

appointed her receiver of the assets of Mr. Shamsee, and that consequently the Staff Pension Fund is not being asked to make payment to any third person but to the duly appointed receiver of the assets of the very person to whom it owes an obligation. According to the Applicant, she should be considered, for the purposes of these proceedings, not as a third person falling under article 49, paragraph (a) (ii) of the Pension Fund Regulations but as a person stepping into the shoes of the Intervener, i.e. becoming entitled to all the pecuniary rights of the latter.

This argument is unconvincing. The recognition by the Staff Pension Fund of the appointment of a receiver of assets for the purposes of collecting the pension of a staff member would amount to the recognition of a court decision as binding on the Fund. The Fund, however, being entitled to "immunity from every form of legal process", cannot be expected to grant such recognition, the more so since the Court order appointing the receiver constitutes a "measure of execution".

IX. For the reasons stated in paragraphs VII and VIII above, the Applicant has no *locus standi* before the Tribunal and the application is accordingly rejected.

(Signatures)

R. VENKATARAMAN

President

Suzanne BASTID

Vice-President

Geneva, 25 May 1979

Endre USTOR

Member

Jean HARDY

Executive Secretary

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## Judgement No. 246

(Original: English)

**Case No. 241:**  
**Fayemiwo**

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

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*Termination of a locally recruited staff member of the United Nations Children's Fund (UNICEF) holding a regular appointment.*

*The Secretary-General's discretionary power to terminate regular appointments.—Request for rescission of the termination.—Contention that the decision was biased by extraneous factors.—Review of the facts bearing on the Applicant's performance.—Mixed performance record of the Applicant.—Contention rejected.—Contention that there were procedural defects in dealing with the Applicant's rebuttals of two of his periodic reports.—Complexity of the various instructions applicable in the case.—Action taken to deal with the Applicant's rebuttals of his periodic reports.—Such action conformed to instructions.—Contention rejected.—Application rejected.*

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## THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Sir Roger Stevens; Mr. Endre Ustor;

Whereas at the request of Clement O. A. Fayemiwo, a former staff member of the United Nations specifically recruited for the United Nations Children's Fund, hereinafter called UNICEF, the President of the Tribunal, with the agreement of the Respondent, extended to 30 May 1979 the time-limit for the filing of an application to the Tribunal;

Whereas, on 30 May 1979, the Applicant filed an application in which he requested the Tribunal to:

“(a) rescind the decision of the Secretary-General terminating the appointment of the Applicant;

“(b) order his reinstatement;

“(c) alternatively order the payment by the United Nations of compensation in money equivalent in amount to 4 years' base salary;

“(d) alternatively order the effectuation of the recommendation of the Joint Appeals Board as stated in para. 111 of the Board's Report to the Secretary-General.”;

Whereas the Respondent filed his answer on 13 August 1979;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF on 1 September 1961 as a Secretary-Stenographer at the Lagos, Nigeria office on a two-month short-term appointment. On 1 November 1961 he was granted a probationary appointment which was converted to a regular appointment as Clerk-Stenographer with effect from 1 September 1963. On 1 January 1964 the Applicant was promoted to the position of Supply Assistant. In a first periodic report, covering 1965-1966, he was rated as “an efficient staff member giving complete satisfaction”. In a second and third periodic reports, for 1967 and 1968-1969 respectively, the Applicant, who on 1 June 1967 had been promoted to the position of Programme and Supply Assistant, was rated as “a staff member who maintains a good standard of efficiency”. On 27 January 1970 Mr. P. F. Larsen, the Resident Director, noted in a memorandum to the Applicant that his office attendance, particularly in the morning, was not as regular as could be desired. The Applicant replied in a memorandum dated 14 February 1970 explaining the reasons for his occasional lateness and alleging various short-comings in the administration of the office. In a fourth periodic report, for 1969-1971, the Applicant was again rated as “a staff member who maintains a good standard of efficiency”; Mr. Larsen, as first reporting officer, made the following comments:

“Loyal in his attitude to United Nations, and interested in its objectives.

“The staff member needs to be more careful about follow-up on problems; reports on field trip findings are not produced, thus nullifying the value of field visits. This is to an extent due to emergence of other pressing problems calling for attention, but this should not interfere with follow-up. There is a certain tendency to unexplained absenteeism, and the punctuality in attending office could be improved upon.

