

**Judgement No. 251***(Original: English)***Case No. 230:  
Noble****Against: The Secretary-General  
of the United Nations**

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*Request for rescission of decisions to withhold salary increments.*

*Need to distinguish between the Applicant's salary increments due in 1971, 1972 and 1973 and that due in 1975.—Increment due in 1975.—Consideration of the circumstances in which the decision to withhold the increment was taken.—The Tribunal finds that the decision was valid.—Increments due in 1971 and 1972.—Failure of the Respondent to comply with the relevant instructions and directives applicable when salary increments are withheld.—Force and effect of Personnel Directives.—Irrelevance of Judgement No. 116.—The Tribunal finds that the decisions to withhold the increments due in 1971 and 1972 were vitiated by procedural defects.—Increment due in 1973.—Circumstances in which the decision to withhold it was taken.—Validity of the decision.*

*Application rejected in so far as it relates to the withholding of salary increments due in 1973 and 1975.—Rescission of the decisions to withhold the salary increments due in 1971 and 1972.—Ruling that the Respondent shall recalculate the salary due to the Applicant in consequence.*

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**THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,**

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Sir Roger Stevens;

Whereas at the request of Miriam Patricia Noble, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 15 June and 15 September 1978 the time-limit for the filing of an application to the Tribunal;

Whereas, on 15 September 1978, the Applicant filed an application the pleas of which read:

“I. The Tribunal is requested:

“(a) to rescind the decisions under which the increments of the Applicant due on 1 June 1971, 1 June 1972, 1 June 1973 and 1 June 1975 were withheld;

“(b) to set an additional sum to be paid to the Applicant in order to compensate for the loss of benefits suffered in the amount of \$12,000.

“II. In the event that the Secretary-General decides to exercise the option under article 9, paragraph 1, of the Statute, the Tribunal will be pleased to fix the amount of compensation in a sum equivalent to two years' net base salary of the Applicant.”;

Whereas the Respondent filed his answer on 17 January 1979;

Whereas the Applicant filed written observations on 30 March 1979;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 September 1963 and received a permanent appointment on 1 September 1965 as a Clerk-Typist at the G-3

level. Until 1967 she served in the Office of Conference Services, where her performance was evaluated in three periodic reports in which she was rated as "a staff member who maintains a good standard of efficiency". On 16 September 1967 the Applicant was transferred to the Office of the Controller and on 1 October 1967 she was transferred to the Office of Technical Co-operation, Department of Economic and Social Affairs, where she was first assigned to the Financial and Administrative Management Section. Her performance in that Section was evaluated in a periodic report in which she was again rated as "a staff member who maintains a good standard of efficiency". On 1 May 1969 the Applicant was reassigned to the Section for Asia and the Far East. Her performance in that Section until 8 March 1971 was evaluated in a periodic report in which she was rated as "on the whole an unsatisfactory staff member", while the first reporting officer commented:

"When transferring to this Section, Miss Noble was questioned about her previously poor attendance record, and she promised to improve it. While she was capable of doing competent work, motivation and sense of responsibility appeared to be lacking. When her short-comings were discussed with her, she gave evening schooling and health as the reasons for irregular attendance and erratic output. Subsequently, frequent sick-leave days were taken, and the hours spent at her desk were too few to be sufficiently productive. She wanted a transfer (in late 1970) to an office with lighter work, but when this did not come through her attendance and interest further weakened."

On 29 June 1971 that report was forwarded to the Applicant by an Administrative Officer of the Office of Personnel with the following memorandum:

"1. We have been informed that your performance during the past ten months has been unsatisfactory. This is also confirmed in the attached periodic report dated 25 June 1971 covering the period of your service from 1 May 1969 to 8 March 1971 during which time you worked as secretary to one of the Programme Management Officers.

"2. As you know, salary increment in the level is awarded for satisfactory service. Satisfactory service for this purpose is defined as satisfactory performance and conduct in the staff member's assignment as evaluated by his/her supervisor. As your performance has been reported to be unsatisfactory, we are withholding the granting of the increment which was due on 1 June 1971."

On 1 July 1971 the Applicant's salary increment which was due on 1 June 1971 was accordingly withheld in accordance with Staff Rule 103.8 (a); her salary increments due on 1 June 1972, 1 June 1973, 1 June 1974 and 1 June 1975 were subsequently also withheld. On 29 July 1971 the Applicant filed a rebuttal to the periodic report. On the following day the Administrative Officer requested the comments of the Department of Economic and Social Affairs in terms of Administrative Instruction ST/AI/115. On 30 November and 16 December 1971 respectively, the first and the second reporting officers submitted their comments on the Applicant's rebuttal. In his comments the second reporting officer stated *inter alia*:

"The Office of Technical Co-operation is of the view that it would be in the best interest of the United Nations if appropriate action could be taken looking toward Miss Noble's termination of service under the terms of Staff Rule 109.3. This recommendation is submitted after taking into full account her work habits, the

quality and quantity of her work, and her attitude towards her work, as reflected in the different areas of OTC to which she has been assigned as well as on loan to another office of the Department of Economic and Social Affairs.”

On 22 February 1972 the Under-Secretary-General for Economic and Social Affairs, after viewing the Applicant’s rebuttal and the comments submitted by the two reporting officers, advised the Director of Personnel that these comments and the periodic report gave a fair appraisal of the situation. In a further periodic report, which covered the period from 9 March 1971 to 30 April 1972, the Applicant was again rated as “on the whole an unsatisfactory staff member”, and the first reporting officer commented:

“This periodic report was an extremely difficult one to compile, because . . . her recent performance has not been entirely bad. I cannot say to what extent this change is likely to be permanent . . .”

On 11 December 1972 the Applicant submitted a rebuttal to the periodic report. On 8 February 1973 the Under-Secretary-General for Economic and Social Affairs, having reviewed the matter, advised the Director of Personnel that in his opinion the ratings in the report were fair and the Applicant’s over-all performance unsatisfactory. On 16 May 1973 a Senior Personnel Officer informed the Applicant that “the Office of Personnel Services, in support of the recommendation of the Department of Economic and Social Affairs, [was] taking the necessary steps to terminate [her] permanent appointment for unsatisfactory services under the provisions of Staff Regulation 9.1 (a)”. On 19 June 1973 the Alternate Secretary of the Appointment and Promotion Panel sent to the Applicant copy of the written presentation (dated 15 March 1973) to the Chairman of the *Ad Hoc* Working Group of the Appointment and Promotion Panel recommending termination of her permanent appointment. In response to a letter from the Applicant, the Chief of Staff Services on 22 June 1973 assured her “that the procedure to be followed in the consideration of the Administration’s recommendation would observe her rights as a staff member and would provide her all the safeguards implied in the principle of due process”. On 20 February 1974 the Applicant raised the question of the withholding of her salary increments in a memorandum to the Office of Personnel and on 20 June 1974 she again raised the question in a further memorandum to the Office of Personnel reading:

“1. On 20 February 1974 I sent to Mr. Villanueva of the Office of Personnel, a memorandum concerning the withholding of my within-grade salary increase due on 1 June 1971 and each subsequent year since then. I have not yet received any answer from your Office in that connexion.

“2. Furthermore, your attention is drawn to Administrative Instruction ST/AI/115, para. 8, according to which ‘special reports will be made (not on the standard report form) consisting of a statement and evaluation of the relevant facts . . . when there is a decision to withhold the within-grade increase because of unsatisfactory services.’ In the absence of any specific provision to the contrary, it must be assumed that this special report should, as do all others, emanate from the immediate supervisor of the staff member concerned. This procedure appears not to have been followed when my within-grade increase was first withheld. Not only was there no special report, but my immediate supervisor was not even consulted in the matter.

✓ “3. It should also be noted that the within-grade increases corresponding to 1972 and 1973 have also been withheld, without my being notified in any way of

this decision. There is no provision in ST/AI/115 for automatic withholding of these increases.

“4. In my view, this inobservance of the prescribed procedure invalidates the action taken. Accordingly, and bearing in mind that my within-grade increment for 1974 was due on 1 June, I respectfully request that all measures be taken to restore to me the increases withheld.

“An early reply will be greatly appreciated.”

On 21 August 1974 a periodic report on the performance of the Applicant from 1 May 1972 to 30 April 1974 was issued and signed by her. In that report she was rated as “a staff member who maintains a good standard of efficiency” and the first reporting officer commented:

“Miss Noble reported several times that due to health reasons she is unable to come to the office in the morning on time. However, when she comes late in the morning, she makes up the time by working late. Nevertheless, she has been instructed to observe the regular office hours in the future. Her frequent absences on sick leave have been a handicap to the section.”

