

- (ii) that a sum of \$2000 shall be paid to the Applicant as compensation for her separation made erroneously with effect from 3 October 1972 instead of from 6 March 1973;
- (iii) that for pension purposes the Applicant shall be treated as having been separated from service on 6 March 1973 and that all sums due to the Staff Pension Fund in consequence of the change in the date of her separation shall be paid by the Respondent.

XV. Except to the extent indicated in paragraph XIV above, the Application is rejected.

(Signatures)

Suzanne BASTID
President

Arnold KEAN
Member

Samar SEN
Member

Jean HARDY
Executive Secretary

New York, 19 November 1980

Judgement No. 266

(Original: French)

Case No. 247:
Capio

Against: The Secretary-General
of the United Nations

Request for recognition of the Applicant's right to be considered for promotion in accordance with the rules in force prior to the adoption of General Assembly resolution 33/143.

Applicant's assertion that the system introduced by the Secretary-General pursuant to resolution 33/143 runs counter to the Charter and the Staff Regulations.—Powers of the General Assembly and the Secretary-General in relation to personnel matters.—Judgement No. 162.—Guidelines established by the General Assembly in resolution 33/143 for the movement of staff from the General Service to the Professional category.—Their implementation by the Secretary-General in Administrative Instruction ST/AI/268.—Concerns of the General Assembly.—Recognition by the Tribunal that the General Assembly was entitled to demand the introduction of a new system and that the Secretary-General exercised his discretion in setting up a system of selection by competitive examination.—Transitional measures introduced by the Respondent.—Question whether the Applicant was entitled to benefit from them.—Applicant's contention that she has an acquired right to the retention for her benefit of the previous promotion system.—The nature of that system.—Information supplied by the Respondent on the status of the Applicant.—Applicant's contention based on the fact that the procedure for her promotion had been initiated prior to the adoption of resolution 33/143 and that the Department had formulated its recommendations prior to the issue of the administrative instruction establishing the new system.—Benefits and advantages granted to staff members under the old promotion system for services performed.—Applicability in that context of the judicial precedents established by the Tribunal with regard to respect for acquired rights.—Applicant's right to have her suitability for promotion evaluated according to the method used previously.—Application of transitional measures has failed to ensure respect for the Applicant's acquired rights.—Applicant's

assertion of her entitlement to a special post allowance.—Finding of the Tribunal that the Applicant has been eligible for the special post allowance since 1 April 1980 but that the Respondent has failed to inform her of the change in the situation to her advantage.—Evaluation of the injury sustained by the Applicant as the amount which she would have received by virtue of the special post allowance for the period between 1 April 1980 and the date of the judgement.—The Respondent is ordered to take the necessary steps to ensure that the acquired rights of the Applicant to be considered for promotion are respected.—The Applicant is awarded the aforementioned sum as compensation.

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 Rosemille Siazon Capio, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 28 February 1980 the time-limit for the filing of an application to the Tribunal;

Whereas, on 28 February 1980, the Applicant filed an application in which she requested the Tribunal:

“A. With respect to the applicability of General Assembly Resolution 33/143 (g), which limits the movement of staff from the General Service category to the Professional categories to 30 per cent of the total posts available for appointment at P-1 and P-2 levels, and which requires that competitive methods be used for selecting General Service staff having at least five years experience and post-secondary educational qualifications, and Administrative Instruction ST/AI/268, which sets forth a policy of competitive examinations for promotion from the General Service to the Professional category, to *adjudge* and *declare* that:

- “(i) The Resolution and Administrative Instruction in question do not provide the necessary legal basis for the Respondent’s decision not to consider *Application* for promotion on the basis of the fact that previous work performance of the Applicant in 15 years with the Organization had already met the general requirements of her Department for being recommended for promotion in the fall of 1978, and Applicant already was performing professional duties in an established P-2 post before the passage of the Resolution or issuance of the Instruction;
- “(ii) The new method of deciding promotions from General Service to Professional category is in contradiction to Staff Regulation 4.2 and Article 101 of the Charter which states that ‘The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity’;
- “(iii) The imposition of a 30 per cent ceiling on the number of posts has unfairly reduced the probability of Mrs. Capio’s being appointed to a professional post and is contradictory to Staff Regulation 4.4 which reads ‘Subject to the provisions of Article 101, Paragraph 3, of the Charter and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations’.

“B. With respect to transitional measures announced in Administrative In-

struction ST/AI/268/Add.1 which is limited to the 51 incumbents of posts prior to 20 December 1978 to *hold* that:

“(i) The Administrative Instruction would prejudice the Applicant from being reviewed by the Central Examination Board because without her knowledge, the manning table of her Department did not list her name against a professional category post despite the fact that she was performing professional category duties in an established P-2 post prior to 20 December 1978, and still continues to perform professional category duties.

“C. To order the Respondent that the Applicant should be charged against a Professional level post in the manning table at par with her colleagues doing the same level and volume of work.

“D. To order the Respondent to pay the Applicant a Special Post Allowance with retroactive effect from 8 September 1978, the date on which Mrs. Capio assumed her present post, accepting Professional-level responsibility and providing fully satisfactory service at the Professional level.

“E. To order the Respondent either to convene an Appointment and Promotion Board to consider Mrs. Capio for promotion to the Professional level or else to order that the Applicant be reviewed by the Central Examination Board under the interim transitional measure for promotion from the General Service to the Professional category level.”;

Whereas the Respondent filed his answer on 6 June 1980;

Whereas the Applicant requested oral proceedings on 24 June 1980;

Whereas the Applicant filed written observations on 6 August 1980;

Whereas the Respondent submitted an additional document on 22 September 1980 and the Applicant commented thereon on 24 September 1980;

Whereas the Applicant submitted additional documents on 23 October 1980;

Whereas the Tribunal heard the parties at a public session held on 28 October 1980;

Whereas at the request of the Tribunal the parties submitted additional information and documents on 29 and 31 October and on 6, 7 and 10 November 1980;

Whereas, in reply to questions put by the Tribunal, the Respondent informed the Tribunal, on 7 November 1980, of some changes he was making to the text of his answer;

Whereas these changes have been explicitly noted in the present judgement;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 16 March 1964 as a Clerk-typist at the G-2 level under a three-month fixed-term appointment which was subsequently extended for one month then converted to a probationary appointment. On 1 October 1964 she was promoted to the G-3 level. She became a Clerk-stenographer on 23 November 1964 and an Accounting Clerk on 20 July 1965. On 1 March 1966 her appointment was converted to a permanent appointment. She was promoted to the G-4 level as a Senior Accounting Clerk on 1 July 1969 and to the G-5 level as a Principal Accounting Clerk on 1 April 1973. On 15 December 1975 she became a Principal Finance Clerk. In that capacity the Applicant, who was serving in the Departmental Administration and Finance Office of the Department of Economic and Social Affairs, assisted the Finance Officer covering operational projects for Asia, Mr. P. Wong, and provided direct coverage in his absence on all routine matters. On 1 July 1978 the Applicant's unit became the

Technical Co-operation Finance Branch on its transfer to the Department of Technical Co-operation for Development. On 29 August 1978 her supervisor wrote to the Executive Officer of the Department that

“ . . .

“As discussed earlier, with Mr. P. Wong’s departure, Mrs. R. Capio is being assigned as Acting Finance Officer. As the senior G/5 and holder of the academic degree B.Sc., Mrs. Capio is the best qualified to fill the vacated P/2 post. . . .”

On 12 September 1978, in a memorandum copied to the Executive Officer, the supervisor advised “all Staff concerned with Technical Co-operation Finance Matters” that

“Effective today, Finance Officer areas of assignments will be changed as follows:

“(a) Southern Africa, Regional and all Regular Programme Projects—Mr. William Butler;

“(b) Asia—Mr. Leonard Zezulin;

“(c) Northern Africa, Europe and Middle East and Interregional Projects—Mr. Compton Persaud;

“(d) Latin America—Mrs. Rosemille Capio.”

On 26 October 1978 the Executive Officer sent the following memorandum to all directors in the Department:

“It has been brought to my attention that in some instances, staff in various offices have been assigned to posts at a higher level than their present grade.

“It is important that my office be informed when staff are assigned to other posts or functions, as these actions may carry with them expectations of promotions or representations from other staff who might be desiring of equal treatment.

“Where any such action is contemplated, I request that it be brought to the attention of my deputy, Mr. Steven Halevy, in order that the prior agreement of the Executive Office may be obtained.”

On 31 October 1978 the Applicant’s supervisor wrote on a copy of that memorandum the following question to the Deputy Executive Officer:

“Mr. Halevy,

“May I take it that my memorandum of 29 August addressed to Mr. Pasquet [the Executive Officer] covers the assignment of Mrs. Capio as an Acting Finance Officer?”

On the same day the Deputy Executive Officer replied: “most definitely”.

On 15 December 1978 the Applicant’s supervisor initiated the procedure for the promotion of the Applicant and mentioned as an “exceptional assignment” the fact that she had been acting in the capacity of a Finance Officer since the departure of Mr. Wong.

On 15 March 1979, in a memorandum to the Assistant Secretary-General for Personnel Services, the Department recommended the Applicant and six other General Service staff members for promotion from G-5 to P-2; the recommendation in respect of the Applicant stated:

“... She assumed the duties of Finance Officer (P-2) in September 1978. ...”

“... ”

“Although a specific P-2 vacancy is not available at the present time, it is the intent of the Department to request the Budget Division to reclassify Mrs. Capio's post to the P-2 level. Accordingly, the Department strongly recommends that she be approved for the P-2 Promotion Register until a suitable vacancy becomes available.”

On 19 June 1979 the Assistant Secretary-General for Personnel Services informed the Department of his plan to set up a new procedure for the promotion to the Professional category of staff members in other categories as requested by the General Assembly in its resolution 33/143 of 20 December 1978. On 9 July 1979 the Department wrote to the Assistant Secretary-General for Personnel Services as follows:

“... ”

“During the past two years TCD [Technical Co-operation for Development] has submitted for the consideration of the Appointment and Promotion bodies six staff members from G-5 to P-2 and two staff members from G-4 to P-1. Out of these eight projected posts for promotion from General Service categories to Professional categories, only two posts actually existed and they are already occupied by two G-5 staff members whose posts were utilized last year for promotion purposes. We had intended to reclassify six other posts financed from extrabudgetary resources to accommodate those promotions, once successful, in the context of the internal realignment and streamlining of the Department. As you may know, this realignment has been held up and it is not therefore possible to classify these posts as yet. As soon as possible after a decision is taken as to the internal structure of the Department the Executive Office will provide your office with the job description for each post that should be classified as professional post.”

The Applicant having been informed by the Acting Executive Officer, Mr. Chhor, that she was listed against a G-5 post on the manning table and not against a professional post, on 10 July 1979 her supervisor expressed surprise and concern in a memorandum to Mr. Chhor, who apparently confirmed orally that the Applicant was listed against a G-5 post on the manning table. On 2 August 1979 the Applicant appealed to the Secretary-General in a letter reading:

“The immediate implementation of the new policy regarding movement from the General Service to the Professional category is of great concern to me for the following reasons:

“I have been with the Organization for 15 years and as of 12 Sept. 1978, have been Finance Officer with Technical Co-operation Finance Branch, DTCD, handling Latin America Projects and Human Settlement (Habitat) Projects which is an established professional post. I was recommended for promotion to the P/2 level in the fall of 1978 in accordance with established procedures at that time.

“To my disappointment, I understand that resolution 33/143 (g) adopted by the General Assembly on 20 Dec. 1978 which mandates that competitive examinations control the movement of staff from General Service to the Professional Level is to be applied in November 1979 for staff recommended for promotion in the fall of

1978. This would be an instance where a General Assembly Resolution were applied in such a way as to violate the acquired rights of staff—such application being in direct violation of any proper interpretation of staff rules and regulations.

“I believe that those staff members who were doing professional work and assigned to recognized professional posts and especially those recommended for promotion prior to the date of 20 Dec. 1978 (Resolution 33/143 (g)) should not be subjected to the new scheme of competitive examination.

“ . . . ”

On 2 October 1979 the Applicant, having received no reply, requested the Secretary-General's agreement to submit an application directly to the Tribunal. Her request was granted and on 28 February 1980 she filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. As to the applicability of General Assembly resolution 33/143 (g):

(a) The Respondent should have considered the Applicant's case for promotion in accordance with the existing policies and procedures, and the Resolution and Administrative Instruction did not provide a legal basis for his refusal to do so;

(b) The new method of deciding promotions from General Service to Professional level is inconsistent with the Charter and Staff Regulations, which require that “The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity” and until a correct implementation of Resolution 33/143 (g), the Applicant should be considered for promotion on the basis of the policies and procedures in effect on 8 September 1978;

(c) The arbitrary ceiling of 30 per cent called for in the Resolution should be declared void and the Administrative Instructions based thereon should be retracted.

2. As to the prejudicial effect upon the Applicant of the transitional measures announced in Administrative Instruction ST/AI/268/Add.1: The discrepancy between the manning table account of Professional post assignments and the actual assignments, wherein the Applicant in fact occupies a Professional-level post, should not bar her from being considered for promotion in accordance with transitional measures announced in Administrative Instruction ST/AI/268/Add.1 or other more fair and objective measures that might be taken by the Respondent.

Whereas the Respondent's principal contentions are:

1. Rules governing promotion of United Nations staff are “statutory” measures established and subject to change by the General Assembly under Article 101 of the United Nations Charter.

2. General Assembly resolution 33/143 I (g), by changing rules governing promotion of United Nations General Service staff members into the Professional category, did not violate any rights of United Nations staff. The resolution could have been immediately and completely implemented by the Secretary-General.

3. The Special Review, which established a limited and narrow exemption from the competitive examination, created rights only in those covered by the exemption. The limited and narrow nature of the Special Review is consistent with General Assembly resolution 33/143 I (g).

4. The Respondent's decision that the Applicant did not qualify for a Special Post Allowance was valid and does not violate the Applicant's rights.

The Tribunal, having deliberated from 28 October 1980 to 20 November 1980, now pronounces the following judgement:

I. The Tribunal has before it an application seeking recognition of the Applicant's right to be considered for promotion, General Assembly resolution 33/143 and the administrative instructions issued by the Secretary-General in implementation of that resolution notwithstanding.

The Applicant argues that the aforesaid resolution and administrative instructions run counter to the provisions of the Charter and the Staff Regulations. In view of her administrative status, the Applicant contends that she has an acquired right to the retention for her benefit of the former system for promoting General Service staff to the Professional category, as introduced by circular ST/ADM/SER.A/437 of 17 October 1957. She requests, finally, that she be granted a special post allowance as of 8 September 1978, the date on which she assumed the duties and responsibilities of a staff member at the P-2 level. The Tribunal will consider these different claims in turn.

II. In resolution 33/143 the General Assembly requested the Secretary-General to adopt certain "measures and guidelines regarding recruitment of Professional staff". The resolution contains specific provisions relating to the promotion of General Service staff in paragraph I 1 (g).

The General Assembly, which, under Article 101 of the Charter, is empowered to establish the regulations applicable to the staff of the Organization, may give the Secretary-General instructions as to how to use the powers devolving on him as the chief administrative officer.

As the Tribunal recognized in Judgement No. 162 (*Mullan*), the rules of the Charter are "legally binding on United Nations organs". However, "responsibility for [their] implementation falls upon those who are competent to make rules applicable to the staff". Moreover, once the General Assembly has laid down in the Staff Regulations the broad principles of personnel policy for the staffing and administration of the Secretariat, the Secretary-General is to "provide and enforce such staff rules . . . as he considers necessary", provided that they are "consistent with these principles".

III. Resolution 33/143 establishes three guidelines for the movement of staff from the General Service to the Professional category:

- (1) Promotions should involve only the P-1 and P-2 levels;
- (2) They should not exceed 30 per cent of the total posts available for appointment at those levels;
- (3) They should be conducted "exclusively through competitive methods of selection from General Service staff with at least five years' experience and post-secondary educational qualifications".

These guidelines were put into effect by the Secretary-General in administrative instruction ST/AI/268 of 29 August 1979, which specifies the methods and procedures for drawing up the list of posts to be filled, the eligibility requirements for the examinations, the organization of the examinations and the functions of the Central Examination Board and the various Boards of Examiners. Finally, the administrative instruction set forth certain transitional measures that were later supplemented.

The Applicant contends that the General Assembly's guidelines and their imple-

mentation by the Secretary-General disregard the provisions of Article 101 of the Charter and Staff Regulation 4.4. She points out that limiting recruitment by promotion to 30 per cent may result in a failure to select the best candidates for the posts to be filled if the outside candidates, recruited by nomination, prove to be of lower calibre.

Above all, she criticizes selection by an examination consisting solely of written tests and an interview as a "competitive method", when relevant experience and on-the-job performance, particularly in a Professional post, do not enter into consideration and no provision is made for assessing the candidates' integrity. For, according to Staff Regulation 4.2, which reproduces the wording of Article 101 of the Charter and deals with promotion among other issues, "the paramount consideration . . . shall be the necessity for securing the highest standards of efficiency, competence and integrity".

Furthermore, Staff Regulation 4.4 states that "the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations".

Thus, according to the Applicant, the system introduced by the Secretary-General pursuant to resolution 33/143 fails to respect the Charter and the Staff Regulations. Until the measures taken to put resolution 33/143 into effect, take account of the provisions by which the Secretary-General is bound, the Applicant feels she is entitled to be considered for promotion under the system and procedures in force on 8 September 1978.

IV. The Tribunal observes that one of the things that resolution 33/143 indicates is the General Assembly's desire, in view of the Organization's current situation, to secure fuller compliance with Article 101, paragraph 3 *in fine*, of the Charter, which is reproduced by Staff Regulation 4.2: "Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible." Concern was also expressed that a satisfactory proportion of staff members at the P-1 and P-2 levels should be capable of pursuing a complete career in the Secretariat.

While the method chosen by the Secretary-General for the purpose of organizing promotion by competitive examination is debatable in some respects, it is reasonable to suppose that candidates with five years' experience have demonstrated the qualities referred to in Article 101 of the Charter, which cannot be evaluated in the tests planned.

The Applicant does not ask the Tribunal to rule on the legality of administrative instruction ST/AI/268; she asks it to determine what her own legal status in that regard is and whether she has a claim to the retention for her benefit of the former system for promoting a staff member from the General Service to the Professional category.

The Tribunal recognizes that the General Assembly was entitled to demand the introduction of a new system to govern such promotions and that the Secretary-General has exercised his discretion in setting up a system of selection by competitive examination, thereby modifying the powers of the Appointment and Promotion Board and related bodies and establishing new bodies, the Central Examination Board and the boards of examiners for the various occupational groups. But the Tribunal notes that administrative instruction ST/AI/268 made provision for transitional measures applying to the examinations held in 1979. These were supplemented on 6 December 1979 by an administrative instruction which provided, in the case of some staff members, not for special arrangements in connexion with the examination, but for a special review of their suitability by the Central Examination Board.

As the Applicant's promotion should have been considered in 1979, the question

arises whether she was entitled to benefit from the transitional measures introduced by the Respondent.

V. The Applicant argues that she has an acquired right to the retention for her benefit of the promotion system that was in force prior to the issue of administrative instruction ST/AI/268 on 29 August 1979.

This system was introduced in circular ST/ADM/SER.A/437 of 17 October 1957, which accompanied changes in the Staff Rules relating to the Appointment and Promotion Board. The circular made the Board and its subsidiary bodies responsible for reviewing the status of staff members eligible for promotion. A memorandum from the Director of Personnel to the heads of departments dated 4 November 1959 set out the criteria for promotion as established by the Board and the Committee. The importance of the individual candidate's occupational status—his current duties, performance as assessed in his periodic reports and oral testimony, and his potential for promotion to at least the P-3 category—are stressed, and the Board had to weigh all these factors together in making its recommendation.

The circular deals both with recommendations for immediate promotion and with recommendations for inclusion in a promotion register when no post is immediately available for the person concerned.

VI. As a result of information supplied at the Tribunal's request during the proceedings, the Respondent on 7 November 1980 modified the wording of his answer relating to the Applicant's status, which is now described as follows:

“Departmental records (see Annexes 17 and 48) also establish that the Applicant has been charged against a DTCD G-5 post (OHA-07760-E-G-5-001) continuously between 1 July 1978 and 31 March 1980.” “The Respondent does not dispute that the Applicant has been performing professional duties at the P-2 level since 12 September 1978 and has been assigned to a P-2 post in the Technical Co-operation Financial Branch since 1 April 1980.”

An examination of the file and of the documents produced by the Respondent on 7 November 1980 has led the Tribunal to the following conclusions:

(1) Mr. P. Wong, whose grade was P-2, was assigned as of 1 July 1978 to a P-3 post which had been transferred to the Department of Technical Co-operation for Development at that date. After Mr. Wong's resignation on 8 September 1978, the P-3 post was occupied by Mr. Peabody on 1 October 1978. Mr. Wong's resignation did not, therefore, release a P-2 post.

(2) The Applicant's supervisor took decisions in respect of the Applicant which imply a belief that Mr. Wong's departure left a P-2 post open and that the Applicant was assigned to that post. This belief is apparent in the reference, in the memorandum dated 29 August 1978, to “the vacated P/2 post”. Moreover, upon asking the Deputy Executive Officer about the Applicant's assignment in connexion with the memorandum of 26 October 1978 on the assignment of staff to posts at a higher level than their present grade and in reference to her own memorandum of 29 August 1978, the supervisor received a reply authorizing the assignment. When she initiated the promotion procedure on 15 December 1978, the supervisor referred to the fact that the Applicant had been acting in the capacity of a Finance Officer “since the departure of Mr. Wong 8 September 1978” as an “exceptional assignment”. Finally, in her memorandum dated 10 July 1979, she

expressed surprise and concern that the Applicant had been informed, upon inquiring, that she was listed against a G-5 rather than a P-2 post.

(3) The Department has always acknowledged that the Applicant was performing the duties of a Finance Officer (P-2). In the memorandum of 15 March 1979 it indicated its willingness to request the reclassification of the Applicant's post and recommended that the Applicant should be approved for the P-2 promotion register until a suitable vacancy became available. However, the Applicant finally learned in autumn 1979 after repeated inquiries, that the Department had not passed on the recommendation for promotion to the Department of Personnel owing to the anticipated introduction of the system of promotion through competitive examination.

(4) The information received by the Tribunal on 7 November 1980 shows that the Applicant has been charged against a P-2 post in the staffing table since 1 April 1980.

VII. In order to vindicate her acquired rights to the retention for her benefit of the promotion system established in 1957, the Applicant contends that since the procedure was initiated by her chief of service on 15 December 1978, prior to the adoption of resolution 33/143, and since the Department formulated its recommendations prior to the issue of the administrative instruction establishing the new system, she was entitled to have the proposal for promotion evaluated according to the rules in force at the time when that proposal was made.

The Respondent contends that the Secretary-General was under an obligation to establish a new procedure in accordance with the guidelines laid down by the General Assembly. That procedure was applicable immediately to staff members whose promotion was to take place between 1 April 1979 and 31 March 1980.

The Tribunal acknowledges that the administrative instruction issued pursuant to resolution 33/143 involves a change in procedure and in particular the intervention of new bodies. The competence of the Appointment and Promotion Board was affected by the new system. The Respondent states that from April 1979 onward the Board stopped considering the proposals for promotion from G-5 to P-2 already submitted to it, because the system provided for in resolution 33/143 was being prepared. From this standpoint, the Applicant cannot claim acquired rights and the retention for her benefit of the competence of the Appointment and Promotion Board.

VIII. The Tribunal notes, however, that in the promotion system established in 1957, certain benefits and advantages are granted to staff members for services performed. Evaluation with a view to promotion is based on the conditions in which the person concerned performs professional functions; furthermore, a staff member can be included in the promotion register irrespective of the classification of the post he occupies. Those are prerogatives recognized in connexion with the promotion procedure but distinct from it. It is legitimate to speak of acquired rights with regard to these prerogatives attached to services performed at the time when the procedure is initiated, and apply to them the judicial precedents established by the Tribunal (Judgements No. 82: *Puvrez* and No. 202: *Quéguiner*). Respect for acquired rights means that the complex of benefits and advantages to which a staff member is entitled for services rendered before the entry into force of a new rule cannot be impaired.

Since the necessary administrative measures relating to the Applicant's suitability to be considered for promotion in 1979 had been taken prior to the adoption of resolution 33/143 and prior to the issue of administrative instruction ST/AI/268 of 29 August 1979, the Applicant had thereby acquired the right to have her suitability for a P-2 post evaluated

according to the method established in 1957, and not by the competitive examination method.

IX. The Tribunal notes that in the administrative instruction of 29 August 1979 the Respondent set out transitional measures for General Service staff assigned to and fulfilling the duties of a P-1/P-2 post in the staffing table prior to 1 April 1979, with or without a special post allowance. The administrative instruction of 6 December 1979, supplementing the preceding one, stated that a special review would be conducted in the cases of the staff members assigned to 51 P-1/P-2 established posts. The special review was entrusted to the Central Examination Board, with additional members selected from the membership of the Appointment and Promotion Committee. It was stated that in the case of those staff members, who would not have to take the competitive examination, the Central Examination Board would take into account various factors relating to their professional suitability in conditions similar to those of the previous system. The Tribunal notes that those provisions took into account the acquired rights of those staff members. However, the Applicant was not covered by those transitional measures, for the 51 posts in question had been selected with the proviso that the name of the candidate for promotion must be charged against a Professional post in the staffing table of the Department. However, since that was not the case for the Applicant owing to the situation noted by the Tribunal in paragraph VI above, the post the duties of which she was performing was not included among those which the Central Examination Board was empowered to consider in the special review.

That being so, the Tribunal concludes that the acquired rights of the Applicant, defined in paragraph VIII above, have not yet been taken into consideration as she was entitled to expect.

X. The Tribunal notes that in the report of the Central Examination Board dated 8 February 1980, the Board mentioned the problem that would stem from the fact that professional posts were not available in sufficient quantity to correspond to the effective exercise of professional duties. It mentioned administrative practices which would no longer be viable in the future but acknowledged that under its terms of reference it was not in a position to do anything about meeting the situation.

The Tribunal notes that the administrative instructions issued so far have thus not covered all cases in which staff members can claim acquired rights. It is aware of the fact that the Central Examination Board, having received an appeal from the Applicant, heard her case. It considers that a way should be found to ensure that the Applicant enjoys the benefit of her acquired rights and hence to give her an opportunity to have her right to promotion considered in the light of the criteria used in the system which existed prior to the administrative instruction issued pursuant to resolution 33/143, which introduced the competitive examination system.

XI. The Tribunal notes that the fact that the Applicant had been charged against a G-5 post in the staffing table not only prevented her post from being covered by the transitional measures established but also deprived her of any possibility of benefiting from the special post allowance to which she would have been entitled from 8 September 1978 onwards on the basis of Staff Rule 103.11 (b).

The Tribunal notes that according to the information provided by the Respondent on 7 November 1980, the Applicant has been eligible for the special post allowance since 1 April 1980. However, the documents submitted to the Tribunal do not indicate that the Applicant has thus far been informed officially that for more than seven months she has been charged against a P-2 post in the staffing table of the Department. The Tribunal

acknowledges that the Respondent is entitled to use his discretion in granting a special post allowance and therefore it cannot rule that the Applicant was entitled to receive that allowance as from 1 April 1980. Nevertheless, she was indisputably entitled to be informed of the change in her status, so that she could request the implementation of Staff Rule 103.11 (b). By his silence, the Respondent has deprived the Applicant of an opportunity existing for her benefit, and she has thus sustained an injury for which the Respondent must provide compensation.

The Tribunal acknowledges that for the period 8 September 1978-1 April 1980, the staffing table of the Department did not make it possible to list the Applicant against a P-2 post, although she was in fact performing the duties of such a post. The Tribunal observes that the Applicant's supervisor did not receive from the administrative services sufficiently detailed information about what had happened to the post of Mr. Wong, a P-3 post which was then assigned to a P-2 staff member. It is regrettable that the supervisor was not informed about the situation until the Applicant herself became concerned about the outcome of the promotion proposal made on 15 March 1979. In any event, the Applicant could not claim the application of Staff Rule 103.11 (b) at that time and consequently cannot receive compensation on that account.

XII. In the light of the considerations set forth in the preceding paragraph, the Tribunal considers that for the period between 1 April 1980 and the date of the present judgement, the injury sustained by the Applicant must be evaluated as the amount she would have received by virtue of the special post allowance for that period, without prejudice to her right to claim the application of Staff Rule 103.11 (b) as from the date of the present judgement.

XIII. For these reasons, the Tribunal decides:

(1) The Respondent shall take the necessary steps to ensure that the acquired rights of the Applicant to be considered for promotion on the basis of her services corresponding to a P-2 post, as defined in paragraph VIII above, are respected.

(2) The Respondent shall pay the Applicant as compensation the amount determined in accordance with paragraph XII above.

(Signatures)

Suzanne BASTID
President

Francis T. P. PLIMPTON
Vice-President

New York, 20 November 1980

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary