

Judgement No. 267*(Original: English)***Case No. 249:
Adler****Against: The Secretary-General
of the United Nations**

Termination of the employment of a staff member holding a probationary appointment.

Applicant's request that the Tribunal order certain preliminary measures is rejected.

Consideration of the relevant clauses of the Applicant's contract.—Conclusion of the Tribunal that the Staff Rules and Regulations and administrative instructions which pertain to probationary appointments are applicable to the case.—The Applicant's complaints in respect of the procedure followed by the Administration in his case are well-founded.—Examination of the sequence of events connected with the making and investigation of the Applicant's periodic reports.—Delays in the work of the Joint Appeals Board.—Deficiencies in the procedure followed by the Administration in the Applicant's case.—The recommendation of the Joint Appeals Board concerning the payment of compensation to the Applicant was well-founded, and the Secretary-General correctly interpreted that recommendation.—Applicant's allegations concerning the evaluation of his performance are rejected.—Discretionary authority of the Secretary-General in the matter.—Lack of any evidence of prejudice or extraneous factors vitiating the contested decision.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas at the request of Herbert Adler, a former staff member of the United Nations Industrial Development Organization, hereinafter called UNIDO, the President of the Tribunal, with the agreement of the Respondent, extended to 20 March 1980 the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 March 1980, the Applicant filed an application the pleas of which read in part as follows:

“Preliminary measures

“A. The Appellant asks the Tribunal to declare the application receivable and that it is competent to hear the case.

“B. The Appellant requests that the Tribunal obtain the following documents for his use . . . :

“(i) Memoranda of 11 and 16 October 1973 of Leila Doss, former Chief of the Information Service of UNIDO . . .

“(ii) Any written observations Miss Doss may have submitted to the UNIDO Administration in connection with the alleged investigations of the Appellant's second and third rebuttals . . .

“(iii) Francisco Villanueva's cable No. 112 of 18 January 1974; Bertram Borsuk's cable No. 386 of 4 February 1974; Mr. Borsuk's memo of

26 February 1974 to I. H. Abdel-Rahman; and Mr. Abdel-Rahman's reply . . .

- “(iv) The reply promised by Mr. Holmes to Shukri S. Salameh, then Chief of Staff Services, U.N.; any reply received by Mr. Holmes; and any further communications on the subject under discussion up to Mr. Villanueva's cable of 18 January 1974 referred to under (iii) above.
- “(v) The ‘proposal to . . . the Executive Director’ (regarding the establishment of a committee to investigate the Appellant's first rebuttal) referred to in Mr. Holmes' memo to Mr. Salameh of 25 September 1973 . . .
- “(vi) The reply of Mr. Abdel-Rahman to Mr. Holmes' proposal referred to under (v) above.
- “(vii) Any document submitted to the Executive Directors of UNIDO or the UNIDO Administration in connection with the alleged investigations of the Appellant's second and third rebuttals . . .
- “(viii) The complete JAB record of the Appellant's case before the JAB . . .
- “(ix) The notes taken by Miss D. Kingsbury, the official reporter at the Appellant's hearing by the JAB, and/or the summary of the hearing she prepared for the JAB. . . .
- “(x) The complete record . . . of the Appointment and Promotion Committee which considered the Appellant's future status in the period from about 1 April 1974 to 15 October 1974. . . .
- “(xi) The U.N. Secretariat Vacancy Announcement concerning the Appellant's post as Information Officer in the Public Information Service at UNIDO, under which the Appellant was recruited.
- “(xii) The U.N. Secretariat Vacancy Announcement under which the Appellant's successor as Information officer in the Public Information Service at UNIDO was recruited. . . .

“C. In view of the nature of the case, the Appellant requests that oral proceedings be held by the Tribunal for the purpose of interrogating witnesses and hearing the parties under Article 15 of the Rules of the Tribunal.

