Secretary-General's final decision (12 June 1980). These delays, which are neither explained nor justified by the Respondent, did not, in the Tribunal's view, meet the requirements of good administration.

V. The Applicant in his revised application has claimed two months' net base salary for the loss caused by the delay in his studies in Russian, but has not furnished any justification for claiming that amount. The loss for which he claims compensation is therefore purely speculative. The Tribunal is of the opinion that the consequences of this avoidable delay in taking the course are so hypothetical that compensation ought not to be awarded.

VI. The application is therefore rejected.

(Signatures)

Francis T. P. PLIMPTON
Vice-President, presiding

Arnold KEAN
Member

Samar SEN
Member

Jean HARDY
Executive Secretary

New York, 12 November 1980

Judgement No. 264

(Original: English)

Case No. 254: Piracés *Against:* **The Secretary-General of the United Nations**

Termination of the regular appointment of a staff member of the Economic Commission for Latin America (ECLA).

Termination under Staff Regulation 9.1(c) was a nullity because inconsistent with a prior agreed termination.—Criticism of the recommendation of the Joint Appeals Board that the Applicant should be reinstated.—Duty of the Administration to comply with special engagements it has undertaken with regard to a staff member.—Conclusion of the Tribunal that the decision to terminate the Applicant's appointment under Staff Regulation 9.1(c) is ill-founded.—Assessment of the injury sustained by the Applicant.—Award to the Applicant of 3,000 dollars by way of reparation.

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 Jorge Piracés, a former staff member of the United Nations,

the President of the Tribunal, with the agreement of the Respondent, extended successively to 9 July 1979, 1 November 1979, 1 February 1980, 15 July 1980 and 29 July 1980 the time-limit for the filing of an application to the Tribunal;

Whereas, on 29 July 1980, the Applicant filed an application in which he requested the Tribunal:

"A. To *adjuge* and *declare* that the termination of the Applicant's regular appointment with ECLA [Economic Commission for Latin America] was improper and unjustified.

"B. To *order* the Respondent to properly compensate the Applicant for the moral, professional and financial damages suffered by him by virtue of such improper and unjustified termination of his employment.

"C. To *order* the Respondent to grant such proper compensation for the damage done to the Applicant's life as recommended by the Joint Appeals Board in its report No. 308 to the Secretary-General explained as follows:

"The Applicant could have expected to remain in service until superannuation on 31 March 1999, that is, for approximately 319* months from the date on which his employment terminated. Relying on the precedents cited in UNAT Judgement No. 213, paragraph XXI, the Applicant requests that the situation be assimilated to the case of a fixed-term contract which is terminated immediately after renewal, in which case the person concerned is entitled to a termination indemnity of one week's salary for each month of uncompleted service, and that the Applicant therefore be granted the equivalent of 319 weeks' net base salary as compensation in lieu of specific performance.

"D. To *order* the Respondent to calculate all indemnities to be granted at the current salary rate for level G3, step V, and not at that of the 1972 rate when the Applicant was terminated."

"*The number of months from the date of termination to March 1999 should be 319, not 307 as calculated by the Board."

Whereas the Respondent filed his answer on 27 August 1980;

Whereas the facts in the case are as follows:

The Applicant joined the Economic Commission for Latin America (ECLA) in May 1961 under a special service agreement as a Mimeograph Operator. He served under a succession of special service agreements and fixed-term appointments and, on 1 January 1965, he received a probationary appointment which was converted to a regular appointment on 1 January 1966. On 10 September 1971 the Director of Personnel issued the following written censure to the Applicant as a disciplinary measure:

"1. As a result of an exhaustive investigation carried out by the Administration of the Economic Commission for Latin America (ECLA), it has been established that, during the months of August and September 1969 and May and June 1970, a series of irregularities occurred in the Documents Reproduction Section, which consisted in the fraudulent submission of overtime sheets by you and other members of that Section and the claiming of overtime payments in excess of those due.

"2. On 22 March 1971, you submitted a written statement in which you admitted that in mid-1969 you had accepted an arrangement whereby you would present false overtime claims and transfer the resulting excess payments to the

supervisor of the Documents Reproduction Section, through Mr. Manuel Graff. Subsequently, you decided not to participate again in this irregular scheme and, as a result, the supervisor of your Section took certain retaliatory measures against you. You did not report any of these facts to your superiors outside your own Section or to the Personnel Section of ECLA until you were questioned about all the events in which you had taken part. During the verbal confrontation of all staff members under investigation, which took place on 12 June 1971, you again admitted your involvement in the above irregularities.