On 22 August 1974 the Applicant wrote to the Secretary-General a letter requesting that the administrative decision communicated to her in the memorandum of 29 June 1971 be reviewed and that measures be taken to reinstate the annual salary increments withheld. This letter was acknowledged on 9 October 1974 by the Assistant Secretary-General for Personnel Services. On 4 April 1975 the Applicant enquired as to the progress of the matter in a letter to the Assistant Secretary-General for Personnel Services. On 22 April 1975 she was informed that the Assistant Secretary-General would be in a position to take a decision on the matter in the very near future. On 24 April 1975 she reiterated her request that a decision be taken as soon as possible. On 13 May 1975, by a memorandum copied to the Applicant, the Special Assistant to the Commissioner for Technical Co-operation informed an Administrative Officer of the Department of Economic and Social Affairs that the Office of Technical Co-operation had found no change in the Applicant's attitude toward her work in general and did not recommend any reinstatement of the within-grade increment. On 16 May 1975 a periodic report on the performance of the Applicant from 1 May 1972 to 9 February 1973, a period already covered in the preceding periodic report, was issued, the reason given to the Applicant for this duplication being that until 5 February 1973 she had been under a supervisor different from the first reporting officer in the preceding report. In the new periodic report, which the Applicant refused to sign on the ground that the preceding report was valid, she was rated as “a staff member who maintains only a minimum standard” and the first reporting officer commented:

“During the period under review Miss Noble was habitually late coming to work, and her refusal to comply with legitimate requests to undertake assignments resulted in a request for disciplinary action.”

On 16 May 1975 also, the Applicant requested the Programme Management Officer for whom she had been working to submit to the Office of Personnel his appraisal of her services for the entire period during which she had worked with him, and in particular her attitude toward her work in general. On the same day—and again on 16 September 1975—the Programme Management Officer submitted such an appraisal to the Assistant

Secretary-General for Personnel Services, recommending that the Applicant's increments be reinstated and that her valuable services be recognized. On 4 June 1975 the Special Assistant to the Commissioner for Technical Co-operation addressed to the Administrative Officer of the Department of Economic and Social Affairs a further memorandum, also copied to the Applicant, reading:

"Special report on Miss Miriam Noble for *the period 1 June 1974 to the present*

"1. Reference is made to your memorandum of 22 May on the question of reinstating Miss Noble's within-grade increment for the period indicated above.

"2. The decision to give a negative recommendation was arrived at after thorough examination of Miss Noble's record of performances and conduct toward her work. Miss Noble has been unable to keep regular working hours. Although she has claimed illness, she has not been able to provide us with medical certificates, except for brief periods in the past. She has been talked to on several occasions which at the time appears to have been well received by her. But Miss Noble continues to come late.

"3. OTC is prepared to accept a medical explanation to the effect that for medical reasons she would need to come late but in the absence of such supporting evidence, we are not prepared to tolerate such open failure to comply with the rules, much less support her within-grade increment. Furthermore, such an attitude can hardly be taken as exemplary nor can it be expected to encourage greater adherence to the rules of the Organization."

On 2 July 1975, at the request of the Applicant, another Programme Management Officer for whom she had worked submitted to the Office of Personnel Services a favourable appraisal of her services. By a letter of 7 August 1975 the Officer-in-Charge of the Office of Personnel Services informed the Applicant of the action taken on her letter of 22 August 1974 to the Secretary-General, as follows:

"With reference to your letter of 22 August 1974 addressed to the Secretary-General and Mr. Gherab's reply dated 9 October 1974, this is to advise you that the question of the withholding of your annual within-grade increments which fell due on 1 June 1971, 1972, 1973 and 1974, respectively, has been reviewed by the Office of Personnel Services in consultation with the Department of Economic and Social Affairs. The delay in reviewing your request submitted in accordance with the provisions of Staff Rule 111.3 is regretted.