“D. The Appellant . . . requests that he be given the opportunity to examine the following witnesses before the Tribunal:

- “(1) Mr. Kurt Waldheim, Secretary-General of the United Nations. . . .
- “(2) Mr. James Jonah, Assistant Secretary-General for Personnel Services, United Nations. . . .
- “(3) Mr. Shukri S. Salameh, former Chief of Staff Services, Office of Personnel, United Nations. . . .
- “(4) Mr. Gamal M. Badr, Representative of the Secretary-General in connection with the Appellant's appeal to the JAB. . . .
- “(5) Mr. Francisco Villanueva, Representative of the Secretary-General at the Appellant's hearing by the JAB. . . .
- “(6) Ms. Marie Toerien, Chairman of the Appointment and Promotion Committee which considered the Appellant's future status. . . .

“(7) Mrs. A. M. Nielsen, member of the *Ad Hoc* Committee which investigated the Appellant’s first rebuttal. . . .

“(8) Mr. Yasushi Akashi, Under Secretary-General for Public Information, United Nations (or his successor). . . .

“(9) Mr. Rudolph Stajduhar, Director of the Press and Publications Division, Department of Public Information, United Nations (or his successor). . . .

“(10) Miss Leila Doss, former Chief of the UNIDO Public Information Service and the Appellant’s supervisor. . . .

“(11) Mr. Bertram Borsuk, former Chief of Personnel Administration at UNIDO. . . .

“(12) Mr. Clifford L. Noronha, former Chief of Communications, Archives and Records at UNIDO. . . .

“(13) Mr. Abd-El Rahman Khane, Executive Director of UNIDO. . . .

“(14) Mr. Geoffrey Holmes, former Chief of Personnel at UNIDO. . . .

“(15) Mr. Lancelot Poole, Chief of the Secretariat Recruitment Service at UNIDO. . . .

“(16) Mr. Mohammad A. Siddiqui, member of the *Ad Hoc* Committee which investigated the Appellant’s first rebuttal. . . .

“(17) Mr. Stanley White, UNIDO Information Officer. . . .

“(18) Mr. Ibrahim H. Abdel-Rahman, former Executive Director of UNIDO

“(19) Mrs. Marjorie Achton, former UNIDO Personnel Officer. . . .

“ . . .

“E. . . . The Appellant requests that the Tribunal order the Assistant Secretary-General for Personnel Services, Mr. Jonah (or his successor), to provide the Appellant with the following statistics, covering the period 7 November 1971 to 23 November 1978 (or, if the Tribunal finds it sufficient, the period of the Appellant’s service in the U.N., i.e. 7 November 1971 to 25 November 1974).

“(1) How many U.N. staff members who received periodic reports rating them as ‘a staff member who maintains a good standard of efficiency’:^{*}

“(a) received salary increases.

“(b) did not receive salary increases.

“(c) *received *worse* periodic reports and received salary increases.

“(2) How many U.N. staff members who received periodic reports rating them as ‘a staff member who maintains a good standard of efficiency’:^{*}

“(a) while on a probationary appointment, received a permanent appointment.

“(b) while on a probationary appointment, were terminated, giving the staff members’ last names.

“(c) *received *worse* periodic reports and, while on a probationary appointment, received a permanent appointment.

“(3) How many U.N. staff members who received (a) two and (b) three successive periodic reports rating them as ‘a staff member who maintains a good standard of efficiency’:

“(a) while on a probationary appointment, received a permanent appointment.

“(b) while on a probationary appointment, were terminated, giving the staff members’ last names.

“ . . .

“F. . . . The Appellant requests that the Tribunal instruct Mr. James O. C. Jonah . . . to state:

“(a) whether he was a member of the APC [Appointment and Promotion Committee] which considered the Appellant’s termination and, if so, from which date until which date.

“(b) whether he participated in the APC’s *decision* to terminate the Appellant and, if so, whether he was in favor of termination.

“(c) if he did not participate in the *decision*, does he support the termination decision.

“(d) why he refused to answer the Appellant’s above question in his letter of 29 November 1979.

“G. . . . The Appellant . . . requests that the Tribunal order the Assistant Secretary-General for Personnel Services, James O. C. Jonah, to provide the Appellant with the following information:

“(a) the name, nationality, and level of the person who replaced the Appellant and the date he joined UNIDO.

“(b) a copy of the U.N. Secretariat Vacancy Notice under which he was recruited.

“(c) brief journalistic and English-German language background of this person.

“(d) whether this person is still in the UNIDO Information Service and, if not, the date he/she left, and the reason for leaving.

“*Substantive measures*

“1. The Applicant requests the Tribunal:

“(a) To rescind the decision by the Respondent to terminate the Appellant’s probationary appointment on 25 November 1974, and not to grant him a permanent appointment.

“(b) To rescind the decision by which the Respondent, after considering the conclusions and recommendations of the Joint Appeals Board (JAB) in its Report to the Secretary-General of 23 April 1979, maintained the aforementioned administrative decision.

“(c) To order the Respondent to reinstate the Appellant into the service of the United Nations with the United Nations or UNIDO in Vienna, Austria, at the level P-4, a level he could reasonably have been expected to reach had he not been terminated or, failing this, at the level P-3, step X, a level he could reasonably have been expected to reach on the basis of his three periodic reports had he not been terminated, and to grant him a permanent appointment.

“(d) To rule that there was a lack of due process in the Respondent’s failure to pay the Appellant salary increases due on 7 November 1972, 7 November 1973, and 7 November 1974, with respect to Administrative Instruction ST/AI/115 and Personnel Directive PD/5/69.

“(e) To rule that, in view of the Appellant’s three periodic reports which described him as ‘A staff member who maintains a good standard of efficiency’ and

the normal United Nations practice of granting salary increases to staff members receiving such ratings, the salary increases should have been paid and were withheld illegally.

“(f) To order the Respondent, with reference to (d) and/or (e) above, to pay to the Appellant the back salary due to him, as well as the additional money due to him as a result of this with respect to the termination indemnity already paid to him.

“(g) To determine that normal United Nations practice is to grant permanent appointment to staff members on probationary appointment who receive successive periodic reports describing them as ‘A staff member who maintains a good standard of efficiency;’ that the Appellant, who had received a permanent appointment as an International Civil Servant at the Food and Agriculture Organization of the United Nations (FAO) was, on the basis of his above ratings, entitled to a permanent appointment; and that the Respondent’s failure to grant this appointment and to terminate him instead represented an arbitrary and capricious exercise of his power of termination.

“(h) To rule that the Respondent violated the agreement reached with the Appellant prior to his joining the United Nations, which is reflected in a document in his Official Status File, that he would be considered for permanent appointment after six months’ service with the United Nations; that the Appellant was, in any case, entitled to a review of his appointment by the Appointment and Promotion Board at the end of two years of probation in accordance with Staff Rules 104.12 (a), 104.13 (c) (iii), and 104.14 (f) (ii); and that the failure by the Respondent to insure that this review took place at that time was (1) a violation of the Staff Rules and the Appellant’s rights and (2) entitled the Appellant to believe that his services were satisfactory and he would receive a permanent appointment.

“(i) To rule that the Respondent kept the Appellant on a probationary appointment for three years, which is contrary to normal United Nations and accepted international practice; that during most of this time the Respondent kept the Appellant uncertain, if not completely in the dark, as to his future with the United Nations, which affected his physical and mental well-being and, quite possibly, his performance; and that such treatment by the Respondent of the Appellant—his subordinate—was in violation of acceptable modern behavior.

“(j) To rule that the fact that the JAB recommended to the Respondent in its Report of 23 April 1979 that the Appellant be paid six months’ net base salary at the ‘level P-3, step III,’ was clear recognition by the JAB that the Appellant, who was terminated at the P-3, step I level, performed satisfactory service in accordance with Staff Rule 103.8 (a) and that, accordingly, there was no reason to terminate the Appellant for allegedly unsatisfactory work.

“(k) To rule that the JAB, having recommended payment of the six months’ salary at the level P-3, step III (when it could have recommended payment at the level P-3, step I), and having noted in the concluding paragraph of its Report ‘certain inconsistencies on the part of UNIDO’s Administration as well as violations of administrative instructions, procedures and policies, and wishes to put its concern at these instances of lack of due process which, by and large, may have placed strain on the Appellant and perhaps contributed to the unfavourable assessment of his performance,’ the JAB’s failure to recommend the Appellant’s reinstatement is inconsistent with its findings, and a miscarriage of justice which must be reversed.