"3. By participating in a scheme to defraud the United Nations, you have acted in a manner openly and clearly contrary to the standards of conduct and integrity that the Organization expects of its staff members.

"4. The Secretary-General has considered the circumstances of your case and has decided that a written censure be issued to you as a disciplinary measure under the first paragraph of Staff Regulation 10.2 and Rule 110.3(*b*). This memorandum constitutes such a written censure and a copy thereof will be placed in your official status file.

"5. In deciding to take this mitigated disciplinary action against you, the Secretary-General has taken into account the fact that you recognized to yourself the impropriety of your actions in August and September of 1969 and refused to participate a second time in a fraudulent scheme. Nevertheless, your behaviour is viewed with profound disapproval and you are hereby warned that any further acts of misconduct on your part will result in disciplinary action of greater severity."

As a consequence of that written censure the Applicant's annual salary increment was withheld as of 1 November 1971. Moreover, as a result of the investigation mentioned in the written censure, the supervisor of the Documents Reproduction Section was dismissed for misconduct and replaced by Mr. M. Romero, then a member of the Section. On 5 June 1972 the Applicant was suspended from duty without pay pending investigation pursuant to Staff Rule 110.4 on the following charges:

"(*a*) Taking annual leave on 8 May, 10 May, 15 and 16 May, 19 and 22 May, 26 and 29 May, and 2 June without previous notice or authorization.

"(*b*) Taking sick leave from 17 to 21 April without presenting supporting medical certificate.

"(*c*) Having made threats of physical violence against the Supervisor, Mr. Max Romero, and contributing to undermining discipline within the Unit as well as refusing to undertake certain jobs."

On 9 June 1972 the Acting Chief of the ECLA Personnel Section, who earlier had recommended suspension with pay, requested in a memorandum to the Director of the Division of Personnel Administration that the decision to suspend the Applicant without pay be reviewed because:

"(*a*) Except for the charge of threatening bodily harm, I do not consider the charges to involve grave misconduct and,

"(*b*) Mr. Piracés has a large family (a wife and five children) to support."

On 12 June 1972 a Committee composed of ECLA officials held a hearing into the charges in the presence of the Applicant and a representative of the ECLA Staff Association. According to the minutes of the hearing, the Applicant accepted the charge of taking

leave without notice but categorically rejected the charges relating to threats of physical violence against the supervisor and of creating disciplinary problems in the Unit. With regard to his absences from work, the Applicant stated that they had been due to sickness as he suffered from a nervous affliction, but that he was unable to produce medical certificates since the psychiatrist who was treating him was a relative who had not yet received his degree. On 13 June 1972 the Director of the Division of Personnel Administration sent the following cable to the Acting Chief of the ECLA Personnel Section:

> "ELEMENTS SUBMITTED INSUFFICIENT TO GIVE FIRM ADVICE. THERE SHOULD BE A THOROUGH INVESTIGATION WITH QUESTIONING OF ALL INTERESTED AND THEIR CONFRONTATION. WRITTEN STATEMENTS FROM PARTIES CONCERNED ARE NECESSARY. AT THIS STAGE THREAT OF PHYSICAL ACTION AND INCITATION TO DISORDER IN UNIT CAN ONLY JUSTIFY EXTREME DISCIPLINARY MEASURES. ABSENCES WITHOUT NOTIFICATION WOULD NOT WARRANT SUSPENSION WITHOUT PAY. SINCE INVESTIGATION SEEMS RATHER STRAIGHTFORWARD PLEASE PROCEED IMMEDIATELY. WE MUST KNOW WHAT THREAT OF PHYSICAL VIOLENCE IMPLIED SINCE THIS MAY DETERMINE NATURE OF DISCIPLINARY MEASURE. BECAUSE OF FAMILY SITUATION YOU ARE AUTHORIZED TO [SUSPEND] STAFF MEMBER WITH HALF PAY OR PREFERABLY IF POSSIBLE PLACE HIM ON ANNUAL LEAVE".

On 19 June 1972 a further hearing was held at which Mr. Romero was present. The minutes of the hearing refer, *inter alia,* to written statements of 19 May and 5 June 1972 by Mr. Romero "in which the most serious charge against [the Applicant] . . . had been the threat of physical violence against the person of Mr. Romero" and state:

> "Mr. Romero explained that following the memorandum of 19 May 1972, Mr. Piracés had continued acting in an aggressive manner and when handing over to him an urgent job, he had used offensive language and stated: 'When I leave this office, I have to kill this man'. Since Mr. Romero was familiar with Mr. Piracés' character and knew he lost his temper easily, after consultations with friends outside the office, he had taken the decision to leave this threat on record at the Police station of his district.
>
> "Mr. Pokorny asked whether Mr. Piracés had addressed Mr. Romero directly when making this threat and Mr. Romero indicated that it had been made behind his back but loud enough for him to hear it clearly. To Mr. Mouchabek's question as to whether there were any witnesses, Mr. Romero replied that Mr. Carlos Salinas, staff member of that Unit, had been present but that he doubted this staff member would testify in his favour. Mr. Mouchabek repeated the question whether the threat had been direct and Mr. Romero reiterated that it had been made behind his back. Mr. Pokorny asked if any name had been mentioned and Mr. Romero answered in the negative."

On 21 June 1972 a confrontation between Mr. Romero and the Applicant was held in the office of the Acting Chief of the ECLA Division of Administration. On 13 July 1972 the representative of the ECLA Staff Association asked the Acting Chief of the ECLA Division of Administration to request authorization from Headquarters to place the Applicant on full pay status in consideration of the Applicant's family and financial obligations and of the fact that the investigation had gone on for over a month and seemed

likely to continue for at least as much again. On 17 July 1972 the Director of the Division of Personnel Administration cabled the Acting Chief of the ECLA Personnel Section as follows:

> " . . . IN VIEW DELAY IT HAS BEEN DECIDED TO REINSTATE PIRACES IN FULL PAY STATUS AND TO REQUIRE HIM TO ATTEND TO HIS OFFICIAL DUTIES. IF FURTHER UNAUTHORIZED ABSENCE OCCURS, CASE SHOULD BE SUBMITTED FOR APPROPRIATE DECISION. AWAITING MEDICAL EVALUATION AND SALINAS' STATEMENT FOR SUBSTANTIVE DECISION ON DISCIPLINARY MATTER."

On 18 July 1972 the Acting Chief of the ECLA Personnel Section replied by the following memorandum:

> " . . .
>
> "2. I have just received copies of psychiatric evaluation and the views of Dr. Fernando Goñi, ECLA's Medical Advisor, of said evaluation. As mentioned in my coded cable today, I believe Dr. Michael Irwin, M.D., should be consulted regarding Mr. Piracés' medical history. No action is being taken regarding your cable until we receive further advice from you. We hope to have the results of the complete examination available shortly.
>
> "3. As mentioned previously, I believe an agreed termination would be the most feasible solution to this case. At his current grade, local level GS-3, Step V, Mr. Piracés would not fit in to any job that he would not consider beneath his training and dignity (such as a messenger). Furthermore, I have already been approached by Mr. Piracés regarding this possibility as he does not believe he could return, even if not disciplined, and be able to work for ECLA without damage to his health.
>
> " . . ."

On 24 July 1972 the Acting Chief of the ECLA Personnel Section signed Personnel Action forms cancelling the suspension of the Applicant from duty without pay and substituting suspension at half pay, supplemented by annual leave, from 5 June to 3 July 1972, and suspension at half pay, upon exhaustion of accrued annual leave, as of 4 July 1972. On 25 July 1972 the Medical Director advised the Office of Personnel that he agreed with the opinion of Dr. Goñi "that, because of a serious situational reaction, Mr. Piracés should be moved from his present post". On 31 July 1972 the Director of the Division of Personnel Administration sent the following cable to the Acting Chief of the ECLA Personnel Section:

> "REYUR MEMO 18 JULY MEDICAL DIRECTOR ADVISES PIRACES SHOULD BE MOVED FROM HIS PRESENT POST AND GIVEN OTHER ASSIGNMENT. CONFIRM MY CABLE 17 JULY REINSTATING PIRACES IN FULL PAY STATUS AND OTHER TERMS OF CABLE . . . RECOMMEND YOU PURSUE ACTIVELY YOUR SOLUTION AGREED TERMINATION UNDER LAST PARAGRAPH REGULATION 9.1(A)".

