

Endre USTOR
Vice-President

Jean HARDY
Executive Secretary

Samar SEN
Member
Geneva, 25 April 1980

Judgement No. 257

(Original: English)

Case No. 244:
Rosbasch

Against: The Secretary-General
of the United Nations

Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.

Request for oral proceedings.—Request rejected in view of the completeness of the documentation and argumentation before the Tribunal.—Proceedings which culminated in the termination of the Applicant's appointment.—Consideration of the case by the Joint Review Body.—Applicant's contention that the Administration had created impossible working conditions for her.—Consideration of the matter by the Joint Review Body.—Contention rejected.—Applicant's contention based on the fact that she had been awarded her annual within-grade increments.—It is UNDP practice to grant such increments automatically to General Service staff serving at Headquarters.—The reasons which the Applicant had for knowing that her service was in fact considered unsatisfactory.—Applicant's contention concerning an "anonymous petition" against her.—The contention is irrelevant.—Applicant's contention that the Joint Review Body's decision was not duly or properly exercised.—Contention rejected.—Other contentions relating to the report of the Joint Review Body are rejected.—Conclusion of the Joint Appeals Board buttressing that of the Tribunal.—Discretionary authority of the Secretary-General to evaluate the performance of a staff member.—The Applicant was accorded due process.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Mr. Samar Sen;

Whereas, on 11 January 1979, Susan Rosbasch, a former staff member of the United Nations Development Programme, hereinafter called UNDP, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 11 September 1979;

Whereas the pleas of the application read in part:

“As this matter has caused me much hardship, both financially and emotionally, and in seeking employment, I see fit to seek financial settlement covering the period of assignment within the Project Services Section of the United Nations Development Programme up to the time of the decision to terminate my contract.

“I hereby submit my plea to the Administrative Tribunal that I be considered for reinstatement as a staff member.”;

Whereas the Respondent filed his answer on 8 November 1979;

Whereas, on 18 January 1980, the Applicant filed written observations the conclusions of which read as follows:

“Relief claimed

“43. The [Applicant] prays that the Administrative Tribunal be pleased to find:

“That the decision of the Joint Review Body

“(1) is in breach of justice, and/or equity, and/or due process; and/or

“(2) it is in breach of administrative procedures and staff rules; and/or

“(3) it is based on errors of fact and law; and/or

“(4) it is not a due or proper recommendation as required of it under its terms and conditions of reference which in fact or in law amounts to a failure to make a recommendation as required of it.

“WHEREFORE, the [Applicant] prays that the Tribunal finds further that the decision of the JAB [Joint Appeals Board] cannot be sustained as the decision of the JRB [Joint Review Body] was vitiated by irregularity;

“WHEREFORE, the [Applicant] prays further that the Tribunal, in accepting and acting on these recommendations, finds that the Respondent's decision is invalid and cannot be sustained;

“WHEREFORE, the [Applicant] further prays that the Tribunal

“(a) rescind the decision to terminate the permanent appointment of the [Applicant] for unsatisfactory services, and

“(b) to order the reinstatement of the [Applicant], and

“(c) to award the [Applicant] compensation for the loss of emoluments between the termination of her services and the date of her reinstatement, and

“(d) for such other and further relief that may seem appropriate.”

Whereas the Applicant filed a request for oral proceedings on 7 April 1980;

Whereas the facts in the case are as follows:

The Applicant, after serving for three months with the United Nations, joined UNDP on 23 July 1971 as a Clerk/Typist at the G-2 level in the Regional Bureau for Africa under a fixed-term appointment for three months. On 23 October 1971 her appointment was extended up to 31 December 1971 and she was reassigned to the Office of the Administrator and Deputy Administrator, United Nations Volunteer Section. On 1 January 1972 she received a probationary appointment. From June 1972, when the United Nations Volunteer Section was transferred to Geneva, through March 1973 the Applicant served for short periods of varying duration in the Division of Finance, the Division of External

Relations and the Division of Personnel. On 1 January 1973 she received an automatic promotion to the G-3 level. On 1 April 1973 she was granted a permanent appointment and assigned to the Project Services Section in the Division of General Services.

