

as to be a decisive factor, which fact, was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

II. Article 12 permits the Tribunal to revise a prior judgement when the party claiming revision presents to the Tribunal some fact previously unknown to the Tribunal and to the party claiming revision.

III. The Applicant's letters dated 8 February and 26 March 1974 do not, however, present any newly discovered fact. Rather the Applicant presents again his arguments as to the legal interpretation of relevant Staff Rules and of provisions of the Conditions of service for locally recruited staff members of the UNDP Office in Nigeria. Those arguments were fully considered and passed upon by the Tribunal in its Judgement No. 170.

IV. For the above reasons, the application for revision of Judgement No. 170 is rejected.

*(Signatures)*

R. VENKATARAMAN

*President*

Francis T. P. PLIMPTON

*Vice-President*

New York, 4 October 1974

Roger STEVENS

*Member*

Jean HARDY

*Executive Secretary*

## Judgement No. 189

*(Original: English)*

**Case No. 189:**

**Ho (Reassignment, and charges of  
prejudice and harassment)**

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

*Request that the Tribunal declare receivable an appeal against a decision to reassign the Applicant and order the rescission of that decision.—Request that an investigation be held to consider the alleged prejudice and harassment.*

*Request that the judgement be drawn up in Chinese.—Competence of the Tribunal to determine in which official language a judgement shall be drawn up.—Request rejected, the Tribunal having decided that the judgement would be drawn up in English.*

*Request for the hearing of witnesses.—Decision of the Tribunal to hear as witness the Chief of the Security and Safety Section.*

*First principal request.—Reasons why the Joint Appeals Board decided that the Applicant's appeal against the decision to reassign him was not receivable.—Consideration by the Tribunal of the questions when the decision to reassign the Applicant was taken and when the Respondent informed the Applicant*

of that decision.—Conclusion of the Tribunal that the decision was taken on 11 August 1969 and that reasonable steps were taken by the Respondent to inform the Applicant of that decision at the time.—The appeal was not receivable because the Applicant failed to take appropriate action at the time.—Utility of certain observations by the Tribunal on the substance of the decision to reassign the Applicant.—Incident which led to that decision.—Difference of judgement between the Applicant and his superiors as to whether the incident constituted an emergency.—The decision by the Chief of the Security and Safety Section to reassign the Applicant was justified.—Discretion and sensitivity with which the reassignment was carried out by the Respondent.—Conclusion of the Tribunal that the decision to reassign the Applicant was within the Respondent's discretion within the terms of Staff Regulation 1.2, that it was properly carried out and that the appeal would therefore have had little chance of success even if it had been judged receivable.—The Applicant's subsidiary pleas rejected.

Second principal request.—Doubt concerning the scope of the investigation requested by the Applicant.—Statement by the Respondent that the previous incidents alleged by the Applicant were fully investigated and the Administration was under no obligation to investigate the general allegations of prejudice.—Consideration by the Tribunal of the first part of this statement.—Conclusion of the Tribunal that the incidents alleged were in themselves minor in character and were adequately investigated.—Consideration of the second part of the Respondent's statement.—Where an appeal involving a request for an inquiry reaches the Tribunal, it is the latter's responsibility to determine whether the subject-matter of the appeal falls into a category with respect to which the Secretary-General has assumed specific obligations to conduct inquiries and whether in the case of an appeal under Staff Rule 111.1 (b) due process has been observed.—Due process observed in the present case.—Appreciation of the Applicant's qualities by the Respondent and absence of prejudice in the Respondent's assessment of the Applicant's over-all performance.—Request rejected.—Applicant's subsidiary pleas rejected.

*Application rejected.*

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

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Sir Roger Stevens;

Whereas, on 15 July 1974, Cheng-Hao Ho, a former staff member of the United Nations, filed with the Tribunal an application the pleas of which read as follows:

"1. Concerning the first part of the appeal:

"(a) to find receivable my appeal against the administrative decision to reassign me—reached jointly by Mr. D. Vaughan and Mr. M. Gherab—'after the circumstances relating to the 1969 matter were carefully examined'; and

"(b) in accordance with Chapter IV of the Rules of the Administrative Tribunal, to conduct oral proceedings, to hear oral argument and comment on the evidence given, to hear the testimony of the witnesses of the 4 July 1969 incident and its aftermath, especially Security Officer Thomas Giuliani, Assistant Chief Cecil T. J. Redman, Section Chief H. Trimble and others; and

"(c) to hear the testimony of Mr. H. Trimble, Chief Security and Safety Section on the true nature of my reassignment; and

(d) to find, after examining the evidence produced before the JAB [Joint Appeals Board] (cf. annex 4, pp. 2–5, paras. 8–16 and the testimony referred to in (b), and (c) above), that the decision to reassign me was therefore ill-founded in fact, there being no element 'in the circumstances relating to the 1969 matter' to warrant my reassignment and

"(e) to order that the decision to reassign me be rescinded;

"(f) to order the payment of the material loss and damages suffered by me as a direct result of this reassignment in the amount of approximately \$15,000 consisting of approximately \$3,000 per annum lost between 11 August 1960 and

31 May 1974 in earnings from the Timken shift night differential and overtime which I would have normally earned had I not been reassigned, as well as the 79 hours overtime which I have had to work without compensation;

“(g) to order, as recommended in the minority opinion of the JAB, (cf. annex 2, p. 13, para. 6) and for the reasons stated therein, the payment of one year’s base salary.