On 9 August 1972 the Applicant addressed the following memorandum to the Director of Personnel through the Acting Chief of the ECLA Personnel Section:

> "1. In accordance with the final paragraph of Staff Regulation 9.1(*a*) and what has been agreed between the Personnel Section of this Commission and Head-

quarters, I consent to the agreed termination of my contract.

"2. Since my moral reputation and my professional reputation have been seriously injured not only within this Commission but outside it by the unjust presentation of charges and suspension of which I have been a victim, I request you to ask the Secretary-General to grant me in accordance with Staff Regulation 9.3(*b*) the maximum indemnity, which I understand will be not more than 50 per cent higher than that which would otherwise be payable to me under the Staff Regulations.

"3. Thanking you in advance for your prompt attention to this matter."

On 29 August 1972 the Acting Chief of the ECLA Personnel Section, on the authority of the cable of 17 July 1972, signed a Personnel Action form recording the Applicant's reinstatement to duty at full pay as of 17 July 1972. On 31 August 1972 the Acting Director of the Division of Personnel Administration sent the following cable (no. 917) to the Acting Chief of the ECLA Personnel Section:

"SECGEN [SECRETARY-GENERAL] APPROVED TERMINATION PIRACES. NOTICE TERMINATION BEING POUCHED TO YOU TODAY."

On the following day the Acting Chief of the ECLA Personnel Section requested from the Acting Chief of the ECLA Finances Section authorization of an 80 per cent advance payment against the Applicant's entitlements and referred to cable no. 917 as "authorizing the agreed termination". The notice of termination, dated 31 August 1972, from the Director of Personnel to the Applicant, however, read as follows:

"1. This is to inform you that the Secretary-General has decided to terminate your appointment in the interest of the United Nations, under Staff Regulation 9.1(*c*), effective 31 August 1972. Since your services would not be required beyond this date, you will receive compensation in lieu of one month's notice of termination under Staff Rule 109.3(*c*). You are also entitled to termination indemnity under Annex III to the Staff Regulations.

"2. Your request for a maximum termination indemnity under Regulation 9.3(*b*) cannot be granted, since the provision invoked by you applies only to the termination of permanent appointments. You are the holder of a regular appointment governed by the provisions applicable to temporary appointments which are not for a fixed-term, as stipulated in Staff Rule 104.13(*b*) (ii)."

On 22 September 1972 the Applicant addressed the following letter to the Secretary-General:

"I am writing in connexion with my request for payment of the maximum termination indemnity, under Staff Regulation 9.3(*b*), which was refused in a letter dated 31 August 1972 from Mr. M. H. Gherab, in order to ask you to review this administrative decision. Although I understand that under the strict letter of the rules I am not eligible for the maximum indemnity, as I had a regular rather than permanent appointment with the United Nations, I feel that the particular circumstances of my case warrant special treatment, and I would accordingly request you to exercise your discretionary powers to order the payment of the maximum indemnity within the spirit of Regulation 9.3(*b*).

"As a result of the investigation into unfounded accusations by my supervisor that I had threatened him with bodily harm, I have been morally and physically damaged—to such a point that I was obliged to agree to the termination of my

contract, as it was obvious that, even if the investigation completely exonerates me of the charges—as I am convinced it will—my position within the Organisation had become completely untenable.

" . . .

"Owing to my having spoken the truth during an investigation as a result of which Mr. Hernández was dismissed from his post as Chief of the Reproduction Unit, I have been persecuted ever since and given more and more menial jobs, the final straw being a false accusation by the present Chief, Mr. Romero. On his word alone, and without my even being asked to state my position, I was relieved from duty without pay, and it was only two months later that I was returned to duty with full pay, being downgraded to the tasks of a messenger. Now, after having given my assent to a mutually agreed termination under Regulation 9.1(*a*), I have been informed that my contract is being terminated under Regulation 9.1(*c*) because it is a regular rather than permanent contract. I find it incredible that after over ten years work with the Organisation this technicality has been used against me. Surely enough damage has been done to me already. My reputation has been shattered. My health has been affected. And the life of my family has been disrupted. All of this, in my opinion, because no-one thought to get my side of the story before suspending me because of a very flimsy accusation.

"I feel that the United Nations owes me some compensation for the damage I have suffered, and I am sure I can count on your support in seeing to it that justice will be done in my case."

On 16 October 1972 the Assistant Secretary-General for Personnel Services replied:

" . . .

"In reviewing your case I find it necessary to draw to your attention two facts. The first is that since you had a regular Appointment rather than a Permanent Appointment, you were terminated under Staff Regulation 9.1(*c*) and the provision of maximum termination indemnity under Regulation 9.3(*b*) was not applicable to your case. The second is that the payment of a termination indemnity higher than that which is otherwise payable under the Staff Regulations is a discretion which rests with the Secretary-General. Even if you had a permanent Appointment, the payment of maximum termination indemnity would not have been justified by the circumstances of the case. Your appointment was terminated because the Secretary-General, after a full review of your performance record, considered the action to be in the interest of the United Nations. You have been given all the termination indemnity to which you are entitled under Annex III of the Staff Regulations.

"For the reasons aforementioned, I wish to inform you that the Secretary-General has decided to maintain his previous decision not to pay you the maximum termination indemnity under Staff Regulation 9.3(*b*)."

On 26 October 1972 the Office of Personnel Services sent the following cable to the Acting Chief of the ECLA Personnel Section:

" . . . SECGEN HAS DECIDED NOT TO IMPOSE ANY DISCIPLINARY MEASURE ON JORGE PIRACES. SUSPENSION UNDER RULE 110.4 IS NOT DISCIPLINARY MEASURE AND SINCE DISCIPLINE WAS NOT RESORTED TO REINSTATEMENT MUST NECESSARILY COVER WHOLE PERIOD SUS-

PENSION. CONSEQUENTLY REINSTATEMENT SHOULD DATE BACK TO FIVE JUNE 1972 AND NOT ONLY EFFECTIVE SEVENTEEN JULY 1972. HE WAS TERMINATED UNDER REGULATION 9.1(C) IN INTEREST OF ORGANIZATION AND DECISION TO TERMINATE HIM WAS COMPLETELY INDEPENDENT OF DISCIPLINARY PROCEEDINGS."

On 30 and 31 October 1972 Personnel Action forms were issued accordingly. On 29 November 1972 the Applicant lodged an appeal with the Joint Appeals Board against the Respondent's decision not to pay the maximum termination indemnity under Staff Regulation 9.3(*b*) and on 23 September 1976 he filed an amended statement of appeal against the decision to terminate his appointment "in the interest of the United Nations" under Staff Regulation 9.1(*c*). The Board submitted its report on 23 June 1978. The Board's conclusions and recommendations read as follows:

"*Conclusions and recommendations*

"58. The Board finds that the termination of the appellant's regular appointment was improper and should be rescinded.

"59. The Board recommends strongly that the appellant should be reinstated in the service of ECLA and that, in view of the length of time which has elapsed since the improper termination of his appointment, he should retain possession of the amounts paid to him in connexion with the notice of termination and the termination indemnity.

"60. The Board has to establish the amount of compensation in lieu of specific performance that will prove an adequate and proper relief in the event that the Secretary-General decides that reinstatement is not feasible. In the present case, the appellant could have expected to remain in service until superannuation on 31 March 1999, that is, for approximately 307 months from the date on which his employment terminated. Relying on the precedents cited in UNAT Judgement No. 213, paragraph XXI, the Board recommends that the situation should be assimilated to the case of a fixed-term contract which is terminated immediately after renewal, in which the person concerned is entitled to a termination indemnity of one week's salary for each month of uncompleted service, and that the appellant be granted the equivalent of 307 weeks net base salary (calculated at the salary and exchange rate of the date of termination) as compensation in lieu of specific performance.

"61. The Board recommends further that, should the appellant request that he be given a statement referring to the quality of his work and his official conduct in accordance with Staff Rule 109.11, he should be issued such a statement drawn up in compliance with the principles laid down by the Administrative Tribunal."

On 13 October 1978 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided:

"(*a*) to reject the recommendations of the Board that the termination was improper and should be rescinded (para. 48); that you should be reinstated with retention of termination indemnity (para. 49); and that, in lieu of reinstatement, you should be granted the equivalent of 307 weeks' net base salary (para. 50),

"(*b*) to make an *ex gratia* payment to you in an amount equivalent to the 50 per cent additional termination indemnity.

"Furthermore, the Secretary-General took note of the recommendation contained in paragraph 61 of the Report, concerning the issuance, upon request, of a statement in accordance with Staff Rule 109.11."

On 29 July 1980 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was led to believe that he was going to be terminated under Staff Regulation 9.1(*a*) and that this would be an agreed termination. As such, the Applicant would have been eligible for termination indemnity of 50 per cent higher than that which would otherwise be payable. Instead, the Applicant received a termination letter advising him of his termination under Staff Regulation 9.1(*c*), which did not qualify him for maximum indemnity. The Administration, on recognizing belatedly that the Applicant could not be given an agreed termination because he had a regular and not a permanent appointment, substituted other grounds as the basis for the termination of the Applicant's appointment under Staff Regulation 9.1(*c*). The grounds given by the Administration for the termination of the Applicant's appointment, namely his unsatisfactory performance and attitude towards his work and his personality difficulties with his colleagues and supervisors, had no basis in the Applicant's record and had stemmed solely from the disciplinary charges still in progress at the time of termination, charges of which he was later found not guilty.

2. The Administration initiated the termination proceedings *as a result* of the threat of physical violence allegedly made by the Applicant against his supervisor, which was the subject of the investigation. If the alleged threat was responsible for the initiation of the termination proceedings, the results of the investigation into the threat should be far from irrelevant. And the termination of the Applicant's appointment before the conclusion of such investigation showed an improper and questionable handling of the matter by the Administration.

3. Since all evidence points to the fact that the Applicant was indeed terminated because he allegedly threatened his supervisor with physical violence, and since he was later exonerated of such a charge, the termination of his appointment was completely unjustified and the Applicant should have been reinstated when the outcome of the investigation cleared him of the charge.

4. The Administration failed to duly inform the Applicant of the favourable results of the investigation shortly after his appointment was terminated. This omission shows the Administration's total lack of regard for a human being whose means of supporting himself and his family of six had been unjustly taken away from him.

Whereas the Respondent's principal contentions are:

1. The Applicant's tenure of appointment was governed by Staff Regulation 9.1 (*c*). For the purposes of a termination decision, a regular appointment cannot be assimilated to a permanent appointment. Staff Regulation 9.1(*c*) empowers the Secretary-General to terminate a regular appointment at any time if such termination is, in his opinion, in the interests of the Organization. It is therefore clear that the termination in this case complied with the terms of the Applicant's letter of appointment and with the terms of the applicable Staff Regulations and Rules.

2. The Applicant has not established the improper motive or abuse of power which would be necessary to invalidate a decision to terminate a regular appointment pursuant to the broad administrative discretion granted the Secretary-General by Staff Regulation

9.1(*c*). The decision to terminate the Applicant under Staff Regulation 9.1(*c*) while disciplinary charges were being investigated does not constitute improper motive since the Applicant has not established, and in the circumstances patently cannot establish, that the motive for the termination was other than that stated by the Respondent, i.e. that the separation of the staff member was in the interests of the Organization.

3. The amount of termination indemnity payable pursuant to Annex III of the Staff Regulations in force in 1971 is calculated by reference to the staff member's base salary at the date of separation.

The Tribunal, having deliberated from 30 October 1980 to 18 November 1980, now pronounces the following judgement:

I. On 18 July 1972, as stated above, the Acting Chief of the ECLA Personnel Section sent a memorandum to the Director of the Division of Personnel Administration at Headquarters stating that he believed that an agreed termination of the Applicant's services would be the most feasible solution of the matter. He reported that the Applicant had already approached the Personnel Section regarding such possibility, as the Applicant did not believe that he could return to work for ECLA without damage to his health.

On 25 July 1972 the Medical Director advised the Office of Personnel that he agreed that, "because of a serious situational reaction", the Applicant should be moved from his present post.

On 31 July 1972 the Director of the Division of Personnel Administration cabled the Acting Chief of the ECLA Personnel Section recommending that the solution of an agreed termination under the last paragraph of Staff Regulation 9.1(*a*) be pursued.

On 9 August 1972 the Applicant, in a memorandum to the Director of Personnel, stated that "in accordance with the final paragraph of Staff Regulation 9.1(*a*) and what has been agreed between the Personnel Section of this Commission and Headquarters", he consented to the agreed termination of his contract, and requested the 50% maximum indemnity under Staff Regulation 9.3(*b*).

On 31 August 1972 the Acting Director of the Division of Personnel Administration, in cable No. 917 to the Acting Chief of the ECLA Personnel Section, stated that the Secretary-General had approved the termination and that the notice of termination was being pouched. However, the notice of termination, dated 31 August 1972, from the Director of Personnel to the Applicant, announced that the Secretary-General had terminated his appointment "in the interest of the United Nations" under Staff Regulation 9.1(*c*) effective 31 August 1972, and that the request for a maximum termination indemnity under Regulation 9.3(*b*) could not be granted since the provision applied only to the termination of permanent appointments, whereas the Applicant was the holder of a regular appointment.

The Secretary-General's notice of termination ignored the fact that the termination of the Applicant's appointment had *already* been agreed to by his representatives and by the Applicant. Accordingly, the purported termination "in the interest of the United Nations" under Staff Regulation 9.1(*c*) was ineffective and a nullity, since it was inconsistent with the prior agreed termination.

II. On 22 September 1972 the Applicant wrote to the Secretary-General again requesting payment of the maximum indemnity under Staff Regulation 9.3(*b*) in the exercise of his discretionary powers. He contended that as a result of the investigation into unfounded accusations he had been morally and physically damaged to such a point

that he was obliged to agree to the termination of his contract, as it was obvious that even if he were completely exonerated his position with the Organization had become intolerable. He again referred to his assent to a mutually agreed termination under Regulation 9.1(*a*), and to the technicality that his contract was being terminated under Regulation 9.1(*c*) because it was a regular rather than a permanent contract, and he ended by claiming that the United Nations owed him some compensation for the damage suffered. It is noteworthy that the Applicant did not contest the termination of his contract "in the interest of the United Nations", and assumed that he would never be connected with the Organization again because his position had become intolerable.

On 16 October 1972 the Assistant Secretary-General for Personnel Services reiterated that the provision of maximum indemnity under Staff Regulation 9.3(*b*) was not applicable since the Applicant held a regular (and not permanent) appointment, and that his appointment had been terminated because the Secretary-General, after a full review of his performance record, considered the action to be in the interest of the United Nations.

On 26 October 1972 the Office of Personnel Services cabled that the Applicant had been terminated under Staff Regulation 9.1(*c*) in the interest of the Organization and that the decision was completely independent of disciplinary proceedings.

III. On 29 November 1972 the Applicant appealed to the Joint Appeals Board, seeking the reversal of the Secretary-General's refusal to grant him the extra 50% of the termination indemnity, and emphasizing that he had been willing to accept the agreed termination of his contract under Staff Regulation 9.1(*a*) on the ground that he had been informed by the Office of Personnel Services that Headquarters actively agreed to such termination and that he would be entitled to request the Secretary-General to exercise his discretionary powers and pay the maximum indemnity. In his appeal the Applicant merely refers to the letter from the Respondent dated 31 August 1972 stating that his contract was being terminated "in the interest of the United Nations" and apparently does not contest it.

IV. On 23 September 1976 the Applicant filed an amended appeal against the decision of the Secretary-General of 31 August 1972 to terminate the Applicant's appointment "in the interest of the United Nations" under Staff Regulation 9.1(*c*). He confirmed that he was willing to accept the agreed termination of his contract but apparently claims that the termination procedures against him "in the interest of the United Nations" were because of the charges leveled by his supervisor, whereas he had been eventually found not guilty. The amended appeal again states "I was offered by the Office of Personnel in Santiago an agreed termination under the provisions of Staff Regulation 9.1(*a*). On 9 August 1972, I indicated that I was willing to accept the agreed termination under the abovementioned provisions." He significantly writes that, without prejudice, even if the termination act be enforced, he would like to ask the Joint Appeals Board to rule that an exception to Staff Regulation 9.3(*b*) be allowed so as to make a staff member with a regular appointment eligible for the maximum indemnity.

On 23 June 1978 the Joint Appeals Board issued its report, finding that the termination of the Applicant's regular appointment was improper and should be rescinded, and recommending that the Applicant should be reinstated in the service of ECLA and that the amount of compensation to be awarded in case the Secretary-General decides that reinstatement is not feasible should be the equivalent of 307 weeks net base salary.

The Board's recommendation to reinstate the Applicant seems highly questionable. The Board ignores the fact that a binding termination agreement had already been entered

into with the Applicant. Furthermore, no sound reasons for rejecting the Respondent's decision to terminate the appointment "in the interest of the United Nations" are advanced. Moreover, the Applicant's contention that the decision was based on a disciplinary charge later found incorrect is unsubstantiated and was denied by the above-mentioned cable of 26 October 1972.

On 13 October 1978 the Secretary-General rejected the recommendations of the Board that the termination was improper and should be rescinded, and that the Applicant should be reinstated or that, in lieu of reinstatement, he should be granted the equivalent of 307 weeks net base salary.

However, the Applicant was granted an *ex gratia* payment in an amount equivalent to the 50% additional termination indemnity requested.

V. In purporting to terminate the Applicant's appointment "in the interest of the United Nations", the Respondent neglected to appreciate that the contract had already been terminated by agreement. The Respondent incontestably violated a termination agreement already arrived at which was binding both on the Respondent and on the Applicant.

VI. The Tribunal recognizes that the Respondent's concern to respect provisions of the Staff Regulations on the conditions pursuant to which a regular appointment can be terminated is in principle justified, but in this particular case the Respondent ignored the agreement which it previously had entered into with the Applicant. The Tribunal has held that the Administration must comply with special engagements it has taken with regard to a staff member. This was notably held with regard to an undertaking concerning the renewal of a fixed-term appointment. An arrangement on the termination of an employment, approved by the parties, is comparable to an accepted resignation and must equally bind the Respondent. Consequently, the decision of termination under Staff Regulation 9.1(*c*) is ill-founded.

VII. A violation of a contractual obligation concerning termination of services cannot be sanctioned by the reinstatement of the Applicant who has given his approval to the termination. Such violation can only be sanctioned by the reparation of the loss suffered. In this case the direct result was the considerable delay in the payment of the additional indemnification of 50%. If the Respondent finally decided to make the grant, thus accepting the consequences of the termination accord, the payment without any interest of a sum assessed on the basis of a salary paid in 1972 was obviously inadequate. Furthermore, the conduct of the Respondent has produced this very long delay, prolonged by a situation defying any possible action by the Applicant and complicated by the difficulties encountered by the Joint Appeals Board in gathering the necessary documents, which difficulties it mentioned in its report. Under these circumstances, the Tribunal decides that in addition to the monies already paid by the Respondent, the latter has to grant 3,000 dollars to the Applicant by way of reparation for prejudice suffered.

VIII. In conclusion, the Tribunal decides that

(1) The Respondent has violated the agreement concerning the termination of the services of the Applicant;

(2) The Respondent's rejection of the Joint Appeals Board's recommendation that the Applicant be reinstated is affirmed;

(3) The Respondent has to pay 3,000 dollars to the Applicant.

(Signatures)

Suzanne BASTID
President

Francisco A. FORTEZA
Member

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

New York, 18 November 1980

Judgement No. 265

(Original: English)

Case No. 251: Kennedy *Against:* **The Secretary-General of the United Nations**

Termination of the employment of a staff member for abandonment of post.

State of the Applicant's health.—Staff Rule 106.2(a) (viii).—The Applicant did not have recourse to that Rule.—Difficulty of sustaining the view that the consultations which took place substantially met the requirements of that Rule.—Conclusion of the Tribunal that no proper assessment was made of the Applicant's state of health.—Consideration of the attitude and conduct of the parties and the degree of co-operation between the Applicant and the various United Nations doctors and administrative departments.—Difficulty of making the distinction between abandonment of post and "separation from service".—Staff member's entitlement to reasonable notice and the fixing of a specific date for separation for abandonment of post.—Date on which the Respondent finally elected to treat the Applicant's conduct as a repudiation of her contract of employment.—The Tribunal decides that the determination by the Secretary-General that the Applicant had abandoned her post was correctly made but that separation took effect from the aforementioned date and not retroactively, that a sum of $2,000 shall be paid to the Applicant as compensation and that for pension purposes the Applicant shall be treated as having been separated from service on the aforementioned date.—Except to the extent of the above decision of the Tribunal, the application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Samar Sen; Mr. Arnold Kean;

Whereas at the request of Iris Kennedy, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 31 December 1979, 29 February 1980, 30 April 1980 and 14 May 1980 the time-limit for the submission of an application to the Tribunal;

Whereas, on 15 May 1980, the Applicant filed an application in which she requested the Tribunal to order: