

position. On a review of the foregoing facts, the Tribunal finds that the offer of technical assistance posts at level 7, step 2, at a salary equal to that of a D-2 as Senior Economist or Adviser to countries like Tonga, Somalia and Swaziland was a fair and objective attempt by the Respondent in compliance with Judgement No. 205 and that the Applicant's plea that those posts were inferior to a D-2 post reflects only his subjective assessment of the jobs offered to him. The Tribunal concludes that, in making the offer of the technical assistance posts, the Respondent has fulfilled the obligations imposed on him by Judgement No. 205. The Tribunal cannot resist the inference that the Applicant, who was employed in a bank in Kuwait, was not eager to avail himself of the offers made to him.

VIII. The Tribunal further holds that the consideration given to the Applicant's candidature for the post of Deputy Executive Secretary of the Economic Commission for Europe and for the post of Director in the Information and Research Centre on Transnational Corporations was *bona fide* and that there was no lack of good faith in the efforts made to find a suitable position for the Applicant.

IX. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Roger STEVENS
Member

New York, 14 October 1976

Endre USTOR
Alternate Member
Jean HARDY
Executive Secretary

Judgement No. 215

(Original: English)

Case No. 205:
Ogley

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

Request of a former technical assistance expert for payment of compensation for injury attributable to the conduct of a UNDP Resident Representative.

Charges of the Applicant against the Resident Representative and Assistant Resident Representative, against the local UNDP Office and against the Respondent.—Objection that the application is not receivable since it does not appear to be directed against any violation of contractual or statutory rights nor to contest a decision affecting the Applicant's terms of appointment.—The Respondent is in reality questioning the competence of the Tribunal.—Since the Applicant is alleging violation of his implied conditions of service, the Tribunal is competent to subject the case to its scrutiny.

Summary of the most relevant actions and events.—Consideration of the question whether the Applicant suffered any injury to his reputation, professional injury or other damages as a result of actions or procedures for which the Respondent can properly be held responsible.—Charge of defamation.—Consideration of the allegations of the Resident Representative.—Conclusion of the Tribunal that in all the circumstances the charge of defamation cannot be sustained.—Charge of professional injury.—

Examination of the acts of the Resident Representative and their effect on the standing and reputation of the Applicant.—Conclusion of the Tribunal that the actions of the Resident Representative were full of irregularities and improprieties.—Acknowledgement by the Respondent that the Resident Representative acted on behalf of the Organization.—The Respondent must be held responsible for the irregular and improper actions taken in his name.—Contentions of the Applicant that he suffered financial loss and damage as a result of those actions.—Contention relating to financial loss.—Contention rejected.—Contention relating to damage.—Humiliation and stress suffered by the Applicant as a result of the actions of the Resident Representative.—Charge that the Respondent failed to take disciplinary action against the Resident Representative and Assistant Resident Representative or to make a proper inquiry into their conduct.—The purpose of such an inquiry would not have been to secure relief for the damage caused to the Applicant as a result of the actions of the Resident Representative.—Discretion of the Respondent with regard to disciplinary inquiries.—Conclusion of the Tribunal that the Applicant cannot be held to have sustained additional damage for this reason.

Conclusion of the Tribunal that the Respondent must be held liable for the conduct of the Resident Representative which caused the Applicant personal injury.—Analogy with the case which was the subject of Judgement No. 92.—Award to the Applicant of compensation in the amount of \$1,000.

The remaining pleas of the application are rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Sir Roger Stevens; Mr. Francisco A. Forteza, alternate member;

Whereas, on 21 July 1976, Brian Ogley, a former technical assistance expert of the United Nations, filed an application the pleas of which read in part as follows:

“2 (a) I request that the Tribunal orders the hearing as a witness of the Assistant Administrator (Regional Bureau for Africa) at the material times, Mr. M. Doo Kingue, to answer questions put to him by the Tribunal and or my Counsel, Mr. Eric Daenecke, in addition to the following questions which I request that he answers. If in the course of this hearing it appears to the Tribunal and or my Counsel that other senior members of the UNDP [United Nations Development Programme] Administration should be questioned, then I request that action is taken as necessary . . .

“2 (a) In Section III, Explanatory Statement, I state more fully what actually happened when the Chief, Ports Section, UNCTAD [United Nations Conference on Trade and Development], made his mission visit to Sierra Leone in October 1973. This mission is at the heart of this case and I submit that the Joint Appeals Board did not examine the matter in sufficient depth. I submit that either the Tribunal or my Counsel may need to call the Chief, Ports Section, UNCTAD, as a witness in this case, or, alternatively, he may be requested to supply any further information which may be required.

“2 (a) I request that the Resident Representative is called as a witness and searchingly cross-examined, including by my Counsel, and with special reference also to matters raised in my Explanatory Statement.

“2 (a) I request that the Assistant Resident Representative is also called and examined if this is practicable, but I regard this as being of less importance than the cross-examination of the Resident Representative.

“2 (a) If the Tribunal so agrees, I request that the following documents are made available to me, for they would assist me in the preparation of my case:

“(i) The UNDP report of its enquiry into the conduct of the two officials.

- “(ii) The Mission Report of the Chief, Ports Section, UNCTAD, with respect to his mission to Sierra Leone in October 1973.
 - “(iii) The reply of the Chief, Ports Section, UNCTAD, to the questionnaire which I addressed to him on 26 May 1975. (He sent his reply directly to the Joint Appeals Board.)
 - “(iv) The letter written by the Resident Representative on 28 September 1973 to the Director for Technical Co-operation, UNCTAD, copied to UNDP and ILO.
 - “(v) The text of the cable from the Director for Technical Co-operation, UNCTAD, in November 1973, to the Assistant Administrator, UNDP, in which he protested at the defamatory statements circulated about me, and demanded their retraction.
 - “(vi) The text of the cable dated 13 November 1973 from the Deputy Assistant Administrator, Regional Bureau for Africa to the Director for Technical Co-operation, UNCTAD.
 - “(vii) A copy of the letter dated 16 November 1973 from the Resident Representative to the Deputy Assistant Administrator.
 - “(viii) A copy of the letter dated 6 December 1973 from the Director for Technical Co-operation, UNCTAD, to the Resident Representative.
 - “(ix) A copy of the cable from the Director for Technical Co-operation, UNCTAD, to the Deputy Assistant Administrator, Regional Bureau for Africa. (See page 6 [16] of Annex 1)
 - “(x) A copy of the cable from the Assistant Administrator to the Resident Representative with reference to the agreed 3 month extension for the project. (See page 6 [16] of Annex 1)
 - “(xii) Copies of the letters from the Resident Representative to the Ministry of Economic Development dated 18 and 28 December 1973.
 - “(xiii) A copy of the cable from the Resident Representative to UNDP that Government would not agree to the project extension. (I also wish to know the date that cable was originated, and the date it was received in New York.) (See page 7 [20] of Annex 1)
- “2 (a) I would like, if possible, that Miss Eileen Powell, seconded from the World Bank, and at the material time the Deputy Resident Representative in Sierra Leone is also called as a witness . . .
- “2 (b) I contest the Conclusions and Recommendations of the Joint Appeals Board . . .
- “2 (c) . . .
- “I now recapitulate that my original claim had been *either* that the UN give me a *guarantee* of an early port or shipping contract *or*, failing that, financial compensation which would take into account both my actual financial loss and compensations for unquantifiable damages with respect to the humiliations, stresses and general damages which I had suffered in consequence of the happenings complained of. No guarantee was given but it was stated that I would continue to be considered for expert projects. However, I totally reject vague statements of this kind for I have no confidence in such vague assurances given by members of the UN Administration. Moreover, it has now come to my knowledge that recently contract shipping or port expert posts have been filled in Abidjan. It happens that the UN files show that I have had shipping experience in Abidjan. I speak and write French, and, incidentally, I was at one time Honorary British Consul for the Cote d'Ivoire. In the circumstances I have no doubt that I could capably have

handled one of these assignments. In my view, the fact that these assignments have been filled without my being offered one, without even my being informed that vacancies had arisen, speaks for itself. I have effectively been black-listed. In consequence my only practical course of action is to seek financial compensation.

"2 (d) As stated in the Closing Statement of my Counsel (See Annex 16) my claim is for £20,000.

"2 (e) As it is my view that the UN has moral obligations to me, and this would include open vindication of its confidence in me (which it has stated more than once) I would welcome part time shipping and or ports consultancy projects. It is my wish to re-establish myself in this field and further assignments with the UN/UNCTAD/IMCO would help me to do this. I continue to have deep respect for the work of UNCTAD and IMCO."

Whereas the Respondent filed his answer on 20 August 1976;

Whereas the Applicant filed written observations on 8 September 1976;

Whereas on 6 October 1976 the Respondent produced at the request of the Tribunal all files which had been placed before the Joint Appeals Board;

Whereas the facts in the case are as follows:

The Applicant, a United Kingdom national then employed by the Sierra Leone Ports Authority (SLPA), entered the service of the United Nations on 25 October 1971 with a fixed-term appointment of one year as a Port Management and Administration Adviser to the Government of Sierra Leone under the Technical Co-operation Programme of UNCTAD. On 25 October 1972 his appointment was extended for one month and on 25 November 1972 it was further extended for one year. On 30 August 1973 the Chief of the Ports Section of UNCTAD addressed to the Applicant a letter reading in part:

"With regard to your present contract which is due to end on 24 October [sic] 1973, UNCTAD is prepared to support a six-month extension due to the administrative delays which have caused the project to fall behind schedule. You will realize, however, that under UNDP assistance, one of the objectives of the project is that the adviser should 'work himself out of a job', leaving the organization to stand on its own feet. For this reason we do not favour the process of continuing to extend projects. We realize, of course, that the premature withdrawal of an expert can lead to substantial loss of benefit from the work done. Because the training proposals are so important, therefore, it would be a mistake if you were to leave in October."

On the same day the Director for Technical Co-operation of UNCTAD wrote to the Applicant a letter which concluded as follows:

"It may be appropriate for us at this state to point out that we feel that some of the benefit from the work done will be lost if you leave Sierra Leone on the date of the scheduled end of the project—24 October [sic] 1973. The delays to the project, occasioned in December 1972 while you were in England, together with other administrative delays concerned with obtaining approval for your visit to the Nigerian Ports Authority have left us with a strong impression that the work has fallen several months behind schedule. Should this impression be confirmed, we should be ready to support an extension of the present project by up to a maximum of six months. We would thus appreciate your taking up this question with the appropriate authorities as soon as this is feasible.

"A copy of this letter has been forwarded to Mr. Edward, UNDP Resident Representative in Sierra Leone."

On 13 September 1973 the Applicant wrote to the Permanent Secretary of the Ministry of Transport and Communications explaining that UNCTAD would be prepared to

support an extension of the project of up to a maximum of six months and requesting that, if it was the wish of the Permanent Secretary that the project be so extended, the Ministry of Development and Economic Planning be advised accordingly; the Applicant sent copies of his letter to the General Manager of SLPA and to the Permanent Secretary of the Ministry of Development and Economic Planning. On 18 September 1973, in a letter to the Permanent Secretary of the Ministry of Transport and Communications, the General Manager of SLPA endorsed the proposed extension of the project for a period of six months. On 26 September 1973, in a letter to the Resident Representative of UNDP, the Permanent Secretary of the Ministry of Development and Economic Planning supported a six-month extension of the Applicant's assignment and requested the Resident Representative to take the appropriate action early. On 28 September 1973 the Assistant Resident Representative of UNDP sent to the Resident Representative a memorandum reading in part:

"1. I spent this morning, one hour, with Captain Abraham Macauley, the General Manager of the Sierra Leone Port Authority discussing the training papers prepared by Mr. Ogley.

"2. Captain Macauley categorically stated that the expert is not needed at all because he is not a specialist in training.

"3. He felt that the training papers were not specific . . .

" . . .

"5. He felt all along that the expert was meddling in the affairs of the Port Authority to foster his chances of continuing in the country and in fact is interested in becoming the managing accountant of the Port Authority. He also expressed his displeasure with the way the expert has been approaching Ministers and higher Civil Servants to obtain an extension of six months. He pointed out that under pressure he requested for a six months' extension.

"6. The General Manager expressed the opinion that it will take some time to appoint people to the training posts to settle down the financial arrangements and to complete the organizational structure for training and if the same expert is allowed to continue, it would be a mere waste of time and funds because any training programme is not envisaged to take shape before six months.

"7. He told me that he will request the services of an ILO expert in Port training for one year . . ."

On the same day, in a letter addressed to the Director for Technical Co-operation of UNCTAD with copies to the Assistant Administrator and Director of the Regional Bureau for Africa of UNDP and to an official of the Maritime Branch of ILO, the Resident Representative made a critical assessment of the training programme prepared by the Applicant and concluded:

"If the Government requests assistance for the services of a specialist in training it should be supported but for the sole purpose of preparing a formal training programme and implementing it. In my view the present expert could not be considered as a training specialist and therefore his extension is in no way justified.

"I must also point out that no request from Government has been received yet although the expert has been putting a lot of pressure on many officials to request his extension. (See the attached inter-office memo [of 28 September 1973 from the Assistant Resident Representative to the Resident Representative].)

"I therefore suggest advising Mr. Ogley to conclude his assignment as scheduled to avoid wastage of funds and to assist the Port in obtaining the right kind of training Specialist."

On 2 October 1973 the Resident Representative cabled to the Director for Technical

Co-operation of UNCTAD that the Government's request for a six-month extension had been received and that for the reason mentioned in his letter of 28 September 1973 he was unable to support the request. On the same day the Resident Representative sent to the Permanent Secretary of the Ministry of Development and Economic Planning a letter, copied to the Permanent Secretary of the Ministry of Transport and Communications, to the General Manager of SLPA, to the Assistant Administrator and Director of the Regional Bureau for Africa of UNDP and to the Director for Technical Co-operation of UNCTAD, in which he concluded:

"We are aware that the expert has prepared two papers on training but what is needed now is a Specialist on training of Ports personnel to implement the training programme if found suitable by him. As the present expert is not a Specialist in training of Ports personnel per se, I have suggested to UNCTAD, ILO and UNDP to explore the possibility of providing an expert in that field if a request is received from your Government.

"I therefore regret to have to inform you that in the circumstances, it would not be possible to agree to the request for the extension of Mr. Ogley's assignment."

On 11 October 1973, in a letter addressed to the Acting Permanent Secretary of the Ministry of Transport and Communications and copied to the Permanent Secretary of the Ministry of Development and Economic Planning, the Chairman of the Board of Directors of SLPA stated that at a meeting of the Board of Directors held the day before it had been unanimously agreed that the Applicant's assignment should be extended for six months beginning in October and he requested that prompt action be taken to settle the matter with the minimum of delay. In order to determine whether SLPA and the Government really wanted an extension of the Applicant's contract and whether there might be other, perhaps more confidential, reasons why the Resident Representative was refusing the extension, the Chief of the Ports Section of UNCTAD was sent to Sierra Leone to investigate the matter. During his two-day mission on 19 and 20 October 1973, he interviewed four persons, namely, two officials of SLPA, the Permanent Secretary of the Ministry of Transport and Communications and the Permanent Secretary of the Ministry of Development and Economic Planning. He found that, while the two officials of SLPA had not expressed much enthusiasm for the Applicant's training proposals, they had nevertheless confirmed that the Board of SLPA had fully accepted the proposals and had unanimously agreed to request an extension of the Applicant's services for a six-month period. The Permanent Secretary of the Ministry of Transport and Communications was strongly in favour of an extension of the Applicant's contract, and the Permanent Secretary of the Ministry of Development and Economic Planning felt that the matter needed more thought. The General Manager of SLPA could not be interviewed as he was not in Freetown at the time. In his report, the Chief of the Ports Section of UNCTAD complained of the hostility and lack of co-operation of the Resident Representative, who had insisted that three of the interviews be conducted in the presence of the Assistant Resident Representative and had instructed or at least allowed the Assistant Resident Representative to have meetings with the three officials concerned—the two officials of SLPA and the Permanent Secretary of the Ministry of Development and Economic Planning—before the interviews took place. "It was obvious", he noted, "that, for some reason which I did not understand", the Resident Representative "was committed to refusing the extension of Ogley's contract" and that the Assistant Resident Representative "had suitably 'briefed' those three officials 'before I was allowed to see them'". On 5 November 1973, commenting on an offer of expert assistance from ILO, the General Manager of SLPA informed the Ministry of Development and Economic Planning that since the recruitment of a senior expert would take some time, they recommended an extension

of the Applicant's contract of six months. On 12 November 1973 the Director for Technical Co-operation of UNCTAD sent two cables to the Assistant Administrator and Director of the Regional Bureau for Africa of UNDP. In the first, copied to the Resident Representative, he explained that as executing agency for the project UNCTAD felt caught between the Government substantive agency, on one hand, which continued to press for an extension of the project, and the office of the Resident Representative, on the other hand, which for reasons with which UNCTAD was not in agreement was blocking such an extension, and he requested urgent advice and suggestions as to how UNCTAD should proceed in the matter. The second cable, marked personal and confidential, read as follows:

"Further to mytel today's date I am obliged to inform you that in addition to the question of the extension or otherwise of this project recent events in Freetown have given rise to a request to me from Ogley to initiate formal complaint procedures on his behalf against the ResRep Mr Edward and the Assistant ResRep Mr Noaman. This is of course an extremely regrettable development and I will do all possible to dissuade Ogley [who had left Sierra Leone on home leave] from such a course of action when he arrives Geneva late this week. Meanwhile I would hope that the ResRep could be persuaded to retract the critical personal comments on Ogley's behaviour which had been gratuitously circulated to UNCTAD, UNDP and ILO at least and possibly elsewhere. I refer in particular to the interoffice memorandum attached to Edwards' letter to me of 28 September in which completely unsubstantiated reflections on Ogley's activities are attributed to the General Manager of the Sierra Leone Port Authority. Both Ogley and this Agency are understandably concerned to ensure that whatever action is taken on the proposed extension in no way carries the least implication that there is any justification whatever in these charges and casts any reflection on Ogley's technical or moral stature. Your personal intervention in this matter would be most appreciated."

On 13 November 1973 the Deputy Director of the Regional Bureau for Africa of UNDP cabled the Director for Technical Co-operation of UNCTAD that UNDP agreed to a three-month extension of the Applicant's assignment pending assessment of a report which was being requested from the Resident Representative. On 16 November 1973 the Resident Representative sent his report to the Deputy Director of the Regional Bureau for Africa of UNDP; the report read in part:

"3. The Government's extension request of 26 September ... was ... a routine endorsement by the Ministry of Development of the letter written by the Ports Authority requesting the expert's extension. This was prompted by UNCTAD's letter of 30 August to the expert indicating to him that he should take up his extension question with the authorities. The request contained in Government's letter of 26 September was replied to by me on 2 October explaining why I was unable to agree to the extension. We sought sufficient justification for the extension. You will agree and I must stress that it is our duty in the field office to examine every request for extension on its merits and to look into the various aspects of the request before endorsing it. Neither the pressure of an agency (with no substantive reasons given) nor a half-hearted endorsement by a substantive Department should be a justification enough for approval. I had emphasized to Mr. Williamson [Chief of the Ports Section of UNCTAD] during his brief visit that my Office was prepared to discuss the substantive justifications before approving the project. Mr. Williamson did not give any note as he said he would and there is no record of his substantive comments on the expert's proposals for training. I tried to organise a tripartite review to discuss the project with Government but Mr. Williamson chose to meet with the local officials individually. He also did not

want to be accompanied by anyone from this Office. At my specific request he finally agreed to one of my staff going to the meetings as an observer and to take notes which he has done.

"4. . . . UNCTAD could have discussed with us the possibility of extending the project or the justification for extension before writing directly to the expert encouraging him to take up the matter with the authorities. UNCTAD's letter did not direct the expert to discuss the extension with my Office which acts as representative of both the agency and the UNDP in the field."

On the same day the Resident Representative wrote to the Permanent Secretary of the Ministry of Development and Economic Planning, referring to his [the Resident Representative's] letter of 2 October 1973 and requesting "final confirmation if you consider this project suitable for extension and your justification for doing so". On 22 November 1973 the Director for Technical Co-operation of UNCTAD cabled the Assistant Administrator and Director of the Regional Bureau for Africa of UNDP, with a copy to the Resident Representative, that he had informed the Applicant of the three-month extension of his appointment. On 24 November 1973 the Resident Representative cabled the Deputy Director of the Regional Bureau for Africa of UNDP that a letter had been received from the Ministry of Development and Economic Planning confirming that the final decision was that no further extension should be granted to the Applicant. On 5 December 1973, in a letter to the Director for Technical Co-operation of UNCTAD copied to the Assistant Administrator and Director of the Regional Bureau for Africa of UNDP, the Resident Representative, acknowledging receipt of the mission report, stated that the report was "a travesty of truth and an odious piece of fiction" and that "the answer to it and its author's attitude has been given by Government in the certified minutes of his meetings with officials". In a letter of 13 December 1973 to the Director for Technical Co-operation of UNCTAD the Applicant, who had returned to Sierra Leone, stated that he had been dissuaded by the Chairman of the Board of SLPA from attending the Board meeting the day before in order to avoid any frictions with the United Nations office, that the Resident Representative professed to know nothing about a three-month extension of the Applicant's appointment and that, in view of the "open or implied slurs upon [his] professional competence and [his] personal integrity" by the Resident Representative and the Assistant Resident Representative, the word would soon be around that the United Nations had "so many reservations about [his] competence and/or integrity". In a letter of the same date to the Permanent Secretary of the Ministry of Transport and Communications, the Chairman of the Board of SLPA expressed the Board's "embarrassment of not knowing whether Mr. Ogley has any *locus standi* as far as the United Nations are concerned" and asked to be informed as to "whether in fact Mr. Ogley has been granted the extension of six months or otherwise". On 15 December 1973 the Applicant wrote to the Resident Representative asking him to institute cabled inquiries concerning the extension of the project and stating that in the meantime, pending clarification of the position, he would work from his house. On 17 December 1973 the Resident Representative addressed to the Vice-President and Prime Minister of Sierra Leone a letter in which he clarified the situation as follows:

"The final decision of the Ministry of Development [that no further extension should be granted to the Applicant] communicating the official decision of the Government was received on 23 November and transmitted to UNDP Headquarters and to UNCTAD. Between 25 October and 9 December 1973, the expert was on leave in England and he returned sometime last week. Pending the receipt of a final decision the UNDP Headquarters at the request of the Agency had agreed to a further three months' extension to the project. I have just received advice from UNDP that this decision was made on the

basis of the first letter from the Ministry of Development of 26 September 1973 endorsing the extension of the expert's assignment. In the meantime, however, as I have mentioned, Government has made a firm decision that the extension was not required."

By a cable of 20 December 1973 the Director for Technical Co-operation of UNCTAD asked the Resident Representative to confirm that the Applicant's position had been regularized in line with UNDP instructions. On 24 December 1973 the Resident Representative cabled UNCTAD that the Government had not yet reacted or replied to the request for a three-month extension of the project and that its decision was unlikely to be available before the end of the year. On 27 December 1973 the Director for Technical Co-operation of UNCTAD wrote to the Applicant a letter reading in part:

"Please rest assured that your contract has been extended for 3 months and it will be honoured regardless of the ultimate outcome as far as the Government of Sierra Leone is concerned. Whether there will be a further 3 month extension for a total of 6 months remains in doubt, but it would appear to me at this stage that you should make plans to complete and terminate your assignment at the conclusion of the current 3 month extension."

On 2 January 1974 a Personnel Action form extending the Applicant's appointment for three months as from 25 November 1973 was issued. On 3 January 1974, in a letter to the Secretary of the Vice-President and Prime Minister of Sierra Leone, the General Manager of SLPA reiterated the Board of SLPA's wish for a six-month extension of the project. On 11 January 1974 the Permanent Secretary of the Ministry of Development and Economic Planning advised the Resident Representative that his Ministry considered the Applicant unqualified for the post of training ports personnel and was therefore unable to support an extension of his appointment. On 17 January 1974 the Assistant Administrator and the Director of the Regional Bureau for Africa of UNDP cabled the Resident Representative as follows:

"We have discussed Ogley's assignment with Houzer [Director for Technical Co-operation of UNCTAD] who presently attending Governing Council meeting here. In light Government's confirmed decision not endorse extension post we agree and Houzer confirms Ogley should proceed Geneva as soon as possible to write his terminal report until 24 February when disputed three month period expires. Question financing extension his post to be settled later. Termination his assignment Sierra Leone not repeat not to be construed as questioning his overall technical competence but response Governments request. In view conflicting allegations and misunderstandings between your office on the one hand expert and UNCTAD headquarters on the other hand we discussing with UNCTAD method and nature UNDP investigation of overall situation. . . ."

On 19 January 1974 the Vice-President and Prime Minister of Sierra Leone wrote to the Resident Representative the following letter:

"Thank you for your letter of 17th December 1973. I have obtained a report from the General Manager, Ports Authority, a copy of which is attached, and I am now more than convinced of the need to extend Mr. Ogley's services for another six months, with effect from the 25th November 1973.

"I have no doubt that you will use your good offices to ensure that this further extension, which I consider necessary in the public interest, is approved by UNCTAD.

"A formal request will be made to you by the Permanent Secretary, Ministry of Development, to whom I am sending a copy of this letter."

It appears that this letter was received at the UNDP office on 22 January 1974. In the

meantime, however, the Director for Technical Co-operation of UNCTAD had cabled the Applicant on 21 January 1974 that

"UNDP received cable from Edward last week reporting that despite Edward's best efforts Government had decided definitely not to extend your post. In circumstances I have agreed with UNDP/HQ you terminate stay in Sierra Leone and report UNCTAD/HQ for completion your assignment SIL/71/004 including preparation terminal report in Geneva. Please rest assured this action casts no reflection on your personal capacity or performance. You enjoy UNCTAD's fullest confidence and we are fully satisfied with manner you have handled your assignment this project and the restraint with which you have acted under trying circumstances during last several months."

and on the same day the Resident Representative had advised the Applicant to proceed to Geneva to write his terminal report. On 25 January 1974 the Applicant informed the Resident Representative that, while he was making arrangements to leave for Geneva on 2 or at the latest on 5 February, he had been told that the Vice-President and Prime Minister had decided that the United Nations should be asked to continue the project until May; he added:

"... furthermore, I was told that the Honourable Vice-President and Prime Minister also discussed this project with His Excellency the President, who also has a special interest in the port, and in training. I was told that His Excellency the President also signified that it is his wish that the UN should be asked to continue this project—indeed, on the basis asked for some months ago by the Board of the Authority as well as the Minister of Transport personally. I may have been misinformed—but in fact this information has been given to me from more than one source so I think I must assume it to be reliable—but I am told that a directive has accordingly been sent from the Office of the Vice-President to the Ministry of Development for urgent onward transmission to your office. If this communication has indeed been received in your office, I am sure that you will at once have informed New York by cable of it; if it has not been received, I have no doubt you will cause some enquiries to be made."

On 29 January 1974 the Permanent Secretary of the Ministry of Development and Economic Planning advised the Resident Representative that after reviewing the whole case, his Minister had directed that the Applicant's services should be retained for another six months with effect from November 1973. On the same day the Resident Representative informed the Applicant that the Minister of Development and Economic Planning had agreed to a six-month extension of the Applicant's assignment from 25 November 1973 and he requested UNDP to arrange for such an extension. On 25 February 1974 the Applicant's appointment was extended for three months. In the meantime, in letters of 18 and 31 January 1974 addressed to the Director for Technical Co-operation of UNCTAD, the Applicant had requested information on how to initiate proceedings against the Resident Representative and the Assistant Resident Representative for the damage they had allegedly inflicted upon him in connexion with the extension of his appointment. On 7 February 1974 the Director for Technical Co-operation of UNCTAD transmitted those two letters to TARS for its consideration and appropriate action. On 20 February 1974 TARS sent him the following reply:

"..."

"From our conversation and the copies of Mr. Ogley's letters I understand he has grievances against Mr. Edward, UNDP Resident Representative in Sierra Leone. I also understand he is seeking action under Article XI (Appeals) of the Regulations and relevant Staff Rules.

"Prima facie, it may be a bit difficult to find cause for an appeal, since no administrative measure appears to have been taken amounting to non-observance

of his terms of appointment (particularly if he is now to be further extended) or in violation of the Staff Regulations or Rules. Also, no disciplinary action seems to have been taken against him.

"I would venture to say his request might fit rather under Article X (Disciplinary Action) and relevant Staff Rules.

"In any event, I shall seek a legal opinion upon receiving Mr. Ogley's communication and will advise you and Mr. Ogley accordingly."

In a letter of 5 April 1974 a Senior Personnel Officer of the Office of Personnel Services explained to the Applicant the procedure for appealing an administrative decision on the ground of non-observance of a staff member's terms of appointment and the procedure for the institution of disciplinary measures by the Secretary-General. On 23 April 1974 the Applicant sent to the Senior Personnel Officer a letter enclosing an appeal and a request for disciplinary action addressed to the Secretary-General. On 9 May 1974 the Senior Personnel Officer informed the Applicant that a reply to his request for review of an administrative decision would be sent to him in due course by the United Nations and that his request for disciplinary action had been referred to UNDP for appropriate action. On 13 May 1974 the Assistant Secretary-General for Personnel Services advised the Applicant that there had been no violation of the terms of his appointment pointing out that he had received very sympathetic handling by TARS which had recommended and secured an extension of his contract. On 16 June 1974 the Applicant replied that he could not accept the Assistant Secretary-General's conclusions and that he would avail himself of the appeals procedure. The Applicant having on 3 July 1974 expressed to the Office of Personnel Services his dissatisfaction with the delay in UNDP's consideration of his request for disciplinary action, on 10 July 1974 the Chief of Staff Services of the Office of Personnel Services wrote to him as follows:

"I refer to your letter dated 3 July 1974. I will send a copy of it to the Director, Division of Personnel, UNDP, for such action as he may deem appropriate.

"I am afraid the question of disciplinary proceedings does not seem to be clear to you since you assume that the administration of the United Nations or of UNDP has an obligation to take disciplinary measures against a staff member upon the complaint of another. The administration would only decide on disciplinary measures where it is satisfied that a staff member has been guilty of misconduct or of conduct unbecoming an international civil servant. There is no doubt that you believe that you have certain grievances against the Resident Representative and his Assistant in Sierra Leone which are the basis of an appeal by you to the Joint Appeals Board."

On 19 July 1974 the Applicant lodged his appeal with the Joint Appeals Board. On the same day he wrote to the Chief of Staff Services a letter which concluded:

"Finally, I refer to the point you make that the administration of the United Nations alone decides whether or not it is satisfied that a staff member has been guilty of misconduct, or conduct unbecoming an international civil servant. I would obviously have to accept this if it were not for one fact—I am a party in this dispute; there is evidence that I have been defamed by two senior UN/UNDP officials, and the UNDP was put on enquiry many months ago. By apparently taking no action to investigate, openly, and then, on finding in my favour, taking public action to vindicate me, it now seems to me that the UNDP has adopted the actions of Mr. Edward and Mr. Noaman as its own, and has taken sides with them. . . ."

On 7 August 1975 the Officer-in-Charge of Staff Services informed the Applicant that UNDP had undertaken a thorough investigation of his complaint and had found no basis for his request for disciplinary action against the two staff members concerned.

The Joint Appeals Board submitted its report on 3 February 1976. The Board's conclusions and recommendations read as follows:

"63. The Board finds that the Director for Technical Co-operation, UNCTAD, had acted improperly in instructing the appellant to initiate action in connexion with the extension of the project without prior clarification of the matter and consultation with the Resident Representative.

"64. The Board finds that the decision of the Resident Representative to circulate the memorandum of 28 September 1973 to ILO and UNDP Headquarters without providing the appellant with an opportunity to comment thereon was taken negligently. However, the Board finds no evidence that such publication had resulted in any professional injury to the appellant.

"65. The Board finds that the lack of sound administrative judgement exhibited in certain instances by the Resident Representative, in connexion with the extension of the project may have caused the appellant to suffer certain personal anxieties; however, the Board finds no evidence of *mala fides*. The Board finds that the impugned administrative decisions caused no professional injury to the appellant that would entitle him to damages.

"66. The Board finds no evidence in the record of any discrimination against the appellant.

"67. Accordingly, the Board makes no recommendation in support of this appeal."

On 16 April 1976 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board's conclusions and of its decision to make no recommendation in support of the appeal. On 21 July 1976 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Incensed by UNCTAD having directly instructed the Applicant to take up the matter of the project extension with the appropriate authorities, the Resident Representative became determined, as a major matter of principle, at all costs to block the proposed UNCTAD project extension so as to demonstrate to the Government of Sierra Leone, to UNDP and to UNCTAD that so far as the United Nations in Sierra Leone was concerned, his word was law. In order to achieve that objective, the Resident Representative and the Assistant Resident Representative acted with deliberate bad faith against the Applicant at every stage of the proposed extension, in breach of their duty to the United Nations, in breach of their duty to the Applicant as an employee of the United Nations and in breach of the Applicant's contract of employment, an implied term of which was that the Applicant would have proper support and co-operation from the local United Nations office.

2. The deliberate and malicious conduct of the Resident Representative and of the Assistant Resident Representative towards the Applicant called for prompt investigation and disciplinary action on the part of UNDP. Indeed, even if negligence had been the true explanation of their conduct, the negligence in this case would have been of so material and so damaging a nature that it would have called for disciplinary action against those at fault. Yet, UNDP took no prompt action—and apparently took no effective action subsequently either—in spite of the evidence before it that the President, the Vice-President and Prime Minister, Ministers and others in Sierra Leone were questioning the actions and good faith of those two officials.

3. Libels and defamatory statements were circulated about the Applicant by the two officials concerned, and it is an established principle that when libels are issued there arises a claim for financial compensation and not merely a claim for a nominal sum. This is particularly so when the libel attacks a man in respect of his professional

competence and in his personal integrity. Furthermore, if wide circulation is given, there arises a presumption of malice, and the claim is then for even higher financial compensation. Such professional injury is presumed by the law and does not have to be proved.

4. That the Applicant did suffer professional damage is evident from the fact that he has obviously been blacklisted by the United Nations, for suitable UNCTAD appointments appear to have arisen and to have been filled without any reference to him. Yet, in order openly to demonstrate that he did truly enjoy the confidence of the United Nations and that the lies which had been circulated about him in its name were truly deplored and repudiated by the United Nations, the United Nations should have gone out of its way to find and offer further suitable employment to him.

Whereas the Respondent's principal contentions are:

1. The application is not receivable under article 2, paragraph 1 of the Tribunal's Statute since it does not appear to be directed against any violation of contractual or statutory rights or intended to contest a decision affecting the Applicant's terms of appointment.

2. The acts of the Resident Representative concerning the extension of the project were legally unobjectionable, legitimate and within his administrative discretion. His objections to the extension of the project were perfectly legitimate and devoid of personal motivations or of any intention to harm the Applicant, who gratuitously misinterpreted them and construed them as a personal affront without providing any evidence of the alleged prejudice and relying instead on unsubstantiated assumptions, rumours and hearsay. Since the Resident Representative's acts objecting to the extension of the project were fully within his administrative discretion, his judgement may not be substituted by that of the Tribunal unless extraneous motivation or prejudice had led to the acts, which is certainly not the case in this instance. As an expert on mission with the United Nations, the Applicant should have been aware of the correct channel of communication with Government authorities without bypassing the Resident Representative on the request for extension of the project, which was the latter's responsibility.

3. There is no evidence that the Applicant has suffered injury professionally or damages. The Resident Representative's assessment of the training programme was in the form of a communication internal to the Organization and did not cause any professional damage to the Applicant, as evidenced by the fact that UNCTAD expressed to him its fullest confidence and satisfaction with his work. By acting in an official capacity at a time when the project had expired and the Government had not yet given approval for its extension, the Applicant contributed to whatever embarrassment he may have suffered in being prevented from using an office at the port, which does not amount to any professional injury. Finally, the Applicant's contention that he sustained damages as a result of being obliged to seek a new employment outside of Africa—a contention which is intrinsically invalid for purposes of reparation—is difficult to reconcile with statements made by him in the application.

The Tribunal, having deliberated from 27 September to 15 October 1976, now pronounces the following judgement:

1. The Tribunal notes that, in appealing against the decision taken upon the recommendation of the Joint Appeals Board, the Applicant does not seek to overturn any administrative decision taken with respect to his terms of employment, nor does he claim that any specific term of his contract was violated. His contention is that, as a result of a series of actions on the part of the Resident Representative and Assistant Resident Representative of UNDP in Sierra Leone, he suffered defamation and professional injury, that he did not receive proper support and co-operation from the local

UNDP Office such as he was entitled to expect from the implied terms of his contract, and that the Respondent failed to take disciplinary action against those at fault or to make a proper enquiry into their conduct. As a result of the actions referred to, the Applicant, in the absence of a "guarantee" of employment by the United Nations, seeks financial compensation evaluated at £20,000 for "actual financial loss" and for "unquantifiable damages with respect to . . . humiliations, stresses and general damages".

II. The Respondent argues *inter alia* that, because the application does not appear to be directed against any violation of contractual or statutory rights nor to contest a decision affecting the Applicant's terms of appointment, it is not receivable under article 2, paragraph 1 of the Tribunal's Statute. The reference to article 2, paragraph 1 of the Statute reveals that the Respondent questions in reality not the receivability of the application but the competence of the Tribunal. The Tribunal holds, however, that since allegations of violations of the implied conditions of service have been made in this case, it has competence to subject the case to its scrutiny.

III. While the application raises certain matters of general concern, the particular question which the Tribunal must consider is whether, through actions and events which took place between August 1973 and the expiration of his contract in May 1974, the Applicant suffered damages which would validate his contention as set forth in paragraph I above.

In this consideration the Tribunal has had the opportunity to examine the documents entitled "Channels of Communication" and "Functions of Resident Representatives" which were made available to the Joint Appeals Board.

IV. The actions and events most relevant to the issues involved are summarized below. The Applicant had served as Port Management and Administration Adviser to the Government of Sierra Leone since 25 October 1971 on a series of fixed-term contracts the last of which was due to expire on 24 November 1973. In August 1973 the question of the extension of the Applicant's contract for a further period of six months came under consideration. UNCTAD informed the Applicant on 30 August 1973 that, if such extension were necessary to complete the training programme, they would be ready to support it, and the Applicant was instructed to take up the question with the appropriate authorities. A copy of UNCTAD's letter was sent to the Resident Representative. The Applicant executed UNCTAD's instructions by writing to the Ministry of Transport and Communications on 13 September 1973. There is no indication that this letter was copied to the Resident Representative at the time, though a further letter written by the Applicant to UNCTAD on 18 September reporting the action taken and enclosing a copy of his letter of 13 September to the Sierra Leone authorities was so copied. Following a recommendation from SLPA in favour of an extension of the Applicant's contract, the Ministry of Development and Economic Planning informed the Resident Representative, in a letter of 26 September which was received in the Office of the Resident Representative on 27 September, that they supported the extension of six months and requested early action.

According to a later report prepared by the Resident Representative, he had a discussion with the Applicant at an unspecified date in September about the extension of the project in the course of which the Resident Representative formed the impression that the Applicant was seeking the extension for personal rather than professional reasons and that in the circumstances there was no justification for such extension. The Resident Representative claims that this was made clear to the Applicant in the course of the discussion in question. Thereafter the Resident Representative engaged in a series of actions designed to ensure that the Applicant's contract should not be extended beyond 24 November 1973.

On 28 September 1973 the Assistant Resident Representative, after calling on the

General Manager of SLPA, recorded the latter as saying that the extension was unnecessary, that the Applicant was not an expert in training and that he was meddling in the affairs of the Port Authority to foster his chances of remaining in the country. On the same day a copy of this record was sent by the Resident Representative under cover of a letter to UNCTAD copied to the Regional Bureau for Africa of UNDP and the Maritime Branch of ILO, in which it was stated *inter alia* that a training programme could not be completed in six months, that the Applicant was not a specialist in training and that no request for an extension had yet been received from the Sierra Leone Government, though the Applicant had been putting a lot of pressure on many officials to request his extension. On 2 October 1973 the Resident Representative, informing UNCTAD of the receipt of the Government's request, stated that he was unable to support it; he also informed the Ministry of Development and Economic Planning that "it would not be possible to agree" to their request. The Board of Directors of SLPA nevertheless, on 11 October 1973, reiterated their wish that the Applicant's contract should be extended.

The Chief of the Ports Section of UNCTAD was then sent to Sierra Leone to investigate the matter on 19 and 20 October 1973. In his subsequent report, which was later challenged in general terms by the Resident Representative, he stated that the latter had to a large degree thwarted his mission by briefing officials of SLPA and of the Ministry of Development and Economic Planning beforehand. He also quoted the Resident Representative as saying that "the decision [as to the Applicant's extension] was his and UNCTAD's opinion, which was clearly a biased one, would not influence him in any way" and that he (the Resident Representative) "ran the UNDP office in whatever way he saw fit and did not wish to hear my comments on what he should or should not do".

From 25 October till 10 December 1973, the Applicant was on home leave. During his absence, UNCTAD secured UNDP's agreement on 13 November 1973 to a three-month extension pending assessment and the Resident Representative was requested to submit a report. In his reply of 16 November, the Resident Representative stated that he had received no formal request for an extension from the Ministry of Development and Economic Planning, maintained that the letter of 26 September from that Ministry was a routine endorsement of a request from SLPA, and expressed his view that "the project should be terminated because the executing agency has failed to submit its substantive comments". He added that "the major objection to the expert's extension is that he is not, even by his own admission, qualified to implement the training proposals". Also on 16 November the Resident Representative wrote again to the Ministry of Development and Economic Planning reminding them that on 2 October he had said that he could not possibly agree to the extension of the project and asking that, if they thought it suitable for extension, they should provide justification. The Resident Representative next learned from UNCTAD, in a cable of 22 November, that the Applicant had been told of UNDP's agreement on 13 November to a three-month extension. On 24 November, however, he reported to UNDP and UNCTAD that a letter had been received from the Ministry of Development and Economic Planning confirming that the final decision was that no further extension should be granted to the Applicant.

The position when the Applicant returned to Freetown on 10 December was therefore as follows. Both the Applicant and the Resident Representative knew that UNDP had approved the three-month extension of the Applicant's contract as a provisional measure. The Applicant did not know of the Government's decision against any extension. The Government had not been informed that UNDP had granted the three-month extension without which the Applicant's contract would have expired on 24 November 1973.

According to the Applicant, he went to his office as usual on the morning of 11 December, telephoned to the Resident Representative and told him that he wished to attend the meeting of the Board of SLPA the next day. The Resident Representative, who did not demur, said that he was engaged that day and would not be able to see the Applicant. After the Applicant had informed the Chairman of the Board and the General Manager of SLPA that he had been told in Geneva that UNDP had approved a three-month extension, a message came through from the Resident Representative's office to say that the Applicant's assignment with the United Nations had ended. It was agreed that in the circumstances the Applicant should not attend the meeting of the Board of SLPA on 12 December. On 13 December the Chairman of the Board of SLPA wrote to the Ministry of Transport and Communications enquiring as to the Applicant's position and *inter alia* his *locus standi* with the United Nations, while on 15 December the Applicant requested the Resident Representative to clarify his status by cable; there is no evidence of any direct reply to either of those communications. Instead, a quadripartite correspondence of great complexity ensued between UNCTAD, the Resident Representative, the Applicant and various organs of the Sierra Leone Government. In the course of this correspondence UNCTAD assured the Applicant that he could count on an extension of at least three months; SLPA and the Ministry of Transport and Communications sought a six-month extension; the Ministry of Development and Economic Planning affirmed that they could not support any extension; and the Resident Representative, while informing the Sierra Leone Government on 17 December of UNDP's agreement to the three-month extension of which he had learned a month earlier, continued resolutely to take his stand on the letter opposing an extension on which he had reported on 24 November. The Applicant was about to be withdrawn to Geneva to write his terminal report within the three-month extension period. It appears from paragraph 25 of the report of the Joint Appeals Board that at this point there was a last minute intervention by the President of Sierra Leone, which prompted a request for a six-month extension from the Ministry of Development and Economic Planning on 29 January 1974; and this was duly granted, thus bringing a confused situation to an end. The Applicant accordingly served out the full term of his six-month contract ending on 24 May 1974. Meanwhile, however, as set forth earlier in this judgement, the Applicant requested that disciplinary proceedings be instituted against the Resident Representative and the Assistant Resident Representative. He was told on 10 July 1974 that the Administration would only decide on disciplinary measures if satisfied that a staff member had been guilty of misconduct or of conduct unbecoming an international civil servant, and that his grievances were the basis of his appeal to the Joint Appeals Board. The Applicant was further informed on 7 August 1975 that UNDP, after a thorough investigation, had found no basis for disciplinary action against the two staff members concerned.

V. Against this background, the Tribunal has to consider whether the Applicant suffered any injury to his reputation, professional injury or other damages as a result of actions or procedures for which the Respondent can properly be held responsible.

VI. The Tribunal notes that the charge of defamation rests mainly on the allegations contained in the Resident Representative's letter of 28 September 1973 to the effect that the Applicant was not a training specialist and that he had been putting pressure on officials to request his extension. As to the first allegation, the Tribunal observes that the Applicant himself did not claim to be a training specialist, though whether it was necessary to have a specialist in order to provide the administrative framework for a training programme was clearly a matter on which there was a division of opinion. With regard to the second allegation, there would seem no doubt that the Resident Representative was genuinely convinced that the Applicant was using influence to prolong his appointment for reasons connected with his future employment

rather than the needs of the job, and that this conviction was strengthened when the Applicant received instructions from UNCTAD to approach the "appropriate authorities" and acted on them by addressing himself directly to the Ministry of Transport and Communications without formally co-ordinating such action with the Resident Representative. On the other hand it was unnecessary, in the Tribunal's view, for the Resident Representative to send a copy of his letter of 28 September, together with a copy of the memorandum quoting the opinions of the General Manager of SLPA to the same effect, to ILO. It was also regrettable that he did so without giving the Applicant an opportunity to comment. The Tribunal considers, however, that the Resident Representative was within his right in reporting his anxieties to UNCTAD and UNDP, and, as to the memorandum, the Tribunal notes that, in a letter of 24 September 1975, the General Manager of SLPA has confirmed that a discussion took place with the Assistant Resident Representative on the lines recorded by the latter. In any event the communication was intended for internal circulation within the Organization and it did not affect the Applicant's reputation with UNCTAD or the eventual extension of his contract. The Tribunal concludes that in all the circumstances the charge of defamation cannot be sustained.

VII. In connexion with the charge of professional injury the Tribunal must view the actions of the Resident Representative and their effect on the standing and reputation of the Applicant in their whole context. The Resident Representative, having reached the conclusion that the extension of the Applicant's contract was not in the interest of the United Nations, was certainly entitled to express that opinion to UNDP and UNCTAD, with the object of reaching an agreed solution which could be presented to the Government of Sierra Leone as a United Nations view. It does not appear to the Tribunal, however, that this was the course which the Resident Representative followed. He set out instead to try to change the decision of the Sierra Leone authorities as reflected in the letter from the Ministry of Development and Economic Planning of 26 September 1973. He informed the Government on 2 October 1973 that "it would not be possible to agree" to the extension of the Applicant's contract and in so doing appeared to be acting at variance with the views of the executing agency, namely UNCTAD. In stating to the Chief of the Ports Section of UNCTAD that UNCTAD's opinion would not influence him in any way he was failing to comply with the document entitled "Functions of Resident Representatives" which defines these functions as *inter alia* acting as a field representative of UNCTAD. The Tribunal notes further that the Resident Representative failed for over a month to communicate to the Sierra Leone Government the agreement of UNDP on 13 November 1973 to a three-month extension of the Applicant's contract. According to paragraph 16 of the report of the Joint Appeals Board, the Resident Representative received a cable on or about 14 December 1973 from UNDP which read as follows:

"... basis careful review all facts consider our agreement three months extension with adjusted project. Grateful you explain Government AAA Our decision made view their letter 26 September officially requesting extension and difficult rescind at this stage BBB Remaining nine weeks experts stay Freetown will facilitate adequate handing over project including training proposals . . ."

There is no evidence to suggest that the Applicant was informed of the contents of this cable even in so far as it related to his personal movements. On 17 December, however, the Resident Representative informed the Government for the first time of UNDP's decision in favour of a three-month extension in the terms quoted earlier in this judgement. The Tribunal notes that, so far from carrying out the clear intention of the instruction that he should endeavour to secure the Government's approval of the three-month extension, he described that extension as having been taken "pending the receipt of a final decision" (i.e. by the Government) and implied that, because it had been

decided upon on the basis of the letter from the Ministry of Development and Economic Planning of 26 September, it had been overtaken by the Government's later decision, on which he had reported on 24 November, that an extension was not required. The Tribunal finds that in his letter of 17 December 1973 which, contrary to earlier practice, was addressed to the Vice-President and Prime Minister of Sierra Leone, the Resident Representative deliberately misinterpreted and distorted his instructions. In omitting to inform the Applicant of the true position both of the Government and of UNDP when the Applicant returned from leave, he failed to "provide the expert with . . . pertinent information" as required by paragraph (b) of the document entitled "Functions of Resident Representatives". Moreover, by informing the Government on 11 December 1973 that the Applicant was no longer in the employ of the United Nations, he placed the Applicant in a highly embarrassing position and caused doubts to be entertained by the Sierra Leone authorities as to the Applicant's personal integrity. The Tribunal notes further that, although the Resident Representative was told in a letter of 19 January 1974 from the Vice-President and Prime Minister of Sierra Leone that he would shortly receive a formal request for a six-month extension (from 25 November 1973) of the Applicant's contract, he made no attempt to inform the Applicant, whom he instructed on 21 January 1974 to proceed to Geneva as soon as possible.

VIII. The Tribunal concludes from the matters described in the preceding paragraph that the actions of the Resident Representative during the period in question were full of irregularities and improprieties and that he failed to observe the fair standards of behaviour normally expected towards a staff member. The Tribunal considers further that he transgressed the proper functions of a Resident Representative on a number of occasions in disregard of the relevant administrative instructions. The Tribunal observes moreover that several of the Resident Representative's actions were taken in defiance of specific instructions which he received as a field representative of UNCTAD. Throughout the Resident Representative purported to act on behalf of the Organization and not in a personal capacity. The Tribunal is not clear whether these irregularities and improprieties on the part of the Resident Representative were fully examined when UNDP conducted its "thorough investigation" and found no basis for disciplinary action. Since, however, the Officer-in-Charge of Staff Services informed the Applicant that "no acts of misconduct requiring a disciplinary measure have been committed by the two staff members concerned" and since the Resident Representative's conduct is described in the Respondent's answer as "legitimate", "normal to the negotiating process", "clearly devoid of personal or extraneous motives" and "fully within the administrative discretion of the Resident Representative", the Tribunal considers that the Respondent acknowledges that the Resident Representative was acting on behalf of the Organization and the Respondent must be held responsible for the irregular and improper actions taken in his name.

IX. The Tribunal must next consider how far, as a result of the actions described in the two preceding paragraphs, the Applicant suffered any financial loss or damage. As to the first, the Applicant contends on the one hand that in view of the events described he felt that, for a time at least, he must cease to work in Africa, and on the other hand that because suitable UNCTAD appointments appear to have arisen and been filled without reference to him, he had obviously been blacklisted for future employment with the Organization. The Tribunal notes, however, that the Applicant produces no evidence to support this latter contention, nor does it appear that he has at any later date formally applied for any specific job with the United Nations. His decision to leave Sierra Leone, despite the fact that he remained in good standing with many authorities in that country, was his own. His contention that he was professionally injured by being forced to seek employment outside West Africa cannot in the Tribunal's judgement be sustained. He offers no proof that he has encountered diffi-

culty, because of injuries suffered while in Sierra Leone, in obtaining such employment. Moreover he has been engaged in part-time consultancy work as shipping adviser to the Sierra Leone Government in London. The Tribunal concludes therefore that the claim of financial loss cannot be sustained.

X. The Applicant's second contention is, in effect, that he did not receive proper support and co-operation from the local UNDP office such as he was entitled to expect under the implied terms of his contract, and that he suffered thereby humiliation, stress and personal injury. The Tribunal considers that there is ample evidence, set out in paragraphs VII and VIII above, to support this contention and that under this head the Applicant's claim that he suffered humiliation and stress is well founded. The Applicant as an expert in the field was entitled to receive a measure of confidence and support from the Resident Representative. Instead he found that his relations with the Sierra Leone authorities were persistently and consistently undermined, and particularly on his return from leave in December 1973 he was placed by the actions of the Resident Representative in a completely false and invidious position vis-à-vis the Sierra Leone Government. Because he managed, largely by his own efforts, to retrieve that position he was saved from financial loss but, in the Tribunal's opinion, the personal harassments and embarrassments which he suffered as a result of the unjustifiable conduct of the Resident Representative were nevertheless real and acute.

XI. The Applicant also complains that the Respondent failed to take disciplinary action against the Resident Representative and Assistant Resident Representative or to make a proper enquiry into their conduct. While there is no detailed information as to the "thorough investigation" which, according to the Respondent, was conducted prior to 7 August 1975, the Tribunal must observe that the purpose of such an enquiry would have been to establish facts relating to the Resident Representative's actions, not to secure relief for any alleged damage caused to the Applicant as a result of such actions. Furthermore the Tribunal recognizes that the decision to hold an enquiry and to determine its nature is within the discretion of the Respondent. The Tribunal concludes that the Applicant cannot be held to have sustained additional damage either because, as he alleges, there was delay in making the enquiry or because the enquiry did not result in disciplinary proceedings.

XII. For the reasons given in paragraph VIII above, the Tribunal finds that the Respondent must be held liable for the conduct of his Resident Representative which caused the Applicant personal injury.

XIII. Though the Applicant's assignment ran its full course, the Applicant, in his position as an expert, was subjected for a substantial period of time to a series of uncertainties and harassments for which the Tribunal considers that he should be compensated. In Judgement No. 92 (*Higgins*), though the Tribunal found that the Applicant in that case had suffered no financial loss, it did allow him compensation for the uncertainties to which he had been subjected for a substantial period of time. By analogy the Tribunal decides to award compensation in the present case and fixes the amount of such compensation at \$1,000.

XIV. The remaining pleas of the Applicant are rejected.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Roger STEVENS
Member

Francisco A. FORTEZA
Alternate Member

Jean HARDY
Executive Secretary

New York, 15 October 1976