“(l) To rule that the Respondent, in failing to make a rebuttal concerning the JAB’s findings, and in agreeing to pay the six months’ salary to the Appellant, has clearly admitted that he did not respect the terms of employment of the Appellant, that he violated the Appellant’s right to due process, and that he violated the Staff Rules and appropriate Administrative Instructions in connection with the Appellant’s employment.

“(m) To rule that the Respondent’s actions described in (i), (k), and (l) above, represent a clear violation by the Respondent of the Appellant’s rights under the Universal Declaration of Human Rights, specifically Article 23 (l) ‘Everyone has the right . . . to just and favourable conditions of work and protection against unemployment’, Article 28, and Article 30.

“(n) To rule that there existed a conspiracy on the part of certain UNIDO and U.N. officials, the purpose of which was to: (1) violate the agreement as to when the Appellant would be considered for permanent appointment, (2) deny the Appellant his rights under the U.N. Staff Rules and Administrative Instruction ST/AI/115, (3) since there was no basis on which to ‘legally’ recommend the Appellant’s termination to the Appointment and Promotion Committee (APC), to present to the APC untrue, biased, and pre-determined views concerning the Appellant’s alleged performance arrived at by an investigating committee set up at UNIDO specifically for this purpose at the suggestion of the U.N.’s Chief of Staff Services, (4) violate the Appellant’s right to due process.

“(o) To rule that the Appellant’s supervisor, Leila Doss, who was *not* the Appellant’s Department Head, in filling out Sections I and II of his three periodic reports, violated the ‘Instructions for Completing Periodic Reports’ established by the U.N. Administration; that the Respondent, in permitting Miss Doss to do so, denied the Appellant his right to a fair and proper review by an impartial official in Section II of her ratings in Section I; that the denial of such a review represented a most serious lack of due process; that the lack of such a review made the periodic reports invalid; and that such invalid periodic reports could in no way serve as the basis for the Respondent’s decision to terminate the Appellant’s probationary appointment.

“(p) To rule that the investigations of the Appellant’s rebuttals of his periodic reports were either non-existent, or did not meet the Tribunal’s criteria as to what a fair and proper investigation should be like; that the appraisals of the Executive Directors of UNIDO which were based on these investigations are consequently invalid; and that all other actions by the Respondent and the APC based on these investigations are without foundation and invalid.

“(q) To rule that the Executive Director of UNIDO, I. H. Abdel-Rahman, in whose Office the Appellant served for three years, failed to carry out the functions a Department Head in the U.N. is normally expected to carry out toward a subordinate. . . .

“(r) To rule that the three periodic reports filled out by the Appellant’s supervisor, Leila Doss, contain inaccuracies, untruths and omissions, for which there can be only one explanation: prejudice or some other improper motive.

“(s) To rule that the procedure to terminate the Appellant, beginning with the failure of the Respondent to issue to the Appellant a Special Report in accordance

with Paragraph 8 (ii) of ST/AI/115 at the time UNIDO recommended his termination to Headquarters (June 1973), through the tainted or non-existent investigations of his rebuttals and the improper, shallow, and slipshod review by the APC of his probationary appointment from April to October 1974, represented an overall lack of due process.

“(t) To rule that the APC which recommended the Appellant’s termination did not perform its job properly and conscientiously. . . .

“(u) To rule that the reasons given by UNIDO and the U.N. Office of Personnel for recommending the Appellant’s termination, and the reasons given by the APC for recommending the Appellant’s termination—on which the Respondent relied in terminating the Appellant—were not based on the facts and were specious as, therefore, was the Respondent’s termination decision.

“(v) To rule that the Respondent’s decision to terminate the Appellant . . . connotes an improper motive on the part of the Respondent. . . .

“(w) To rule that the Respondent . . . used his power to terminate the Appellant in an arbitrary and capricious manner.

“(x) To rule that the fact that the Respondent made the Appellant, who had obtained a permanent appointment as an International Civil Servant in the United Nations system while at FAO, prove again that he was suitable as an International Civil Servant in the United Nations system simply because he transferred from one United Nations organization to another and from one job to another, was an act of discrimination . . . ; that the Appellant, having acquired the status of a permanent International Civil Servant in the United Nations system at FAO after a year’s probation, had acquired a right and status which could not be taken away from him arbitrarily by the Respondent . . . ; that, in any case, the Appellant’s permanent status as an International Civil Servant in the United Nations system could not be taken away from him by the Respondent without clear and compelling cause . . . ; and that his alleged inability to write feature stories and to work in ‘written’ German was insufficient reason to find him unsuitable as an International Civil Servant.

“(y) To rule that the JAB which considered the Appellant’s appeal failed to ‘act with the maximum of dispatch consistent with a fair review of the issues before it’, as required by U.N. Staff Rule 111.3 (h); that the JAB failed to give the Appellant’s appeal the thorough, careful, fair and conscientious consideration to which he was entitled; that the Secretaries of the JAB, as well as the JAB members, displayed an astonishing lack of devotion to their JAB duties and responsibilities; and that, as a consequence of the above, the Appellant’s rights under Articles 8 and 10 of the Universal Declaration of Human Rights were violated.

“(z) To rule that the Respondent, whose duty as chief administrative officer of the United Nations it was—and is—to establish an effective and scrupulously fair appeals system in conformity with the Declaration of Human Rights—especially since U.N. staff members and former staff members have no recourse outside the United Nations—failed in his duty by not making sure that only the best qualified and most devoted officials who had the required time available for their JAB responsibilities were named to the JAB; by not taking effective action to ensure that the Appellant’s case would receive a prompt hearing by the JAB, especially since the Appellant on three occasions complained to the Respondent about the long delays in the hearing of his case; by keeping the Appellant waiting from the end of June

1979 to 20 November 1979 concerning his final decision regarding the Appellant's appeal, thereby preventing the Appellant from taking his case to the Administrative Tribunal at a much earlier time, thus delaying the course of justice once again; and that, in view of the above, the Respondent violated the Appellant's rights under Articles 8 and 10 of the Universal Declaration of Human Rights.

“2. The Appellant requests that the Tribunal order the Respondent:

- “(i) To pay the Appellant all salary and allowances due from the date of his termination until the date of his reinstatement, taking into account the salary increments due on 7 November of each year since 1974, at net salary, with all income taxes paid by the Appellant on this money to be reimbursed to him by the Respondent in accordance with standard U.N. practice, less the termination indemnity already paid to him.
- “(ii) To reinstate the Appellant into the U.N. Joint Staff Pension Fund as of 25 November 1974, to reinstate all of his rights as if he had never left the Fund (with the Appellant repaying to the Fund the money he received after being terminated).
- “(iii) In the event that the Respondent decides not to reinstate the Appellant but to pay him compensation instead, to pay to the Appellant the sum of U.S. dollars 500,000, an amount—salary and allowances—(plus pension) he could have reasonably expected to earn as a career permanent International Civil Servant in the United Nations from the date of his termination until his retirement at the normal age of 60.
- “(iv) To pay to the Appellant the sum of U.S. dollars 250,000 to compensate him for the mental and physical anguish to which he was subjected and the injury to his health during his three years at UNIDO—particularly at the hands of his supervisor, Leila Doss, and because of the seven months it took the APC, the APB, and the Respondent to decide to terminate him—due to the conditions under which he was forced to work, and as a result of the repeated violations of the Staff Rules and Administrative Instructions concerning his employment by UNIDO officials.
- “(v) To pay the Appellant the sum of U.S. dollars 100,000 to compensate him for the damage to his reputation and the difficulty he has encountered at a fairly advanced age and due to a lack of a commercial and technical background in finding a position approximately equal in pay to that of his UNIDO position as a result of the Respondent's arbitrary, capricious, and illegal termination of his appointment.
- “(vi) To pay the Appellant the sum of U.S. dollars 100,000 for the Respondent's violation of the Appellant's human rights, specifically Article 23 (1) ‘Everyone has the right . . . to just and favourable conditions of work and protection of unemployment,’ Article 28, and Article 30, of the Universal Declaration of Human Rights which the Respondent, as Secretary-General of the United Nations, should be the first one to do everything within his power to uphold.

- “(vii) To pay the Appellant the sum of U.S. dollars 50,000 for the mental strain and the upheaval of his day to day life as a result of the more than three years it took the JAB to submit a recommendation concerning the Appellant’s appeal to the Respondent and for the Respondent to inform the Appellant of his final decision regarding his termination, and the consequent violation by the Respondent of the Appellant’s human rights, specifically Articles 7, 8, 10, 28 and 30 of the Universal Declaration of Human Rights (see (y) and (z) above).
- “(viii) To pay the Appellant six months’ (gross) salary, as recommended by the JAB, *not* six months’ *net base* salary, which is what the Respondent paid to the Appellant. (The Appellant, no longer being a U.N. staff member, should not have the U.N. Staff Assessment deducted from the salary to which he is entitled).
- “(ix) To reimburse the Appellant for the expenses he incurred in connection with his appeal to the JAB, which reimbursement he requested from the JAB but which the JAB ignored . . . and to reimburse him for any reasonable and legitimate expenses, of which the Tribunal will be informed after the hearing of his appeal, in connection with his appeal to the Tribunal.
- “(x) To reimburse the Appellant, in the event that the Respondent pays him any amount of money at any time on a ‘net salary’ basis, any income tax the Appellant may have paid on this money, in accordance with standard U.N. practice.
- “(xi) To come to an agreement with the Appellant whereby any, or all, of the above sums be paid in partial sums from time to time in accordance with the Appellant’s wishes.”

Whereas the Respondent filed his answer on 29 April 1980;

Whereas, on 21 July 1980, the Applicant filed written observations in which he requested the following additional preliminary measures:

“B.

- “(xiii) A statement by the Respondent [clarifying a statement made by his representative before the Joint Appeals Board] . . .
- “(xiv) A statement by the Respondent [clarifying another statement made by his representative before the Joint Appeals Board] . . .
- “(xv) Details as to Leila Doss’ career . . .
- “(xvi) Details as to Bertram Borsuk’s education and training . . .

“D.

“(20) Mr. Axel Wuestenhagen, a former colleague of the Appellant . . .

“(21) Mr. John Vianney who, according to the Appellant’s information, succeeded him as Information Officer in UNIDO’s Public Information Service”

Whereas, on 25 August 1980, the Respondent was called upon to produce the following documents and information:

“(a) the documents referred to under Section B. (i) of the Applicant’s request for preliminary measures;

“(b) the documents referred to under Section B. (iii) of the Applicant’s request for preliminary measures;

“(c) the first document referred to under Section B. (iv) of the Applicant’s request for preliminary measures; and

“(d) the information requested under Section B. (xv), (xvi) and (xvii) of the Applicant’s request for preliminary measures.”;

Whereas, on 28 August, 24 September and 29 October 1980, the Respondent produced:

(a) the documents referred to under Section B. (i) of the Applicant’s request for preliminary measures;

(b) the documents referred to under Section B. (iii) of the Applicant’s request for preliminary measures; and

(c) two memorandums dated 25 September 1973 and 8 October 1973 respectively from Mr. Holmes to Mr. Salameh, together with the following statement regarding (d) above:

“In relation to the information requested by the Tribunal concerning the careers of Ms. Doss, Mr. Borsuk and Mr. Vianney, the Respondent will be willing to arrange for the Official Status Files of those staff members to be made available to the Tribunal provided that these files are not released to the Applicant since the Official Status Files of staff members are not available to their colleagues or outsiders except for purposes of official personnel action. Should the Tribunal, after examining these files, consider that any information contained therein is relevant to the Applicant’s appeal, the Respondent will consider releasing such information to the Applicant. If the Tribunal considers that further information on the careers of these staff members is relevant, the Respondent will request the staff members concerned to supply the Tribunal with a brief *Curriculum Vitae* setting out the information that the Tribunal requests. These *Curricula Vitae* would be made available to the Tribunal on the same basis as the staff members’ Official Status Files.”

Whereas the Applicant submitted additional documents on 4 September 1980;

Whereas on 29 October 1980 the Tribunal, having examined the official status files mentioned above, considered that no information contained therein was relevant to the Applicant’s case;

Whereas the Tribunal heard the parties at a public session held on 29 October 1980;

Whereas the Applicant submitted additional written statements on 30 October 1980;

Whereas the facts in the case are as follows:

The Applicant, who held a permanent appointment in the FAO where he had been serving since 14 September 1970, was transferred to UNIDO on 7 November 1971 as an Information Officer on a probationary appointment due to be reviewed, according to the relevant Personnel Action form, on 31 October 1972; paragraph 3 of the letter of appointment provided that “the period of probationary service under the Probationary Appointment is normally two years. In exceptional circumstances it may be reduced, or extended for not more than one additional year” and paragraph 6 stipulated that “previous continuous service with FAO may be counted towards the completion of the probationary period referred to in paragraph 3 above.” In a first periodic report covering the period from 7 November 1971 to 31 January 1973, prepared by Miss Leila H. Doss, Chief of the Information Service, as both first and second reporting officer, the Applicant was

rated average on all items except "quality of work accomplished", where he was rated below average, and he received the middle overall rating, namely, "a staff member who maintains a good standard of efficiency"; the reporting officer commented:

"Staff member's personal history form lists him as being fluent in German, but his command of the language must improve considerably before it reaches the required standard."

"F. . . . Mr. Adler's work has been satisfactory when it involved straight coverage of meetings of the Industrial Development Board. Where feature writing is concerned, he is acutely aware of the constraints under which UN information must operate, but does not seem to make use of the many opportunities for working creatively within those constraints.

"His main interest lies in the public relations rather than the production aspects of the work. Perhaps his abilities might be put to better use in a UN Information Centre where the main function is one of liaison and stimulating interest, rather than in an Information Service like that of UNIDO, where the work is closely related to that of the substantive divisions, and where the primary need is for a steady output of a wide range of both technical and popular material, designed for internal as well as external use."

"G. . . . I have repeatedly drawn Mr. Adler's attention, orally and in writing, to my reservations regarding the suitability, for our purpose, of the material he produces."

Effective 1 May 1973 the Applicant was appointed alternate member of the UNIDO Staff Assistance Committee. On 18 June 1973 the Chief of the Personnel Administration Section sent a copy of the periodic report to the Chief of Staff Services at Headquarters, advising him that, in view of the less than average rating received by the Applicant, the Executive Director of UNIDO recommended that this probationary appointment be extended through 31 May 1974 in his functions in order to provide sufficient time to recruit a replacement and to allow adequate coverage for some UNIDO meetings. In a reply of 25 June 1973 addressed to the Chief of Personnel Services, the Chief of Staff Services drew attention to "a few procedural errors" which had been made by the Administration; the notation that the Applicant's previous continuous service with FAO might be counted towards the completion of the probationary period had been, in his view, an error since the staff member's functions with UNIDO were not the same as those he had performed in FAO; the recommendation for an extension of the probationary period could not possibly be upheld by the Appointment and Promotion Committee since the recommendation was not made because of any hope that the Applicant's performance would improve during the extended period of probation; he would have to make a presentation for the termination of the staff member on the grounds that the latter was not expected by UNIDO to meet the standards required, but was somewhat concerned about the "slight inconsistency" between such a recommendation and the overall rating of the staff member; a further point regarding the periodic report which caused him some concern was the delay in obtaining the Executive Director's signature on the periodic report and its delivery to the staff member: while the periodic report had been prepared and signed on 28 February 1973, it has only been signed by the Executive Director on 4 June and given to the staff member on 6 June, the eve of his departure on home leave; as to the merits of the Applicant's complaint or UNIDO's dissatisfaction with his services, he believed that a full re-examination of that matter would be warranted; the Chief of Staff Services con-