In a periodic report covering the period from October 1971 to June 1972, the Applicant was rated "an efficient staff member giving complete satisfaction". In a performance review report covering the period from 1973 to 1975, Mr. S. Kar, Chief of the Project Services Section, rated her as "among those whose performance results usually show achievement of planned objectives". On 7 September 1976 the Applicant wrote to the Director of the Division of Personnel alleging dishonesty in the leave record keeping in her Section. An investigation into the Applicant's allegations was conducted by the Chief of the Division of General Services and, on 28 September 1976, the Director of the Division of Personnel advised the Applicant that the leave record keeping had been found to be correct and that she should refrain from making unsubstantiated statements in the future. In October 1976 the Applicant was assigned for three months to the Division of External Relations and, on 30 December 1976, the External Relations Officer for whom she had worked stated that she had been "conscientious, reliable and hard-working" and had "carried out the duties assigned to her with accuracy and promptitude". On 30 March, 27 April and 4 May 1977 the Applicant asked to be transferred out of her Section. On 6 May 1977 she was temporarily assigned to the Directorate of the Division of General Services under the direct supervision of the Chief of that Division. On 5 July 1977 she was assigned to the Maintenance and Operations Section of the Division of General Services under the direct supervision of the Chief of that Section. On 25 July 1977 the Division of Personnel requested Mr. Kar, who had retired from the United Nations on 30 June 1977, to provide a written evaluation of the Applicant's performance for the period from November 1975 through June 1977. Effective 3 August 1977 the Applicant was asked by the Chief of the Division of General Services not to report to duty "following a sudden and severe outburst which she [had] directed at her supervisor on 2 August 1977" and she was accordingly placed on special leave with full pay under Staff Rule 105.2 (a). On 23 August 1977 the Director of the Division of Personnel submitted to the Vice-Chairman of the Appointment and Promotion Panel, for consideration by the Joint Review Body in accordance with the procedure set forth in Administrative Instruction ST/AI/222, a proposal for the termination of the Applicant's permanent appointment under Staff Regulation 9.1 (a) for unsatisfactory services. The proposal outlined her service record, and recited in detail, going back to 1975, episodes of discourtesy, lack of co-operation, tardiness, insubordination, unsubstantiated accusation of dishonesty, refusal to follow instructions, culminating on 2 August 1977 when, on being reprimanded by her superior for being late in reporting from lunch, she refused to do some requested typing, continued to eat lunch at her desk and then walked into his room, threw the telephone in his direction onto the floor and swept the papers off his desk. A copy of the proposal was sent to the Applicant on the same day under cover of a letter reading in part:

"In accordance with paragraph 7 of Administrative Circular ST/AI/222, this is to advise you that you may comment on the proposal or on any matter relating to your case. Furthermore, you may request the Review Group to obtain from specified staff members information which you consider to be relevant to your case."

On 25 August 1977 Mr. Kar provided the requested evaluation report in which he stated, *inter alia*:

“As regards the performance review report on Miss Rosbasch, I knew that it was due, but could not complete it for the simple reason that Miss Rosbasch never gave it to me. I did not dare ask it from her before my separation because in view of her prevailing mood at that time, this could have provoked some strong reaction from her. I did not want to make an already bad situation worse.

“Now for my opinion on her performance. I regret to say that since my last report in November 1975, the situation had deteriorated considerably. In that report, though I had to point out her inherent deficiencies, I had tried to highlight the positive aspects of her performance, hoping thereby to have still better results in the future. Unfortunately, this did not happen, as subsequent events, well-known to Personnel, show. Her performance both in respect of work done and personal relationship with others took a very decided downward trend. Her typing work deteriorated and her willingness to work hard also changed for the worse. She still did not take any interest in the substantive work of the office and could not remember an incoming or outgoing letter.

“The worst deterioration, however, took place in her personal relationship and attitude towards others. She seemed to have an abiding grievance against all and sundry in the office, mainly because she thought that she had been unjustly deprived of her promotion. All my efforts to instil in her the idea that a promotion had to be earned and if she was really interested in promotion, she must work for it and improve her performance and attitude, were of no avail. In the end the situation became so bad and she had become so much [more] of a hindrance than help that I had to ask her to be taken away from the Section, even though I knew I would not get a replacement. We decided that it would be better to do our own typing work rather than have her disrupting the work and mental equilibrium.

“I am sorry that I have to give such a negative report about a staff member who worked for me for nearly 2½ years. This is the first time in my whole working career that I have to do it.”

On 30 August 1977 the Applicant, to whom Mr. Kar's report had been referred, submitted a letter in which she stated that his comments were “totally untrue”. The Joint Review Body, which had been convened on 23 August 1977, submitted its report to the Administrator of UNDP on 13 October 1977. Its findings, recommendations and conclusions read as follows:

“Findings of the Joint Review Body

“18. After reviewing again the evidence and the testimony of witnesses, including that of Miss Rosbasch herself, the Joint Review Body, by a majority of four members to one, agreed with sincere regret that the service of the staff member in question should be terminated from UNDP. It did so with a number of misgivings and considerable compassion for the staff member herself, although the majority members of the Joint Review Body believed that her future at UNDP would be greatly impaired and obstructed by even greater frustration if they had decided otherwise. As it stands, the majority members find no fundamental fault in the conduct of Miss Rosbasch's recent supervisors, of such a nature which could provoke or justify her unacceptable behaviour. But, the Joint Review Body feels compelled to point to the insidious influence of ‘corridor gossip’ and its detrimental effect on the prospects for appropriate placement.

“19. The Joint Review Body feels constrained to call to the Administrator’s attention the all-too-prevalent supervisory practice of giving favourable reviews to unsatisfactory staff members in the hope of passing them off on other sections or divisions within UNDP. The practice was admitted to by those in a position to know in testimony before the Joint Review Body. It is one to be condemned if the efficiency and effectiveness of UNDP as a development institution are to be maintained.

“20. In the end, it was the principle of the efficiency and effectiveness of UNDP as an operational organization which convinced the majority members that the extremity of termination should be upheld in this case. The clearly insubordinate attitude of the staff member, together with her disruptive behaviour as verified, were viewed as detrimental to the goals and efforts of the organization. The majority members believe that such efforts demand exceptional co-operation, sacrifice and integrity on the part of all staff members and that, if occasional lapses are to be humanely forgiven, chronic disturbances are to be roundly condemned.

“21. Admittedly, the attitude of the staff member in question was exacerbated by the inability of the Division of Personnel, despite its extraordinary efforts, to place Miss Rosbasch in a suitable working environment. The staff member’s chief complaints were that she had not obtained a promotion despite more than six years of service in grade and that she had not been placed in a job which afforded personal satisfaction. None the less, the record shows that Miss Rosbasch failed even when given the opportunity to apply herself and her technical skills (with which, incidentally, the Joint Review Body could find no appreciable fault) to the various opportunities provided her. Her last post—a grade above her current level—would have provided the opportunity both of promotion and of improved chances for better placement within the organization, had the staff member fully applied her abilities. Instead, her unpredictable, disruptive and insubordinate behaviour persisted, and may even be said to have increased. However, the majority members of the Joint Review Body feel that responsible officers in the UNDP Division of Personnel have done their best to assist, advise and place Miss Rosbasch in a post compatible with her expressed aspirations.

“Recommendations and conclusions

“22. The majority members of the Joint Review Body recommend to the Administrator of UNDP that the services of Miss Susan Rosbasch be terminated for reasons stated above.

“23. In conclusion, the Joint Review Body looks to the Administrator and to UNDP’s Division of Personnel to help alleviate its own sense of distress in being involved in such proceedings for the first time in UNDP’s history. It urges the Administrator to assure in the future that:

“(a) supervisors be properly trained so that they can carry out their responsibilities reasonably and honestly so as to be able to assess the performance of staff members under their supervision and so that any practice of ‘up-grading and out’ can be eliminated; and

“(b) so-called ‘floating’ staff members who are not immediately placeable be given urgent and concerted attention by the Division of Personnel lest their morale become impaired.”

The dissenting member of the Joint Review Body, while agreeing with the findings of

the majority, disagreed with the recommendation to terminate the Applicant's appointment and proposed that the Applicant be put on probation for a three-month period. In a letter of 24 October 1977 the Director of the Division of Personnel advised the Applicant that pursuant to the recommendation of the Joint Review Body, the Administrator had decided to terminate her appointment effective 31 October 1977 for unsatisfactory services in accordance with the provisions of Staff Regulation 9.1 (a); a copy of the Joint Review Body's report was attached to the letter. On 29 November 1977 the Applicant requested the Secretary-General to review the termination decision. On 19 December 1977 she was advised that the Secretary-General had decided to maintain the decision and on 19 January 1978 she lodged an appeal with the Joint Appeals Board. The Board submitted its report on 11 August 1978. Its conclusions and recommendation read as follows:

"Conclusions and recommendation

"49. The Board finds that the decision to terminate the appellant's permanent appointment for unsatisfactory services was not vitiated by any irregularity. Accordingly, it recommends that the decision be maintained."