“The shortcomings referred to above have been discussed with the staff member frequently, and it has been impressed on him that as a senior man in the office, he must show a completely correct attitude as an example to others.”,

and the Director of the Administrative Division took note of the report “with concern”. On 1 January 1972 Mr. F. F. Smithwick became Regional Director at the Lagos UNICEF

office. The Applicant's annual increment due on 1 June 1972 was suspended on the grounds that he had not returned his periodic report and that the day-to-day functions of his section were being reviewed; on 28 July 1972, however, the increment was granted as from 1 June 1972. By a memorandum dated 23 March 1973 Mr. Smithwick informed the Applicant that he was reassigned from the Programme Support Unit to the Programme Section; the memorandum said that consideration had been given to further measures to strengthen the Programme Support Unit and continued:

"I have decided to transfer you to the Programming Section and to put Mr. Clayton in charge of the Programme Support Unit with Mr. Nesi as his Deputy. I had hoped to discuss these matters with you, but as you have been absent for several weeks (for three of which we have had no explanation or information) I am taking this action without further consultation with you.

"For the time being, your duties in the Programming Section will be to understudy Mr. Sangonaïke who is due for transfer to UNICEF Headquarters. I would like you to make yourself fully acquainted with the programmes in the States of West, Mid-West and Lagos and the Regional projects at the Ibadan University. Mr. Sangonaïke's designated replacement is a new man to UNICEF and I would like you to be his counsellor, friend and educator in the first months of his assignment.

"I wish you luck in your new assignment and I will be watching carefully how you carry out your duties with a view to giving you greater responsibility."

In a reply dated 17 April 1973 the Applicant pointed out that he had been absent on certified sick leave; after referring to an incident where, four or five months earlier, Mr. Smithwick had allegedly asked him to resign and promised him to remove him one day from UNICEF, he concluded:

"I need not write further on this matter but . . . people who are well versed in office administration, after reading the last two paragraphs of your memorandum under reply, will see clearly that this is a device to terminate my appointment in UNICEF unjustifiably—as you have promised."

In a fifth periodic report, for 1972-1973, the Applicant was rated between "a staff member who maintains a good standard of efficiency" and "a staff member who maintains only a minimum standard"; as first reporting officer, Mr. Smithwick noted that he had had "continuous discussions" with the Applicant concerning the short-comings indicated in the report and, in a statement attached to the report, he explained that, having found upon taking up his duties that the supply and shipping operations were handled through two separate sections, he had decided to amalgamate the two sections, that the Applicant had been put in charge of the new unit, that after a period of trial and observing results it had become quite clear that he "was not capable or would not meet the challenge of this new organization of a vital and necessary activity", and that he accordingly had been transferred out of the unit, whose functioning had improved thereafter. When signing the report the Applicant wrote on it the following comment: "I did not expect a good report from Mr. Francis F. Smithwick. Please see my memorandum to him of 17/4/73 (copy attached)." At the end of 1973 the Applicant became Chairman of the Lagos UNICEF Staff Association. In January 1974 Mr. S. Norberg replaced Mr. Smithwick as Regional Director. On 10 March 1975, in a note for the file referring to the Applicant's lateness, Mr. Jibril, Finance and Administrative Officer, wrote that the Applicant had indicated his intention not to sign the attendance sheet again and that, since he was the Chairman

of the Staff Association, his refusal to sign had to be weighed on the impact it might have on other staff members. In a memorandum dated 18 September 1975 Mr. Norberg advised the Applicant that his next periodic report would have to contain a number of blanks due to lack of evidence as to his capacities; he complained that the Applicant had failed to complete some assignments and had turned over to one of his colleagues an assignment entrusted to him, and added:

"This same uncooperative spirit has also been evidenced all along by your attitude towards time-keeping, signing the daily attendance sheets, routine medical examination and other administrative matters. As the then chairman of the Staff Association, you did set a poor example to your colleagues in these respects."

The Applicant replied in a memorandum dated 26 September 1975 that there was "an ulterior motive" behind Mr. Norberg's criticisms and that he had been co-operative with regard to the medical examinations; referring to a meeting held on 13 August 1975 with Mr. Norberg, the Applicant went on to state:

"... You told me that you were happy I am no more the Chairman of UNICEF/Lagos Staff Association because during my tenure of office, I made the Association to convey to UNICEF Headquarters many information which you (Mr. Norberg) did not want Headquarters to know, e.g.:

"(a) that UNICEF/Lagos was paying for unoccupied houses and flats for lengthy periods—a waste of funds;

"(b) that copies of minutes of the meeting of the Executive Committee Members (UNICEF/Lagos Staff Association) dated 7 November, 1974 were forwarded to many staff members in UNICEF New York, revealing various irregularities in the Lagos Office, etc.

"You went further to say that as long as you are the Regional Director you will continue to make things difficult for me and this is the reason why you did not give me a particular project (or assignment) to handle since you became the Regional Director. . . ."

In a sixth and final periodic report, for 1974, the Applicant was rated as "on the whole, an unsatisfactory staff member"; as first reporting officer, Mr. Norberg commented:

"Displays no sign whatsoever of taking any interest in the work of UNICEF.

"On joining the Lagos office in January 1974, I found that Mr. Fayemiwo had no other assignment than an administrative responsibility in one of the UNICEF-assisted projects. In June, I entrusted him with the task of assembling and processing essential information material concerning Nigeria, as it were in the capacity of a personal assistant. The results of this assignment amounted to next to nothing. Another attempt to put him to work was equally disappointing.

"In Section I above, therefore, I have only been able to fill in ratings 5-7, 9 and 10-12. Other ratings have been marked 'not applicable' since the staff member had consistently avoided demonstrating his capacities whenever given a chance.

"In addition, the staff member has been uncooperative in accounting for his frequent absences from the office, thus setting a deplorable example to his colleagues.";

he added that he had discussed the short-comings indicated in the report "several times verbally and once in writing" with the Applicant. In taking note of the report, the Director of the Administrative Division wrote:

“Mr. Norberg’s letter of 18 September 1975 to Mr. Fayemiwo, and the latter’s reply, are to be read in conjunction of this report.”

In a rebuttal appended to the report the Applicant stated that he had been judged by inappropriate standards and that he disagreed with the comments in the report, and referred to his memorandum of 26 September 1975. On 12 February 1976, Mr. Jibril, after an exchange of memorandums with the Applicant regarding his “absence from the office on several occasions”, requested that in the future the Applicant indicate his presence in the office by regularly signing the attendance register, a “practice” which he had “stopped . . . almost a year” earlier. On 15 March 1976 the Lagos office received from UNICEF headquarters a cable dated 12 March 1976 approving the immediate termination of the Applicant’s appointment. About 22 March 1976 the Applicant was allegedly involved in a car accident and went on sick leave. On 4 May 1976 a notice of termination was sent to the Applicant who refused to receive it; he also refused to receive a letter sent by registered mail on 14 May 1976. On 14 June 1976 UNICEF Headquarters advised the Lagos office that the Applicant’s termination would have to be postponed until the question of his sick leave and the condition of his health had been clarified. On 13 July 1976 Mr. Jibril wrote to the Applicant that arrangements had been made for him to be examined by a United Nations–designated physician on 20 July 1976, that a UNICEF car and driver had been assigned to bring him to the clinic and that no further sick leave certificates would be accepted until the medical examination had been completed. It appears, however, that the Applicant was not at home on the day of the appointment. On 21 July 1976 Mr. Jibril wrote again to the Applicant, insisting that he get in touch with the office with a view to arranging a new appointment before 30 July 1976. On 27 July 1976 Mr. Jibril, in accordance with his letter of 13 July 1976, returned to the Applicant his latest sick leave certificates. On 6 August 1976 Mr. Jibril informed UNICEF Headquarters about the situation concerning the Applicant’s medical examination and requested their advice. On 18 August 1976 Mr. Norberg, referring to discussions he had held in his office on 16 and 17 August with the Applicant, wrote him a letter reading in part:

“. . . You have told us that our letter of 4 May 1976, advising you of the Executive Director’s decision to terminate your appointment, and including a separation cheque for \$7084.24, was not received by you. We have therefore provided you with a photocopy of the letter. . . .

“You have been submitting sick leave certificates covering the period 3 May up to 6 August 1976, by which date you submitted your doctor’s statement that you were fit to return to work. Meanwhile, we have arranged for you to undergo a medical examination by one of the accredited United Nations physicians, who will report to the Director of Medical Services at the United Nations Headquarters in New York. The advice from the Medical Service may affect date of your separation.”