"Your performance from May 1969 through April 1972, as duly recorded in your two periodic reports covering the period, was not up to the required standard and therefore did not warrant the granting of the annual within-grade increments falling due on 1 June 1971 and 1 June 1972. Furthermore, on 15 March 1973 a procedure for termination on grounds of unsatisfactory services was initiated by the Office of Personnel Services and you were made aware of the action taken in this respect. As a result, the increment due on 1 June 1973 was also withheld. Consequently, I would like to confirm that I see no valid reason for reinstating the annual within-grade increments falling due on 1 June 1971, 1972 and 1973.

"Since your performance for the period 1 June 1973 through 31 May 1974 was reported by your new supervisor, Mr. Basu, as having somewhat improved and since you were not made aware by the Administration in accordance with Administrative Instruction ST/AI/115 during the said period or after of the grounds on which your

within-grade increment falling due on 1 June 1974 was withheld, I have come to the conclusion that this increment should be reinstated. The relevant administrative action will be taken accordingly."

The Applicant's salary increment due on 1 June 1974 was accordingly reinstated. On 8 September 1975, in a further letter to the Secretary-General, the Applicant requested his review of the decision not to reinstate her salary increments due on 1 June 1971, 1972 and 1973, and raised the question of the withholding of the salary increment which had fallen due on 1 June 1975. On 17 October 1975 the Administrative Officer of the Department of Economic and Social Affairs addressed to the Applicant a memorandum reading in part as follows:

"... This will advise you that the Medical Service has informed this Office on 15 October 1975 that, as of 1 October 1975, there is no medical reason for you to keep other than the normal working hours. We are pleased to learn of the improved state of your health and by this memorandum confirm to you that you are expected to keep the normal working hours."

On 12 November 1975 the Special Assistant to the Commissioner for Technical Co-operation sent to the Administrative Officer, with a copy to the Applicant, a memorandum reading:

"Special Report: Miss Miriam NOBLE

"*Within-Grade Increment*

"1. Please refer to your memorandum of 22 October 1975 regarding Miss Noble's within-grade increment for the period 1 June 1974 through 31 May 1975.

"2. In this connexion, I would like to refer to my memorandum of [13] May 1975 in which I stated there has been no change for the better in Miss Noble's attitude toward her work as demonstrated in her inability to report to work on time. At one point, in this long and drawn-out affair, we had hoped she would be able to provide us with medical evidence to justify her chronic lateness. But this possibility was put to rest permanently with the latest communication from the Medical Service that there was no medical basis for it.

"3. OTC takes the position, therefore, that her within-grade increment should be withheld for the period in question and as Miss Noble continues to come late appropriate steps be taken to put a stop to it."

On 19 November 1975 the Administrative Officer, in a memorandum to the Office of Personnel Services, supported the position of the Office of Technical Co-operation. The Applicant's salary increment due on 1 June 1975 was accordingly withheld. On 26 November 1975 the Applicant wrote to the Office of Personnel Services "to record [her] protest over the recommendation contained" in the memorandum of 12 November 1975. On 28 November 1975 the Applicant lodged with the Joint Appeals Board an appeal—her first—directed against the decision set out in the second paragraph of the letter of 7 August 1975 from the Office of Personnel Services. On 3 December 1975 the Assistant Secretary-General for Personnel Services, replying to the Applicant's letter of 8 September 1975 addressed to the Secretary-General, confirmed the withholding of her salary increments due on 1 June 1971, 1972 and 1973; he also confirmed the withholding of her salary increment which had fallen due on 1 June 1975. On 19 December 1975 the Applicant wrote again to the Secretary-General requesting him to review the decision to withhold

her salary increment due on 1 June 1975. On 30 January 1976 the Assistant Secretary-General for Personnel Services replied:

“This refers to your letter to the Secretary-General dated 19 December 1975 in which you requested, under Regulation 11.1, revision of the decision to withhold your salary increment which was due in June 1975.

“Your case has been thoroughly reviewed. A special report on your services from 1 June 1974 to 1 June 1975 was prepared on 4 June 1975 and a copy was given to you. Under rule 111.3 (a) you should have addressed within one month a letter to the Secretary-General requesting that the decision to withhold your salary increment be reviewed. This decision was notified to you on 4 June 1975, and put into effect on 30 June 1975, the date when you should have received the first monthly instalment of the increment had it not been withheld. Your request for review dated 19 December 1975 does not, therefore, meet the time limits prescribed for the procedure of the Joint Appeals Board.

“Without prejudice to the above position on the receivability of any appeal that you may decide to file, I would like to point out, for your information, that the decision of which you are complaining was taken in strict conformity with the provisions of Administrative Instruction ST/AI/115 on the subject. Had your request been submitted within the time limit, the Secretary-General would have seen no reason to rescind the decision to withhold your salary increment, since it would have been found to comply both with the provisions of rule 103.8 (a) which make satisfactory services a pre-condition for granting salary increments, and with those of Administrative Instruction ST/AI/115 which prescribe the procedure to be followed for the withholding of salary increments.”

On 3 February 1976 the Applicant lodged with the Joint Appeals Board an appeal—her second—directed against the decision to withhold her salary increment due on 1 June 1975. On 11 August 1976 a periodic report on the performance of the Applicant from 1 May 1974 to 31 December 1975 was issued. In that report she was rated as “a staff member who maintains a good standard of efficiency” and the first reporting officer commented:

“Since writing her last periodic report, Miss Noble was given numerous written and oral instructions to observe office hours and to arrive punctually in the morning. Subsequently, upon advice from the Medical Service that there was no medical grounds for her late arrival, she was instructed that failure to report on time would constitute defiance of official instructions. Nevertheless, her late arrival in the morning continues. As a result, the work of the Section has been considerably handicapped. The Programme Management Officer under whom she works directly has reported that her poor attendance in the morning and excessive absences on sick leave is detrimental to his own performance. It is regrettable that because of her poor attendance record her effectiveness as a staff member has been seriously jeopardized. It goes without saying that in a Section where one is trying to maintain some order with other staff members, this individual case has caused a problem of morale with the others.”

On 1 September 1977 the Joint Appeals Board submitted its report. Its conclusions and recommendations read as follows:

*“Conclusions and recommendations*

“83. The Board finds that the decisions to withhold the appellant’s salary increments which fell due on 1 June 1971 and 1 June 1972 were invalid from the point of view of procedure because the respondent failed to issue in connexion with those decisions the special reports required under paragraph 8 of Administrative Instruction ST/AI/115.

“84. The Board finds that, although no special report was issued in connexion with the decision to withhold the appellant’s salary increment which fell due on 1 June 1973, that decision was valid from the point of view of procedure since before it was taken the respondent had initiated proceedings to terminate the appellant’s permanent appointment for unsatisfactory services. From the point of view of substance, however, the majority of the Board finds that the decision was invalid because in the evaluation of the appellant’s performance and conduct on which the decision was based, the respondent failed to take into account a fact which was essential in the circumstances, namely, the appellant’s state of health.

“85. The Board finds that the appellant is precluded from contesting the decision to withhold the salary increment which fell due on 1 June 1975 since she failed to submit a rebuttal to the special report of 4 June 1975 containing the evaluation of her performance and conduct for the purpose of the withholding of the increment.

“86. The Board recommends that the Secretary-General should:

- “(i) rescind the decisions to withhold the appellant’s salary increments which fell due on 1 June 1971 and 1 June 1972;
- “(ii) place the appellant at the step she would have reached at her level if those salary increments had not been withheld; and
- “(iii) pay to the appellant the difference between the total amount of salary increments she would have received if she had reached that step without any withholding of increments and the total amount of increments which have actually been paid to her.

“87. In addition, the majority of the Board recommends that the Secretary-General should also rescind the decision to withhold the appellant’s salary increment which fell due on 1 June 1975 and that he should take that rescission into account in determining the step at which the appellant should be placed and the total amount of the sums to be paid to her.”

On 12 January 1978 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General, having re-examined her case in the light of the Board’s report, had decided to take the following actions:

“(a) to accept the Board’s conclusion . . . in paragraph 84 that the decision to withhold the increment due on 1 June 1973 was procedurally valid and its conclusion in paragraph 85 that you were precluded from contesting the withholding of the increment due on 1 June 1975.

“(b) to reject the Board’s conclusions in paragraph 83 that the withholding decisions for the increments due on 1 June 1971 and 1 June 1972 were invalid on procedural grounds and its conclusion, adopted by a majority of the Board in paragraph 84, that the withholding decision for the increment due on 1 June 1973 was invalid on substantive grounds, and

“(c) to reject the Board’s recommendations made in paragraphs 86 and 87

by a majority of the Board, for rescission of the decision to withhold increments due on 1 June 1971, 1 June 1972, and 1 June 1973 and concomitant readjustment of the salary step and payment of salary differentials.”

