medical profession''. The Tribunal therefore considers that it is not competent to examine and compare the value of the conclusions reached by the members of the medical board regarding the origin of Mr. Jiménez Carrillo's illness. The Tribunal notes that the Respondent applied the procedures laid down in Appendix D to the Staff Rules and that his final decision was based on the opinion of the majority of the medical board. The validity of that decision therefore cannot be contested.

XI. The Tribunal observes, however:

(1) That the Respondent failed to have Mr. Jiménez Carrillo undergo a medical examination on separation from service;

(2) That in his communication of 29 March 1974 he failed to take into consideration a medical certificate that might have provided new elements in the case;

(3) That there was considerable delay in convening a medical board to consider the case in accordance with article 17 of Appendix D to the Staff Rules, even if that delay could not be attributed entirely to the Respondent; and

(4) That the 17-month delay between the date of the medical board's report and the date on which the Applicant was informed of the Secretary-General's final decision is excessive.

XII. The Tribunal considers that these instances of administrative negligence entail the responsibility of the Respondent and that the Applicant is entited to obtain pecuniary compensation therefor. Consequently the Tribunal, rejecting all other claims, decides to award the Applicant $5,000 as compensation.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Roger STEVENS
Member

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Geneva, 23 May 1979

Judgement No. 244

(Original: English)

Case No. 222: Bernard *Against:* **The Secretary-General of the United Nations**

Agreed termination of a staff member holding a permanent contract.—Deductions for indebtedness to third parties made from the payments due to a staff member on termination.

Applicant's preliminary request for the production of documents.—Request rejected.

Question of the validity of the termination of the Applicant's appointment by mutual agreement.—Last paragraph of Staff Regulation 9.1 (a).—The Tribunal observes that the Staff Regulations and Rules do not stipulate that a written agreement is necessary in such cases.—Examination of the circumstances culminating in the separation.—Probability that the Applicant had agreed to a termination with monetary benefits.—Applicant's consent to the proposed termination.—Failure of the Applicant's contention that he remained a permanent staff member, of his request for reinstatement as a permanent staff member and of his contention that his consent was subject to a condition regarding the deductions.

Question of the legality of the deductions for indebtedness to third parties made from the payments due to the Applicant on separation.—Applicant's contention that no deductions could be made from his salary because he remained a staff member.—Contention rejected.—Applicant's contention that, on the date of the separation, there was no valid final judgement for the debt.—Recapitulation of the salient facts.—The Tribunal holds that on the date when the deductions were made, there was in existence a valid and binding debt.—Immunity of the United Nations from every form of legal process.—Staff Regulation 1.8.—Staff Rule 103.18 (b) (iii).—Policy of the United Nations concerning the application of that Rule.—Exercise by the Secretary-General of his discretion.—Contention rejected.—Applicant's contention that the termination indemnity did not fall under any of the categories mentioned in the above Rule.—Meaning of the term "emoluments".—That term includes termination indemnities. Contention rejected.

The Tribunal upholds the termination of the Applicant's appointment by mutual agreement and the decision to make the contested deductions.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francisco A. Forteza; Mr. Endre Ustor;

Whereas, on 31 March 1978, Gilbert Bernard, a former staff member of the United Nations, filed an application the pleas of which read as follows:

"(*a*) Preliminary or provisional measures:

"(1) That the Tribunal order the Respondent to produce the alleged written consent not to contest the proposed agreed termination . . . I have never signed any agreement not to contest the proposed termination and therefore such a document alleged cannot exist.

"(2) That the Tribunal order the Respondent to produce documentary evidence, proof that I have been advised *in writing* of all the unilateral assertions made about things they allege they have told me verbally or about alleged events. . . .

"(3) That the Tribunal order the Respondent to produce documentary evidence that I have advised them in writing things they unilaterally allege I have told them verbally. . . .

"(*b*) The decisions which the Applicant is contesting and whose rescission he is requesting under article 9, paragraph 1, of the Statute:

"(1) The decision taken by the Administration to terminate my permanent appointment under the last paragraph of Staff Regulation 9.1(*a*), without my agreement not to contest the actions as required . . .

"(2) The decision to withhold and deduct chargeable to my salary as a permanent staff member the sum of $11,030.00. Since I did not agree not to contest the proposed termination referred to in the above paragraph, there can be no *termination indemnity* as proposed therein. . . . The $16,019.39 received constituted

a salary advance. . . . Another salary advance of $480.00 was received in August 1974 . . . , making a total salary advance received of $16,499.39.

"(*c*) The obligations which the Applicant is invoking and whose specific performance he is requesting under article 9, paragraph 1, of the Statute:

"(1) That the Tribunal order the Respondent my complete *reinstatement* as a permanent staff member of the United Nations Headquarters in New York retroactive to 25 May 1974, with complete payment of my full salaries, medical and dental subsidies, dependency allowances, education grants, pension contributions, annual leaves and all other allowances and entitlements, less the salary advance received of $16,499.39. In addition, payment of interest on the sums due prior to the date of my reinstatement as the Tribunal may deem reasonable.

"(2) At the time of my illegal separation my pay grade was P-3 step 12. . . . I am entitled to accelerated increments for having proficiency in 4 official languages since 1 July 1972. . . . My pay grade on 1 November 1974 is P-3 step 13. Step 13 is the last step in the P-3 level. Except for prejudice, I should be promoted to the P-4 level on 1 November 1974 so that I may continue to receive my salary increments. In all my career in the United Nations I have never been denied a salary increment. This would take me to grade P-4 step 8; from then on I should receive an increment every 10 months as follows: 1 September 1975 P-4 step 9, 1 July 1976 P-4 step 10, 1 May 1977 P-4 step 11, 1 March 1978 P-4 step 12. Step 12 is the last step in the P-4 level, therefore, except for prejudice, at least on 1 March 1978 I should be promoted to grade P-5 step 6 in order to continue receiving my salary increments. From then on I should receive a salary increment every 10 months; etc. I hereby request that the Tribunal order that my salary, allowances and entitlements at least be computed according to the scheme just detailed; or if this should not be within the powers of the Tribunal, that the Tribunal order payment of an equivalent lump sum in compensation thereof.

"(*d*) The amount of compensation claimed by the Applicant in the event that the Secretary-General decides, in the interest of the United Nations, to pay compensation for the injury sustained in accordance with the option given to him under article 9, paragraph 1, of the Statute. Staff Regulation 9.5 states 'Staff members shall not be retained in active service beyond the age of 60 years. . .'. As a permanent staff member my service would therefore end at the retirement age of 60 years to be pensioned under the Pension Fund. Accordingly, in case such an action is taken by the Secretary-General, the Tribunal should order that I be paid a sum equivalent to my full salaries, medical and dental subsidies, dependency allowances, education grants, pension contributions, annual leaves and all other allowances and entitlements from 25 May 1974 to the date I become 60 years old, including the interest payments applicable according to the pay scheme in (*c*)(2) above.

"(*e*) Any other relief which the Applicant may request in accordance with the Statute:

"(1) Costs for preparing, processing and carrying out the lengthy appeal before the Joint Appeals Board, including my round trip travel to and stay in New York from 29 April 1976 to 5 May 1976 for conference with my counsel at which time the supplementary statement of the Applicant dated 11 May 1976 was also drafted . . . , consultations with lawyer and examination and study of Administrative Tribunal Judgements; and costs for preparing, processing and carrying out the application before the Administrative Tribunal, in the sum of $3,000.00.

"(2) Indemnization for medical and dental costs for me and my children from 25 May 1974 to date of reinstatement, in case such payment is not included in paragraph (*c*) above, in the sum of . . . $5,000.00.

"(3) Indemnization for material and moral damage because of the constant stresses, harassments, worries, humiliations, prejudice, sufferings, loss of prestige and other adverse and detrimental effects sustained by me during the unusually long duration of this case."

Whereas the Applicant filed a supplementary statement on 3 April 1978;

Whereas the Respondent filed his answer on 23 June 1978;

Whereas, on 11 July 1978, the Applicant filed written observations in which he made the following requests:

"10. . . . I hereby request the Tribunal to grant the following additional reliefs which should be added to paragraph (*e*), page 3, of my application entitled 'Other relief which the Applicant may request in accordance with the Statute':

"(*e*)(4) The sum of $498.00 paid to the Parkway Village Co., Queens, New York, to cover termination fee for breaking the 3-year lease of an apartment due to the illegal termination of my appointment. After waiting in vain for the Administration to reply to my request for review of the illegal decisions, the Administration never did reply, so I had to return to Costa Rica, which required that I had to give up the apartment many months before expiration of the lease. I hereby agree that such payment should be made against presentation of the required probatory documents which I must secure from the Parkway Village Co. in the near future.

"(*e*)(5) The sum of $1,166.65 paid for loss and damages to my personal effects shipped uninsured by the United Nations from New York to Costa Rica according to a Certificate of Survey of Loss or Damage of the American Institute of Marine Underwriters. This certificate is in possession of a relative who handled the case but who is now abroad for some 3 months. I agree that payment be made only against presentation of the certificate and other required probatory documents.

"11. I hereby request that the Tribunal order that all texts under the headings 'Statement of Facts' and 'Prior Proceedings' in the Respondent's answer, together with the corresponding annexes, be taken out of said answer, according to the explanations given in paragraph 2 of these written observations.

"12. I hereby request that, if the Respondent is going to be allowed to be present at the Tribunal during the hearing of my case, to advise me accordingly and also allow me to be present together with my lawyer-adviser.

"13. I hereby request the Tribunal that, in accordance with article 10, paragraph 2, of the Rules of the Tribunal, a complete set of copies of the personnel files communicated to the Tribunal be forwarded to me.

"14. I hereby request the Tribunal to order, pursuant to article 18 of the Rules, that the case be remanded in accordance with article 9, paragraph 2, of the Statute of the Tribunal."

Whereas, on 1 August 1978, the Applicant submitted an additional document and requested that some items be removed from his official status file and that others be included;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 17 September 1966 under a probationary appointment as an Industrial Development Officer in the Department of Economic and Social Affairs. On 1 September 1968 his appointment was converted to a permanent appointment.

On 4 December 1972 the Applicant's marriage was dissolved by a judgement of divorce of the Supreme Court of New York which ordered him to pay 160 dollars per week for the support of his former wife and four children and 1,000 dollars for her attorney's fees; the judgement also granted his former wife custody of the children, with visitation rights to the Applicant at her residence, and allowed her to continue to reside in the Applicant's house for 90 days. On 3 March 1973 the Control Centre of the Security and Safety Section received a telephone call from Detective J. Mulvey of the New York City Police Department requesting information about the Applicant and indicating that he was wanted by the police for questioning in connexion with an assault complaint by his former sister-in-law. On 6 March 1973 a Senior Personnel Officer of the Office of Personnel Services met with the Applicant concerning the inquiry from the Police Department. On 12 March 1973 the Senior Personnel Officer discussed the case with Detective Mulvey, who told him that he would like to see the Applicant on 23 March in the morning. On 13 March 1973 the Senior Personnel Officer conveyed that request to the Applicant and advised him that he should make himself available for the appointment. On 16 March 1973 the Applicant advised the United States Immigration and Naturalization Service that his former wife was no longer entitled to the G-4 visa status and requested that appropriate action be taken for her deportation. By an order dated 25 April 1973 the Supreme Court of New York directed the Applicant's former wife to vacate his house and directed the Applicant to pay her moving expenses up to 500 dollars and counsel fee, alimony and child support arrears in the amount of 1,810 dollars and to post a bond of 10,000 dollars as security for future alimony and support payments. On 27 April 1973 the United States Mission to the United Nations requested the assistance of the Staff Counsellor in obtaining the moving expenses from the Applicant. As a result of that request the Senior Personnel Officer had an interview with the Applicant on 7 May 1973. On 29 June 1973 the attorney for the Applicant's former wife, to whom the Applicant had submitted a list of claims against his former wife, wrote to the Applicant setting forth a proposal for the settlement of the respective claims and for the exercise of the Applicant's visitation rights. On 11 July 1973 the Senior Personnel Officer drew the Applicant's attention to his obligation under the judgement of divorce to pay support and alimony to his former wife and his own children, and to his obligations as an international civil servant under the relevant provisions of Staff Regulations 1.4 and 1.8. On the same day the Applicant replied that it was his former wife who was in arrears with regard to payments due to him and that he had always expressed his intentions to make adequate payments to her provided he was given the address of her residence and allowed to exercise his visitation rights at such residence as ordered by the court. On 13 July 1973 the attorney for the Applicant's former wife wrote again to the Applicant advising him that contempt proceedings would be instituted against him if he did not reply. By an order of the Supreme Court of New York dated 2 October 1973 the Applicant's former wife was appointed receiver of the Applicant's house and given leave to enter a money judgement in the amount of 3,740 dollars against the Applicant, who was enjoined from disposing of his house; her motion for garnishment of the Applicant's salary was denied

without prejudice, however, and she was directed to give him her address and to allow him visitation rights in accordance with the judgement of divorce. On 8 October 1973 the attorney for the Applicant's former wife wrote to the Secretary-General a letter demanding that immediate disciplinary action be instituted by the United Nations against the Applicant on the ground that he had defied all court orders by refusing to pay his former wife support for herself and the four children as well as her attorney's fees and in the last instance by selling his house. On 22 October 1973 the Senior Personnel Officer asked the Applicant to answer the various allegations made by his former wife's attorney, particularly those in respect of arrears in alimony and support payments and the sale of the house. On the following day the Applicant replied in substance that being prevented from exercising the visitation rights granted him by the court he was legally absolved of any obligation to make support payments, that he had appealed from the various court orders and that when he had sold his house there was no court order to the contrary. On 30 October 1973 the Chief of Staff Services addressed the following letter to the attorney for the Applicant's former wife in reply to his letter of 8 October 1973:

". . .