On the same day the Applicant requested, in a letter to the Secretary-General, a review of the decision to terminate his regular appointment; he claimed that he had been locked out of his office the day before, that he had not received from Mr. Norberg anything in writing as to why his appointment had been terminated, that he had taken the required medical examination except the laboratory tests on 11 August 1976 but that Mr. Norberg had instructed him not to take these tests since his services would soon be terminated, and that the termination decision was motivated by prejudice on the part of Messrs. Smithwick and Norberg. On 15 September 1976 Mr. Jibril advised the Applicant to

complete his medical examination as his status after 4 May 1976 would depend on the outcome of such examination. On 25 September 1976 the Applicant sent to the Secretary-General a copy of an anonymous letter addressed to the Applicant on 23 September 1976 and containing the text of the cable from UNICEF headquarters dated 12 March 1976. On 1 October 1976 a Personnel Officer of UNICEF headquarters sent to Mr. Norberg a copy of an anonymous letter received by another Personnel Officer and quoting the text of that cable; he concluded that there was a "leakage" of the confidential correspondence in the Lagos office and that the Applicant knew of his impending termination in April 1976 "through his own source" and accordingly refused to accept any correspondence addressed to him. From a statement signed by Mr. Norberg and two witnesses, it appears that on 18 October 1976 the Applicant came to the Lagos office to take delivery of two confidential envelopes addressed to him from New York by the United Nations; that "the Regional Director . . . prevailed upon Mr. Fayemiwo to take possession of the Director's letter of 18 August 1976 concerning the former's separation from UNICEF"; that the Applicant, "who had earlier omitted to collect this letter, again declined to do so"; and that the Applicant, however, read the letter and then left without collecting the two confidential envelopes. On the same day Mr. Norberg dispatched the two envelopes to the Applicant by registered mail and advised him accordingly, adding:

"I should add that my letters of 4 May 1976 and of 18 August 1976, concerning your separation from UNICEF, as well as the cheque for your separation entitlements remain available for your collection at this office. As you will recall, it proved impossible to have the first one delivered to you, even by registered mail. The second one you have now twice declined to collect from us."

On 3 November 1976 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 7 June 1978. The Board's conclusions and recommendations read as follows:

*"Conclusions and recommendations"*

"108. The Board recognizes that the termination of the appellant's regular appointment is governed by Staff Regulation 9.1 (c) which provides that a decision to terminate a regular appointment is within the discretion of the Secretary-General and will be upheld in the absence of a showing by the appellant that the decision was influenced by prejudice or improper motivation. The Board concludes, on the basis of the evidence before it, that the appellant has not met the burden of proving that the contested decision was so motivated.

"109. The Board finds, however, on the basis of the information made available to it, that the respondent failed to apply an appropriate procedure to assure fair consideration of the appellant's views in connexion with his two final periodic reports before the decision of termination was taken. The Board deems such consideration was necessary, since the appellant produced written statements in explanation or rebuttal of part or all of his final two periodic reports. Accordingly, the Board agrees that due process was not observed and that these reports, covering the periods 1 January 1972-31 December 1973 and 1 January-31 December 1974, must be considered incomplete documents.

"110. The Board finds also that in this case the respondent failed to prepare and present to the appellant a copy of a special report concerning the decision or recommendation to terminate the appellant's appointment. The appellant was thereby deprived of the opportunity to make a statement in explanation of such report before

the decision of termination was taken, in violation of the principle of due process.

“111. Therefore the Board concludes that the appellant was injured in so far as his rights to due process were denied him by the Organization in the adoption of the contested decision. While the Board realizes the difficulty of assigning a precise monetary value to this type of injury, the Board none the less agrees that the appellant should be compensated for the injury he has suffered. Accordingly, the Board recommends that the appellant be paid compensation equivalent to three months' net base salary.”

On 19 December 1978 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General had decided to take note of the Board's report and to maintain the decision terminating his regular appointment without the need for taking any action on the Board's recommendation regarding the award to him of compensation in addition to the termination indemnity already paid to him; the Assistant Secretary-General added:

“In taking this position the Secretary-General was satisfied that the omission of a special report concerning the decision or recommendation to terminate your appointment (which is not specifically stipulated in the UNICEF Field Manual as applicable to local staff), did not affect your substantive rights as a staff member and did not, in itself, result in a failure of due process.”

On 30 May 1979 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to terminate the Applicant was biased, being based on extraneous factors rather than on objective and dispassionate analysis of the weaknesses and strength of the Applicant. A flagrant violation of the rights of the Applicant was displayed when the officer who terminated him temporarily suspended unprocedurally his within-grade increment.

2. If the Applicant's rebuttal to his last two performance reports had been investigated by the second reporting officer, the Applicant would not have been terminated because it would have been obvious that the report was inconsistent and biased, thus resulting in the denial of due process of law to the Applicant.

Whereas the Respondent's principal contentions are:

1. The Respondent acted within his authority under Staff Regulation 9.1 (c) in terminating the regular appointment of the Applicant.

2. The Respondent respected all appropriate procedures in his actions prior to the decision to terminate the Applicant:

- (a) The Respondent did not violate any alleged procedural requirement in respect of the Applicant's periodic reports or in his failure to file a special report prior to the termination decision;

- (b) Even if certain procedural errors had occurred, such errors could not and did not constitute any denial of due process to the Applicant.

3. The Applicant suffered no injury for which any compensation could be granted as a result of the Respondent's actions.

The Tribunal, having deliberated from 25 September to 2 October 1979, now pronounces the following judgement:

I. The Tribunal notes that the Applicant was the holder from September 1963 of a regular appointment as a local staff member of the UNICEF office in Lagos. While such appointments are for an indefinite period and may last until retirement, they may be terminated on thirty days' notice in writing subject to the payment of such indemnity as may be provided for under the Staff Regulations and Rules; and a statement to this effect was included in the Applicant's letter of appointment dated 11 December 1963. The applicable Staff Regulation is 9.1 (c) under which the Secretary-General may at any time terminate the appointment "if, in his opinion, such action would be in the interest of the United Nations". Unless, therefore, it can be shown that the decision to terminate was due to prejudice or other factors extraneous to the staff member's performance or that, in the procedure leading to termination, the Applicant suffered injury through being denied due process, it is not open to the Tribunal to rescind a decision which is within the Secretary-General's discretion.

II. In his pleas the Applicant requests the rescission of his termination in effect on two grounds: firstly that the decision was biased by extraneous factors, namely his Chairmanship of the Lagos UNICEF Staff Association, and secondly that there were procedural defects in dealing with his rebuttals of two of his performance reports, with the result that his side of the case was never properly investigated and he was thus denied due process. It is proposed to deal successively with these contentions.

III. The Tribunal observes that, on the first plea, namely prejudice based on external factors, the Applicant has submitted in evidence certain statements which appear to lend colour to his contention. He alleges for example that in early 1973 he was moved into a more testing post, namely the Programming Section, for which he had less experience, at the very moment when his performance was under severe scrutiny. In his memorandum to the Regional Director (Mr. Smithwick) dated 17 April 1973 he refers to a meeting in the latter's office at which the Director "promised that you will one day remove me from UNICEF, whether or not I tender my resignation". He similarly recalls, in a memorandum dated 26 September 1975 to Mr. Smithwick's successor, Mr. Norberg, that the latter had told him on 13 August 1975 that he was happy that he was no longer Chairman of the Lagos UNICEF Staff Association and that as long as he was Regional Director he would continue to make things difficult for the Applicant. While these alleged statements do not purport to be more than the Applicant's recollection of the conversations, the Tribunal notes that they have not been officially repudiated, neither by the recipients of the memorandum nor by the Respondent in his submission. It is at least clear, both from the tone of all correspondence and from the relevant periodic reports, that over the period 1973 to 1976 considerable friction existed between the Applicant and his superiors.

IV. A careful examination of the evidence clearly reveals, however, that this did not derive solely, as the Applicant appears to allege, from his activities as Chairman of the Lagos UNICEF Staff Association. He occupied this position from late 1973 until about mid-1975, and it will be seen that two of the incidents quoted in the preceding paragraph occurred before he took up that position. However much his Staff Association activities may have irritated his superiors, it is clear that their dissatisfaction with him stemmed from earlier times and from other causes, namely his performance as a staff member.

V. The Tribunal accordingly considered whether the critical comments on the Applicant's performance, which became marked after the appointment of Mr. Smithwick



as Regional Director on 1 January 1972 and continued notably under his successor, could have been due to extraneous factors such as personal prejudice, quite apart from the Applicant's Chairmanship of the Staff Association. It is noteworthy that, after four relatively favourable periodic reports, the fifth report, covering the period January 1972 to December 1973 and signed by Mr. Smithwick, was unmistakably adverse, while the sixth and final report signed by Mr. Norberg was worse. Could the Applicant have got across these two Directors in some way which affected their impartial judgement of him and caused them to find faults with him which no previous superior had detected?

VI. After reviewing all the facts bearing on the Applicant's performance from the time of his appointment, it appears to the Tribunal that the adverse comments on his work cannot be attributed to prejudice against him on the part of his last two superiors. The faults that they found in him had been apparent, albeit in a lesser degree, almost from the outset. Before he was given a regular appointment his superior reported (on 22 April 1963) that his output was uneven and not entirely satisfactory, and his behaviour erratic; he added:

"Mr. Fayemiwo also suffers from intermittent lack of punctuality during which periods he also tends to . . . stay away for considerable times without any real justification."

The applicant was warned of this adverse report in a confidential letter (not copied to New York) of 23 April 1963 from the Acting Area Representative who told him *inter alia*:

"While . . . you appear to have the necessary qualifications for efficiency and satisfactory work, it seems as if you have peak periods when no complaint can be made of your general standards and periods when your efficiency definitely falls below average. . . . whereas on some occasions your attitude can be charming and co-operative, on other occasions you tend to be discourteous, surly, aggressive and generally bad-tempered."

Thanks to this outspoken reprimand the Applicant's performance improved, he was told (on 29 July 1963) that his recent behaviour had been exemplary, and he was shortly thereafter given a regular appointment dating from 1 September of that year. On 30 April 1964, his immediate supervisor Mr. Sangonaike wrote apropos a backlog of work that

"... in my opinion Mr. Fayemiwo has the necessary ability and capabilities required to handle his part of the work. However, he tends to fall into a kind of self-complacency which causes his output to suffer."

As a result of this report, the Applicant, who admitted frankly that the criticism of his work was accurate, was warned that if the backlog was not cleared he would either have to accept demotion or be asked to resign (13 May 1964).

Thereafter, however, his performance markedly improved and the same area Representative who had written to him so frankly on 23 April 1963 was able to say of him (in a letter to the Director of the Administrative Division, UNICEF headquarters, dated 18 April 1967):

"He has consistently worked long hours and shown a dedication and devotion to duty which I have rarely encountered in an officer at his level. . . . It is seldom that one finds himself in a position in which he can recommend an officer so highly.

... I am not recommending him for the next scale on the general staff line because I think he merits more than this."

The Applicant's first, second and third periodic reports, covering the periods 1965-1966, 1967 and 1968-1969 respectively, reflected this favourable view of his performance at that time, though only in the first of these was he described as "an efficient staff member giving complete satisfaction". In late 1969 he was reprimanded for lateness, a pattern repeated frequently in the following months. The Applicant's fourth periodic report (1969-1971), written by the same supervisor as the third, reflected renewed disquiet about his performance. He dropped one or two places on Judgement and one on Written Expression, Oral Expression, Industry, Quality of Work, Quantity of Work, Sense of Responsibility and Initiative. He was criticized not only for lateness and unexplained absenteeism but also for failure to follow up on problems. It will thus be seen that the weaknesses in his performance for which he was severely criticized by his later supervisors were in evidence, intermittently but unmistakably, almost from the outset.

Two of his earlier supervisors had had occasion to modify their views of his work, one in a favourable, the other in an adverse sense. Given such a mixed record, the contention that the decision to terminate was "based on extraneous factors rather than on objective and dispassionate analysis of the weaknesses and strength of the Applicant" cannot in the Tribunal's view be sustained.

VII. Under the same head the Applicant refers to the temporary withholding of his salary increment in 1972 as a flagrant violation of his rights. The Tribunal cannot share his view of this trivial incident, which resulted in part from action taken inadvertently by the Applicant's brother and caused no financial loss or damage to the Applicant.

VIII. The Applicant's second contention relates to procedural defects in the handling of his rebuttals of his fifth and sixth periodic reports. In their consideration of these matters the Joint Appeals Board also commented on the absence, prior to termination, of any special report on the Applicant as prescribed in Administrative Instruction ST/AI/115 and Volume II, Part VII, Section 2, paragraph 14 (d) of the UNICEF Field Manual, although the matter of special reports was not and is not now raised by the Applicant himself. The Tribunal considers both these questions below.

IX. In the Tribunal's view the whole issue of what set of instructions were applicable in a case involving the termination of a regular appointment of a local UNICEF staff member in 1976, i.e. before Administrative Instruction ST/AI/240 (of 3 January 1977) and UNICEF Administrative Instruction No. 295 (of 24 May 1978) came into force, raises questions of some complexity. ST/AI/115 related to the preparation of periodic reports "on all staff below the level of Director (D-2) on temporary or permanent appointments". The Respondent, however, questions whether ST/AI/115 as such was applicable to UNICEF staff and asserts that its provisions were not intended to apply to locally recruited staff in UNICEF field duty stations. It is true that the UNICEF Field Manual dealt *inter alia* with the same matters as ST/AI/115 but in differing terms. The relevant sections of the Field Manual fell into two parts: Section 2 B of Volume II, Part VII, dealing with international staff, and Section 2 C, dealing with local staff. Section 2 B stated that "ST/AI/115 outlines in general terms the procedure to be followed in preparing periodic reports" and contained wording about special reports identical to that of ST/AI/115. There was provision for rebuttal of periodic reports but not (as in ST/AI/115) of special reports, and the provision of ST/AI/115, paragraph 13 whereby, when a

staff member makes a rebuttal, "the Head of the Department will investigate the case and will record his appraisal of it in writing" was omitted. Section 2 C, dealing with local staff, contained no reference to ST/AI/115 nor to special reports as such; it provided that "in addition to regular reports, interim reports are made when either the supervisor or the staff member is transferred or separated, provided six months have elapsed since the last report". There was provision for the staff member to "make a written explanatory statement or rebuttal of the performance report which automatically becomes part of the report and should be copied to Headquarters" but none for investigation or appraisal of such rebuttal by the Head of Department as in ST/AI/115.

X. Against this very involved and somewhat conflicting background of instructions, it appears to the Tribunal that the Applicant's UNICEF superiors cannot be held to have committed any procedural error if they followed the instructions contained in Section 2 C of Volume VII of the UNICEF Field Manual. As regards the Applicant's rebuttals of his fifth and sixth periodic reports, all they were required to do by these instructions was to ensure that the rebuttals became part of the report and were copied to headquarters; and they did so. As regards an interim report on separation, it is to be noted that the Applicant's sixth periodic report was signed by the Regional Director on 18 September 1975, by the Director of the Administrative Division on 13 November 1975, and by the Applicant (accompanied by a rebuttal) on 8 December 1975, while the decision to terminate was conveyed to the Lagos office in a cable from UNICEF headquarters dated 12 March 1976 and to the Applicant (who refused to accept it) in May 1976. The Tribunal accordingly finds that the action taken to deal with the Applicant's rebuttals of his periodic reports and with reports prior to his termination conformed to instructions and that there is therefore no basis for the Applicant's contention that the handling of this case was vitiated by procedural irregularities.

XI. Although the Tribunal has reached the conclusion that the termination decision was not vitiated by procedural irregularities, the Tribunal wishes to observe that the Respondent should have made an appraisal of the rebuttal filed by the Applicant to his final periodic report and afforded him an opportunity to defend himself before taking the termination decision, especially in view of the Applicant's active role in the Lagos UNICEF Staff Association and the possible allegation of prejudice arising therefrom. The Tribunal, however, recognizes that the Applicant reduced the possibility of such action by the tactics of evasion adopted by him after he learned about his impending separation. Nevertheless, the Tribunal considers that it is part of good administration to observe the dictum that justice should not only be done but also be seen to be done.

XII. For the foregoing reasons the Applicant's pleas are rejected.

*(Signatures)*

R. VENKATARAMAN  
*President*

Endre USTOR  
*Member*

Roger STEVENS  
*Member*

Jean HARDY  
*Executive Secretary*

*New York, 2 October 1979*

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