On 15 September 1978 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The Administration failed to abide by the rules it had itself set in Administrative Instruction ST/AI/115 and Personnel Directive PD/5/69.

2. With regard to the decision to withhold the salary increment due on 1 June 1973, the Joint Appeals Board’s statement that the termination proceedings had fulfilled the purpose of the special report required under Administrative Instruction ST/AI/115 is contradicted by its findings that the decisions to withhold the salary increments due on 1 June 1971 and 1 June 1972 had been vitiated by the lack of a special report. The prescribed formalities protect the rights of staff members to due process and their observance therefore cannot be waived by the Administration.

3. With regard to the decision to withhold the salary increment due on 1 June 1975, the Board’s finding that the Applicant was precluded from contesting it because she had failed to submit a rebuttal to the special report of 4 June 1975 disregards the fact that this special report was conditional on a medical explanation of the Applicant’s need to come late. For that reason the Applicant did not dispute the special report, and instead endeavoured to produce the medical explanation requested in its paragraph 3. Only when she was informed of the special report of 12 November 1975 did she present a memorandum dated 26 November 1975 in which she requested that the recommendation to withhold the salary increment in question be not entertained. Furthermore, it is stated in the Personnel Action form dated 6 October 1975 which reinstated the increment due on 1 June 1974 that the granting of the increment due on 1 June 1975 “is presently under review”. The final decision was communicated to the Applicant by letter dated 3 December 1975 which she contested by a letter dated 19 December 1975.

4. In taking the decision to withhold the Applicant’s salary increments on the basis of her unsatisfactory services, an essential fact, namely, health reasons, was not taken into account.

5. In evaluating the Applicant’s performance during the relevant periods, the opinion of other staff members who had been her immediate supervisors was not taken into account.

Whereas the Respondent’s principal contentions are:

1. For a staff member to be entitled to a salary increment, he must meet the requirements of having given satisfactory service as provided in Staff Rule 103.8 and in Annex I, paragraph 4, to the Staff Regulations. The Applicant did not give satisfactory service as defined by Staff Rule 103.8 (a) in any of the 12 months’ periods relevant to withholding the salary increments due on 1 June 1971, 1972, 1973 and 1975. It appears from Judgement No. 116 that minor procedural irregularities would not invalidate a decision otherwise correct on grounds of substance.

2. As far as the procedural aspects are concerned—and setting aside Personnel Directive PD/5/69 in view of its subsidiary nature—it is doubtful that the procedure indicated in Administrative Instruction ST/AI/115 is of such mandatory and essential

nature as to be indispensable to a valid decision to withhold a salary increment. The essential purpose of that procedure is to ensure that all relevant information is placed before the competent authority when a decision is being made. When this objective is assured, it is not necessarily a matter of absolute right on the staff member's part that all other aspects of the Administrative Instruction are literally complied with.

3. With regard to the withholding of the salary increments due on 1 June 1971 and 1 June 1972, the procedural defect—if any—was minor since in both instances the objective of a special report was accomplished through a regular periodic report.

4. With regard to the withholding of the salary increment due on 1 June 1973, the procedure followed provided safeguards for the rights and interests of the Applicant which were at least as substantial as those afforded by the procedure prescribed for special reports.

5. With regard to the withholding of the salary increment due on 1 June 1975, the decision was made in accordance with the procedure prescribed in Administrative Instruction ST/AI/115.

The Tribunal, having deliberated from 26 September to 11 October 1979, now pronounces the following judgement:

I. In requesting rescission of the decisions to withhold her salary increments due in 1971, 1972, 1973 and 1975, the Applicant correctly draws a distinction between the first three and the last of these years. Her contention in regard to the first three years is that the procedures laid down in Administrative Instruction ST/AI/115 and Personnel Directive PD/5/69, requiring a special report evaluating the staff members' service, and providing opportunity for rebuttal and for the investigation and appraisal of that rebuttal by the Respondent, were not followed.

