

X. For the foregoing reasons, the application is rejected.

XI. The proceedings before the Joint Appeals Board in this case lasted from 13 August 1974 to 19 March 1979. The Tribunal feels constrained to observe that such protracted procedure is not consistent with Staff Rule 111.3 (h) and is hardly conducive to the proper administration of justice.

(Signatures)

Endre USTOR  
Vice-President, presiding

Samar SEN  
Member

Francisco A. FORTEZA  
Member

Jean HARDY  
Executive Secretary

New York, 11 November 1980

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## Judgement No. 262

(Original: French)

Case No. 248:  
Thorgevsky

Against: The Secretary-General  
of the United Nations

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*Request of a former staff member promoted from the General Service to the Professional category, seeking to ensure that her promotion does not have the effect of reducing her pension entitlement.*

*The Tribunal notes that during the last five years of the Applicant's participation in the Pension Fund, her pensionable remuneration was lower than it would have been had she not been promoted.—Inapplicability of Staff Rules 103.9 and 103.16(c).—Applicant's contention based on Judgement No. 257 of the ILO Administrative Tribunal.—Notwithstanding the desire to strengthen the common system, solutions differ from one Organization to another.—Grounds of the aforementioned judgement No. 257.—Since that judgement was expressly based on a text which is not included in the provisions which the Tribunal must apply, the latter cannot apply the solution provided in that judgement for the benefit of the Applicant.*

*Request for compensation for procedural delays.—Since the Applicant has sustained no injury as a result of the procedure followed, the request is rejected.*

*Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Francisco A. Forteza;

Whereas on 11 February 1980, Wanda Thorgevsky, a former staff member of the United Nations, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after effecting the necessary corrections, again filed the application on 12 March 1980;

Whereas the pleas of the application are as follows:

“The Applicant requests the Administrative Tribunal to ask the Secretary-General of the United Nations to take the measures necessary to ensure that the Applicant receives a pension equal to what it would have been if there had been no promotion to P-1, if the Applicant had retired on 30 April 1978 at the G-6, step XI level.

“This decision would be in accordance with the judicial precedent established in the matter by Judgement No. 257 [of the ILO Administrative Tribunal] . . .

“Moreover, considering that justice was requested over four years ago and that the Office of Personnel Services at United Nations Headquarters in New York, in a memorandum dated 9 April 1979, . . . expressed the fear that it might ultimately have to pay substantial damages, the Applicant requests the Administrative Tribunal to award her compensation in the amount of six thousand dollars because of excessive procedural delays.”

Whereas the Respondent filed his answer on 28 April 1980;

Whereas on 30 October 1980, the Respondent provided, at the request of the Tribunal, additional information about the action taken by the Director-General of FAO to implement paragraph 2 of the operative part of Judgement No. 257 of the ILO Administrative Tribunal and the role played by the interorganization co-ordination organs in the adoption of United Nations Staff Rule 103.16 (c) and provisions 302.3103 and 302.442 of the FAO Staff Manual;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Office at Geneva in February 1953 with a temporary appointment as a typist at the G-2 level in the Languages Division. In 1955 she was granted a permanent appointment. In 1956, she was transferred to the Library and promoted to G-3. She was promoted to G-4 in 1957, G-5 in 1962 and G-6 in 1967. On 1 April 1971 she was promoted to the P-1 level as Assistant Librarian. Having reached normal retirement age on 2 October 1977, her appointment was extended until 30 April 1978, when she retired.

As early as 17 January 1975, the Applicant, who had decided to take early retirement and had even submitted her resignation to that end, complained in a letter to the Chief of the Personnel Administration Section in the Geneva Office that her pension would be much smaller than it would have been had she not been promoted to the Professional category; in particular she wrote:

“ . . .

“An informal consultation in the Financial Service has shown that my ‘*promotion*’ to P-1 on 1 April 1971 reduced my pensionable remuneration very substantially and that if I had remained a ‘G’ I would receive about 400 F more each month. I also learned that the Administration, aware that promotion was proving prejudicial although it should, by definition, improve the position of the person concerned, has decided that henceforth those promoted from ‘G’ to ‘P’ will retain all the rights acquired under the ‘G’ system until their progress in the ‘P’ category enables them to regain their previous level; thereafter they will continue under the ‘P’ system (from P-3, step 6).

"It would be absolutely unjust if I were to be the victim of discrimination and be refused the benefit of the new rule. For out of 22 years of service with the United Nations, I was 'G' for 19 years and have been a 'P' for only 3 years. Yet it is precisely those three years—the most unfavourable for me—that you will use as a basis for calculating my pension!

" . . .

"In fact, if Personnel Administration had informed me of the disastrous consequences which a promotion to P-1 at the end of my career would have for me, I would certainly have refused it. But *I was told nothing* and I shall now lose about 5,000 Fr. a year until the end of my life as a result of my 'promotion'.

"In conclusion, I reiterate my request to benefit from the pension rights acquired under the 'G' system as provided by the new rule. If that is impossible, I withdraw my resignation and request my immediate reclassification at G-7, at the level closest to my current salary.

" . . . "

On 27 January 1975, the Applicant, who had withdrawn her resignation, reiterated her complaints in a letter addressed to the Director of the Administrative and Financial Services of the Geneva Office. On 18 July 1975, the Applicant once again wrote to the Chief of the Personnel Administration Section invoking Judgement No. 257 of the ILO Administrative Tribunal in the case of Grafström against FAO. On 25 September 1975, the Chief of the Personnel Administration Section replied that, according to an opinion given by the Office of Legal Affairs at Headquarters, Judgement No. 257 of the ILO Administrative Tribunal had no bearing on her situation because it was based on rules peculiar to FAO. On 25 October 1975, the Applicant wrote to the Secretary-General, requesting him to review his decision. On 12 January 1976, the Assistant Secretary-General for Personnel Services replied stating that after reviewing her case, the Secretary-General had decided to maintain the decision for the following reasons:

" . . .

"The difference between your pensionable remuneration at your present level at this time and the pensionable remuneration which would have accrued to you had you not been promoted to the Professional category was due not to the promotion itself but rather to upward revisions in the salary scales of the General Service category subsequent to your promotion. While the Organization has assumed certain obligations in Administrative Instruction ST/AI/209 towards maintaining the level of pensionable remunerations upon promotion from the General Service category to the Professional category, those obligations relate only to the amount of pensionable remuneration at the time of promotion. It would not be reasonable for the Organization to assume an indefinite obligation to staff members promoted from the General Service category to match whatever increased pensionable remuneration might have ensued as a result of salary increases in the former category. One would certainly not expect such adjustment if the salary movement in the meantime was in favour of a reduced pensionable remuneration for those in the General Service category. A staff member who has accepted a promotion from the General Service to the Professional category is subject to the rules governing salary, benefits and allowances as in effect at the time of promotion.

“The United Nations Administrative Tribunal has sustained the temporary nature of the Organization’s obligation to maintain the level of remuneration upon promotion with respect to salary and allowances under rule 103.9 (UNAT Judgements Nos. 156 and 175). Since the pensionable remuneration is based on a staff member’s salary, it is only logical to apply the same principle to pensionable remuneration. However, ST/AI/209 relating to the level of pensionable remuneration upon promotion was intended to protect the promoted staff member against any loss in pensionable remuneration at the time of promotion and was not envisaged as a guarantee against any future loss caused by unforeseen fluctuations in salary between the two categories. No sensible administrative policy could provide for such an infinite insurance to promoted staff which, apart from its illogical premise, would in fact be discriminatory against staff who were directly recruited at the Professional level and whose pensionable remuneration can never have the safeguard of comparison with those retiring at the General Service level.

“As to the ILO Tribunal’s Judgement No. 257 invoked by you, it has been noted that there is no provision in the Regulations, Rules and Instructions of the United Nations similar to the general clause of FAO’s rule 302.3103 on which the Tribunal based its decision favourable to the applicant in the Grafström case. In the United Nations, the provisions on this matter are contained in ST/AI/209, the terms of which are basically identical to those of FAO’s rule 302.442 which, in the words of the ILO Tribunal, ‘offers a precise solution applicable to the present’. In the United Nations there are no conflicting or dual rules (similar to the provisions of FAO’s rules 302.3103 and 302.442) which would allow an interpretation other than the one applying to the situation at the date of promotion.

“ . . . ”

On 11 February 1976, the Applicant submitted an appeal to the Joint Appeals Board of the United Nations Office at Geneva. The Board submitted its report on 31 July 1979. The considerations, conclusions and recommendations of the Board read as follows:

“VI. *Considerations, conclusions and recommendations of the Board*

“10. The Board carefully examined whether any steps should have been taken by the Secretary-General with a view to maintaining the Appellant’s pension benefits at the level they would have reached at the time of her retirement, in April 1978, had she remained in the General Service category (G-6, step XI) instead of being as she had been in 1971, promoted to the Professional category at the grade P-1. The board noted that there had been no violation of the Rules and Regulations of the Joint Staff Pension Fund or of the relevant United Nations Rules and Regulations as applied in other similar cases.

“11. The Board noted, however, that as a consequence of the current monetary disarray, the Appellant suffered, according to information provided at the time to the Appellant by the Geneva Office of the Joint Staff Pension Fund, a considerable loss in her pension entitlements (\$783 per month at the P-1 level instead of \$1,140 per month which she would have received had she remained at level G-6, step XI) as a result of her promotion to the Professional category in 1971.

“12. The Board was deeply concerned about the present anomalies of the United Nations pension system resulting in promotion to the Professional category leading to a substantial decline in pension benefits. This anomaly is in particular

unfair to staff members who, at the time of accepting promotion to the Professional category, were not in a position to foresee that this would decrease their pension benefits even though they earned a higher take-home pay as a result of their promotion. This situation clearly calls for appropriate remedial action. This was to some extent recognized by the issuance of Administrative Instruction ST/AI/209 of 5 January 1972 entitled: 'Pensionable remuneration on promotion to the Professional category', subsequently reflected in Staff Rule 103.16 (c). However, the latter provides only marginal and temporary relief.

"13. The Board considered in this connexion Judgement No. 257 of the ILO Administrative Tribunal concerning the complaint of Mrs. Grafström against the FAO by which the Tribunal decided that appropriate steps should be taken by the Director-General of FAO in order to protect the pension rights of the staff member concerned. The Board noted, however, that the Judgement was *inter alia* based on the interpretation of the meaning of FAO Staff Rule 302.3103, for which *stricto sensu* there neither was nor is an equivalent in the UN Staff Rules. While the organizations of the UN system have agreed to apply common systems of salaries, allowances and other conditions of service, there are no identical conditions of service and the application of the common system remains the responsibility of the competent organs of each member of the common system.

"14. Looking at the overall situation as it prevails within the UN proper, the Board found that the provisions of the Pension Fund system as such have not been unequally applied in this respect as far as the UN staff is concerned, even though administrative action had been taken in several other organizations which resulted in a change in pension benefits.

"15. The Board came to the conclusion that the contested decision of the UN Administration was not inconsistent with the letter, if not the spirit, of the UN Staff Rules and Regulations. The important fact remains, however, that a promotion should normally entail an improvement and not a deterioration in the financial status of a staff member including with regard to retirement benefits.

"16. The Board felt that, while it was not within its competence to remedy the anomalies of the present pension system, it should in all fairness suggest that steps be taken with a view to the average annual pensionable remuneration being computed in such a way that it reflects substantially—as in the case of General Service staff—the effective salary that is, in the case of Professional and higher staff, the basic salary, together with appropriate parts of post adjustments. Such an arrangement, while presently not provided for under Annex I to the Staff Regulations, would presumably be in accordance with, if not the letter, at least the spirit of Article 1 (h) and Article 25 of the Regulations of the Joint Staff Pension Fund, which must have reflected the initial intention of the legislator that the pensionable remuneration is, by and large, related to the effective salary, as in the case of General Service staff. In other words, it would appear to be reasonable and legitimate to provide for a pensionable remuneration, including the appropriate contribution to the Staff Pension Fund, on the basis of salary scales reflecting, also for non-General Service staff, the effective salary."

On 29 October 1979, the Assistant Secretary-General for Personnel Services informed the Applicant that after reviewing her case, taking the report of the Joint Appeals Board into account, the Secretary-General had decided to maintain the contested decision. On

11 February 1980, the Applicant filed the aforementioned application.

Whereas the Applicant's principal contentions are:

1. As a result of her promotion to P-1, the Applicant has since her retirement suffered a pension loss evaluated by the Pension Fund itself at 357 dollars a month, for the rest of her life. The aforementioned difference does not take into account the possibility that the Applicant would have been promoted to G-7 or the increases in benefits granted since that time.

2. The United Nations Administration was perfectly aware of the problem when it issued administrative instruction ST/AI/209 on pensionable remuneration of staff members promoted to the Professional category. Its intention was to protect staff members against a reduction in their pensions.

3. It is inadmissible to refuse to apply that protective measure to the Applicant on the pretext that her pensionable remuneration was higher on the day of her promotion and was not reduced until six months later.

4. The Applicant's argument was accepted by the ILO Administrative Tribunal in its Judgement No. 257.

Whereas the Respondent's principal contentions are:

1. The contested decision was valid because it was consistent with Staff Rule 103.16 (c), the sole provision expressly applicable to this case.

2. The Respondent had no obligation to continue indefinitely to recalculate the Applicant's pensionable remuneration in order to take account of increases in the pensionable remuneration payable to staff serving in the Applicant's former category and level.

3. Judgement No. 257 of the ILO Administrative Tribunal is not relevant to the case, since the FAO provision on which it is based has no counterpart in the United Nations Staff Rules.

The Tribunal, having deliberated from 27 October 1980 to 11 November 1980, now pronounces the following judgement:

I. The Applicant requests that her retirement pension be equal to that which she would have received had she retired at the G-6, step XI, level. According to articles 1 (h) and 29 of the Regulations of the United Nations Joint Staff Pension Fund, the pension is calculated by reference to the "final average remuneration", that is, the average annual pensionable remuneration during the 36 completed calendar months of highest pensionable remuneration within the last five years of contributory service.

The Applicant having retired on 30 April 1978, her pension is established by reference to the remuneration received since 1973, that is, during a period beginning two years after 1 April 1971, the date of the Applicant's promotion from G-6 to P-1. The Tribunal notes that during that period the Applicant's pensionable remuneration was lower than it would have been had she not been promoted.

II. The Tribunal also notes that at the time when the Applicant was promoted, there was no problem concerning the establishment of her remuneration, for at the time of her promotion and for more than a year after her shift to the Professional category, the Applicant's salary and pensionable remuneration were greater than the corresponding amounts which she had received previously. The Tribunal therefore concludes that this case does not involve the application of Staff Rule 103.9, concerning the effects of

promotions on salary, which, according to the practice of the Tribunal (Judgement No. 156: Garnett), applies in the case of promotion from the General Service category to the Professional category, nor the application of Staff Rule 103.16 (c), adopted pursuant to administrative instruction ST/AI/209 and the only provision in the rules concerned expressly with promotion from the General Service category to the Professional category.

III. The question did not arise until the pensionable remuneration of General Service staff was substantially increased, at which time the Applicant considered that she was entitled to have her pension calculated as though she had continued to receive a General Service salary. Since she is unable to base her case on a text of the United Nations Staff Rules, she invokes the judicial precedent set on the subject by the ILO Administrative Tribunal in the Grafström case, Judgement No. 257. The Applicant's reasoning is based in fact on the idea that there is a "common system" of salaries for the staff of the United Nations and the specialized agencies. The Tribunal notes in this connexion that General Assembly resolution 34/438, adopted on 17 December 1979 and entitled "Feasibility of establishing a single administrative tribunal", was taken with a view to "strengthening the common system". The Tribunal recognizes the importance of the action taken over more than 30 years with a view to establishing a common system, but is obliged to acknowledge that in 1972, the report of the Special Committee for the Review of the United Nations Salary System mentioned the existence of areas in which differences continued to exist; that at its thirty-third session, the General Assembly "urged" the competent authorities of all organizations of the United Nations common system to refrain from actions which did not contribute to the strengthening of that system (resolution 33/119); and that the report of the International Civil Service Commission to the thirty-fourth session of the General Assembly drew attention to the wide divergences which still exist among the organizations regarding the question of pensionable remuneration. Thus the existence of solutions which differ from one organization to another remains a fact.

IV. The United Nations Administrative Tribunal must consider whether the solution provided by the ILO Administrative Tribunal in the Grafström case is in conformity with the provisions which the United Nations Administrative Tribunal must apply. The FAO Staff Manual contains provision 302.442, which reads as follows:

"When, on his promotion from the General Service to the Professional category, a staff member's pensionable remuneration would otherwise be reduced, the said remuneration may, at his option, be maintained at its previous level, with the staff member and the Organization making their contributions accordingly, until this level is overtaken by the rising pensionable remuneration under his new status. At the time of promotion, the staff member is informed in writing of his right to exercise this option."

This provision is analogous to United Nations Staff Rule 103.16 (c), which states:

"Where a promotion from the General Service category to the Professional category would result in a reduction of the staff member's pensionable remuneration, the level of pensionable remuneration reached prior to the promotion shall be maintained until it is surpassed by the level based on the staff member's salary in the Professional category."

Paragraph B of Judgement No. 257 of the ILO Administrative Tribunal shows that Mrs. Grafström requested and obtained a retroactive regrading so that her pensionable remuneration at the date of her promotion was higher than that which she had enjoyed at grade

G-7. In paragraph II above, the Tribunal noted that in the case of the Applicant, the question did not arise at the time of her promotion.

V. But the dispute which was the subject of Judgement No. 257 of the ILO Administrative Tribunal concerned the salary to be taken into account in calculating the pension, and Mrs. Grafström claimed the pensionable remuneration that she would have had in the General Service category had she not been promoted to the Professional category. Thus her complaint was analogous to that of the Applicant in the present case.

The ILO Administrative Tribunal allowed Mrs. Grafström's appeal on the basis of provision 302.3103 of the FAO Staff Manual, which read as follows:

“When, on his promotion from the General Service to the Professional category, a staff member's pensionable remuneration would otherwise be reduced, special arrangements may be made for maintaining the said remuneration at its previous level.”

The ILO Administrative Tribunal considered that that text should be given a “wide interpretation” and should be interpreted as dealing with the future as well as the present and as making it possible to maintain the pensionable remuneration “at the level at which it would otherwise have been”. In paragraph II above, the Tribunal concluded that United Nations Staff Rule 103.16 (c), the only provision in the Staff Rules dealing expressly with promotion from the General Service category to the Professional category, is not applicable in this case. Since the decision of the ILO Administrative Tribunal was expressly based on a text which is not included in the provisions which the United Nations Administrative Tribunal must apply, the latter tribunal cannot apply for the benefit of the Applicant the solution provided in Judgement No. 257 of the ILO Administrative Tribunal. The difference in the solutions originates in the respective rules of the two organizations concerned.

VI. However, although the Tribunal is obliged to apply the law in force, it considers it regrettable that a promotion can in certain cases entail a reduction in pension.

VII. The Applicant requests the Tribunal to grant her compensation of six thousand dollars for “excessive procedural delays”. Although the Respondent has stated in his answer that the Administration has taken steps to eliminate such delays, the Tribunal must observe that so lengthy a procedure is not consistent with Staff Rule 111.3 (h) and in no way contributes to the proper administration of justice. In this case, since the Applicant has suffered no injury as a result of the procedure followed, the Tribunal is unable to grant that request.

VIII. For these reasons, the application is rejected.

*(Signatures)*

Suzanne BASTID  
*President*

Francisco A. FORTEZA  
*Member*

*New York, 11 November 1980*

Endre USTOR  
*Vice-President*

Jean HARDY  
*Executive Secretary*

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