"Mr. Bernard has given his reply which has served to confirm my previous impression that there are a number of contestable issues between Mr. Bernard and his ex-wife which have been the subject of litigation in the appropriate courts. I find it difficult to envisage the Secretariat playing a role of arbiter between a staff member and his ex-spouse particularly when each side has his own lawyer and the lawyers are handling these matters in court. I am not in any sense passing judgement on the responsibility of either party or attempting to exonerate Mr. Bernard from possible failure to meet his basic obligations towards his ex-wife or to comply with court orders. The fact is that no definitive judgement appears to be pending against Mr. Bernard which is ready for execution through the proper channels.

"I would like to emphasize in this connexion that Mr. Bernard as an individual enjoys no immunity from court or other legal proceedings in civil or criminal action. Therefore, he has not and will not be able to obtain any protection because of his employment with the United Nations. The only immunity which he might indirectly benefit from is the immunity of the United Nations from a garnishment of its employees' salaries. This does not apply to the employees' bank accounts or any private property within the area. At the same time, we take a somewhat strict approach towards our employees so that when there is a definitive enforceable judgement against them, we try to apply pressure on them to meet their obligations in order to avoid any undue embarrassment to themselves which might reflect on the UN secretariat. The present state of affairs seems to indicate that the litigation is continuing between the two parties with representation by counsel and that there is no definitive judgement against Mr. Bernard. I further understand from Mr. Bernard that the order for alimony is contingent upon a concession by his ex-wife for the right of visitation to the children and that this matter has not yet been settled.

"In view of the aforesaid, I regret that I cannot be of much help to you at the present stage. However, in view of the explanations I have given above, this Office would be prepared to use reasonable pressure on Mr. Bernard to meet his obligations under any definitive and enforceable judgement."

On 24 January 1974 the United States Mission to the United Nations advised the Assistant Secretary-General for Personnel Services that the Applicant had failed to appear in Queens

County Family Court on 7 January 1974 to answer charges of non-support of his family, and requested that, since he could not be located by the authorities, steps be taken to instruct him to make himself available for service of process. On 1 February 1974 a Personnel Officer wrote to the Applicant asking why he had not appeared in Queens County Family Court on 7 January 1974 and what action he intended to undertake in the matter. On 4 February 1974 the Applicant replied that he had no knowledge of any required Family Court appearance on 7 January 1974. On 12 February 1974 the Personnel Officer asked the Applicant when and where he would make himself available for service of process. On 6 March 1974 the United States Mission to the United Nations sent a letter to the Chief of Staff Services requesting that, since the authorities continued to be unable to locate the Applicant outside of the United Nations, his immunity be waived without prejudice to the interests of the United Nations and the police authorities permitted to enter the premises of the United Nations and serve process on him. On 7 March 1974 the Chief of Staff Services forwarded the letter to the Director of the General Legal Division, asking for his concurrence on condition that before a waiver of immunity was issued the Applicant would be offered the option of surrendering voluntarily. The Director of the General Legal Division agreed. In the afternoon of 12 March 1974 the Applicant met with the Chief of Staff Services who advised him that a waiver of immunity would be issued for his arrest on the premises unless he surrendered voluntarily to the competent authorities. In the evening of the same day the Applicant met with the Director of the General Legal Division who explained to him that the United Nations could not involve itself in the issues between the Applicant and his former wife, nor could the United Nations allow its inviolability to be used as a shield by him in a personal matter of that kind; the Applicant having apparently agreed to make himself available for service of process if he were allowed to see his children, the Director of the General Legal Division told him that he would telephone the United States Mission concerning the question of his seeing the children. Later in the evening the Applicant met again with the Chief of Staff Services. On 13 March 1974 the Director of the General Legal Division telephoned the United States Mission to the United Nations and was advised that the Applicant's former wife had always been ready to make the children available for a visit at a point away from her home and that if the Applicant agreed to surrender voluntarily the United States Mission would withdraw its request for a waiver of immunity. On the same day the Applicant, in conversations on the telephone, informed the Chief of Staff Services and the Director of the General Legal Division that he would not agree to visit his children anywhere but at their residence as the court orders had provided, and the United States Mission was advised of the Applicant's position. On 21 March 1974 the United States Mission requested that appropriate steps be taken to have the Applicant present himself for arrest or allow the police to enter the premises of the United Nations to arrest him; a copy of the arrest warrant was attached to the request. From a Note for the File from the Senior Personnel Officer dated 8 April 1974 it appears that the Applicant was planning to go on home leave on 17 April 1974, that he had been convicted of the assault charge in late December 1973 and placed on three years' probation, and that he was warned by the probation officer that he was not allowed to leave the country without his approval and the permission of a judge. On 9 April 1974 the Legal Counsel sent a waiver of immunity to the Assistant Secretary-General for Personnel Services under cover of a memorandum reading in part:

"4. In the present case, the United States authorities have not found it possible

to execute the warrant for arrest outside the Headquarters building. Nor have efforts by your Service and by my office to induce Mr. Bernard to make voluntary arrangements outside the United Nations Headquarters been successful. Mr. Bernard himself has no immunity in this matter and it is not permissible that the inviolability of the United Nations be used as a shield to prevent service of a warrant. Section 9 of the Headquarters Agreement specifically provides that the United Nations shall prevent the Headquarters District from becoming a refuge for persons avoiding arrest under federal, state or local law. I am, therefore, in accordance with the authority delegated to me, attaching a waiver under section 9 of the Headquarters Agreement by which on behalf of the Secretary-General I consent to the entry of the appropriate peace officer for the purposes of executing the warrant of arrest.

"5. Since, however, the entry for this purpose may be a cause of embarrassment to the Organization, I suggest that Mr. Bernard be advised of this waiver and instructed to present himself for arrest outside the United Nations premises or otherwise satisfy the warrant of the Family Court, within a fixed period of time, perhaps one or two days. If he does not comply with this instruction within the time fixed, arrangements should then be made through the United Nations Security and Safety Section for entry of the peace officer for the purpose of making this arrest. This should, of course, be done as discreetly as possible both in the interests of the staff member and of the Organization.

"6. I might add that failure to comply with the instruction would, of course, be grounds for disciplinary action, and that there is a duty on the part of staff members to conduct their private affairs in a way so as not to involve the United Nations in embarrassing situations of this kind."

On 8 May 1974 a copy of that memorandum was transmitted to the Department of Economic and Social Affairs for the Applicant's information upon his return from home leave. On the same day the Personnel Officer sent to the Secretary of the Appointment and Promotion Board, for transmittal to the Chairman of the Appointment and Promotion Committee, a memorandum concerning the five-year review of the Applicant's permanent appointment in which the Office of Personnel Services recommended that the Applicant be separated from service; he added:

"While Mr. Bernard was offered two months ago an agreed termination which he refused, he has not been informed of the action being taken by the Office of Personnel Services on the termination of his appointment. Mr. Bernard is now on home leave and will be informed of this action accordingly on his expected return to New York around mid-May."

On 15 May 1974 the Chief of Staff Services, after trying unsuccessfully to persuade the Applicant to meet with him, sent him a memorandum requesting him formally to present himself to the competent court or to the law officers concerned within 48 hours failing which there would be no alternative but to proceed with the implementation of the waiver; the Applicant was also required to provide a formal report regarding his conviction on a charge of assault and an explanation of his failure to advise the Organization in accordance with Staff Rule 104.4(*d*). The Chairman of the Staff Committee was informed of the circumstances of the case by the Chief of Staff Services and, concerned about the serious implications of having uniformed city officers arrest a staff member on United Nations premises, he convened a special meeting of the Staff Committee at which it was concluded

unanimously that he should exert every effort to prevent that from taking place. On 17 May 1974 he met with the Applicant and thereafter sent him the following letter:

> "This is to confirm what I told you in the course of our conversation today concerning your situation.
>
> "I was requested by [the Chief of Staff Services] and by [the Senior Personnel Officer] to inform you that the Office of Personnel Services was prepared to recommend the termination of your appointment on the basis of the last paragraph of Staff Regulation 9.1(*a*). As you know, under the terms of that paragraph:
>
> " '. . . the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment, if such action would be in the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned.'
>
> "Should your decision be to agree to this action, you would need to inform the Office of Personnel Services . . . by Monday, 20 May 1974."

On 23 May 1974 the Assistant Secretary-General for Personnel Services addressed the following notice of termination to the Applicant:

> "I regret to inform you that the Secretary-General has decided to terminate your permanent appointment under the terms of the last paragraph of Staff Regulation 9.1(*a*).
>
> "This letter constitutes formal notice of termination of your appointment as required by Staff Rule 109.3(*a*) effective 24 May 1974. In view of the circumstances, however, the Secretary-General has decided to authorize compensation in lieu of the notice period under Staff Rule 109.3(*c*).
>
> "The Secretary-General has also decided to grant you termination indemnity under Annex III(*a*) to the Staff Regulations. You are also entitled to repatriation grant from 17 September 1966 and to commutation of unused accrued annual leave under Staff Rule 109.8.
>
> ". . ."

By a letter to the Director of the General Legal Division dated 24 May 1974 the attorney for the Applicant's former wife asked that the Applicant be compelled to pay a total amount of 11,030 dollars for alimony and support and for legal fees pursuant to the court orders. On 28 May 1974 the Director of the General Legal Division forwarded a copy of that letter to the Assistant Secretary-General for Personnel Services with a memorandum advising him that in view of the claim put forward in the letter, payment of any emoluments to the Applicant as a result of his agreed termination should be temporarily stopped in order to provide the time necessary to investigate the claim and to determine whether or not any deduction for indebtedness to third parties should be made from such emoluments in accordance with Staff Rule 103.18. On 30 May 1974 the Director of Personnel Administration instructed the Payroll Section to stop payment of the emoluments due to the Applicant pending authorization by the Office of Personnel Services; he also asked the attorney for the Applicant's former wife to send him copies of the court orders, which the attorney did by a letter dated 31 May 1974. On 3 June 1974 the Director of the General Legal Division advised the Assistant Secretary-General for Personnel Services that in view of the recent developments in the Applicant's affairs immediate payment of sums standing to his credit should be made after deduction of the total amounts for which

claims had been received from creditors, including the Credit Union, his former wife and attorneys, but that no payments either to him or to the creditors from the amounts withheld should be made pending verification of the claims against him. On the same day the Payroll Section was instructed to proceed accordingly. On 11 June 1974 the Director of the General Legal Division advised the Director of Personnel Administration as follows:

"...

"2. Staff Rule 103.18(*b*)(ii) and (iii) provides for deductions to be made from salary wages or other emoluments for indebtedness to third parties if authorized by the Secretary-General. As you know, it is UN policy not to make deductions from regular salary payments for the purpose of paying to staff members' outside creditors (other than the Credit Union) but staff members are required as a matter of proper conduct to pay their debts and meet their legal obligations without UN involvement. Deductions from final UN payments to staff have, however, been authorized by the Secretary-General for the purpose of direct payment by the UN to creditors from monies standing to the credit of a staff member at the time of his separation. The UN's policy to seek to ensure payment of judgement creditors of staff members stems at least in part from the UN's obligation to prevent the UN's own immunity from suit and the inviolability of its premises from precluding enforcement of private legal obligations of staff members. On the other hand, although we wish to avoid the situation of practical unenforceability of judgements against our staff, it is essential to be certain that the UN payment is no greater than the sum actually due and owing.

"3. With this in mind it would be my suggestion that the claim described in letter dated 31 May addressed to you by Mr. Irwin Goldstein, Attorney for Mrs. Bernard, should be notified to Mr. Bernard and that he be given an opportunity to establish that he has paid all or part of the sums required by the Court Order. In the absence of any such showing, I would recommend authorization of the payment to Mrs. Bernard and Mr. Goldstein, calculated in accordance with the Court Orders."

On the same day the Director of Personnel Administration wrote to the Applicant to forward copies of the letter from his former wife's attorney dated 31 May 1974 and of the court orders, adding:

"Although it is our understanding that these Orders have not in fact been complied with, we wish to take special precautions to ensure that payment of no more than the legal obligation existing at the time of your separation from service is authorized to be made from the money standing to your credit with the UN. No payment from the money withheld will be made until you have been given an opportunity to establish, within a reasonable time, that you have already paid either in full or in part the obligations now stated to be due under the Court Orders. Payment from this money will of course be made to you of any amount which you have already paid under the Court Orders."

On 11 June 1974 also the Applicant addressed a letter to the Secretary-General in which, claiming that the letter dated 23 May 1974 from the Assistant Secretary-General for Personnel Services established his separation from service "conditioned only and exclusively to the full payment" to him "of indemnities spelt out in said letter", he requested immediate delivery of the balance of 11,030 dollars together with compensation for having

been unduly delayed at Headquarters for lack of complete payment of his final settlement. On 12 June 1974, in a further letter to the Secretary-General the Applicant stated that his previous letter was intended as the first step in the appeals procedure. On 14 June 1974 the Chief of the Payroll Section wrote to the Assistant Secretary-General for Personnel Services to forward the Applicant's final pay statement—showing 24 August 1974 as the separation date—a copy of which he had handed to the Applicant on 5 June 1974; he added that he had personally reviewed the statement with the Applicant who had been in full agreement except for the amount of 11,030 dollars requested to be held by the Office of Personnel Services. On the same day the Applicant wrote again to the Secretary-General, declaring that he did not consent to his termination under the last paragraph of Staff Regulation 9.1(*a*) unless the balance of 11,030 dollars due to him "as compensation of the total compensation entitlement indicated" in the notice of termination of 23 May 1974 was delivered to him immediately. On 14 June 1974 also, the Applicant confirmed in a letter to the Director of Personnel Administration that unless he received immediately the balance of 11,030 dollars, he did not and would not consent not to contest the proposed action, and would therefore remain as a staff member with permanent appointment. On 24 June 1974 the Applicant sent to the Chief of Staff Services a letter in which he emphasized that the three copies of court orders forwarded to him by the Director of Personnel Administration on 11 June 1974 were exactly the same three orders that had been sent to the United Nations a few months ago, none of which the United Nations had found to be a valid final judgement for invoking the application of the Staff Rules as evidenced by the letter of the Chief of Staff Services dated 30 October 1973; since at the proposed date of his separation from service, 24 May 1974, no valid final judgement against him had existed which would have enabled the United Nations to invoke the application of any staff rule, the Applicant requested reimbursement of the amount of 11,030 dollars together with adequate compensation for procedural delay. On 9 July 1974 the attorney for the Applicant's former wife submitted to a Senior Legal Officer of the General Legal Division a decision by a judge of the Supreme Court of New York ordering the Applicant to pay 11,190 dollars in alimony, support and counsel fee arrears; according to the attorney, the sum due by the Applicant through the week of 27 May 1974 amounted to 10,550 dollars; the decision had not yet been signed, but a signed order would be forwarded as soon as received. On 11 July 1974 the Acting Director of the General Legal Division advised the Director of Personnel Administration that in his opinion the attorney for the Applicant's former wife had established an indebtedness to a third party for which a deduction from the Applicant's emoluments could, in the past, have been and might then be authorized by the Secretary-General pursuant to Staff Rule 103.18(*b*)(iii); he therefore recommended that payment be authorized to the attorney in the amount of the obligation as accrued under the court orders as of the date of the Applicant's separation from service. On 16 July 1974 that recommendation was transmitted to the Payroll Section. On 16 July 1974 also the Supreme Court of New York issued a contempt order directing the Applicant to pay a total of 11,190 dollars in alimony, support and counsel fee arrears, plus an additional counsel fee of 300 dollars. A copy of that court order was forwarded to the Senior Legal Officer on the following day. On 25 July 1974 the Applicant lodged an appeal with the Joint Appeals Board. On 29 July 1974 the Payroll Section sent to the Applicant's former wife a cheque in the amount of 10,550 dollars representing "the amount due to [her], including legal fees, . . . as of 27 May 1974". On the same day the Director of Personnel Administration advised the Applicant that a deduction in the amount of 10,550 dollars had been authorized to pay his indebtedness to his former wife

under court orders as of the first business day following his separation from service, i.e. 27 May 1974. A sum of 480 dollars representing the difference between the deduction thus authorized and the amount previously withheld was subsequently remitted to the Applicant. The Joint Appeals Board submitted its report on 21 September 1977. The Board's conclusions and recommendations read as follows:

"*Conclusions and recommendations*

"172. The Board concludes that there had been a valid agreed termination pursuant to the last paragraph of Staff Regulation 9.1(*a*).

"173. The Board recognizes that the appellant and the respondent have agreed that the correct date of the appellant's separation from service is 24 May 1974 rather than 24 August 1974.

"174. The Board finds also that at the time of the appellant's separation from service, a valid fixed debt existed in favour of his ex-wife. The Board therefore concludes that the Administration was justified in making the contested deductions from the appellant's terminal emoluments, pursuant to Staff Rule 103.18(*b*)(iii), for the satisfaction of an indebtedness to a third party.

"175. The Board recommends that the appellant's date of separation from the Organization, incorrectly shown in his Final Pay Statement as 24 August 1974, be amended to reflect the correct separation date of 24 May 1974.

"176. The Board further recommends that all other pleas of the appellant be rejected."

On 9 March 1978 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Joint Appeals Board's conclusions contained in paragraphs 172 to 174 of its report and had accepted the Board's recommendations set out in paragraphs 175 and 176 of the report. On 31 March 1978 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. In the case of the termination of a permanent appointment under the last paragraph of Staff Regulation 9.1(*a*), due process and a complete, fair and reasonable procedure require a written communication by the staff member concerned stating his consent not to contest the action prior to the Administration's decision to terminate the permanent appointment.

2. The Applicant has never signed any written communication giving his consent not to contest the proposed termination. Neither did he give his consent verbally or otherwise. His only written communication to the Administration in this regard was to inform it of his decision that he did not agree not to contest the proposed action and that he remained as a permanent staff member.

3. The universal law of evidence requiring that all allegations be proved beyond a reasonable doubt by the production of documentary evidence and written communications and that all allegations based on hearsay, assumptions, conjectures, belief, biased interpretations, etc. be rejected applies to the case.

4. Since the Applicant's status as a permanent staff member has never ceased, no deductions for alleged debts chargeable to his salaries can be made under Staff Rule 103.18(*b*)(iii).

5. In any event an indemnity is not an emolument and therefore Staff Rule 103.18(*b*)(iii) is not applicable against termination indemnities.

6. While no valid debt had been recognized by the Administration before the letter proposing termination was written, after the date of the proposal the contrary view was held by the Administration on the basis of the same documents.

Whereas the Respondent's principal contentions are:

1. With regard to the termination of the Applicant's appointment:

(*a*) Staff Regulation 9.1(*a*) does not require that a staff member's decision not to contest a termination be in writing; in fact the wording "not to contest" implies that in the absence of any contesting action by the staff member the termination will be effected on the date prescribed;

(*b*) The facts surrounding the termination, as well as statements made by the Chairman of the Staff Committee and the Chief of Staff Services before the Joint Appeals Board, leave no doubt that the Applicant agreed to the termination of his appointment and that he was well aware that the termination he was accepting would not preclude a subsequent deduction from his pay account in favour of his former wife;

(*c*) There is no substantial basis for the Applicant's suggestion that he was denied due process.

2. With regard to the deduction from the Applicant's payroll account:

(*a*) The action was taken in proper application of the general practice whereby the United Nations makes deductions from terminal entitlements in order to pay staff members' third-party indebtedness when such action is considered to serve its broad policy interest;

(*b*) The expression "salaries, wages and other emoluments" as used in Staff Rule 103.18(*b*)(iii) is obviously meant to include all financial benefits payable to a staff member under the Staff Regulations and Rules;

(*c*) The Applicant was given a reasonable opportunity to show cause why a deduction should not be made from his payroll account but he failed to do so;

(*d*) The money paid by the Respondent to the Applicant's former wife in July 1974 was in respect of the indebtedness of the Applicant as a staff member under the court judgements and orders of 1972 and 1973, the contempt order of 16 July 1974 merely proving that the Applicant had not satisfied the indebtedness that existed before 24 May 1974.

The Tribunal, having deliberated from 8 to 25 May 1979, now pronounces the following judgement:

I. The Applicant's preliminary request for the production of the "alleged written consent not to contest the proposed agreed termination" cannot be granted as the Respondent pleads that the document is missing from the files. The Tribunal will deal with the merits of the Respondent's plea later in the judgement. The Applicant's other two preliminary requests that the Respondent be ordered "to produce documentary evidence" to sustain the various assertions made by him are too vague and general. They are not requests for production of specific documents and therefore cannot be granted.

II. It is unnecessary for the Tribunal to go into all the details of the marital disputes between the Applicant and his spouse as the case before the Tribunal is limited to the issues framed hereunder which are:

1. Was there a valid termination of the Applicant's appointment in accordance with Staff Regulation 9.1(*a*)?

and

2. Was the deduction for third-party indebtedness made by the Respondent from the terminal entitlements of the Applicant authorized under Staff Rule 103.18(*b*)(iii)?

III. The last paragraph of Staff Regulation 9.1(*a*) which is relevant for determining whether the Applicant's separation from service was valid reads as follows:

> "Finally, the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment, if such action would be in the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned."

The Applicant contends that the decision not to contest a proposed termination under the above rule must be in writing and that he never signed an agreement not to contest the proposed termination. He adds that he neither gave his consent verbally or otherwise. The Respondent asserts that the Applicant gave an unqualified consent to the termination but the Respondent was unable to produce the document as it was missing from the files. The question arises whether a written agreement not to contest a termination is a prerequisite for termination under Staff Regulation 9.1(*a*) and whether the absence of such a written authority voids the termination. The Tribunal observes that the Staff Regulations and Rules do not stipulate that a written agreement is necessary for separation under the last paragraph of Staff Regulation 9.1(*a*). This paragraph only provides that the termination action should not be contested by a staff member. Whether there was such an agreement is a question of fact to be determined on the evidence which may be documentary, oral or circumstantial. The Tribunal finds no authority for the contention that the agreement not to contest the proposed termination must be in writing.

IV. Examining the circumstances which culminated in the separation, the Tribunal finds that the Applicant was convicted of an assault charge and placed on three years' probation, a fact which he had withheld from the Administration and for which the Administration had called for explanation, that there was a warrant for his arrest from the Queens County Family Court, that the Legal Counsel had signed a waiver and consent for the entry into the United Nations Headquarters District of a police officer for the purpose of executing the warrant of arrest against the Applicant and that, on 8 May 1974, the Office of Personnel Services had recommended to the Appointment and Promotion Board that the Applicant be separated from service. The Tribunal finds that in the circumstances it was more likely for the Applicant to agree to a termination with monetary benefits under the last paragraph of Staff Regulation 9.1(*a*) than to risk a termination with financial loss.

V. The Tribunal also observes that the sequence of events leading to the termination indicates that there was consent for the action taken. On 17 May 1974 the Chairman of the Staff Committee, who was concerned at the prospect of the arrest of a staff member at the United Nations Headquarters and who lent his good offices to find a solution to the Applicant's difficulties after discussing the matter with the Applicant, wrote to him as follows:

> "This is to confirm what I told you in the course of our conversation today concerning your situation.
>
> "I was requested by [the Chief of Staff Services] and [the Senior Personnel Officer] to inform you that the Office of Personnel Services was prepared to rec-

ommend the termination of your appointment on the basis of the last paragraph of Staff Regulation 9.1(*a*). . . .

"Should your decision be to agree to this action, you would need to inform the Office of Personnel Services by Monday, 20 May 1974."

On 23 May 1974 the Assistant Secretary-General for Personnel Services communicated to the Applicant the decision of the Secretary-General "to terminate [your] permanent appointment under the terms of the last paragraph of Staff Regulation 9.1(*a*)." Since the Administration would not act under this Regulation without the agreement of the staff member, the Tribunal infers from these two communications that the latter one was issued on the receipt of the Applicant's consent.

VI. The Tribunal further notes that when the Applicant received the notice of termination dated 23 May 1974, he did not dispute the notice on the ground that he had not consented to the termination. He acquiesced in it until 11 June 1974. Even in his letter to the Secretary-General dated 14 June 1974, the Applicant did not state that he never consented to an agreed termination. On the other hand, he stated:

"I hereby declare that I *do not* consent to my termination under the last paragraph of Staff Regulation 9.1(*a*) unless the balance of $11,030.00 which is due to me as compensation of the total compensation entitlement indicated in [the Assistant Secretary-General for Personnel Services]'s letter is delivered to me immediately."

It is clear from this letter that the Applicant was seeking to go back on the consent already given because of certain deductions from his terminal payments.

VII. The Respondent's case that the Applicant had agreed in writing to the termination receives support from a memorandum of 26 May 1976 submitted to the Joint Appeals Board in which the Chairman of the Staff Committee stated that he had learnt from the Applicant that the Applicant had initially written his agreement to the termination conditional on his receiving his indemnities in full but had later "revised his letter to remove any conditions from his agreement 'not to contest' the termination". In a memorandum of 9 June 1976 also submitted to the Joint Appeals Board, the Chief of Staff Services similarly recalled that the Applicant "had finally brought in an unqualified written consent to termination . . .". The Tribunal therefore holds that the Applicant gave his consent to termination under Staff Regulation 9.1(*a*) both in writing and verbally and that his denial is an afterthought.

VIII. The Applicant contends that as he had not given his consent to termination, he continued to remain a staff member and was entitled to all benefits of a staff member. The Tribunal has already reached the conclusion that the Applicant gave his consent to the proposed termination. The Tribunal finds no provision for withdrawing such consent. Besides, once a termination becomes effective, it remains in force unless it is set aside by a process of law.

IX. The Tribunal also notes that the receipt by the Applicant of his terminal entitlements (less the deductions under dispute) is inconsistent with his plea that he continued to remain a permanent staff member. The Applicant tries to get over the infirmity in his argument by pleading that "the $16,019.39 received constituted a salary advance . . . another salary advance of $480.00 was received in August 1974". There is nothing to show that the terminal payments were even remotely contemplated as salary advances

and the plea is baseless. The Applicant's contention that he remained a permanent staff member therefore fails.

X. The Applicant's request for reinstatement as a permanent staff member also fails as a consequence of the earlier finding that there was comment on the part of the Applicant, under Staff Regulation 9.1(*a*).

XI. The Applicant further contends that his consent to termination was conditional on his receiving the full termination indemnity without deductions and that, as the condition was not fulfilled, there could be no termination. The Tribunal notes that the memorandum dated 8 May 1974 from the Personnel Officer to the Secretary of the Appointment and Promotion Board mentions that the Applicant had earlier refused an offer of an agreed termination. Later, when the Administration issued a waiver of immunity and agreed to the arrest of the Applicant on the premises of the United Nations Headquarters, the Chairman of the Staff Committee intervened. In his memorandum of 26 May 1976 quoted earlier the Chairman stated:

> "As I recall, I was due to travel to Geneva over the week-end. Upon my return (approximately on 28 May 1974), I learned both from Mr. Bernard and from [the Chief of Staff Services] that Mr. Bernard had initially written his agreement to the termination as described above, *conditional* on his receiving his indemnities in full; that this conditional agreement had been rejected by the Officers of Personnel Services and of Legal Affairs and that thereafter Mr. Bernard had revised his letter to remove any conditions from his agreement 'not to contest' the termination."

The above fact is also supported by the Chief of Staff Services who stated in his memorandum dated 9 June 1976:

> "I recall that Mr. Bernard contacted me a few times and tried to persuade me to accept the qualified agreement to termination. He kept harping on the idea that the demands of the Court in favour of his wife were not final judgements and therefore the United Nations could not make any deductions from his terminal pay. I explained to him that this was a matter on which he was free to challenge the administration if there should be an attempt to make deductions from his terminal pay but at the present time I was merely concerned with his consent to a termination and could give him no further undertaking."

The Tribunal concludes that the Applicant did try strenuously to avoid the deductions from his terminal payments but that the Administration did not give any assurance that no deductions would be made. The Tribunal therefore holds that the Applicant's consent to termination was not subject to any conditions regarding the deductions.

XII. The Applicant contests the deduction of 10,550 dollars made by the Respondent for third-party indebtedness on several grounds. His first contention is that he continued to remain a staff member and that consequently no deductions could be made from his salary. The Tribunal has earlier rejected the contention that the Applicant remained a staff member after 24 May 1974 and the plea therefore fails.

XIII. The Applicant's second contention is that on the date of separation, namely 24 May 1974, there was no valid final judgement for the debt and that consequently Staff Rule 103.18(*b*)(iii) could not be invoked. In order to decide this point, it is necessary to recount briefly the salient facts. On 4 December 1972 the Supreme Court of New York in its judgement of divorce ordered the Applicant to pay 160 dollars per week for the

support of his former wife and four children. On 25 April 1973 the Supreme Court of New York held the Applicant to be in default of payment of alimony, child support and counsel fees in the amount of 1,810 dollars, in violation of the judgement of divorce. On 2 October 1973 an order of the Supreme Court of New York granted a money judgement against the Applicant in the amount of 3,740 dollars and the Applicant's cross-motion to relieve him of all payments to his former wife and to vacate or modify the order of 25 April 1973 was denied in full. On 19 October 1973 the Applicant filed a notice of appeal against the order of 2 October 1973 but apparently did not pursue it. In January 1974 the Queens County Family Court issued a warrant for arrest of the Applicant for failure to appear to answer a charge of non-support of his family. On 24 May 1974 the attorney for the Applicant's former wife submitted a claim for 11,030 dollars. Thus on 24 May 1974, when the Applicant's former wife claimed payment, there was an enforceable court decree against the Applicant.

The Applicant had relied on the letter dated 30 October 1973 from the Chief of Staff Services to the attorney for the Applicant's former wife wherein it is stated "no definitive judgement appears to be pending against Mr. Bernard which is ready for execution through the proper channels". The Applicant contends that, on the basis of this statement, he concluded that there would be no deductions. The Tribunal notes that on 30 October 1973, when the Chief of Staff Services wrote to the attorney, there was an appeal filed by the Applicant against the order of 2 October 1973. But till 24 May 1974 neither suspension nor stay of the court orders had been obtained by the Applicant and the court orders remained enforceable.

XIV. The Tribunal further notes that the Office of Legal Affairs, after examination of all the relevant material, authorized the payment "as accrued under the Court orders".

XV. The Tribunal therefore holds that on the date when the deductions were made, there was in existence a valid and binding debt certified as such by the Legal Counsel for the Respondent.

XVI. The Tribunal observes that the Secretary-General has a discretion under Staff Rule 103.18(*b*)(iii) to authorize deductions from salaries, wages and other emoluments for indebtedness to third parties. The Tribunal recalls that by virtue of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly, the United Nations, its property and assets enjoy immunity from every form of legal process, that it is open to the United Nations to expressly waive its immunity but that no such waiver of immunity shall extend to any measure of execution. Therefore no proceedings by way of decrees, attachment or garnishment orders may lie against the United Nations. At the same time, Staff Regulation 1.8 provides that "The immunities and privileges attached to the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations." Hence staff members cannot use the United Nations as a shield against performance of their obligations or payment of their debts to third parties.

In respect of indebtedness of staff members to third parties, Staff Rule 103.18(*b*)(iii) provides:

"(*b*) Deductions from salaries, wages and other emoluments may also be made for the following purposes:

". . .

"(iii) For indebtedness to third parties when any deduction for this purpose is authorized by the Secretary-General".

The policy of the United Nations concerning the application of the Rule quoted above was set forth in a legal opinion dated 6 February 1968 published at page 215 of the *United Nations Juridical Yearbook,* 1968. In reply to a question whether a staff member's salary could be attached through the issuance of a court order, the opinion stated that while such a proceeding against the Organization is null and void by virtue of the Convention on the Privileges and Immunities of the United Nations, "the Organization's immunities afford no justification for a staff member's failure to meet his legal obligations and it is the United Nations policy, in line with the dictates of the General Assembly, to take measures to prevent the immunity from legal process from defeating creditors' rights". The opinion further clarifies the practice followed by the United Nations with respect to garnishments and other court orders requiring the Organization, as employer, to make regular payments out of a staff member's salary directly to judgement creditors:

"The court order, if received, is returned to the creditor (or court official) with the explanation of the Organization's immunity and also the United Nations policy concerning private legal obligations of staff members. As for the staff member, he is requested—usually by his Personnel Officer—to settle the matter in such a way, either by payment or further court action, as to avoid any further embarrassment to the United Nations. Even if he disclaims the debt or intends to appeal the judgement, he is required, as a matter of proper conduct, to take whatever legal steps would ordinarily be necessary to delay any direct action vis-à-vis his salary . . . ."

XVII. The Tribunal notes that though the Applicant was vehemently protesting before the Administration his liability under the court orders, he did not get those orders stayed or overturned through appropriate legal proceedings as envisaged in the opinion quoted above. The Tribunal considers that the Respondent was right in regarding the subsisting court orders as binding on the Applicant as the Respondent could not get involved in the validity of judgements concerning staff members in their personal capacity.

XVIII. The opinion further states:

"With respect to deductions . . . for debts to third persons, it is against established policy to authorize deductions from regular salary checks for debts to judgement creditors; but it is not unusual to make such deductions from final salary or other terminal payments due to staff members upon separation."

In the exercise of his discretion, the Secretary-General authorized deductions in respect of the indebtedness of the Applicant towards his former wife. The Tribunal's competence in such cases does not extend to an examination of the propriety of the decision but is limited to the question whether the exercise of discretion was arbitrary or capricious. The foregoing facts clearly establish that there were court orders for payments to the Applicant's former wife and that these orders had not been either stayed or overturned. The

subsequent order in the proceedings for contempt against the Applicant reinforced the fact of the existence of the indebtedness of the Applicant to his former wife. The Tribunal therefore finds that the Secretary-General was within his rights in ordering a deduction for the Applicant's indebtedness to his former wife.

XIX. The Applicant's third contention is that the relevant Staff Rule authorizes deductions only from "salaries, wages and other emoluments" and that since the termination indemnity did not fall under any of the categories mentioned, the Rule was inapplicable to the case.

XX. The Tribunal notes that the term "emoluments" has not been defined in the Staff Regulations and Rules. According to the *Shorter Oxford Dictionary*, "emolument" means "profit or gain from station, office or employment; dues, remuneration, salary". According to Stroud's *Judicial Dictionary*, "an 'Emolument' is a Profit or Advantage,—anything by which a person is benefited, *e.g.* a person dispossessed of an OFFICE, or EMPLOYMENT, who is entitled to Compensation calculated according to his 'Annual Emolument' derived therefrom, is entitled to have taken into consideration the profit he has made on the allowance made to him for travelling expenses. . . . The word has a wider meaning than 'REMUNERATION'." Since termination indemnities arise "from station, office or employment", it would follow that the term "emoluments" includes termination indemnities.

The Tribunal also notes that under Staff Regulation 3.3(*a*):

> "An assessment . . . shall be applied to the salaries and such other emoluments of staff members as are computed on the basis of salary . . .".

That staff assessment is applied to termination indemnities is not in dispute. Since termination indemnities are calculated on the basis of the salary and length of service, the Tribunal concludes that the reasoning on which termination indemnities are regarded as emoluments for the purposes of staff assessment under Staff Regulation 3.3(*a*) applies with equal force to termination indemnities being treated as emoluments for the purposes of deductions for indebtedness to the United Nations or to third parties under Staff Rule 103.18(*b*).

XXI. For the foregoing reasons, the Tribunal:

1. upholds the termination of the appointment of the Applicant under the last paragraph of Staff Regulation 9.1(*a*); and

2. upholds the decision to withhold and deduct the sum of 10,550 dollars from the terminal payments due to the Applicant on separation under Staff Rule 103.18(*b*)(iii).

XXII. The Tribunal therefore:

(*a*) rejects the request of the Applicant for reinstatement with complete staff benefits retroactive to 25 May 1974;

(*b*) decides that the requests for grade promotions, salary increments or, in the alternative, for compensation under article 9.1 of the Statute of the Tribunal do not arise;

(*c*) rejects the claims for costs of litigation, for medical and dental costs for the Applicant and his children, and for material and moral damage.

XXIII. As a consequence of the findings of the Tribunal in the case, the Applicant's other pleas do not arise.

XXIV. The application is rejected.

(Signatures)

R. VENKATARAMAN
President

Endre USTOR
Member

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Geneva, 25 May 1979

Judgement No. 245

(Original: English)

Case No. 226: Shamsee *Against:* **The United Nations Joint Staff Pension Board**

***Request for the sequestration of a pension** paid by the Staff Pension Fund to a retired staff member.*

***Request that the Tribunal direct the Staff** Pension Fund to honour the sequestration order issued by the New York Supreme Court.—**Question whether** the Staff Pension Fund enjoys the same immunity from the jurisdiction of domestic courts as the United Nations.—Interpretation of the relevant instruments.—**The Tribunal concludes that the Staff Pension** Fund is covered by the immunity of the United Nations.—**It follows that the immunity from legal process** against the Fund can be waived and that such waiver cannot extend to any measure of execution.—The Tribunal holds that the Staff Pension Fund is not bound to honour the sequestration order.—**Question** of the privileges and immunities of staff members in respect of their obligations to third parties.—**Section** 20 of the Convention on the Privileges and Immunities of the United Nations.—**Staff Regulation** 1.8.—**Staff Rule** 103.18 (b) (iii).—Obligation of staff members to fulfil their private obligations.—**Corresponding** obligation of retired staff members.—Lack of any provision in the Pension Fund Regulations permitting deductions for indebtedness to third parties.—Objections concerning the Tribunal's competence.—**These** objections are well founded, since the Applicant does not belong to the category of persons entitled to seize the Tribunal.—Applicant's contention that she should not be considered as a third party but as the receiver of the assets in dispute.—Contention rejected.*

***The application is rejected, the Applicant** having no* locus standi *before the Tribunal.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Endre Ustor;

Whereas, on 21 April 1978, Raymonde Shamsee filed an application the pleas of which read: