

tions indicates that the Applicant received gross wages of 24,880.05 Swiss francs for 2,082½ hours of work in 1973 and gross wages of 19,449.15 Swiss francs for 1,456 hours of work in 1974, and that in 1975 he is receiving a gross wage of 13.10 Swiss francs per hour, plus 8 per cent for the "thirteenth month".

In those circumstances, the grant to the Applicant of a sum of 15,000 Swiss francs constitutes, in the Tribunal's view, adequate compensation for the damage sustained by the Applicant as a result of the irregularities committed by the Administration.

XIX. The Applicant has referred to the Panel's recommendation concerning his possible re-employment within the United Nations system, which the Secretary-General saw fit merely to note in his communication of 1 November 1974. Since the Applicant has filed no plea on this subject, the Tribunal is not required to pronounce on the Respondent's interpretation of the Panel's recommendation or on the action taken with regard to that recommendation.

XX. The Applicant requests compensation in the amount of 3,000 Swiss francs as a contribution to his legal expenses and the reimbursement of miscellaneous expenditures incurred since April 1974 in the amount of 250 Swiss francs.

The Tribunal decides to grant the Applicant the sum of 700 dollars as costs.

XXI. For these reasons the Tribunal decides that:

(1) The Applicant be paid compensation in the amount of 15,000 Swiss francs for the damage he sustained as a result of the irregularities committed by the Respondent in connexion with his case;

(2) The Applicant be paid 700 dollars as costs;

(3) All other claims are rejected.

(Signatures)

Suzanne BASTID

Vice-President, presiding

Francisco A. FORTEZA

Member

New York, 8 October 1975

Roger STEVENS

Member

Jean HARDY

Executive Secretary

Judgement No. 205

(Original: English)

Case No. 196:
El-Naggar

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

Non-renewal of a fixed-term appointment.

Request of the Applicant for access to his confidential file.—Request met, the Respondent having made the file available to the Tribunal and the latter having disclosed relevant documents to the Applicant.

Points for determination by the Tribunal.—Contention of the Applicant that he had an expectancy of continued service with the United Nations.—Argument based on the Respondent's recognition of the

Applicant's exceptional qualifications and performance.—Recognition of such qualities does not by itself create a legal expectancy which imposes on the Respondent an obligation to renew the Applicant's appointment.—Arguments based on Judgements Nos. 4 and 15.—Irrelevance of those judgements.—Precedents established in Judgements Nos. 95 and 142.—Consideration of the Applicant's contract as a whole and the surrounding circumstances.—Conclusion of the Tribunal that the Applicant had no legal expectancy of renewal of his contract.—Contention of the Applicant that his appointment amounted in law to a permanent one.—Arguments based on the fact that the Applicant was repeatedly recommended for a permanent appointment and was turned down on invalid and illegal grounds.—Discretion of the Secretary-General regarding the type of appointment offered to a staff member.—Acceptance of a fixed-term appointment by the Applicant.—Contention rejected.—Contention of the Applicant that Staff Regulation 4.4 was breached in this case.—This Regulation has no relevance either to the decision not to renew the Applicant's fixed-term appointment or to the denial of a permanent appointment to him.—Contention of the Applicant that in his case there was a gross abuse of authority on the part of the Secretary-General in not assigning him to a post for four months.—Contention rejected.—Allegations of prejudice relating to the nature of the post offered to the Applicant, the Respondent's attitude regarding the disclosure of documents and the charge of dereliction of duty originally made against the Applicant by the Respondent.—Consideration of those allegations and conclusion of the Tribunal that they are unfounded.

Recommendation of the Joint Appeals Board.—Its acceptance by the Secretary-General.—Obligation of the Respondent to carry out his undertaking.—Consideration of efforts made by the Respondent to keep the Applicant on the staff and offer him an appropriate appointment.—The fact that the Applicant did not accept any of the technical assistance assignments offered him does not conclude the Respondent's obligation to make an effort to provide him with an appropriate appointment.—Order that the Respondent should make an attempt to place the Applicant in such a post within three months from the date of the judgement.—Award to the Applicant, should the Respondent exercise the option provided for in article 9.1 of the Statute of the Tribunal, of compensation in the amount of six months' net base salary.—Failure of the Respondent to implement the part of the recommendation of the Joint Appeals Board that he should keep the Applicant on the staff while seeking an appropriate assignment for him.—Award to the Applicant of a sum equivalent to three months' net base salary.

The other requests are rejected.—Award to the Applicant of \$800 as costs.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 21 February 1975, Said El-Naggar, a staff member of the United Nations Conference on Trade and Development, hereinafter called UNCTAD, filed an application the pleas of which read as follows:

"First: With respect to procedure

"The Administrative Tribunal is respectfully requested:

"I. To order access to the Applicant's confidential file.

"II. To authorize oral proceedings.

"Second: With respect to substance

"The Administrative Tribunal is respectfully requested:

"III. To order the Respondent to place the Applicant, upon the expiry of his current fixed-term appointment on 28 February 1975, in an appropriate established D-2 post for a period equal to the duration of his current fixed-term appointment, i.e., five years.

"IV. Should the Respondent, by virtue of the authority vested in him in Article 9.1 of the Statute, decide to pay compensation, to order the payment to the Applicant of a sum equivalent to five years' net base salary.

"V. To rule that the United Nations Administration has acted in bad faith

in a manner which reflected unduly and unjustly on the Applicant's competence and integrity, and caused him considerable moral and material injury for which the Respondent should pay, in addition to the sum requested in IV above, compensation equivalent to three years' net base salary of the Applicant.

"VI. To order the Respondent to reimburse the Applicant for legal expenses, the amount of which will be specified at a later stage in the proceedings.";

Whereas the Respondent filed his answer on 21 March 1975;

Whereas the Applicant filed written observations on 31 March 1975;

Whereas, on 24 September 1975, the Respondent made the Applicant's confidential file available to the Tribunal which, after examining the file, disclosed to the Applicant documents relevant to his case;

Whereas, on the same day, the Tribunal heard the parties at a public session in the course of which the Applicant provided additional information to the Tribunal and restated his pleas IV, V and VI as follows:

"IV. Should the Respondent, by virtue of the authority vested in him in Article 9.1 of the Statute, decide to pay compensation, to order the payment to the Applicant of a sum of \$168,150.

"V. To rule that the Respondent has acted in bad faith and abused his administrative authority in a manner which reflected unduly and unjustly on the Applicant's competence and integrity, and caused him considerable moral injury for which the Respondent should pay, in addition to the sum requested in IV above, the sum of \$168,150.

"VI. To order the Respondent to reimburse the Applicant for legal expenses to the amount of \$9,772.20.";

Whereas the Respondent submitted additional documents and information on 25, 26 and 29 September 1975;

Whereas the Applicant submitted supplemental memoranda on 1 and 3 October 1975;

Whereas the facts in the case are as follows:

The Applicant, a national of Egypt, entered the service of UNCTAD on 18 July 1965 as a Senior Economic Affairs Officer under a fixed-term appointment for two years at level P-5. This appointment was extended for short periods and, on 1 October 1967, the Applicant received another fixed-term appointment for two years and was promoted to D-1 as Assistant Director of the Research Division. That appointment was extended for five months on 1 October 1969 and for five years on 1 March 1970. The Applicant's performance from 18 July 1965 to 30 April 1969 was evaluated in four periodic reports in which he was rated "an exceptionally competent staff member of unusual merit". On 1 June 1971 the Applicant was promoted to D-2 and transferred to the United Nations Economic and Social Office in Beirut (UNESOB) as Director. On 9 August 1973, by its resolution 1818 (LV) the Economic and Social Council established the Economic Commission for Western Asia (ECWA), which was to consist of the States then covered by UNESOB and was to start its operations in Beirut on 1 January 1974. On 3 December 1973, the Under-Secretary-General for Economic and Social Affairs informed the Applicant that Member Governments wanted the Executive Secretary of the new Commission to be from a country belonging to the geographic scope of the Commission; with regard to the Applicant's next assignment, the Under-Secretary-General stated:

"...

"I am anxious to facilitate things for your next job. We have, of course, very little time to find a suitable accommodation for you in Geneva in case you would

want to leave Beirut immediately as stated in your letter. I am exploring the possibilities. It would, however, help me if you could let me know, as soon as possible, what your 'schedule of preferences', other than UNCTAD, would be in case it became difficult to find a spot there. Would you, for instance, consider a UNDP [United Nations Development Programme] job? Would you exclude working for the Economic Commission for Africa, perhaps in one of the sub-regional offices which I am trying so hard to strengthen? Would some role in the preparation of the World Food Conference to be held in November 1974 be suitable as a transitional solution? Or anything which you can think of."

On 14 December 1973 the Applicant replied in part:

"...

"As mentioned in my previous letter I have no quarrel with the decision of the Secretary-General to appoint the Executive Secretary from a country belonging to the geographic scope of ECWA. I am wondering, however, if it would not be possible to implement the decision of the Secretary-General in a manner which would spare me undue embarrassment and inconvenience.

"It would be extremely embarrassing for me if the appointment of the Executive Secretary were to be announced without reference to my next assignment. For this reason I expressed the hope in my previous letter that the new appointment and my transfer from Beirut would be simultaneously announced.

"Being in the middle of the school year, the immediate implementation of the Secretary-General's decision would put me, I regret to say, to considerable inconvenience. For obvious reasons I am not prepared to stay in Beirut after the take-over by the new Executive Secretary. At the same time I cannot risk the disruption and loss of the current school year for my two boys by terminating my residence in Beirut before the school year is out. I am, therefore, hopeful that it is not too late to ask for the postponement of the take-over to the next summer session of ECOSOC [Economic and Social Council].

"As to my 'schedule of preference' I would very much hope that a suitable opening is available in Geneva. For reasons connected with the education of the children and my family affairs in Egypt, Geneva has for me a definite advantage over New York. In Geneva my first choice would be of course UNCTAD in view of my long association with it, the personal relations I have with all the senior staff there, as well as my professional background. Naturally, the feasibility of this course of action depends on the agreement of Mr. Perez-Guerrero [Secretary-General of UNCTAD] (or Mr. Corea) [his successor as of April 1974] and the availability of a suitable opening. Aware of certain political difficulties, I would not, at this stage, insist on a directorship of one of the Divisions. I would be satisfied with a special assignment in the Office of the Secretary-General of UNCTAD, such as preparation for the next UNCTAD Conference.

"Failing UNCTAD, the second best would be another post in Geneva provided it is related to my professional background. I do not know, however, what is available in Geneva outside UNCTAD, but would be glad to consider proposals.

"If Geneva is not possible I would, as a last resort, consider an appropriate assignment in New York. I am not, however, prepared to accept a UNDP assignment in the field, nor would I favour a job in one of the sub-regions of ECA [Economic Commission for Africa]. The same applies to the preparation for the World Food Conference, which is certainly outside my field of competence.

"..."

On 4 January 1974, a United Nations Press Release issued in Beirut announced *inter alia* that UNESOB would be integrated in the secretariat of ECWA, that Mr. Al-Attar,

Permanent Representative of Yemen to the United Nations, had been appointed Executive Secretary of ECWA and that the Applicant's "new assignment within the United Nations [would] be announced shortly". On 8 January 1974 the Assistant Secretary-General for Personnel Services recommended the Applicant to the Secretary-General of UNCTAD as a replacement for an UNCTAD staff member at the D-2 level who had been seconded to UNDP for two years. On 5 February 1974 the Secretary-General of UNCTAD replied that, while considering the Applicant to be a very competent and devoted international civil servant, he was not prepared to proceed with an appointment of such a critical nature shortly before his separation from UNCTAD and that his successor, whom he had consulted, had conveyed to him clearly his unwillingness to concur with an appointment at that level before being able to assess the situation within UNCTAD after taking up his position in April. On 4 March 1974 the Department of Economic and Social Affairs informed the Applicant that four senior posts were open in the programmes of technical co-operation and asked him whether he might be interested in any of these. On 14 March 1974, at the instance of the Under-Secretary-General for Administration and Management, the Secretary-General of UNCTAD accepted to employ the Applicant in the Commodities Division for a period of one year. On 15 March 1974 the Applicant, who had worked for ECWA until 18 January 1974 (when Mr. Al-Attar took up his duties) but had remained in Beirut pending his reassignment, was instructed to proceed to Geneva for assignment with UNCTAD in the Commodities Division, his absence being charged to annual leave and if necessary to special leave without pay. The Applicant spent a few days in Geneva discussing with UNCTAD his proposed assignment. He was offered for the period of his availability an assignment as Special Adviser on the world food problem and diversification in the Office of the Director of the Commodities Division. The Applicant found that assignment unacceptable and on 19 March 1974 left for New York where he stayed for one month trying to secure another assignment. On 19 April 1974 he returned to Beirut. On 7 May 1974 the Secretary-General of UNCTAD sent the following cable to the Applicant:

"Glad to offer you assignment with UNCTAD on basis of following arrangements: AAA As adviser on special projects you will report to SECGEN UNCTAD on projects falling within area of competence of more than one Division and to the Director concerned on other projects. BBB In view space situation your office will be located on eighth floor. CCC Your assignment will be for period up to expiration date your present fixed term contract that is, twenty-eighth February 1975. UNCTAD does not undertake any commitment whatsoever beyond that date. Please cable if acceptable and inform of date reporting for work Geneva".

On 8 May 1974 the Applicant replied:

"To avoid further delay accept your offer. Reporting UNCTAD May 13. Shall take up with Davidson [Under-Secretary-General for Administration and Management] questions related to duration of assignment and removal of household effects and travel of dependents".

On 13 May 1974 the Applicant was transferred to UNCTAD as Adviser on Special Projects for a period ending on the expiration date of his appointment; the transfer was recorded in Personnel Action Form No. 74-3313 approved by the Office of Personnel on 22 August 1974. On 12 June 1974 the Assistant Secretary-General for Personnel Services advised the Applicant that the period between 18 January 1974 and 13 May 1974 would be charged to special leave with pay with the exception of the periods from 21 January to 1 February, from 7 to 11 March and from 22 to 26 April, to be recorded as annual leave. On 16 September 1974 the Applicant appealed to the Secretary-General of the United Nations against the decision contained in Personnel Action Form No. 74-3313 and requested that the decision be reviewed so that:

“(a) My transfer will be to an established post of such rank and responsibility as to be equal to my former post of Director of the United Nations Economic and Social Office in Beirut. Such action would be in keeping with Staff Regulation 4.4.

“(b) My assignment will be of such a duration as to be equal to that of my former fixed-term appointment, i.e., for a period of five years. Such action would be in keeping with reasonable expectations. It would also remove the moral and material injury to which, otherwise, I would be exposed.”

On 17 October 1974 the Assistant Secretary-General for Personnel Services addressed to the Applicant the following reply:

“...
“The Secretary-General has carefully examined your appeal and sees no basis for intervention or for altering the decisions which have been taken in your case. It is true that you had served as Director of UNESOB from June 1971 to May 1974 but it is equally true that your transfer to UNCTAD was effected at your request following your departure from Beirut and your refusal to serve with ECWA. The post which was assigned to you in UNCTAD was the only post available at the time and since there was no other post to which you could be assigned, the Secretary-General took his decision in your interest rather than terminate your services.

“Regarding your request for an extension of five years, I regret to advise you that I can see no possibility of such an extension in the absence of a suitable post where your qualifications and experience can be utilized. In fact, you have expressed complete dissatisfaction even with your current assignment in UNCTAD. I would like to remind you in this connexion that your letter of appointment with the United Nations clearly stipulates that it does not carry any expectancy of renewal or conversion to any other type of appointment. This clause in your letter of appointment is in conformity with Staff Rule 104.12(b). In the circumstances, I regret that I fail to see any valid basis for your expectancy of continued service with the Organization.”

In the meantime the Applicant had lodged an appeal with the Joint Appeals Board on 16 October 1974. The Board submitted its report on 9 January 1975. The final sections of the report read as follows:

“VII. *Findings and Conclusions of the Board*

“80. The Appellant has had an excellent record in his work for the United Nations during a period of more than nine years; while there appear to have been difficulties in finding an appropriate assignment for him after 19 January 1974, these difficulties do not seem to be attributable to the Appellant's incompetence or a failure on his part to perform adequately the tasks assigned to him.

“81. The Appellant does not seem to have been guilty of any failure to follow instructions or to have refused any offer or request to take on other work assignments following the establishment of the ECWA; his expressed desire to be transferred soon to another appropriate post following the establishment of ECWA was understandable and the intention to arrange a transfer was recognized in the press release issued by the United Nations announcing the appointment of Mr. Al-Attar and quoting the Secretary-General as stating that the Appellant's next assignment would be ‘announced shortly’.

“82. The length of time it has taken to find a further assignment acceptable to the Appellant is not the fault either of the Appellant nor of the Administration; the Appellant acted legitimately and in good faith in expressing preferences for certain types or places of assignment while the Administration also acted legitimately and in good faith in seeking to arrange assignments which were appropriate

in the light of the Appellant's qualifications and of the needs of the United Nations.

"83. While recognizing that the Appellant has been subject to inconvenience and frustration in his work during the period since January 1974, the assignment of the Appellant to UNCTAD was not a violation of any staff rules or regulations or the Charter, and the Appellant is not entitled to any compensation for damages.

"84. After more than nine years of devoted service, and on the basis, *inter alia*, of his excellent record of performance, his accelerated promotions, his severance of ties with his former employer at Cairo University, and the recommendation for conversion of his fixed-term appointment to permanent appointment, the Appellant has a reasonable expectation of continuation in service with the United Nations on the expiry of his present contract.

"85. The Administration has indicated in its response to the present appeal that it is continuing its efforts to find an appropriate post for the Appellant.

"VIII. Recommendation

"86. On the basis of the above findings and conclusions the Board unanimously recommends to the Secretary-General that it would be in the best interest of the United Nations to seek to keep the Appellant on the staff and to offer him a new and appropriate appointment on the expiry of his present contract."

In a cable from the Technical Assistance Recruitment Service dated 25 January 1975 the Applicant was asked to indicate his interest and the earliest date of his availability for certain technical assistance posts of one or two years' duration in Lesotho, Viet-Nam and Libya. But the Applicant did not respond to the offer. On 27 February 1975 the Assistant Secretary-General for Personnel Services communicated the decisions of the Secretary-General to the Applicant in the following letter:

"...
"The Board recommended that it would be in the best interest of the United Nations to seek to keep you on the staff and to offer you a new and appropriate appointment on the expiration of your present contract. In as much as the Secretary-General had indicated, while the Board was considering your appeal, that he was continuing his efforts to explore possibilities for your placement in a suitable position, he has accepted the Board's recommendation. Your candidature was offered to a number of offices and organizations but so far, without positive results.

"I also understand that you have been asked to indicate your interest in several technical assistance assignments but that you have not responded so far. If you do not accept any of the assignments offered to you, which are the only assignments the Secretary-General is currently able to offer, your appointment will expire and the Secretary-General will maintain his previous decision."

On the following day the Applicant left the service of UNCTAD upon the expiry of his appointment. In the meantime, however, he had filed with the Tribunal on 21 February 1975 the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's assignment as Adviser on Special Projects was a fictitious assignment which amounted to a demotion without cause or due process.

2. Under the special circumstances of his case, the Applicant was perfectly justified in his expectancy that his last fixed-term appointment would be renewed upon expiry for another five years. The discontinuation of his employment with the United Nations was contrary to reasonable expectancy and tantamount to termination in terms of Staff Regulation 9.1.

3. The present case is exceptional in the sense of article 9, paragraph 1 of the Statute of the Tribunal and justifies payment of an indemnity equal to the net base

salary which would have accrued to the Applicant had he continued in the service of the United Nations until his statutory retirement age:

(a) This is perhaps one of the rare cases in which a devoted staff member with an impeccable record of service is denied continued employment;

(b) The Respondent could not invoke political considerations as a factor in his attitude towards the Applicant.

4. From January 1974 to September 1974, the Applicant was subjected to numerous acts of harassment, humiliation and discrimination which inflicted incalculable damage on his professional reputation, and caused him considerable moral and material injury. Such acts entail the responsibility of the Respondent, independently of that provided for in article 9, paragraph 1 of the Statute of the Tribunal, on the basis of the general principles of law which require compensation for moral or material injury caused by wrongful acts.

Whereas the Respondent's principal contentions are:

1. The Applicant's transfer from Beirut and his assignment to UNCTAD were within the Secretary-General's authority under Staff Regulation 1.2 and did not constitute an abuse of authority or misuse of power. On the contrary, they were effected with a concern for the Applicant's personal and professional sensibilities going beyond requirements for legitimate exercise of the Secretary-General's authority and indeed going well beyond what most staff members may reasonably expect to receive.

2. Stating the period of the Applicant's assignment with UNCTAD as the time remaining under his fixed-term appointment was not an administrative decision affecting his contract rights.

3. The Applicant does not have any legal right to United Nations employment subsequent to the expiry of his five-year appointment in the absence of a new offer and acceptance. Even if, contrary to the facts, the contested administrative action was an administrative decision against offering the Applicant any further United Nations appointment, it would not have constituted non-observance of the terms of reference of his existing appointment, for the Applicant has no legal basis for asserting any right including any legally cognizable expectation to further appointment.

The Tribunal, having deliberated from 24 September to 9 October 1975, now pronounces the following judgement:

I. At the outset the Tribunal wishes to state that the Applicant's request for access to his confidential file has been met during the proceedings by the Respondent making the entire confidential file available to the Tribunal and by the Tribunal, after scrutiny, disclosing to the Applicant documents relevant for the purposes of his case.

II. In view of the elaboration of and amendments to the Applicant's pleas made by him during the oral proceedings, the Tribunal considers it useful to formulate the points for determination as follows:

1. Did the Applicant have a legal expectancy of continuing employment with the United Nations on the expiry of his fixed-term appointment?

2. Did the Applicant's employment situation amount to a permanent contract in law and was there a termination without due process in violation of Staff Regulation 9.1?

3. Was there a violation of Staff Regulation 4.4 in the case?

4. Was there a gross abuse of discretion or authority by the Respondent and has the Applicant suffered moral and material injury thereby?

5. Was there an acceptance of the recommendation of the Joint Appeals Board and

if so has the Respondent performed his obligations in this regard?

6. To what compensation, if any, is the Applicant entitled? Is he entitled to special damages for material and moral injury, if any, suffered by him?

III. The Tribunal observes that the Applicant had a fixed-term appointment which under its terms as well as under Staff Rule 104.12 (b) does not carry any expectancy of renewal or of conversion to any other type of appointment.

The Applicant, however, contends that the recognition by the Respondent of his exceptional qualifications and performance, his accelerated promotions from P-5 to D-2 in less than six years and the repeated recommendations for conversion of his fixed-term appointment into a permanent appointment gave him a reasonable expectancy of continued service with the United Nations.

The Tribunal notes that the high qualifications and abilities of the Applicant were never in dispute but points out that the recognition of such qualities does not by itself create a legal expectancy which imposes on the Respondent an obligation to renew or extend the Applicant's fixed-term appointment.

The Applicant also relies on Judgements No. 4 (*Howran*) and No. 15 (*Robinson*) in support of his claim.

The Tribunal observes that Judgement No. 4 mainly concerned the dismissal of staff members holding temporary-indefinite contracts while the present case involves not dismissal but non-renewal of a fixed-term appointment. Moreover, the Staff Rule relating to fixed-term appointments applicable in the present case was not in force when Judgements No. 4 and No. 15 were rendered and these earlier judgements based on old Staff Rules do not serve as precedents on this point.

Nevertheless, the Tribunal has held in Judgement No. 95 (*Sikand*) that:

"The Tribunal in its jurisprudence has established that the terms and conditions of employment of a staff member with the United Nations may be expressed or implied and may be gathered from correspondence and surrounding facts and circumstances",

and in its Judgement No. 142 (*Bhattacharyya*) the Tribunal ruled as follows:

"As a general rule fixed-term appointments do not carry a right of renewal. This is explicit in Staff Rule 104.12 (b), the wording of which has been incorporated in the standard letter of appointment. Nevertheless, the Tribunal is competent to examine the surrounding facts in which the letter of appointment was signed. The Tribunal has to consider the contract as a whole, not only by reference to the letter of appointment but also in relation to the circumstances in which the contract was concluded."

Accordingly, the Tribunal proceeds to consider the Applicant's contract as a whole and examine the surrounding circumstances in order to ascertain whether a legal expectancy of renewal was created in this case.

The Applicant relies on the United Nations Press Release issued on 4 January 1974 at Beirut on behalf of the Secretary-General on the occasion of the establishment of the Economic Commission for Western Asia stating that "Mr. El-Naggar's new assignment within the United Nations will be announced shortly", thereby strengthening the Applicant's expectancy of continued service with the United Nations. The Tribunal notes that at the time when the press release was issued, the Applicant had served less than four out of five years of his fixed-term appointment and had still more than a year of service left. Since the announcement regarding the Applicant's new assignment could have reference to the unexpired portion of his fixed-term appointment, the Tribunal is unable to read in the press release any assurance of continued employment of the Applicant after the expiry of his appointment.

In support of his claim of reasonable expectancy of renewal, the Applicant also relies on office memoranda recommending him for a career appointment with the United Nations. The Tribunal notes that on at least two occasions strenuous efforts were made by UNCTAD to secure a permanent appointment for the Applicant. But on both occasions the Respondent did not accede to the request and awarded only fixed-term appointments without any suggestion of extension after the expiry of the term, and the Applicant accepted the same without demur. Moreover, the Tribunal is of the view that inter-office memoranda which are in the nature of proposals do not create obligations on the part of the Administration or entitlements to a staff member.

The Applicant further contends that on the basis of reasonable expectation of continued employment with the United Nations, he acted to his prejudice in resigning from a prestigious post as Professor of Economics in the University of Cairo. It appears from the record, however, that the Applicant resigned his post in the University of Cairo voluntarily in 1972 and that no assurance of extension of his five-year contract was given at that time.

The Tribunal notes that in the Bhattacharyya case (Judgement No. 142) the letter offering employment to the Applicant stated:

"I would also like to add that for staff members who join us there will be opportunities after their first fixed-term contract for regular employment and for more senior posts in the Organization dependent upon their qualifications and performance."

The Tribunal found in that case that "the circumstances of the Applicant's fixed-term appointment and his performance of service created a legal expectancy of continued employment". The Tribunal further decided that "such legal expectancy created a corresponding obligation on the part of the Respondent to provide continuing employment to the Applicant . . .". Thus the basis of the decision in that case was that the Respondent, when offering employment, held out promises of regular employment and for more senior posts upon satisfactory performance of duties. The Tribunal finds that in the present case no such hope or promise was held out to the Applicant at any stage and that no obligation was undertaken by the Respondent for the Applicant's continued employment beyond 1975.

Taking all these circumstances into account, the Tribunal finds that the Applicant had no legal expectancy of renewal or extension of service after the expiry of his fixed-term appointment.

IV. The Applicant argues that although his appointment was in terms a fixed-term appointment it amounted in law to a permanent one governed by the relevant Staff Regulations and Rules. In support of his claim he relies on two arguments, namely that he was repeatedly recommended for a permanent appointment and that he was turned down on invalid and illegal grounds.

The Tribunal observes that under Article 101 of the Charter the power of appointment rests with the Secretary-General. The type of appointment to be offered to a staff member is within the discretion of the Secretary-General. Neither the exceptional competence of a staff member nor favourable recommendations for a particular type of appointment by themselves create an entitlement to such an appointment. Furthermore, the Tribunal holds that its competence does not extend to an examination of the reasons for the issue or refusal of a particular type of appointment to a staff member in the absence of entitlements in this regard.

The Tribunal further notes that a letter dated 18 January 1970 (but corrected to 18 February 1970 on the copy in Headquarters) from the Assistant Secretary-General for Personnel Services at Headquarters to the Secretary-General of UNCTAD specifically stated that the question of geographical distribution posed a serious problem to

the permanent appointment of the Applicant, and offered a five-year fixed-term appointment instead. In a cable to the Secretary-General of UNCTAD dated 23 February 1970, the Chief of the Personnel Section of UNCTAD stated:

“... In your absence received letter from Gherab [Assistant Secretary-General for Personnel Services] to you of eighteen February indicating he prepared to authorize five year extension for Elnaggar... *Eye discussed same with Elnaggar who prepared to accept extension.* Suggest you also confirm your agreement to Gherab while at Headquarters so we can proceed with implementation in view Elnaggar's current temporary extension expires February twentyeight.” [*Emphasis supplied.*]

It appears from the above cable that the Chief of the Personnel Section of UNCTAD had discussed the question with the Applicant and that the latter was prepared to accept an extension of five years. In a memorandum dated 18 March 1970 to the Chief of the Personnel Section of UNCTAD the Applicant stated: “I am afraid I cannot accept less than a five-year fixed-term appointment”. Thus, the Applicant having accepted a fixed-term appointment, it is not open to him to argue that the fixed-term appointment was in reality something different, namely, a permanent appointment. The Tribunal therefore rejects the plea that the Applicant's fixed-term appointment amounted in law to a permanent appointment and consequently holds that Staff Regulation 9.1 (a) is inapplicable to the case.

V. The Applicant's next contention is that Staff Regulation 4.4 requires that “the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations”, and that in breach of that Regulation he was not appointed to any of the seven D-2 vacancies that arose between November 1973 and February 1975 in the Department of Economic and Social Affairs of the United Nations and in UNCTAD.

The Tribunal considers that the plea does not advance the Applicant's case for extension of his fixed-term appointment. Even if the Applicant had been appointed to one of those posts, his employment would have ceased, unless his contract had been renewed or extended, on the expiry of his fixed-term appointment. Appointment to an established post by itself does not have the effect of converting a fixed-term appointment into a career appointment.

The Applicant argues that, while considerations of geographical distribution of staff are relevant for recruitment, they are not relevant for promotion, and that denial of a permanent appointment on the principle of balanced geographical distribution is illegal and invalid.

The Tribunal points out that the conversion of a fixed-term appointment into a permanent one is not a “promotion” within the meaning of the Staff Rules. There are no provisions in the Staff Rules for such a conversion except through the process of first granting a probationary appointment, followed by a review by the Appointment and Promotion Board. The Tribunal notes further that consideration of geographical distribution did not apply when the Applicant obtained his accelerated promotions from P-5 to D-2. The Tribunal holds that Staff Regulation 4.4 has no relevance either to non-renewal of the Applicant's fixed-term appointment or to denial of a permanent appointment to him.

VI. The Applicant strenuously pleads that there has been in his case a gross abuse of discretion or authority on the part of the Secretary-General. He states that in spite of the press release stating that his next assignment would be “announced shortly”, he was left without an assignment for four months giving the impression that he was under suspension pending investigation in a situation highly derogatory to his reputation.

The Tribunal notes that as early as 8 January 1974 the Assistant Secretary-General

for Personnel Services wrote to the Secretary-General of UNCTAD regarding the placing of two D-2 staff members, including the Applicant, and that the Secretary-General of UNCTAD replied on 5 February 1974 that he was not prepared to proceed with the appointment on the eve of his separation from UNCTAD and that his successor, whom he had consulted, had conveyed to him "clearly his unwillingness to concur" with the appointment. It appears from a letter dated 11 March 1974 from the Under-Secretary-General for Administration and Management to the Secretary-General of UNCTAD that after a telephone conversation UNCTAD was persuaded to accept the Applicant "for a temporary period". The Applicant was asked on 15 March 1974 to report to UNCTAD for an assignment, but he found it unacceptable and proceeded to New York where he remained for a month negotiating his future assignment. The sequence of events shows that the Administration was trying to accommodate the Applicant in UNCTAD for which he had expressed a preference earlier. The Applicant was apparently not aware of the steps taken on his behalf, as seen from a memorandum dated 17 April 1974 in which he states: "From that date [8 January 1974] up to my departure from Beirut on 7 March 1974—i.e., a period of two months—I was left completely in the dark not knowing anything about my present or future functions". This may have caused the impression in the Applicant's mind that he was neglected while in fact the Administration was pursuing the question of his posting.

The Tribunal concludes that the facts stated above do not justify the complaint that in not assigning the Applicant to a post for four months there was a gross abuse of discretion or authority by the Secretary-General.

The Applicant next argues that the post offered to him in May 1974 in UNCTAD was a "fictitious" job, that there was no such position in the manning table and that there were no special projects or functions to be performed. The Tribunal recognizes that the Applicant was put to inconvenience in a job without definite functions and apparently without proper office accommodation or secretarial assistance. At the same time the Tribunal notes that even this position in UNCTAD had been secured for the Applicant by special efforts on the part of the Respondent and that, as contended by the Respondent, the alternative could possibly have been worse.

The Applicant also criticizes the attitude of the Respondent regarding the disclosure of documents charging the latter with attempt at "manipulation of files". It is true that the Respondent stated at first that he had a non-privileged confidential file for the Applicant and then corrected himself by saying that he had only a privileged confidential file. The Tribunal observes that such mistakes do not inspire staff members' confidence in the fairness of the Administration and should be avoided. In this case, however, the entire confidential file has been placed before the Tribunal and the relevant papers have been disclosed to the parties, though at a late stage of the proceedings.

The Applicant sees further evidence of prejudice against him in the fact that the Respondent charged him with dereliction of duty before the Joint Appeals Board in spite of a cable from the Executive Secretary of the Economic Commission for Western Asia, Mr. Al-Attar, stating that he "would appreciate if it [the charge] is not used in building up case". As regards the reasons for the Applicant's non-continuance of service in Beirut after the Economic Commission for Western Asia was set up, there appear to have been different views among senior officials in New York. While the Under-Secretary-General for Economic and Social Affairs appreciated the reasons why the Applicant did not wish to continue in Beirut after the appointment of an Executive Secretary higher in rank than the Applicant, the Assistant Secretary-General for Personnel Services and the Under-Secretary-General for Administration and Management appear to have felt that the Applicant should have continued in Beirut and helped the new Executive Secretary in his functions. The Tribunal notes that the complaint against the Applicant for leaving his post in Beirut has been found by the Joint Appeals Board

to be unsustainable and has been abandoned by the Respondent in the proceedings before the Tribunal. In the light of the views expressed by two senior officials, however, it is not possible to infer improper motivation or prejudice on the part of the Respondent in the submissions made to the Joint Appeals Board in this respect.

On a review of the material in support of the Applicant's plea of gross abuse of discretion and authority by the Respondent, the Tribunal observes that, while there were certain unsatisfactory features in the case such as differing versions regarding the confidential files and equivocal acceptance of the recommendation of the Joint Appeals Board (dealt with in para. VII below), there were other actions favourable to the Applicant such as the granting of special leave with pay for most of the period in which he remained without function and *ex post facto* approval of his travel to New York without prior authorization. The delay in assigning the Applicant to a suitable post after his service in Beirut was not due to any fault of the Administration and the rejection of the recommendations for a permanent appointment was neither illegal nor invalid. The Tribunal therefore reaches the conclusion that there has been no prejudice or abuse of discretion or authority by the Respondent as contended by the Applicant.

VII. The Joint Appeals Board made its recommendation on 9 January 1975 and the Secretary-General "accepted" the recommendation on 27 February 1975. The application was filed, however, on 21 February 1975—that is, before the decision of the Secretary-General was communicated to the Applicant—as authorized by article 7, paragraph 2 (b) of the Statute of the Tribunal, on the premise that the Secretary-General "failed to take any action within the thirty days following the communication of the opinion" of the Joint Appeals Board. The basis for the application was therefore the implicit non-acceptance by the Secretary-General of the recommendation of the Joint Appeals Board. Nevertheless, as the Secretary-General subsequently "accepted" the recommendation, the Tribunal holds that there is an obligation on the part of the Respondent to carry out his undertaking. The Joint Appeals Board recommended that the Respondent should seek:

(a) to keep the Applicant on the staff; and

(b) to offer him a new and appropriate appointment on the expiry of his contract.

The Secretary-General, while "accepting" the recommendation, stated:

(a) that while the Joint Appeals Board was considering the appeal he had been continuing his efforts to explore possibilities for the Applicant's placement in a suitable position;

(b) that the Applicant's candidature had been offered to a number of offices and organizations without positive results; and

(c) that if the Applicant did not accept any of the technical assistance assignments offered to him, his appointment would expire and the previous decision regarding the Applicant's separation from service at the expiry of his fixed-term appointment would be maintained.

From the foregoing analysis of the recommendation of the Joint Appeals Board and its "acceptance" by the Secretary-General, the Tribunal finds that the "acceptance" was somewhat equivocal. If, as contended by the Respondent during the oral proceedings, the acceptance meant "that he [the Secretary-General] was already doing what they [the Joint Appeals Board] asked him to do" and that those efforts were without positive results, it would follow that there was nothing more for the Respondent to do in the case. If that had been his intention the Secretary-General would have so stated categorically. On the other hand, the letter sent to the Applicant on behalf of the Secretary-General gives the impression that he accepted the recommendation of the Joint Appeals Board both in respect of keeping the Applicant on the staff and of offering him a new and appropriate appointment on the expiry of his contract. Reading

the letter as a whole, the Tribunal finds that the Secretary-General accepted the recommendation of the Joint Appeals Board and thereby undertook to fulfil the obligations arising therefrom. It is therefore for the Respondent to show that efforts were made to keep the Applicant on the staff and to place him in a suitable position after the recommendation made by the Joint Appeals Board on 9 January 1975.

The Applicant contends that during the period 1973-1975 there were a number of D-2 posts either vacant or falling vacant such as those of Director of the Office of Technical Co-operation, Director of the Natural Resources Division, Director of the Division for Science and Technology and Director of the UNCTAD Liaison Office in New York, and that the Respondent failed and neglected to assign the Applicant to any of them. In the course of the oral proceedings, the Respondent explained how these posts had been filled by others but he did not state whether the Applicant had been specifically considered for any of them. Having reached the conclusion, however, that the Respondent's obligation arose as a consequence of his acceptance of the recommendation of the Joint Appeals Board, the Tribunal confines its examination to the efforts made by the Respondent subsequent to the report of the Joint Appeals Board.

On 25 September 1975 the Respondent furnished to the Tribunal a list detailing the departments or offices to which the Applicant's candidature was proposed between January 1974 and March 1975. It appears from the list that the Applicant's name was proposed:

1. For a post in UNCTAD in replacement of Mr. Sidney Dell on 8 January 1974;
2. To the Department of Economic and Social Affairs and the Regional Economic Commissions in February 1974, October 1974 and January 1975;
3. To the United Nations Industrial Development Organization on 31 October 1974;
4. To the Economic Commission for Europe on 7 November 1974;
5. To the Office of the United Nations High Commissioner for Refugees on 11 November 1974;
6. To the United Nations Fund for Drug Abuse Control on 11 November 1974;
7. To the United Nations Research Institute for Social Development on 11 November 1974; and
8. To the Technical Assistance Recruitment Service in January 1975 for employment in technical assistance programmes.

It emerges from examination of the correspondence listed in the foregoing statement that the only assignments suggested to the Applicant after 9 January 1975 were technical assistance posts. The Tribunal is of the view that the acceptance of the recommendation of the Joint Appeals Board by the Secretary-General implied that a fair and objective attempt should continue to be made, after the date of the report, to find the Applicant a new and appropriate appointment. Apart from sounding the Applicant about technical assistance posts in Viet-Nam, Lesotho and Libya, there is no evidence that the Respondent made a continuing effort to place the Applicant in an appropriate appointment. Even the cable inquiring as to the Applicant's willingness to be considered for the technical assistance posts did not disclose the rank and emoluments of those posts. The Applicant has argued that those posts were inferior in rank and emoluments to his position of D-2. During the oral proceedings the Respondent submitted that the rank and emoluments of some of the technical assistance posts were comparable to the Applicant's position. The Tribunal notes that the cable referred to above was not followed up by a letter giving details regarding rank and emoluments. In the circumstances, the Tribunal holds that the Applicant's non-acceptance of the

offer of technical assistance posts does not conclude the Respondent's obligation to make a fair and objective effort to provide the Applicant with an appropriate appointment.

VIII. The Tribunal recognizes that it was not easy to find a suitable post at the D-2 level in the short time between 9 January 1975, when the Joint Appeals Board submitted its report, and 28 February 1975, when the Applicant's employment ceased. The Tribunal accordingly considers that the Respondent should be afforded further opportunity to implement the recommendation of the Joint Appeals Board. It therefore orders that the Respondent should make a fair and objective attempt to place the Applicant in an appropriate post within three months from the date of this judgement.

IX. The Statute of the Tribunal provides that should the Secretary-General decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in the case, the Tribunal shall fix the amount of compensation to be paid to the Applicant for the injury sustained. Considering that the injury in this case arose from the non-performance by the Respondent of the limited obligation which he undertook by accepting the Joint Appeals Board's recommendation, that the Applicant had no legal expectancy of continuation in service beyond his fixed-term appointment, and that no prejudice or abuse of discretion or authority can be attributed to the Respondent, the Tribunal fixes the amount of compensation to be paid to the Applicant at six months' net base salary.

X. The Tribunal further notes that part of the recommendation of the Joint Appeals Board, namely, that the Respondent should seek to keep the Applicant on the staff, has not been implemented. The Tribunal recognizes that the obligation to keep the Applicant on the staff pending exploration of a suitable assignment for him is not indefinite but limited to a reasonable period for making the search. In the Tribunal's view, it would appear that three months would normally be necessary for making a search for a suitable post at the D-2 level. Since the obligation to keep the Applicant on the staff pending the search for a suitable post has not been fulfilled, the Tribunal awards to the Applicant three months' net base salary.

XI. For the foregoing reasons, the Tribunal:

- (1) Orders the Respondent to pay three months' net base salary to the Applicant;
- (2) Orders the Respondent to make a fair and objective attempt to place the Applicant in a suitable position within three months from the date of the judgement and, should he exercise his option under article 9, paragraph 1 of the Statute of the Tribunal, to pay compensation equal to six months' net base salary;
- (3) Save and except as ordered in (2) above, rejects the Applicant's plea III for an order to the Respondent to place the Applicant in an appropriate established D-2 post for a period of five years;
- (4) Save and except as ordered in (1) and (2) above, rejects the Applicant's amended plea IV for an order for payment of the sum of \$168,150;
- (5) Rejects the Applicant's amended plea V for an order for payment of the sum of \$168,150 as compensation for material and moral injury.

XII. The Applicant requests \$9,772.20 as reimbursement of legal expenses.

The Tribunal notes that the Applicant could have availed himself of the assistance of a member of the panel of counsel.

Having regard to its resolution of 14 December 1950 and considering the special nature and circumstances of the case, the Tribunal orders the Respondent to pay the Applicant \$800 as costs.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

New York, 9 October 1975

Roger STEVENS
Member

Jean HARDY
Executive Secretary

Judgement No. 206

(Original: French)

Case No. 194:
Quéguiner (Reimbursement of
medical expenses)

Against: The Secretary-General of
the Inter-Governmental
Maritime Consultative
Organization

Request of a staff member of IMCO for rescission of a decision rejecting his claim for reimbursement of medical expenses incurred for a dependant away from the duty station.

IMCO Staff Regulation 6.2.—Entitlement of IMCO staff in London and their dependants to free treatment provided under the United Kingdom National Health Service.—Allegation of the Applicant that the Respondent was at fault in failing to advise him that by virtue of the United Kingdom's membership of the European Economic Community, he was also entitled to free medical treatment in the other countries of the Community.—Inapplicability to the Applicant of the reciprocity provided for in the provisions of the Community with regard to health insurance.—Allegation of the Applicant that since the health insurance coverage available to the staff is defective, his inability to obtain reimbursement for the expenses in dispute results from the negligence of the Respondent.—Health insurance systems arranged by the Secretary-General with a view to supplementing the benefits offered by the National Health Service.—Limits of the existing system.—Difficulty of providing 100 per cent coverage for all possible risks.—Approval of additional funds with a view to giving the staff an opportunity to join a new insurance scheme.—The fact that a sizable number of staff members preferred to remain under the existing system provides evidence that that system was not patently inadequate.—Contention of the Applicant that part of the aforementioned funds was to be used to settle claims in dispute.—Observation of the Tribunal that that contention is not based on any official document.—Principle stated in Judgement No. 182 relating to pension matters.—Application of the same principle by analogy.—Conclusion of the Tribunal that the Applicant's allegation that he has sustained injury as a result of negligence on the part of the Respondent is without foundation.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Zenon Ros-sides; Mr. Francisco A. Forteza; Mr. Mutuale Tshikankie, alternate member;

Whereas, on 9 December 1974, Jean Quéguiner, a staff member of the Inter-Governmental Maritime Consultative Organization, hereinafter called IMCO, filed an