II. Different circumstances apply to the 1975 decision which can conveniently be considered first. In this case the Applicant concedes that a special report was prepared but contends that her rebuttal of 26 November 1975 was ignored. By way of refutation the Respondent has pointed out that the Applicant received a copy of the special report of 4 June 1975 but failed to request a review within one month as required by Staff Rule 111.3 (a). The Respondent also rejects the Applicant's contention, offered in explanation of the delay in providing a rebuttal, that the reference in the special report to a medical explanation of the Applicant's lateness (an explanation, incidentally, which was not forthcoming) meant that the decision to withhold her salary increment was not definitive and therefore did not call for action on her part. The Tribunal finds that in 1975 the Respondent's actions in respect of withholding the Applicant's salary increment were procedurally correct and that the decision was valid.

III. As regards the decisions to withhold the Applicant's salary increments in 1971 and 1972 the facts are as follows. A periodic report covering the Applicant's service from 1 May 1969 until 8 March 1971 and describing her as "on the whole an unsatisfactory staff member" was signed by the first and second reporting officers on 25 June 1971 and by the Applicant on 29 July 1971. A memorandum of 29 June 1971 notified the Applicant of the withholding of her increment on account of unsatisfactory performance. No special report as required by ST/AI/115 and PD/5/69 was prepared. The Applicant provided a lengthy rebuttal of her periodic report for the period 1 May 1969 to 8 March 1971 on 29 July 1971, in which she made no reference to the withholding of her salary increment. This rebuttal was fully investigated and appraised in accordance with ST/AI/115, the view that the Applicant's performance was unsatisfactory was upheld and the Office of

Technical Co-operation recommended on 16 December 1971 that appropriate action should be taken "looking toward Miss Noble's termination of service under the terms of Staff Rule 109.3". No further consideration was given to the withholding of her salary increment for 1971 by either side and, when the increment was again withheld on 1 June 1972, the Applicant was not notified, nor did she protest when she found that no increment was forthcoming in her monthly pay packet. A further periodic report covering the period 9 March 1971 to 30 April 1972 again described the Applicant as an unsatisfactory staff member and was rebutted by the Applicant, again without mention of the withholding of her salary increment, on 11 December 1972.

IV. The Tribunal finds that, although the requirements of ST/AI/115 with respect to periodic reports were meticulously observed by the Respondent, those of paragraph 8 of ST/AI/115 and PD/5/69 regarding special reports in connexion with the withholding of salary increment were ignored. Moreover PD/5/69 specifically states that

"If a decision is taken to withhold the staff member's salary increment, the staff member must be notified and shown the report evaluating his service and must be given the opportunity to rebut the said report."

In the present case not only was no report prepared in either year; in 1972 the Applicant was not even notified. She was thus deprived in both years of the opportunity of rebutting a special report dealing specifically with those aspects of her unsatisfactory performance which in the Respondent's view justified the withholding of her salary increment.

V. The Tribunal recognizes that in both 1971 and 1972 the Applicant had, and used, every opportunity to rebut criticisms of her performance in the context of her periodic report. But, in the Tribunal's view, this provides no justification for the failure of the Respondent to comply with the relevant instructions and directives applicable when salary increments are withheld. The purpose of paragraph 8 of ST/AI/115 and PD/5/69 was to ensure that decisions affecting salary increments were given careful and discrete consideration both by the Administration and by the staff member concerned, and were not as it were lumped together with and lost sight of in the mechanics of dealing with periodic reports. For this reason the Tribunal cannot accept the Respondent's contention that

"it is . . . doubtful that the procedure indicated in paragraph 8 of ST/AI/115 is of such mandatory and essential nature as to be indispensable to a valid decision to withhold a salary increment."

In regard to PD/5/69, the Respondent maintains in effect that

(a) because staff members would normally be unaware of its contents it confers no "far-reaching" rights upon them; and that

(b) PD/5/69 does not add any substantive provision to those stated in ST/AI/115.

The Tribunal finds both these propositions unacceptable. It appears to the Tribunal that the sentence quoted from PD/5/69 in para. IV above substantively amplifies ST/AI/115, paragraph 8, specifically in terms of staff members' rights. As to (a) above the Tribunal cannot accept the proposition that Personnel Directives, because they are not widely circulated, fall into a different category from other instructions relating to staff and can be more loosely interpreted. As the Tribunal has frequently had occasion to point out, most recently in Judgement No. 237 (*Powell*):

"... The Secretary-General issues administrative orders and information cir-

culars which the Tribunal has held to have the same force and effect as the Staff Rules unless inconsistent with the Staff Regulations.’’

The Tribunal holds that Personnel Directive PD/5/69, which is based on an administrative instruction, must be regarded as falling within the scope of this ruling.

VI. The Respondent further contends that the procedural irregularities in connexion with the decisions to withhold the Applicant’s salary increments were minor and he relies on Judgement No. 116 (*Josephy*) to support the view that minor procedural irregularities would not invalidate a decision otherwise correct in substance. Even were the Tribunal to concede, which it does not, that the irregularities in the present case were minor, Judgement No. 116 in its view does not serve as a precedent. In that case, the Applicant relied not on ST/AI/115 but on chapter X of the Staff Regulations concerning disciplinary measures and the Tribunal was not called upon to consider whether the Respondent’s action contained procedural irregularities except in the context of that chapter.

VII. The Tribunal therefore finds that the decisions taken by the Respondent to withhold the Applicant’s salary increments in 1971 and 1972 were vitiated by procedural defects and that they should be rescinded.

VIII. As to the decision to withhold the Applicant’s salary increment in 1973, the Tribunal notes that the Applicant was informed on 16 May 1973 that action was being taken to terminate her appointment for unsatisfactory services under Staff Regulation 9.1 (a), and she was given the opportunity in accordance with the proper procedures to challenge this recommendation. In the Tribunal’s view, the notice of termination was the equivalent of the procedure contemplated in ST/AI/115 and PD/5/69. The fact that the termination proceedings against the Applicant did not result in a separation did not mean that her performance during 1972–1973, on which the withholding of the increment was based, was other than unsatisfactory. The Tribunal accordingly finds that the decision to withhold the Applicant’s salary increment for 1973 was valid and her request with respect to this year is rejected.

IX. For the foregoing reasons, the Tribunal:

- (i) Rejects the application in so far as it relates to the withholding of salary increments in 1973 and 1975;
- (ii) Rules that the decisions to withhold the Applicant’s salary increments in 1971 and 1972 be rescinded;
- (iii) Rules that the Respondent shall recalculate the salary due to the Applicant in such a way as to include in it a one-step increment from 1 June 1971 and another one-step increment from 1 June 1972 and shall pay to her the sums owing in consequence;
- (iv) Rejects all other pleas of the Applicant.

(Signatures)

Francis T. P. PLIMPTON  
*Vice-President, presiding*

Roger STEVENS  
*Member*

Endre USTOR  
Vice-President

New York, 11 October 1979

Jean HARDY  
Executive Secretary

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## Judgement No. 252

(Original: English)

**Case No. 235:**  
**Zañartu**

*Against:* **The United Nations Joint  
Staff Pension Board**

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*Request for the payment of an early retirement benefit, commuted into a lump sum, instead of a disability benefit.*

*Death of the Applicant.—Succession of his widow and sons to his rights.—The Tribunal is competent to pass judgement on the application.*

*Article 28 of the Regulations of the Joint Staff Pension Fund.—Applicant's memorandum to the Secretary of the Joint Staff Pension Board electing to receive an early retirement benefit, commuted into a lump sum.—Rejection of that election by the Secretary on the ground that the Applicant had become entitled to a disability benefit.—Advantage to the Applicant of the early retirement benefit, commuted, in view of his frail health.—Rule H.3 of the Administrative Rules of the Pension Fund.—Request of the United Nations Children's Fund (UNICEF) for determination of the Applicant's incapacity for the purpose of a disability benefit.—Decision of the United Nations Staff Pension Committee granting the disability benefit.—Voiding of the UNICEF request with the consent of the Applicant.—The Pension Committee's decision is rendered void ab initio.—Indication by the Applicant of his intention to retire early.—His reaction when informed of the granting of a disability benefit.—The Tribunal orders the Respondent to give effect to the election by the Applicant to receive an early retirement benefit and to commute it into a lump sum.—Request for interest denied.*

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### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS.

Composed of Madame Paul Bastid, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza;

Whereas at the request of José I. Zañartu, 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 by thirty days the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 January 1979, the Applicant filed an application in which he requested that the Tribunal:

“A. Order the United Nations Joint Staff Pension Fund to allow the Applicant to exercise his right to elect an early retirement benefit under the provisions of article