it been the employer organization’s express or implicit intention to reserve to itself the right to reduce the real value of my future emoluments in whatever currency they would have to be paid.

“It goes without saying that in determining the importance of my losses and the amount of my future benefits in the currency in which they are now being paid, all intervening monetary realignments should be taken into account, as is done in the case of the post adjustments, so that neither the Organization nor myself make any profits or losses as a result of the fluctuations in the relative value of currencies.

“ . . .

“I am certain that you fully realize the present plight of retired officials and the real hardships that most of them are experiencing because of the repeated and brutal cuts affecting their UN income. I am also sure that you understand the necessity to remedy the present situation by appropriate and immediate measures. However, if you were not in a position to take on your own initiative such remedial action, I hope you will agree with me that the claim stated in my letter should be brought to the Administrative Tribunal. It is still my fervent hope that you could take immediate steps to help pensioners so as to render a recourse to the Tribunal unnecessary.”

On 29 May 1973, in another letter addressed to the Secretary-General, the Applicant reiterated his claim, stressing that the purchasing power of the pensions paid to most former staff members retired in Western Europe had decreased in local currencies by more than 30% within the last two years, only on account of monetary realignments,

and he suggested that the claim be submitted directly to the Tribunal. On 8 June 1973 the Director of the Division of Personnel Administration, Office of Personnel Services, answered the Applicant's letter of 10 April 1973 as follows:

"I have been instructed by the Secretary-General . . . to inform you that if you wish the United Nations Administrative Tribunal to consider any claim you may have, you must comply with the procedures laid down in the applicable Staff Regulations as well as with the Statute and Rules of the Administrative Tribunal.

"Quite apart from this aspect, however, the Secretary-General wishes to bring to your attention the fact that he is fully aware of the problem created by the loss of purchasing power of pensions due to cost-of-living rises and exchange rate changes. His representatives both in the Consultative Committee on Administrative Questions and the Standing Committee of the United Nations Joint Staff Pension Board had therefore been instructed to support the decision taken by these bodies at their recent meetings for submission to the forthcoming session of the Pension Board of a study of changes in the pension adjustment system which are designed to compensate for such loss."

On 12 June 1973, in reply to the Applicant's letter of 29 May 1973, the Director of the Division of Personnel Administration informed him that it was not within the Secretary-General's power to make the payments requested by him and that a submission to the Joint Appeals Board would therefore be useless. On 9 July 1973 the Applicant filed with the Tribunal the application referred to earlier. The application contained the following statement:

"The Secretary-General stated in his letter of 12 June 1973 to the Applicant that submission of the latter's claim to the Joint Appeals Board would present no usefulness. The letter in question was a reply to Applicant's request to the Secretary-General that he should be allowed to submit his claim directly to the Tribunal. As Respondent agrees with Applicant that the present case is not one which should be brought before the Joint Appeals Board, Applicant submits therefore his case directly to the Administrative Tribunal."

On 12 July 1973 the Executive Secretary of the Tribunal requested from the Director of the General Legal Division in charge of the Office of Legal Affairs the Secretary-General's views as to whether the Applicant's letter of 29 May 1973 to the Secretary-General and the answer of 12 June 1973 could be regarded as constituting an agreement for direct submission of the case to the Tribunal under article 7, paragraph 1 of its Statute. On 16 July 1973 the Director of the General Legal Division addressed to the Executive Secretary of the Tribunal the following reply:

" . . .

"I can advise you on behalf of the Secretary-General that direct submission to the Tribunal is agreed upon insofar as Mr. Harpignies' appeal is directed against a decision taken by the Secretary-General.

"This agreement dispenses with any requirement there might be in this case for submission to the Joint Appeals Board, but it is without prejudice to the requirements of Chapter VIII of the Rules of the Administrative Tribunal concerning applications alleging non-observance of the Regulations of the UN Joint Staff Pension Fund."

Whereas the Applicant's principal contentions are:

1. The criterion of the real value of remunerations is the level of their purchasing power. While the international organizations, after the devaluations of the United States dollar, resorted to the system of post adjustments to correct the ensuing imbalance between the purchasing power of salaries paid in dollars in the United States and

of salaries paid outside the United States in local currencies, no similar measure was taken with regard to pensions.

2. The pension scheme is an integral part of the salary structure and one of the essential conditions of employment. Therefore, the real value of pensions cannot be changed except with the agreement of both parties to the employment relationship.

3. The employer-organizations—and not the Pension Board or the Pension Fund—are the primary and the ultimate debtors of pension benefits towards their retired staff. The only question relevant to the Applicant's case is therefore whether the Respondent organization, as a party to the employment relationship with the Applicant, was and is under a legal obligation to maintain the purchasing power of the pension benefits paid on its behalf by the Pension Board and, consequently, whether its failure to do so constitutes a violation of that legal obligation, which it should correct by performing properly its legal duty.

4. The rule of equality of treatment of the staff applies to pensioners as well as to active staff members. By failing to adapt pensions so as to maintain their real value, the organizations have violated that rule, not only by treating differently active staff members and pensioners, but in tolerating that pensioners be in fact treated differently according as they live in a dollar area or, for instance, in Western Europe.

Whereas the Respondent's principal contentions are:

1. The Pension Fund Regulations define rights to payments during retirement, and no greater rights were provided by the terms of the Applicant's United Nations appointment. General Assembly decisions relating to pensions are the sole source of the Applicant's retirement rights. Ever since the Pension Fund's establishment by the General Assembly, the Pension Fund Regulations have provided for benefits to be paid in the currency in which contributions were calculated. The Secretary-General has no authority or discretion to make supplementary payment from United Nations funds, and the Applicant has no legally cognizable basis for expecting compensation for fluctuations in the value of his pension in the currency of his home country.

2. The post adjustment system as applied to professional staff salaries has no effect on rights of retired staff members. The two very distinct régimes established by the General Assembly for retired staff and for staff in service preclude enlarging of financial rights for pensioners by analogy to rights of staff in service.

3. The Respondent has not guaranteed the purchasing power of pensions, and the devaluation of the dollar was not the result of any action by the Respondent.

The Tribunal, having deliberated from 10 to 19 April 1974, now pronounces the following judgement:

I. The Tribunal notes first of all the particular features of the application which, with the consent of the Secretary-General, has been submitted to it without prior consideration of the case by the Joint Appeals Board, as permitted under article 7, paragraph 1 of the Statute of the Tribunal.

The Applicant, a retired staff member of the United Nations, is requesting the Secretary-General to pay him allowances over and above the retirement pension he receives from the Pension Fund. He bases his request on what he deems to be the Organization's obligation to maintain the effective purchasing power of his retirement pension by supplementary benefits to take into account rises in the cost of living and devaluation of the dollar, the currency in which his pension is calculated.

The Tribunal observes that, since the application was submitted on 9 July 1973, the presentation of the case has changed following the adoption and implementation of General Assembly resolution 3100 (XXVIII) of 11 December 1973 which ordered certain readjustments of pensions effective on 1 January 1974. The Applicant considers,

however, that the increased benefits payable by the Pension Fund under that resolution do not, in his case, effectively maintain the purchasing power of the pension. He therefore maintains his application both as regards the question of principle and as regards compensation for any losses suffered since 1 January 1974.

II. The Tribunal has before it several applications for intervention under article 19 of the Rules. It notes that the following applicants for intervention are former United Nations staff members who are now in receipt of retirement pensions and therefore have rights which may be affected by the Tribunal's judgement: Jehan de Noüe, Michael H. Higgins, Charles Kaufmann, Léon Debaud, Pierre Stoeckel, Olga Birukoff, Georges M. Lambert-Lamond, Alexander W. Rattray, Juliette Studer, Robert P. Schwarz, Marie-Louise Barriot, Ernest Musy, Marguerite Duret, René Genier, Clovis Geynes, Paule-Juliette Klein, Marguerite Zumthor, Victor Tedesco, Simonne V. Mans, Justin L. Montagné, Elisabeth Marion, Daniel-Robert Berger, Henry Granville Fletcher, Constantine F. MacGuire, Yvonne Grandjean, Juliette Dumont, Lilly Stoïloff, Jean L. Francillard, Robert Nivelles, Jean Barberot, Marguerite Bally, Henri Grivel, Oswald-Charles Bernardinelli, Marguerite Brun, Louisa Chatelain, Jules Goy, May Miriam Le Touzel, Pierre Bron, John Rawson.

The Tribunal rules that those applications are admissible.

With regard to the application for intervention submitted by Robert Ashton, the Tribunal notes that his services were with the International Civil Aviation Organization. The effects of a judgement against the Secretary-General of the United Nations cannot extend to another intergovernmental organization as a result of an application for intervention. The application for intervention from Robert Ashton, therefore, is not admissible.

III. The Tribunal has been furnished with memoranda containing certain information pertinent to the case from groups of staff or former staff members of the United Nations. The Tribunal decides that these memoranda, which are similar in substance, will form part of the dossier of the case.

IV. The Applicant has detailed his personal situation as a United Nations pensioner resident in Belgium who chose, under article 48 of the Pension Fund Regulations, to have his benefits payable in Belgian francs at the rate of exchange for dollars obtained by the Fund on the date of payment. He has stated that whereas from 1970 to the end of December 1973 the price index in Belgium rose from 100 to 121.9, the dollar rate fell from 50 Belgian francs to approximately 40 Belgian francs by March 1974, after dropping to less than 35 Belgian francs in the summer of 1973. Despite his increased receipts from the Pension Fund, therefore, his real benefit was reduced by the equivalent of \$1,768 at the rate of 40 Belgian francs, i.e. by more than 12 per cent of the present face value of his pension, which is \$14,506. The Applicant has also supplied figures regarding the situation of United Nations pensioners resident in other countries in which prices have risen and the dollar has depreciated. He has brought to the particular attention of the Tribunal the case of Switzerland—where many pensioners live—: the dollar, which was worth 4.32 Swiss francs in January 1970, fell to 3.03 Swiss francs in March 1974, whereas the price index rose from 100 in 1970 to 131.6 at the end of 1973.

While the increase in the cost of living is a general phenomenon affecting to a greater or lesser extent all retired staff members, whatever their country of residence, it is unquestionable that the devaluation of the dollar used as the monetary unit under the Pension Fund Regulations has materially altered the situation in some countries.

V. This set of circumstances has been taken into account for a number of years by the General Assembly, which has adopted various measures to remedy the situation of retired staff members. Since 1965, the General Assembly has approved the introduc-

tion of a system of annual adjustment of pensions to take account of changes in the cost of living, the system being based on an index reflecting the average rise in post adjustment. Moreover, since 1971 the effects of changes in the parity of the dollar have been considered by the Joint Staff Pension Board. In 1972 the Board, noting that in a situation of rising prices many of the pensioners were receiving smaller pensions in terms of local currency, made a number of proposals which led to the adoption by the General Assembly of resolution 2944 (XXVII) of 4 December 1972 which, while maintaining and developing the system established in 1965, provided for the granting of additional adjustments over three years applying to the first \$3,000. In view of the difficulties referred to above and in the light of further changes in the value of the dollar, the problem was considered at length by the competent authorities in 1973.

VI. The Joint Staff Pension Board considered the relative merits of a selective scheme of pension payments in closer proportion to the losses sustained by pensioners in individual countries, but concluded that it would represent a major departure from the existing world-wide system of equal contributions irrespective of duty station and equal pensions irrespective of country of residence, and that while a selective scheme might be desirable in principle it would involve in an international context many difficulties and anomalies.

The Advisory Committee on Administrative and Budgetary Questions also studied the problem carefully and recognized that a non-selective scheme "must under-compensate some and over-compensate others for currency changes". It noted that "until the devaluation of the dollar, the purchasing power of pensioners resident in Europe was substantially higher than that of their former colleagues resident in the United States". It suggested, however, that the Joint Staff Pension Board should keep under review the experience of the International Monetary Fund and the International Bank for Reconstruction and Development in their efforts to "link benefits more closely with local conditions" and should, "at an appropriate time, consider again whether a similar scheme could be adopted by the United Nations system without exposing the Fund to undue risk".

Finally, the General Assembly decided, by resolution 3100 (XXVIII) of 11 December 1973, to maintain the existing system, subject, however, firstly, to the payment of a transitional adjustment calculated as a percentage of the basic benefit, and, secondly, to the application of a revised pension adjustment index capable of responding more rapidly to changes in the cost of living. By that resolution, the General Assembly also requested the Joint Staff Pension Board to carry out an in-depth study on various selective systems designed to compensate for currency changes and inflationary movements in the respective countries of residence of pensioners.

VII. The Tribunal notes that the cost of additional benefits granted by the General Assembly is borne exclusively by the Pension Fund. The Applicant claims, however, that there is an obligation, on the part of the Secretary-General as administrative head of the United Nations, to ensure the stability of the purchasing power of the Applicant's pension by granting him additional compensation.

Thus the Applicant is not questioning the line of conduct of the Pension Fund or its interpretation of General Assembly resolution 3100 (XXVIII); he seeks in effect an unconditional guarantee by the United Nations of the purchasing power of his pension.

The Tribunal must therefore determine: (a) the legal basis of the Applicant's right to a pension; (b) whether that right to a pension implies a right to have the purchasing power of the pension maintained by the United Nations.

VIII. As to (a), the legal status of the Applicant as a United Nations staff member was based on a contract which, among other clauses of an individual character, provided for his participation in the Pension Fund. Since this is a contractual provision,

the Respondent could not legally have abolished unilaterally the Applicant's participation in the Pension Fund. But the contract itself said nothing further with regard to such participation. It did, however, refer to the Staff Regulations and Rules as the law governing the contract, so that the practical effects of the Applicant's participation in the Pension Fund derived from regulations established by the General Assembly under Article 101, paragraph 1 of the Charter.

IX. Under Staff Regulation 6.1,

"Provision shall be made for the participation of staff members in the United Nations Joint Staff Pension Fund in accordance with the Regulations of that Fund".

The Pension Fund Regulations are established by the General Assembly, which has decision-making powers and may amend the Regulations after consultation with the Pension Board (Article 50 of the Regulations).

Under the Pension Fund Regulations, however, the pension scheme is a joint scheme for staff members of the United Nations and of the other member organizations. The Fund has its own special structure and is jointly managed by all the member organizations. The Fund constitutes a separate entity and is the owner of its assets, which are held separately from the assets of the United Nations "on behalf of the participants and beneficiaries of the Fund" (Article 18 of the Regulations).

The member organizations, on the other hand, pay their share of contributions under article 25 of the Regulations and, under article 27, they have an obligation to make deficiency payments "in the event that an actuarial valuation of the Fund shows that its assets may not be sufficient to meet its liabilities under these Regulations . . .". Their obligations, however, are confined in principle to those set forth in provisions of the Pension Fund Regulations such as those of articles 25 and 27, and they do not extend to a situation as the present one, where the Applicant seeks supplementary payments over and above those established by the General Assembly.

Therefore, under the law applicable by virtue of the Applicant's contract, the Respondent has no financial obligations towards the Applicant other than those incumbent upon him under the Pension Fund Regulations and the resolutions of the General Assembly.

X. The Tribunal notes further that the Applicant is bound by article 48 of the Pension Fund Regulations, which reads:

"(a) Contributions under these Regulations shall be calculated and remitted to the Fund in dollars.

"(b) Benefits shall be calculated in dollars and shall be payable in any currency selected by the recipient, at the rate of exchange for dollars obtained by the Fund on the date of payment."

The Applicant in effect is complaining against the application of this text and more particularly of the provision relating to the rate of exchange "on the date of payment".

XI. There is no doubt, however, that since the Respondent specifically recognized in the contract the Applicant's right to a pension, he would be contractually liable if, through his action or omission, the Applicant's participation in the Pension Fund were to lose any practical significance or if the effects of such action or omission were so contrary to general principles of law applicable to pensions as to render the very notion of pension meaningless.

XII. As to (b), the question arises whether the right to a pension gives the pensioner a right to the maintenance of the purchasing power of his pension.

The Applicant maintains that the pensions system is an integral part of the salary system; that by instituting the post adjustment the United Nations has applied the

principle of adjustment of salaries in terms of purchasing power at the duty station; and that the same system should be applied to pensions by the use of an appropriate selective system, in the absence of which the Respondent should make a compensatory payment.

XIII. The Tribunal cannot accept the Applicant's view as a matter of law. The pensions system and its relations with the salary system are governed by different regulations in different States and international organizations, and there is no principle of law requiring any uniformity, nor in particular any adjustment to a rise in the cost of living.

XIV. The Tribunal points out that, in a case which admittedly was decided a long time ago, the Administrative Tribunal of the International Labour Organisation held that an indemnity granted in French francs in 1940 could properly be paid in French francs in 1947 by the International Institute of Intellectual Co-operation to a staff member of Swiss nationality resident in Switzerland: "The devaluation of currency is a state of things to which all are subject . . . the currency agreed upon or adopted remains such, 'le franc reste le franc' " (Judgement No. 16, *Niestlé*, 25 April 1955). The same principle had already been affirmed with respect to pensions (Judgement No. 19, *Desplanques*, Administrative Tribunal of the League of Nations). In other cases, the Administrative Tribunal of the International Labour Organisation stated that general principles did not make it possible to grant an application requesting an increase in salary proportionate to a rise in the cost of living, although the Tribunal accepted the claim for damages for delay in the payment of the amounts due in view of "the extremely painful changes in economic conditions" (Judgement No. 4, *Weiss*, 27 February 1947).

On the other hand, the Tribunal notes that in Judgement No. 61 (*Lindsey*), the Administrative Tribunal of the International Labour Organisation observed: "It is obvious that owing to the general rise in the cost of living the salaries of the staff of the [International Telecommunication] Union would have been increased to some extent . . .".

XV. The adjustment of salaries to the varying cost of living at various duty stations has been a constant concern of international organizations, and the post adjustment system was introduced precisely to take care of such differences. However, it should be noted that the system also facilitates changes in the postings of staff members who may be called upon to work in all countries of the world.

XVI. The adjustment of pensions to the cost of living doubtless appears to be a reasonable social requirement as well as a means of maintaining for the international civil service a prestige likely to encourage recruitment of high-quality staff. It cannot be regarded, however, as a rule of law so precise as to affect the contractual responsibility of an organization. Furthermore, the Tribunal has already pointed out that since 1965 the General Assembly has taken steps to increase pensions in relation to the cost of living, and it cannot be claimed that the alleged inadequacy of those measures throws any liability on the Respondent.

XVII. With regard to the devaluation of the dollar, there is no doubt that, in selecting under article 48 of the Pension Fund Regulations that his pension, calculated in dollars, be paid in Belgian francs "at the rate of exchange for dollars . . . on the date of payment", the Applicant was involved in an exchange rate which operated to his disadvantage after 1971: he suffered a reduction in the amount of his pension in Belgian francs, whereas his former colleagues resident in the United States continued to receive the same amount in dollars as before. This difference in situation is incontestable but the Tribunal cannot regard it as an infringement upon the Applicant's right to a pension for which the Respondent could be held liable.

The Tribunal notes further that the adoption of the dollar as a monetary unit not

only for the Pension Fund but also for the Financial Regulations of the United Nations was generally accepted; that the salaries of the Judges of the International Court of Justice, which had been fixed in florins, were established in dollars, after the devaluation of the florin in 1949, by General Assembly resolution 474 (V) of 15 December 1950; and that in 1960 the International Telecommunication Union decided to express in dollars the salaries of its staff, which until then had been fixed in Swiss francs. It is therefore apparent that for more than 25 years the dollar as a monetary unit was regarded as the best suited to the needs of the general international organizations.

In the absence of a provision similar to that contained in article IV (1) of the Articles of Agreement of the International Monetary Fund (which refers to the United States dollar of the weight and fineness in effect on 1 July 1944), the devaluation of the dollar has deeply affected international organizations and altered many existing situations, including those of retired staff members of the United Nations. It does not seem, however, that the resulting inequality of treatment, which is not attributable to the Organization, imposes any specific duty on its part towards a retired staff member.

XVIII. In conclusion, the Applicant has not established that the right to a pension includes a right to maintenance of the purchasing power of the pension so that a reduction in purchasing power due to an increase in the cost of living and to devaluation of the dollar would impose a contractual obligation on the Respondent. Accordingly the Applicant cannot claim any benefit other than those granted by the General Assembly to remedy the losses suffered by pensioners. It is not for the Tribunal to assess the value of the measures taken, their possible short or long-term effects, or the advisability of endeavouring to apply other systems.

XIX. As the Applicant, while criticizing the effectiveness of the measures taken by the General Assembly with a view to maintaining the purchasing power of his pension, has not proved any breach of a contractual obligation incumbent on the Respondent, the Tribunal rejects his application.

XX. The Tribunal, however, is impressed by the unfortunate position in which United Nations pensioners find themselves and trusts that the Respondent and the General Assembly will give continuing attention to pensioners' financial difficulties.

XXI. Considering that the Applicant has raised very important questions of general interest to the retired staff members of the United Nations family and that the Tribunal has received from him valuable information for the consideration of the case, the Tribunal decides to award him the sum of \$500 in lieu of costs.

XXII. The applications for intervention submitted by Jehan de Noüe, Michael H. Higgins, Charles Kaufmann, Léon Debaud, Pierre Stoeckel, Olga Birukoff, Georges M. Lambert-Lamond, Alexander W. Rattray, Juliette Studer, Robert P. Schwarz, Marie-Louise Barriot, Ernest Musy, Marguerite Duret, René Genier, Clovis Geynes, Paule-Juliette Klein, Marguerite Zumthor, Victor Tedesco, Simonne V. Mans, Justin L. Montagné, Elisabeth Marion, Daniel-Robert Berger, Henry Granville Fletcher, Constantine F. MacGuire, Yvonne Grandjean, Juliette Dumont, Lilly Stoïloff, Jean L. Francillard, Robert Nivelles, Jean Barberot, Marguerite Bally, Henri Grivel, Oswald-Charles Bernardinelli, Marguerite Brun, Louisa Chatelain, Jules Goy, May Miriam Le Touzel, Pierre Bron, John Rawson are rejected on merits.

(Signatures):

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Geneva, 19 April 1974

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

STATEMENT BY MR. FRANCIS T. P. PLIMPTON

In agreeing with the substance and conclusions of the above judgement, I should record my inability to concur with some of the reasoning or with some of the wording.

(Signature)

Geneva, 19 April 1974

Francis T. P. PLIMPTON

Judgement No. 183

(Original: English)

Case No. 177:
Lindblad

Against: The Secretary-General
of the United Nations

Dismissal for misconduct of a staff member holding a fixed-term appointment.

No dispute between the Applicant and the Respondent as to the circumstances which led to the termination of the Applicant's appointment and those in which the Applicant's fault was discovered.—Request for rescission of the decision terminating the appointment.—Applicant's argument that he was never called upon to answer or offer an explanation for the acts of which he is accused.—Procedure followed by the Respondent.—Consideration of the question whether that procedure complied with the Staff Regulations and Rules.—Conclusion of the Tribunal that the Respondent acted within the terms of the Staff Regulations and Rules, but that wherever he had discretion to opt between two courses of action he selected that which was less favourable to the Applicant.—Consideration of the question whether the Applicant was accorded due process.—Application by the Respondent of Personnel Directive PD/1/69.—No evidence that any written charges were made against the Applicant or that he had any opportunity to reply to such charges in any considered way.—Particular seriousness of this omission in this case.—Conclusion of the Tribunal that the Applicant was not accorded a fair opportunity to give his version of all the relevant facts or to explain his conduct in its entirety.—A staff member against whom disciplinary proceedings are taken should be furnished with a specific charge and should be accorded the right to be heard before a sanction is imposed on him, including the opportunity to participate in the examination of the evidence.—Since Personnel Directive PD/1/69 does not explicitly state such a right, it does not provide adequate protection for staff members away from Headquarters or Geneva and does not establish an equivalent procedure to the Joint Disciplinary Committee procedure as envisaged in Judgement No. 130.—Since the Applicant was not accorded fair procedure, the contested decision is not well founded.—Assimilation of the Applicant's situation to that of a staff member whose contract would have expired on the date of his dismissal.—Award to the Applicant of an indemnity equivalent to 30 working days' pay.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Sir Roger Stevens;

Whereas, at the request of Anders Lindblad, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 16 July 1973 and again to 18 October 1973 the time-limit for the filing of an application to the Tribunal;