On 13 October 1978 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General had accepted the Board's recommendation that the decision to terminate her appointment be maintained. On 11 January 1979 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Administration, by its acts or omissions, created impossible working conditions for the Applicant. Whether intentional or otherwise the effect of such acts or omissions individually and collectively caused grave prejudice which led to her dismissal.
2. The decision to terminate the Applicant's services is invalid and cannot be sustained as it was based on the recommendation of the Joint Review Body whose decision itself was not duly or properly exercised.
3. The Joint Review Body failed to consider the burden of proof incumbent on the Administration to establish the charges of misconduct and poor performance. The Administration failed to discharge the burden of proof incumbent on it to justify termination.
4. The Joint Review Body acted *ultra vires* in purporting to revise performance reports, based vital findings on administrative practices admittedly in violation of Staff Rules or due process or on inadmissible evidentiary material, and arrived at findings based on unreasonable or irrelevant considerations.

Whereas the Respondent's principal contentions are:

1. The Applicant's plea for financial settlement is not receivable under article 7, paragraph 1, of the Statute of the Tribunal.
2. As to the Applicant's plea for rescission of the decision to terminate her contract and for subsequent reinstatement, the Secretary-General's decision was a proper exercise of authority under Staff Regulation 9.1 (a) and was taken on the recommendation of the Joint Review Body in accordance with the procedures established in Administrative Instruction ST/AI/222:

(a) The conclusions of the Joint Review Body and the decision of the Secretary-General to terminate the Applicant's appointment were not based on inadequate or erroneous information;

(b) The Applicant's procedural rights were respected during the proceedings leading to the Secretary-General's decision as maintained.

The Tribunal, having deliberated from 22 April to 30 April 1980, now pronounces the following judgement:

I. By letter received on 7 April 1980, the Applicant's counsel requested oral proceedings before the Tribunal. In view of the completeness of both the documentation and the argumentation before the Tribunal, such proceedings would serve no purpose. The request is therefore rejected.

II. The Applicant's appointment as a staff member of UNDP was terminated pursuant to the provisions of Staff Regulation 9.1 (a), which reads in part as follows:

"The Secretary-General may terminate the appointment of a staff member . . . if the services of the individual concerned prove unsatisfactory . . ."

The proceedings which culminated in the termination of the Applicant's appointment by the Secretary-General originated on 23 August 1977 in a memorandum from the Director of the UNDP Division of Personnel to the Vice-Chairman of the Appointment and Promotion Panel proposing such termination and listing detailed complaints and incidents beginning in August 1975. In accordance with the procedure set forth in Administrative Instruction ST/AI/222, the matter was referred to the Joint Review Body, composed of five staff members, for review and recommendation to the Administrator.

As stated above, the Applicant was furnished with a copy of the memorandum and was advised that she might comment on the proposal or on any matter relating to her case and request the Joint Review Body to obtain from specified staff members information that she considered relevant.

III. At the request of the members of the Joint Review Body, its Chairman had a preliminary meeting with the Director of the United Nations Medical Service, who had had two separate visits from the Applicant, to determine whether any medical factors should be taken into consideration in the Joint Review Body's decision. The Director informed the Chairman that in his judgement no such factors could be entertained. Accordingly, the Joint Review Body ruled out of its consideration in the Applicant's case any extended leave, suspension or agreed separation for medical reasons as an alternative to termination.

The Applicant contends that the Joint Review Body erred in asking its Chairman to consult with the Director of the United Nations Medical Service before investigating the allegations against her. The Tribunal finds that the consultation with the Medical Director was entirely appropriate, and agrees with the following statement by the Joint Appeals Board:

"The Board could not agree with the appellant that the Joint Review Body had exceeded its terms of reference by asking the Medical Director at the start of its proceedings whether any medical factors should be taken into consideration. It appeared to the Board that the information contained in the appellant's file might have led the Joint Review Body to wonder whether the appellant's performance could have been affected by medical factors. In those circumstances the Joint Review Body had been not only entitled but even obliged to seek the expert opinion of the Medical Director before it took a position on the proposal for the termination of the appellant's appointment for unsatisfactory services."

IV. The Joint Review Body's report shows that it held eight separate meetings and

heard seventeen witnesses, including the Applicant's immediate supervisors, her working colleagues and friends, the Personnel Officer with whom she dealt in her UNDP service, the United Nations Staff Counsellor and other appropriate staff involved in the case, and that it interviewed her for a period of five hours for the purpose of reviewing carefully the allegations levelled against her in the memorandum of 23 August 1977 and of ascertaining any mitigating facts or circumstances. It received as documentation the memorandum of 23 August 1977 together with 26 annexes consisting mainly of letters or memoranda by, to or about the Applicant on file with the Division of Personnel.

The report summarizes the allegations contained in the memorandum of 23 August 1977 as follows:

"Insubordination. It was alleged that the staff member had repeatedly behaved in an insubordinate manner toward her supervisors, ignoring or defying their instructions, engaging in name-calling and the exchange of vituperative memoranda, tearing up reprimanding memoranda and placing them in the "in trays" of supervisors, surreptitiously tape-recording a conference with her supervisor concerning her conduct, creating emotional scenes and in other ways demonstrating her refusal to accept reasonable supervision. Such behaviour culminated, the memorandum alleged, in an emotional outburst by the staff member in which, unprovoked, she threw her supervisor's telephone on the floor and swept all papers from his desk after being questioned about tardiness after a lunch period.

"Disruptive Behaviour. It was alleged that in her relations with colleagues the staff member displayed an unco-operative, abrasive and disruptive attitude, engaging in quarrels with her colleagues, threatening one of them with physical injury and, on at least one occasion, levelling grave, unsubstantiated charges of dishonesty and abuse of leave records against fellow staff members in her section. In these respects, the memorandum charged, the working efficiency of Miss Rosbasch's section was repeatedly impaired, to the overall detriment of UNDP's functions.

"Chronic Tardiness. It was alleged that, despite repeated warnings by her supervisors and by the Division of Personnel, the staff member persisted in a record of chronic tardiness, both with respect to arrival for work in the mornings and with regard to excessive lunch periods. The last such warning, the memorandum stated, resulted in the staff member's unaccountable outburst in throwing the telephone.

"Incompetence. The Joint Review Body noted that as part of the documentation submitted in the case under consideration, various allegations of incompetence were included pertaining to the staff member's technical skills, e.g., her inability to type manuscripts reasonably free of error and otherwise to satisfactorily perform duties expected of a person at her grade and level. Although incompetence in terms of technical skills was not a specific allegation in the memorandum's overall conclusions, the Joint Review Body nonetheless sought witnesses either to verify or to deny such specific allegations."

The report contains in some detail a summary of the testimony of the witnesses, including that of several who testified in favour of the Applicant, and states as follows:

"On the whole, the Joint Review Body found that witnesses corroborated the allegations contained in the memorandum of 3 August 1977. Several offered additional allegations of bizarre or unco-operative behaviour by the staff member. In addition, a number of witnesses commented negatively upon the emotional fitness

and well-being of the staff member, although the Joint Review Body could not consider such comments within the purview of its decision.”

The report concludes with the findings, recommendations and conclusions set forth in the first part of the Judgement.

The dissenting member of the Joint Review Body associated herself with the Body’s understanding of the allegations of the Division of Personnel and with the Body’s findings based on the testimony heard, but dissociated herself from its principal recommendation, that of terminating the Applicant’s services, and proposed that the Applicant be put on probation for a three-month period.

The report was forwarded to the Administrator of UNDP, who pursuant to the recommendation of the Joint Review Body terminated the Applicant’s appointment.

In response to the Applicant’s request for a review by the Secretary-General of the Administrator’s decision, yet another review of the case was conducted on behalf of the Secretary-General, confirming that the Applicant had been given due process and that the findings of the Joint Review Body fully justified the decision of termination. The Secretary-General therefore decided to maintain the decision.

V. The Applicant contends that the Administration, by its acts or omissions, created impossible working conditions for the Applicant and that the effect of such acts or omissions individually and collectively caused great prejudice against the Applicant.

The Joint Review Body itself called attention to the problem in its report, which reads in part:

“Admittedly, the attitude of the staff member in question was exacerbated by the inability of the Division of Personnel, despite its extraordinary efforts, to place Miss Rosbasch in a suitable working environment. The staff member’s chief complaints were that she had not obtained a promotion despite more than six years of service in grade and that she had not been placed in a job which afforded personal satisfaction. Nonetheless, the record shows that Miss Rosbasch failed even when given the opportunity to apply herself and her technical skills (with which, incidentally, the Joint Review Body could find no appreciable fault) to the various opportunities provided her. Her last post—a grade above her current level—would have provided the opportunity both of promotion and of improved chances for better placement within the organization, had the staff member fully applied her abilities. Instead, her unpredictable, disruptive and insubordinate behaviour persisted, and may even be said to have increased. However, the majority members of the Joint Review Body feel that responsible officers in the UNDP Division of Personnel have done their best to assist, advise and place Miss Rosbasch in a post compatible with her expressed aspirations.”

An examination of the Joint Review Body’s report indicates that its decision and recommendation were reached after careful consideration of all the Applicant’s contentions and scrupulous attention to due process, and in full accordance with Administrative Instruction ST/AI/222. The Joint Review Body fully recognized its responsibilities, as shown in its report which reads in part:

“At its first meeting on 24 August, the members of the Joint Review Body reviewed the documentation and agreed that their primary responsibility in the case was to assure that the rights of Miss Rosbasch as a permanent staff member were

being protected in all respects and that the evidence marshalled by the Division of Personnel was not only accurate as to the facts but also of such a cumulative nature as to warrant the extreme measure of termination of the staff member's contract. The members of the Joint Review Body were unanimous in the view that termination proceedings against any permanent staff member were among the most serious personnel actions to be taken by any organization and determined to weigh their responsibilities accordingly."

There is no evidence whatsoever to show that those responsibilities were not fully carried out.

VI. The Applicant attempts to make much of the fact that she had been awarded her annual within-grade increments regularly on the due dates, the last of which had been April 1977. According to Staff Rule 103.8 (a), satisfactory service for the purpose of awarding a salary increment is defined as "satisfactory performance and conduct of staff members in their assignments as evaluated by their supervisors". But, according to information provided to the Joint Appeals Board by the representative of the Secretary-General it was in fact the practice of UNDP to grant such increments automatically to its General Service staff serving at Headquarters, without regard to whether the staff member's service had actually been evaluated as satisfactory (UNDP required such evaluations in the case of its professional staff and its locally recruited General Service staff serving away from Headquarters). The UNDP practice might have led the Applicant to believe that her services were "satisfactory"; however, her behaviour and conduct had been consistently criticized in writing and orally by her superiors, and she could have been under no illusion as to their attitude.

The Tribunal joins with the Joint Appeals Board in regretting that the UNDP had disregarded the Staff Rule governing the award of salary increments, not only because of the desirability of such evaluations for the efficiency of the Organization, but also because the withholding of a salary increment would have served as an explicit warning to the Applicant that her permanent appointment was in jeopardy. However, as stated above, the Applicant had ample reasons to know that her service was in fact regarded as unsatisfactory.

VII. The Applicant also attempts to make much of an "anonymous petition" against her placed in her official status file. In point of fact a UNICEF staff member wrote a signed letter to the Applicant's supervisor on 12 September 1975, enclosing a note from "several concerned UNICEF staff members" complaining that the Applicant had been using the facilities of the UNICEF lounge and using them in an improper and messy way. The letter continued in part:

"I hate to bother you with such a petty matter but our staff 'are up in arms' because when they want to go to our very small lounge during lunch time, the place is nearly full of UNDP 'gals' and hardly any place is left for them. This complaint on Miss Rosbasch is a new one to me and I wonder whether a subtle way could be found to bring this to her attention."

The UNICEF letter and the note were referred to the Applicant for reply; her reply was filed with the letter and note; the matter was never mentioned by the Joint Review Body and obviously played no part whatsoever in its decision or recommendation.

The Applicant is mistaken in asserting that the note in question was the first adverse report ever recorded against her; her file contains a detailed report by one of her supervisors

dated 29 August 1975 as to her irritating behaviour, failure to follow instructions, annoying conduct as regards her colleagues, lateness of reporting in the morning, etc.

VIII. The Tribunal finds no merit in the Applicant's arguments in support of her contention that the Joint Review Body's decision was not "duly or properly exercised". The report shows that due process was scrupulously observed and that the charges against the Applicant's conduct were properly assessed. Apart from the Administration's awarding salary increments without requiring the evaluation provided for in Staff Rule 103.8 (a), discussed in paragraph VI above, there was no evidence at all of any "administration's breaches of staff rules, administrative instructions, personnel directives and procedural errors" or of any "administration's lapses and shortcomings". Nor was the Administration subject to any estoppel by reason of such award of salary increments without evaluation.

The Tribunal concludes that the Joint Review Body's decision was duly and properly reached.

IX. The Applicant next contends that in the proceedings before the Joint Review Body the Administration failed to discharge the burden of proof incumbent on it to establish the charges of misconduct and poor performance and to justify termination. On the contrary, the Joint Review Body's report, based on its eight meetings and hearing of 17 witnesses, came to the conclusion set forth in paragraph IV above that the witnesses had corroborated such charges.

X. Finally the Applicant contends that the Joint Review Body acted *ultra vires* in purporting to revise performance reports, based vital findings on administrative practices admittedly in violation of staff rules or due process or on inadmissible evidentiary material, and arrived at findings based on unreasonable or irrelevant considerations.

The contention that the Joint Review Body purported "to revise performance reports" is without foundation. Earlier reports, from October 1971 to June 1972 and from 1973 to 1975, which had been comparatively favourable to the Applicant, were carefully considered. As regards the period since 1975 and the very negative special report by Mr. Kar, her former supervisor, dated 25 August 1977, the Applicant was given a full opportunity to reply to the report, and her reply was placed in her file together with the special report. The conclusions in the report were amply supported by the documentary evidence before the Joint Review Body and the testimony of the witnesses appearing before it.

As regards "administrative practices . . . in violation of staff rules" and "inadmissible evidentiary material", the Tribunal refers to its discussion in paragraph VI above as to the Administration's award of salary increments without evaluation and in paragraph VII above as to the "anonymous petition".

As regards "findings . . . based on unreasonable or irrelevant considerations" the Applicant offers no specification.

The Tribunal concludes that the Joint Review Body's report was proper and that the Applicant's contentions with respect to it are without merit.

XI. The Tribunal's conclusion is buttressed by the report of the Joint Appeals Board dated 11 August 1978. After stating that the review of the Applicant's case by the Joint Review Body, established according to the provisions of Administrative Instruction ST/AI/222, represented in principle the complete, fair and reasonable procedure which must be carried out prior to the termination of a permanent appointment, the Joint Appeals Board pointed out that the Tribunal had ruled that:

“the termination decision might be vitiated if it was taken upon recommendations based on inadequate or erroneous information, and that to be valid the procedure followed must permit adequate consideration of the evaluations concerning the work of the staff member concerned, and ‘a thorough, searching and balanced review of the latter’s standards’ ”.

The Board said that it had carefully examined the record of the Applicant’s six years of service with UNDP, and noted that the Administration had scrupulously respected the Applicant’s right to reply to adverse statements placed on her file and that the documents put before the Joint Review Body had included her comments on the complaints made against her. The Board noted that the Applicant had been invited to comment on the proposal for termination or on any matter relating to her case and had been offered an opportunity to request the Joint Review Body to obtain from specified staff members information which she considered relevant. The Board concluded that the Joint Review Body had had access to a complete and accurate record of the Applicant’s service with UNDP and that its report showed clearly that the review of the Applicant’s case met the requirement of being “thorough, searching and balanced”. The Board thereupon held that the termination decision was not vitiated by any irregularity and should stand.

XII. The Tribunal has repeatedly held that it cannot substitute its judgement for that of the Secretary-General concerning the evaluation of the performance of a staff member and that this matter lies within the Secretary-General’s discretionary authority. As to the Applicant’s complaints about procedural irregularities, the Tribunal finds that the Applicant was accorded due process and consequently that her complaints are unfounded. Accordingly the decision to terminate the Applicant’s appointment is sustained.

XIII. The application is rejected.

(Signatures)

Francis T. P. PLIMPTON
Vice-President, presiding

Samar SEN
Member

Endre USTOR
Vice-President

Jean HARDY
Executive Secretary

Geneva, 30 April 1980