“2. Concerning the second part in the appeal:

“(a) to order the production of the complete records of the investigation referred to in the letter of Mr. M. H. Gherab to me dated 31 May 1974, on the basis of which the Secretary-General purportedly decided to reject the recommendation of the JAB on the second part of the appeal; and

(b) to find this investigation, if any, not complete and/or not impartial and/or failing the test of due process and/or unfounded in fact; and

“(c) to order a comprehensive and thorough investigation by an impartial body, as recommended by the JAB in its report (annex 2, p. 11, para. 45), on the instances of prejudice and harassment of which I complain, from 1953 (as recommended in the minority opinion attached to the Board’s report annex 2, p. 13, para. 4 (iii)) to the present or alternatively;

“(d) to conduct such an investigation itself and in so doing: to examine evidence I furnished before the JAB, in particular, the note of observations submitted on my behalf on 21 November 1973 and the attachments thereto (see annex 4) and the supplementary note of observations of 12 February 1974 and the attachments thereto (see annex 5) and the report dated 25 February 1966 drawn up on me by my Department in connexion with the filling of two newly-established P.2 posts in the Section referred to in the note of observations (annex 4, part 1, para. 34 (b) (ii)); and

“(e) to find that my Department blocked by advancement, treated me unfairly, and with regard to the report referred to above dated 25 February 1966, to find such report distorted and/or misleading and contrary to the provisions of Staff Rule 112.6; and

“(f) to order the payment of the equivalent of three years’ base salary as compensation for the discrimination systematically practised by the Office of General Services against me resulting in damage to my United Nations career, in sowing doubt as to my professional competence, and personal integrity, and resulting in serious financial loss to me.”

Whereas the Respondent filed his answer on 7 August 1974;

Whereas the Applicant submitted a statement under article 15, paragraph 2 of the Rules on 15 September 1974;

Whereas the Applicant filed written observations on 16 September 1974;

Whereas, on 25 September 1974, the Tribunal held a public hearing at which it heard the parties and, as a witness called by the Applicant, Mr. H. A. Trimble, Chief of the Security and Safety Section;

Whereas at the public hearing documents were submitted by the witness and a statement was filed by the Respondent at the request of the Tribunal;

Whereas an additional statement was filed by the Respondent on 26 September 1974 at the request of the Tribunal;

Whereas additional documents were submitted by both parties at the request of the Tribunal on 26 September 1974;

Whereas, on 27 September 1974, the Applicant presented additional observations

and requested the Tribunal to order the Respondent to produce a detailed statement of the officers assigned as supervisors of outside posts prior to 1 January 1979 [1969?] and after 31 May 1974;

Whereas, on 2 October 1974, the Applicant requested that the judgement be drawn up in Chinese, one of the five official languages of the United Nations;

Whereas the facts in the case are as follows:

The Applicant, a Chinese national, entered the service of the United Nations on 29 January 1951 as a Junior Security Officer at the G-4 level. On 1 March 1955 he received a permanent appointment and was promoted to the G-5 level. On 1 February 1959 his functional title was changed to Security Lieutenant and, on 1 June 1966, he was placed at the S-5 level in the newly created Security Service category.

A periodic report on the Applicant's service from 15 October 1954 to 29 January 1957 was contested by the Applicant. In his rebuttal the Applicant referred to a dispute which had occurred between himself and one of his colleagues, Mr. J. Finore—who, like the Applicant, was in command of one of the four Security tour squads—on 20 May 1955 and which had been settled by the Chief of the Buildings Management Service at the end of July 1955, and he requested that the dispute “be reopened for final solution”. On 19 February 1957 the Director of General Services appointed an *Ad Hoc* Committee, composed of three members of the Office of General Services, to investigate the charges contained in the report and to furnish him with an evaluation upon which to base his appraisal. On 28 February 1957 the Committee submitted its report, in which it found the periodic report to be fair. The periodic reports on the Applicant's service from 1 January 1959 to 1 January 1963 were also contested by the Applicant and became the subject of Judgement No. 122, whose review was unsuccessfully sought by the Applicant.

On 5 July 1969 the Applicant addressed to the Chief of the Security and Safety Section a memorandum, entitled “Unbecoming attitude of a Supervisor”, in which he complained of remarks made to him on the preceding day by Mr. Finore—who had become Deputy Chief of the Section and was the Acting Chief at the time—on the occasion of a trespassing incident which had occurred at the Secretary-General's residence in the early morning while the Applicant was the Duty Tour Platoon Supervisor. The memorandum concluded with a request that a hearing be conducted “to take up the trespassing case and the unbecoming attitude of a supervisor”. The Chief of the Security and Safety Section made an investigation of the Applicant's complaint against Mr. Finore and, on 17 July 1969, he informed the Applicant of the findings of the investigation at a meeting attended by the Applicant and by Mr. Finore. At that meeting, the Chief of the Section stated that he had received statements from Mr. Finore and from various witnesses and that, on the basis of the information he had obtained, he had reached the conclusion that the Applicant's complaint was not founded. On 1 August 1969 the Applicant, who had been furnished with copies of the statements, sent to the Chief of the Security and Safety Section a memorandum, entitled “Unbecoming Attitude of a Supervisor, Add.1”, in which he questioned the probative value of the statements from witnesses on the ground that they had not been made under oath, as well as the accuracy of Mr. Finore's statement, and requested that a further hearing of the case be conducted. On 8 August 1969 the Chief of the Security and Safety Section replied that no useful purpose would be served in his conducting a further hearing of the case. In a memorandum addressed on the same day to the Director of the Office of General Services, the Chief of the Security and Safety Section criticized the performance of the Applicant on the occasion of the 4 July 1969 incident, stating in particular that the Applicant had violated written orders by failing to detail the Tour Sergeant to the Secretary-General's residence as it was his duty to do in the

event of an emergency and that he had departed from sound and normal operating procedures by not informing immediately a senior official of the incident. The memorandum concluded as follows:

"As you are aware, the Tour Lieutenant on duty is the Headquarters Duty Officer outside normal hours. This position must be filled by a supervisor on whose judgement we can all rely.

"I cannot accept, nor can I discharge, my duties and responsibilities as Chief of the Security and Safety Section under a situation where I do not have complete faith in the judgement of each of my Tour Lieutenants.

"Lieutenant Ho is on annual leave until 13 August 1969; therefore I have assigned a Sergeant to 'A' Squad as Acting Lieutenant. I do not intend to return Lt. Ho to duty with the Tour Platoon.

"Pending a more satisfactory solution concerning the future status of Lt. Ho, I have assigned him on a temporary basis to my office as Lieutenant (Special Assignments)."

On 11 August 1969 the Applicant was informed that he had been appointed "Lieutenant (Special Assignments)", his first assignment being to review the Security and Safety Section Manual under the direct control of the Chief of the Section. The Applicant's second assignment was to make a survey of the Section's expenditures and budget estimates. On 21 January 1970 the Chief of the Security and Safety Section informed all Section supervisors of the following:

"With effect from 26 January 1970, Lieutenant Ho is appointed supervisor of all posts outside the Headquarters area, with the exception of Post 1000 [the Secretary-General's residence]. Post 1000 remains the responsibility of the Tour Platoon, as outlined in the instructions dated 21 January 1969.

"Posts for which Lt. Ho is responsible include: Post 9—Alcoa Building, third floor; Post 10—UNITAR Building; Post 11—Alcoa Building, sixth floor; Post 800—Chrysler Building; Post 900—485 Lexington Avenue; and the Astoria Warehouse.

" . . . "

On 1 February 1973 there was an exchange of words between the Applicant and Mr. Finore, then Acting Chief of the Security and Safety Section, who had instructed him to stop reading a newspaper in the Section Office during the lunch period. In a memorandum addressed on the same day to the Assistant Secretary-General for General Services and entitled "Unbecoming Attitude and Conduct of a Supervisor, Add.2", the Applicant complained about Mr. Finore's attitude towards him both in that incident and in the July 1969 incident, and he requested "that an impartial body be set up to hear the [4] July 1969 incident together with the subsequent cases of prejudice and harassment". On 25 April 1973 the Assistant Secretary-General for General Services replied as follows:

"1. In the discussion which [the Executive Officer of the Office of General Services] and I had with you on 11 April 1973 concerning your memorandum of 1 February 1973, I informed you that I would give careful consideration to the comments you made about your case during the course of that meeting before reaching a final decision. This I have now done. In addition, I have talked with the Chief and Deputy Chief of the Section and reviewed your file.

"2. Your request of 1 February 1973 falls into two categories:

"(i) A reference to an incident which occurred in the Secretary-General's residence in July 1969; reported use of abusive language against you;

your reassignment from the position of a Tour Platoon Supervisor; and your positive contribution to the preparation of the Security Section's Provisional Manual.

- “(ii) A reference to the incident of newspaper reading which occurred on 1 February 1973 in Room No. C-108 during your lunch time, and to Mr. Finore's conversation with you; your general query regarding non-provision of office and furniture facilities; your allusion to Mr. Finore's personal prejudice against you since 1955.

“3. As far as (i) above is concerned, I am satisfied that the circumstances relating to the 1969 matter were carefully examined not only by my predecessor, but also by the Director of Personnel before a joint decision was taken to reassign you. I do not find that there is any basis or that it would be in order for me to reopen a matter on which a final decision was made almost four years ago by senior officials.

“4. Regarding your exchange of words with Mr. Finore on 1 February 1973, I can understand that you might not have been previously aware of the instructions which had been issued by the Chief of the Security Section. I believe you can appreciate that in the interest of office efficiency and public relations, the Section Chief would quite reasonably expect that this type of activity should not take place in his outer office. You indicated in our conversation that you considered this particular incident to be a minor one. I have also gone through the statements received from a number of witnesses which also support this conclusion.

“5. Regarding the non-provision of office and furniture facilities, [the Chief of the Security and Safety Section] has informed me that he has explained to you why it has not been possible to provide space and furniture for all Lieutenants in the Security Section. I understand that as and when they have to work at a desk appropriate space is provided. Considering the fact that the Lieutenants have supervisory responsibilities which require them to be mobile, the arrangements which have been made, while perhaps not ideal, are working satisfactorily from a management standpoint.

“6. In respect of your reference to Mr. Finore's personal prejudice against you, your file bears testimony to the fact that you have in the past brought directly or indirectly to the attention of the Appointment and Promotion Committee, and to the Director of Personnel, instances where in your view such prejudice was displayed. These cover a period of several years and received due consideration from appropriate officials. Since we agree that the incident of February 1973 was a minor one, this episode should be considered closed by all concerned. I sincerely hope that with the co-operation and goodwill of all concerned working relations between you and your supervisors will be satisfactory.”

On 22 May 1973 the Applicant sent to the Secretary-General a letter in which he requested:

“... that the administrative decision communicated to me by [the Assistant Secretary-General for General Services] on 25 April 1973 together with the joint decision made by the former Assistant Secretary-General and the Director of Personnel consequent to the 1969 incident (which was made known to me on 25 April 1973 by [the Assistant Secretary-General]'s memorandum) be reviewed on the grounds that these two administrative decisions were made without observing the terms and conditions of my employment including the pertinent rules and regulations”.

On 29 June 1973 the Office of Personnel Services informed the Applicant that there was nothing in the memorandum of 25 April 1973 which could be regarded as an

administrative decision leading to the non-observance of his terms of appointment. On 20 July 1973 the Applicant lodged an appeal with the Joint Appeals Board. The Board considered that it had before it two appeals, the first concerning the Applicant's reassignment in August 1969 and the second concerning the rejection of the Applicant's request of 1 February 1973 for an inquiry into his charges of prejudice and harassment. The Board's conclusions and recommendations, submitted on 18 April 1974, read as follows:

*"Conclusions and recommendations*

"43. As to the first appeal, the Board finds that the appellant received notification in writing on 11 August 1969 of the administrative decision that he is now seeking to contest. The Board finds further that the notification was made with sufficient particularity to allow the appellant to meet the time-limits laid down in Staff Rule 111.3 (a) and (b) for lodging an appeal had he wished to do so at that time, and that the appellant has not shown that there were exceptional circumstances that would justify a waiver of those time-limits in this case.

"44. Accordingly, the Board, by majority vote, decides not to entertain the appeal on the ground that it is not receivable.

"45. As to the second appeal, the Board finds that there has been no comprehensive and thorough investigation by an impartial body of the serious charges of prejudice and harassment that the appellant brought in his memorandum of 1 February 1973 against his Department and against Mr. Finore in particular. The Board recommends that the Secretary-General should instruct an appropriate impartial body to investigate and to report to him on the instances of prejudice and harassment, from July 1969 to the present, of which the appellant complains."

The Member elected by the Staff dissented from the Board's conclusions and recommendations and appended to the Board's report the following dissenting opinion:

"... .

"2. I believe that the appeal is receivable on the ground that Appellant's case falls within the provisions of Staff Rule 111.3(d) in law and in fact, warranting the waiver of the time-limit rule for appeals. The waiver of this rule, is warranted as an exceptional measure because the record shows that Appellant's special assignment of 11 August 1969, to review the Section's manual, was *temporary*. Based on specific instructions of the Section Chief, the Appellant carried out his special assignment diligently and faithfully, since apparently no one in the Security Section had the skill, talent and experience to undertake such a highly technical and professional job. . . . Moreover, Appellant's present position as supervisor of outside posts derives from the memorandum dated 21 January 1970 from the Section Chief to all Security and Safety Supervisors, and gives the semblance of a *permanent* assignment for which the Appellant was not given any direct written order except peripherally and generally. It appears from the record that said position was previously performed by several S-3 corporals, and no other security lieutenant (S-5) was assigned to perform the same task or to act in Appellant's place as a leave replacement. . . . It seems, therefore, that the Appellant's assignment referred to in the memorandum of 21 January 1970 was made for punitive reasons. For instance, the joint decision of the former Assistant Secretary-General for General Services, and the Director of Personnel, to reassign the Appellant from his S-5 post of tour supervisor to an S-3 job as supervisor of outside posts after 'the circumstances relating to the 1969 matter were carefully examined' seems to be *censure*, effectively resulting in Appellant's loss of esteem, curtailment of authority, diminution of responsibilities and consequential financial loss. In addition, I agree with Appellant's assertion that the memorandum of 25 April 1973 from

the Assistant Secretary-General, General Services, was the first notification—in *writing*—to Appellant of the decision to reassign him, consequent to the 1969 incident which gave Appellant the opportunity to challenge that decision for the first time. For all the foregoing reasons, I believe that the appeal is receivable; that the time-limit rule should have been waived, and that the appeal should be governed by Staff Rules 110.3 and 111.3.

“3. To sum up, in my judgement the majority opinion of the Board declaring the first part of the appeal to be non-receivable relied on faulty legalism and tends to obstruct justice.

“B. 4. Even though I agree with the Board’s conclusion in paragraph 45 of the report . . . , I have the strongest reservation about the Board’s recommendation ‘that the Secretary-General should instruct an appropriate impartial body to investigate and to report to him on the instances of prejudice and harassment, from July 1969 to the present . . . ,’ due to the following considerations:

- “(i) The Joint Appeals Board, in my opinion, has the primary responsibility to undertake such an investigation and to report its findings and recommendations to the Secretary-General. By relegating such responsibilities to another body (‘an appropriate impartial body’ whose term of reference has not been defined), the Appellant would be deprived of all his legal rights as an appellant, namely the right to be notified of the composition of the so-called impartial body; the right to appear before the body; the right to counsel; the right to make statements and further appeals to other bodies—all of which are accepted rights in the eyes of the Joint Appeals Board.
- “(ii) In the hope of achieving a minimum of objective justice, I recommend that in lieu of the phrase, ‘an appropriate impartial body’, the phrase, ‘the newly-established Sub-Committee on Legal Rights of the Federation of the International Civil Servants Association’ be substituted and be given the same rights as mentioned in (i) above.
- “(iii) . . . It is my judgement that the alleged prejudice and harassment, practised by the Department and Mr. Finore in particular, against the Appellant took place since 1953. Therefore, I disagree with the phrase, ‘from July 1969 to the present’ in paragraph 45 of the Board’s report and recommend that the review be from 1953 to the present.

“5. Based on the written submissions, it is my finding that the Department has never acknowledged Appellant’s contribution to the Security Section in developing and drafting the Section’s Provisional Manual; despite his superior academic qualifications and experience the Appellant has not been promoted since 1955; his juniors have been made his seniors; and, since 1969, his assignment has been reduced to one far below his capabilities in that Appellant was assigned to a post which periodically required overtime but was instructed not to work overtime; that he had to work 79 hours overtime in six months without being compensated nor given compensatory time off, contrary to Staff Rule 103.12; that his reassignment subsequent to the 4 July 1969 incident was a *de facto* demotion since it resulted in Appellant’s losing privileges and esteem, curtailment of his authority, and diminution of his responsibilities; that the reassignment resulted in financial loss to him equivalent to the difference in pay (including Timken, night differential, and overtime) that he would have received had he not been reassigned; and that his Department deprived him of normal career development and advancement opportunities, unlike some of his colleagues, thereby resulting in his loss of income.

“6. In as much as the above factual litany of wrongdoings, for all practical



purposes—even if corrected now—would be an exercise in futility since Appellant is leaving the United Nations to retire on pension on 31 May 1974; and even if the impartial body finds in favour of Appellant against his Department, in my capacity as a member of the Board, I recommend that relief be granted to Appellant on an *ex-gratia* basis. In support of Appellant's appeal, I therefore recommend an *ex-gratia* payment of one year's salary as award compensation to him."

On 31 May 1974 the Assistant Secretary-General for Personnel Services communicated the decisions of the Secretary-General to the Applicant in the following letter:

"...

"The Secretary-General has re-examined your complaints in the light of the Board's report and has decided to take note of the Board's finding that your first appeal was not receivable. Regarding your second appeal, the Secretary-General has decided to take no action on the Board's recommendation that an appropriate impartial body be instructed to investigate and to report on the instances of prejudice of which you had complained. The Secretary-General is satisfied that an investigation of previous incidents alleged by you had been fully investigated in the past and that the administration was under no obligation to investigate general allegations of prejudice unrelated to specific administrative decisions."

On 15 July 1974 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The appeal against the administrative decision to reassign the Applicant was receivable:

(a) The decision of 11 August 1969, on which the Joint Appeals Board based its findings, was not the decision contested by the Applicant. Indeed, the former decision could not be validly contested in that it was a simple reassignment carried out by the Section Chief in the exercise of his discretion. Nor is it correct to say that the Applicant should have known or assumed that his reassignment resulted from the 4 July 1969 incident;

(b) The decision of 25 April 1973, by contrast, contained two elements—namely, that the decision to reassign the Applicant was taken by the then Assistant Secretary-General for General Services and by the Director of Personnel, and that it was taken after examining the circumstances relating to the 4 July 1969 incident—which rendered the decision of reassignment subject to contestation by the Applicant. For the first time, the memorandum of 25 April 1973 made it clear that the Applicant's change of jobs was more of a *removal* from his previous position than a *reassignment* to another position and that the 4 July 1969 incident—for which he bore not the slightest blame—was used as a pretext to ostracize the Applicant from the service by relegating him to a post clearly recognizable as an S-3 post.

2. The investigation the Applicant had requested should be ordered, or held, by the Tribunal:

(a) Contrary to what is stated in the letter of 31 May 1974 from the Assistant Secretary-General for Personnel Services to the Applicant, the "previous incidents" alleged by the Applicant were not "fully investigated in the past", as would appear if the Tribunal were to order production of the complete records of such investigations;

(b) (i) The Administration is under an obligation "to investigate general allegations of prejudice" if *prima facie* evidence shows that these allegations have a basis in truth;

(ii) The Applicant has made *specific* allegations that are probative of a policy, manifested for over 20 years, whereby, as a Chinese and as an individual, he was precluded from the normal advancement and career development despite his better qualifications;

- (iii) If the Administration was under no obligation to investigate general allegations of prejudice "unrelated to specific administrative decisions", it would ensure itself freedom from answerability merely by refraining from giving "specific administrative decisions" and superiors could treat their personnel in any capricious or arbitrary manner; furthermore, in the present case there *are* specific administrative decisions that are being contested;
- (iv) In any event, there is a specific obligation, inherent in the Staff Regulations and Rules, to redress violations of the terms of appointment of a staff member.

3. The Respondent has already acknowledged the validity of the Applicant's claim for an investigation.

Whereas the Respondent's principal contentions are:

1. The decision of the Joint Appeals Board that the appeal of the Applicant against the Administration's decision to reassign him is not receivable because of his failure to observe the time-limits prescribed by Staff Rule 111.3 is valid. The Board considered, and did not accept as valid, the Applicant's contention that he did not know at the relevant time and had no reason of then knowing that the decision taken in August 1969 to reassign him was linked to the July 1969 incident.

2. The Applicant has no entitlement under the Staff Regulations or Rules to an investigation of his charges of prejudice and harassment extending over a twenty year period from 1953 to 1973. Accordingly, the rejection by the Administration of the request of the Applicant for such an investigation cannot properly be considered as a violation of the terms of his appointment. Furthermore, the Tribunal, the Joint Appeals Board, the Appointment and Promotion Committee, the Director of Personnel and various other offices of the Organization have at different times considered charges of prejudice and harassment made by the Applicant, and in none of those cases were any of his charges accepted as valid.

The Tribunal, having deliberated from 24 September to 7 October 1974, now pronounces the following judgement:

I. As to the Applicant's request that the judgement be drawn up in Chinese, the Tribunal notes that under article 10, paragraph 4, of its Statute "The judgements shall be drawn up, in any of the five official languages of the United Nations, in two originals . . .". The Statute thus clearly indicates that it is for the Tribunal and not for either of the parties to determine in which of these five official languages the judgements shall be drawn up. The Tribunal has determined that this judgement shall be drawn up in English and the request of the Applicant is rejected accordingly.

II. The Tribunal considered the request of the Applicant that it should hear the testimony of a number of witnesses, totalling eight in all, named by the Applicant. The Tribunal decided to hear as witness Mr. Trimble, Chief of the Security and Safety Section, on "the true nature of the Applicant's two special assignments and the final appointment to an S-3 corporal's job" and on the question whether the decision to reassign the Applicant from Tour Platoon Supervisor to Lieutenant (Special Assignments) was made, as alleged by the Applicant, "for punitive reasons". The Tribunal also heard the Applicant who spoke briefly at the hearing.

III. The first plea of the Applicant, and the first matter which the Tribunal had to consider, related to the receivability of the appeal against the administrative decision to reassign the Applicant, which the Joint Appeals Board had decided by majority vote was not receivable. The Board's ruling was based on the view that the decision against which the appeal was made was taken on 11 August 1969, whereas the appeal was not made until 1973, which made it ineligible under Staff Rule 111.3 (*d*) unless there were exceptional circumstances which the Board considered did not apply in this case. The

Applicant's contention is that the Respondent's letter of 25 April 1973, from which he allegedly realized for the first time that his reassignment was the outcome of criticisms made of his performance during the incident of 4 July 1969, itself constituted a decision and that it was against that decision that he appealed in conformity with Staff Rule 111.3 (a), i.e. within one month of the letter. The Tribunal had to consider firstly when the effective decision concerning the reassignment of the Applicant was taken, and secondly when proper steps were taken by the Respondent to inform the Applicant of that decision.

IV. As to the first point, the Tribunal is satisfied that the decision took place as a direct result of the incident of 4 July 1969 and was effective from 11 August 1969 when the Applicant was given a "first assignment as Lieutenant (Special Assignments)". The letter of 25 April 1973 merely referred to this reassignment in the context of the 4 July 1969 incident, and did not in itself constitute a decision. As to the second point, the Applicant was clearly aware of this reassignment as an effective decision when he received the memorandum of 11 August 1969; his contention is that he did not realize the reasons for it until he received the letter of 25 April 1973. It is true that the Applicant was not informed specifically and in writing, at the time, that his reassignment was the result of the 4 July 1969 incident, but this incident had been the subject of a full investigation and according to the oral testimony of the Chief of the Security and Safety Section, Mr. Trimble, the Applicant had been made fully aware that his judgement in connexion with the 4 July 1969 incident had been questioned and that in consequence he was being removed from the tour platoon. He must therefore have known that a reassignment of some kind was inevitable and if he failed to connect the reassignment which he actually received with his Chief's assessment of his performance on 4 July 1969, the blame certainly cannot be attributed to any lack of plain speaking on the part of the Respondent.

V. The Tribunal concludes that the decision to reassign the Applicant was taken on 11 August 1969 and that reasonable steps were taken by the Respondent to inform him of that decision at the time as well as to convey the reasons for it. The Tribunal accordingly finds that the nature of the decision must have been clear to the Applicant when it was taken, viz. in August 1969, that he failed to take appropriate action under Staff Rule 111.3 (a) at the time, and that his later appeal against the decision was rightly found by the Joint Appeals Board not to be receivable.

VI. The Tribunal has however noted that, the Applicant having pointed out the personal inconvenience which procedural delays would cause him, the Respondent requested the Tribunal "to rule on all the issues involved in this case on their merits, as and to the extent it may deem appropriate". Notwithstanding, therefore, its decision that the appeal is not receivable, the Tribunal considers that it would be useful to make certain observations on the substance of the administrative decision of 11 August 1969 against which the later appeal was in effect made. Such observations must necessarily take some account of the incident of 4 July 1969 and of the events which flowed from it.

VII. The Tribunal has not attempted to make an exhaustive inquiry into the circumstances of the incident itself, nor does it consider that it would be appropriate for it to do so. The Tribunal notes however that, following a break-in by demonstrators to the garden of the Secretary-General's residence on the night of 4 July 1969, a conflict of view developed between the Applicant and his superiors. The latter maintained that the incident constituted an emergency, for which, under a recent order, certain action was prescribed on the part of the Tour Supervisor on duty, namely detailing the Tour Sergeant to proceed to the scene of the incident, and immediately reporting to the Chief or Deputy Chief of Section. The Applicant did not take action under either of those heads and subsequently contended that in his view the incident did not constitute an

emergency. There is thus no dispute as to what actually occurred; the conflict of view reflects a difference of judgement between the Applicant and his superiors, and it was because he acted or failed to act on the basis that the incident did not constitute an emergency, a view in which the Applicant persisted, that the decision was taken to remove him from the Tour Platoon.

VIII. Before commenting on this decision, the Tribunal notes three points:

- (i) In oral evidence Mr. Trimble stated that "any incident, regardless of how insignificant it may appear, which involves the Secretary-General, the members of the Secretary-General's family, or his property is certainly, as far as I am concerned as Chief of Security, a major incident, always has been and always will be";
- (ii) In a report from Lt. Wineman, who took over the post of Tour Supervisor from the Applicant at 0800 on 4 July 1969, it is stated that the Secretary-General asked the Security Control Centre at 0915 on 4 July 1969 why he had not been informed of the incident when the New York City Police were there, adding that there was no reason why he should not have been informed and that it was the Security Section's responsibility to do so;
- (iii) A security system to be fully effective depends on strict adherence to orders, on consistency of interpretation and on conformity in matters of discipline and judgement. The head of such a service has the duty as well as the right to ensure that those principles are followed.

IX. From the foregoing the Tribunal, without prejudging the issue as to whether the incident constituted an actual or potential emergency or not, draws the conclusion that the Chief of Security was well within his rights in deciding that he could not "discharge [his] duties and responsibilities . . . under a situation where [he did] not have complete faith in the judgement of [his] Tour lieutenants" and that in consequence he did "not intend to return Lt. Ho to duty with the Tour Platoon". It was as a result of this decision, in the Tribunal's view fully justifiable, that the related decision to reassign the Applicant to other responsibilities was taken.

X. Moreover, in the Tribunal's view this reassignment was carried out by the Respondent with discretion and sensitivity. It would presumably have been open to the Chief of Security to recommend that measures of some severity should be taken against the Applicant. Instead he was given two temporary assignments for which his qualifications were particularly well suited; and immediate moves were made to find him a permanent post which he could occupy honourably without losing salary or seniority rights. That these assignments were effected without directly invoking the reasons as to why they were necessary is in the Tribunal's view a good indication of how tactfully a difficult situation was handled; and it is noteworthy that all those assignments were accepted by the Applicant at the time without demur. It is true that the finding of a permanent post—the third assignment—for the Applicant did not prove altogether easy, that he performed a task which quite often (though not invariably) in the past had been performed—as it apparently will be in the future—by a staff member of S-3 rank, and that certain physical facilities at this post left something to be desired. Nevertheless, the Applicant's rank and salary, apart from his liability to earn overtime (which he was expressly told was ruled out), remained unaffected. The Tribunal notes too the Respondent's contention (expressed in oral evidence) that at a time when an exceptionally large number of United Nations staff were outposted, the post of outside supervisor assumed greater importance than it had enjoyed before. Even if this were not the case, the Tribunal would be more impressed by the upgrading of the post to fit the rank of the Applicant as an indication of the efforts made by the Respondent on his behalf, than by the Applicant's contention that in being required to fill a post

normally occupied by an S-3 he was being subjected to *de facto* demotion. On the contrary, it is the impression of the Tribunal that in all his last three postings the Applicant was given special consideration, and among the reasons for this was no doubt his long service, devotion to duty and in many respects excellent record.

XI. In considering the merits of the decision against which the appeal was made, therefore, the Tribunal concludes that the decision was within the Respondent's discretion within the terms of Staff Regulation 1.2 and that it was properly carried out. As to the Applicant's suggestion that there were reasons, other than the 4 July 1969 incident, for the reassignment, it is not in the Tribunal's view necessary to look beyond the 4 July 1969 incident for an explanation, and no evidence whatever of such "other reasons" has been adduced. On the merits of the case therefore, the appeal would in the Tribunal's view have had little chance of success even had it been judged receivable.

XII. Having regard to the foregoing, the Tribunal rejects the Applicant's subsidiary pleas in the first part of his appeal, namely, that he should be paid both for overtime which he worked without authorization and for overtime which he would have worked had he not been reassigned, and that he should be compensated with one year's base salary *ex gratia*.

XIII. In the second part of his appeal, the Applicant demands *inter alia* an investigation regarding his past treatment at the hands of the Respondent. The Tribunal notes at the outset that the scope of the investigation demanded is not consistently defined. The Applicant refers in his plea to "a comprehensive and thorough investigation by an impartial body, as recommended by the Joint Appeals Board"; and the Joint Appeals Board majority report proposes that such an investigation should extend "from July 1969 to the present". In the same plea, however, the Applicant refers to 1953 as the desired starting date and makes specific reference to a report of 25 February 1966, which is in fact an interoffice memorandum giving a comprehensive and to all appearances balanced view of the promotion prospects of all lieutenants in the Security and Safety Section, including the Applicant. Whereas the Joint Appeals Board's recommendation and the plea refer to "instances of prejudice and harassment", it would appear from the reference to the 1966 document that the Applicant desires that the investigation should also cover questions of promotion, a subject on which he engaged in frequent correspondence. Finally, Applicant's counsel stated in the oral proceedings that what was wanted was "the examination of the sum total of conduct towards him manifested in minute detail over a period of 23 years". At an earlier stage the Applicant claims to have demanded "a global review of the attitude of the Department towards him, not so much an investigation of one incident or another". There is therefore in the Tribunal's view some doubt as to what type of investigation, were one to be instituted, would satisfy the Applicant.

XIV. The Tribunal notes further that the views of the Respondent on this subject are clearly defined. As the letter from the Assistant Secretary-General for Personnel Services dated 31 May 1974 says, "the Secretary-General is satisfied that an investigation of previous incidents alleged by you had been fully investigated in the past and that the administration was under no obligation to investigate general allegations of prejudice unrelated to specific administrative decisions".

XV. The Tribunal has given careful consideration to each part of this statement by the Respondent. It has examined the Applicant's dossier to determine how far the first part of the statement relating to investigation of incidents in the past can be substantiated. The first such incident occurred in 1955 when the Applicant filed complaints against Lt. Finore as a result of a controversy about the timing of relief at their respective platoons. Countercharges were filed, extensive documents were exchanged and a hearing was held, and a recommendation was made that the Applicant should be reprimanded for his conduct in the office of his Chief and for violation of orders.

An investigation in 1957 followed upon a rebuttal by the Applicant of his periodic report. An *Ad Hoc* Committee reached the conclusion that, taken as a whole, the statement rebutted described a staff member who was giving satisfactory service and making a constructive contribution to the work of the United Nations. It was also considered that the *Ad Hoc* Committee could not usefully investigate the circumstances involved in the individual incidents to which the Applicant made reference in his rebuttal, owing to the lapse of time. An application for the deletion of comments from the Applicant's periodic reports was made in 1968 to the Tribunal and rejected (Judgement No. 122). An inquiry was held into allegations by the Applicant against the "unbecoming attitude" of Mr. Finore following the incident of 4 July 1969; the Applicant was informed by the Chief of Security that he did not consider the complaint founded. The only specific incident which was not investigated was that which occurred on 1 February 1973, relating to the Applicant reading a newspaper during a lunch break; this however is fully documented and is agreed by both the Applicant and the Respondent to be a minor affair. In addition, the Applicant's dossier indicates that he has made frequent and insistent pleas for transfer and (more particularly) promotion, occasionally alleging prejudice as one of the reasons for receiving special sympathy. These pleas have received due consideration but invariably borne negative results. The conclusion which the Tribunal draws from this examination is that the incidents alleged, while no doubt reflecting temperamental conflicts, were in themselves minor in character and have been as fully investigated as circumstances justified.

XVI. As to the second part of the statement of the Assistant Secretary-General for Personnel Services quoted in paragraph XIV above, the Tribunal recognizes that the Secretary-General has assumed a number of obligations to conduct inquiries into defined specific matters under Staff Rules. Further, in Staff Rule 111.1 (b) the question of prejudice or some other extraneous factor is referred to specifically as a matter within the competence of the Joint Appeals Board. Where an appeal involving a request for an inquiry reaches the Tribunal, it is the responsibility of the Tribunal to determine (a) whether the subject-matter of the appeal falls into a category with respect to which the Secretary-General has assumed specific obligations and (b) whether in the case of an appeal under Staff Rule 111.1 (b) due process has been observed. It is not for the Tribunal to lay down under the latter head general rules as to the circumstances in which the Secretary-General should conduct investigations but it may, in cases where in the Tribunal's view due process has not been observed, award relief to the Applicant.

XVII. In the present case it is the Tribunal's view, having regard to the investigations described in paragraph XV, that due process has been observed, and that the Secretary-General's exercise of discretion in rejecting the Applicant's demand for a further investigation regarding general allegations of prejudice unrelated to specific administrative decisions is not open to challenge. In arriving at this conclusion the Tribunal has had regard to the unspecific nature of the Applicant's request and in particular has tried to understand the circumstances which have given rise to a request of this nature. The point of departure of the Applicant's request is ostensibly a series of incidents over the years which have been brought about by a clash of temperament with Mr. Finore. All of those incidents are fully documented already; all with the exception of a minor one in 1973 were adequately investigated at the time. The real burden of the Applicant's complaint, however, resides not so much in the minutiae of those incidents in themselves, on which further investigation could hardly be expected at this stage to throw additional light, as in the underlying belief that they were in some way the cause of his failure to obtain promotion and that his career with the United Nations was somehow blighted as a result. It was no doubt with this thought in mind that the Joint Appeals Board recommended an investigation having regard to the fact that the Applicant would soon be retiring after 23 years of loyal service and that "it

would be unfortunate if [he] were to leave with the impression that his serious charges of prejudice and harassment had been evaded or lightly brushed aside". Hence flows the Applicant's plea in the first part of his appeal that the decision to reassign him be rescinded, and in the second part that he be paid "three years' base salary as compensation for the discrimination systematically practised by the Office of General Services against me resulting in damage to my UN career, in sowing doubt as to my professional competence and personal integrity, and resulting in serious financial loss to me".

XVIII. The view of the Tribunal differs on this matter from that of the Joint Appeals Board. It is by no means certain that the charges of prejudice and harassment can correctly be described as serious, and the Tribunal does not consider that they have been evaded or lightly brushed aside. Moreover, the Tribunal does not find that any evidence has been produced by the Applicant to support his thesis that personality clashes with Mr. Finore have adversely affected his promotion. On the contrary, the Tribunal sees a good deal of evidence to show that the Applicant's repeated requests for promotion have been carefully considered. It finds no evidence of discrimination systematically practised against the Applicant by the Office of General Services, nor of doubt being sown as to the Applicant's personal integrity, regard for which has always been most marked in his periodic reports. As to his professional competence, this has also in many contexts been highly praised, and challenged only in a few quite specific situations such as the 4 July 1969 incident, where the facts have been well documented. In these circumstances, it is the view of the Tribunal not only that an investigation along any or all of the lines propounded by the Applicant would produce no new information, but also that it would not necessarily yield evidence helpful to the Applicant's basic concern, namely, that he should receive some reassurance that he left the United Nations after 23 years of devoted service with a reputation for hard work, efficiency and substantial achievement. In this connexion the Tribunal notes that there are many favourable references in the Applicant's periodic reports to his sense of responsibility, his alertness and efficiency, his unfailing punctuality and his high sense of duty and devotion. From these reports it is clear to the Tribunal, and it should be clear to the Applicant, that his qualities have been fully appreciated and that the Respondent's assessment of his over-all performance has not been coloured by prejudice.

XIX. For the reasons given in paragraphs XIII to XVIII above, the Tribunal rejects the Applicant's demand for an investigation of any kind, nor does it consider that the circumstances justify financial compensation of any kind. The subsidiary pleas of the second part of the appeal are accordingly rejected also.

XX. The application as a whole is accordingly rejected.

*(Signatures)*

Suzanne BASTID

*Vice-President, presiding*

Francisco A. FORTEZA

*Member*

*New York, 7 October 1974*

Roger STEVENS

*Member*

Jean HARDY

*Executive Secretary*