cluded with the suggestion that three independent senior officers be appointed by the head of the department to investigate the rebuttal expected from the Applicant. On 17 August 1973 the Director of the Industrial Services and Institutions Division wrote to the Officer-in-Charge of the Personnel Administration Section to "confirm" their "understanding" that the Applicant was to be transferred to the Information Section of that Division subject to the agreement of the Executive Director. On 14 September 1973 the Applicant filed a rebuttal to his periodic report in a memorandum addressed to the Chief of Personnel Services. On 25 September 1973 the Chief of Personnel Services forwarded a copy of the Applicant's rebuttal to the Chief of Staff Services, stating that he agreed with his suggestion regarding the method to be followed for the investigation of the rebuttal. On 11 October 1973 Miss Doss commented on the Applicant's rebuttal in a memorandum addressed to the Chief of Personnel Services. On 2 and 3 December 1973 the Applicant submitted additional material for the consideration of the *Ad Hoc* Committee of three senior officials appointed by the Executive Director to investigate the Applicant's rebuttal. On 5 December 1973 that Committee issued its report, in which it recommended unanimously to the Executive Director that no change be made in the periodic report. On 12 December 1973 the Executive Director advised the Chief of Personnel Services that the Applicant's rebuttal had been thoroughly investigated and that he considered that the periodic report represented a fair assessment of the Applicant's work for the period covered. On 20 December 1973 the Applicant was informed accordingly. In a second periodic report covering the period from 1 February 1973 to 15 January 1974, also prepared by Miss Doss, the applicant received the same ratings as in the first except that he was rated below average on "initiative"; Miss Doss commented:

"F. . . . The comments made in the last periodic report under F continued to be valid in the period under review. However, staff member's coverage of the Industrial Development Board in 1973, though acceptable, was less accurate and less complete than in 1972."

"G. . . . I have on several occasions drawn Mr. Adler's attention to my reservations regarding his work."

On 6 February 1974 Miss Doss sent the following memorandum to the Chief of the Personnel Administration Section:

"I refer to your memorandum of 4 February.

"Mr. Adler has not met the particular requirements of the UNIDO Information Service, and I cannot therefore recommend a further extension of his appointment with the Service.

"However, this in my view does not preclude his making a contribution elsewhere in the UN Secretariat."

On 26 February 1974 the Chief of the Personnel Administration Section transmitted that memorandum to the Executive Director, who approved it on 28 February 1974. On 5 March 1974 the second periodic report was sent to the Applicant for signature. In an exchange of memorandums with the Chief of the Personnel Administration Section dated 1, 7, 14 and 26 March 1974, the Applicant complained that UNIDO failed to adhere to the schedules indicated in Administrative Instruction ST/AI/115 for the processing of periodic reports. Having been advised that it was UNIDO's recommendation that the Applicant should be separated from the Organization unless there was a suitable position for him elsewhere in the Secretariat, the Office of Personnel Services recommended to

the Appointment and Promotion Committee, on 27 March 1974, that the Applicant be separated from service under Staff Rule 104.12 (a). On 30 April 1974 the Chairman of the Appointment and Promotion Committee at Headquarters sent the following letter to the Applicant:

“The Appointment and Promotion Committee is now in the process of reviewing your probationary appointment. It has before it a joint recommendation by UNIDO and the Office of Personnel Services for your separation from the service in accordance with the provisions of Staff Rule 104.12 (a).

“In the interest of ‘due process’, however, the Committee decided to give you the opportunity to state in writing your own point of view and any facts you consider relevant to the issue, particularly whether you have been informed by UNIDO of its intention to make such recommendation. Should you wish to do so, the Committee expects to hear from you within two weeks from the date of this letter.”

On 2 May 1974 the Applicant filed a rebuttal to his second periodic report. In letters to the Chairman of the Appointment and Promotion Committee dated 4 May, 8 May, 12 June, 19 June, 26 July, 15 August and 18 September 1974, he stated that he had not been informed by UNIDO of its intention to make a recommendation for his separation from the service and submitted information for the consideration of the Committee. Effective 1 June 1974 the Applicant was reappointed alternate member of the UNIDO Staff Assistance Committee until 30 April 1975. On 11 June 1974, in a memorandum addressed to the Chief of Personnel Services, he complained that although he had been assigned to do some difficult translating from German into English, his periodic reports indicated that he did not work in German. On 1 July 1974, in a further memorandum to the Chief of Personnel Services, he asked to be informed of the circumstances in which UNIDO had recommended his separation from the service. On 8 July 1974 he addressed a similar memorandum to the Chief of the Personnel Administration Section reiterating his request. On 29 July 1974 the Executive Director informed the Chief of Personnel Services that the Applicant’s rebuttal to his second periodic report had been investigated and that he considered that the periodic report represented an accurate and fair evaluation of the Applicant’s performance for the period covered. On 1 August 1974 the Applicant was advised accordingly. On 9 August 1974 he asked the Chief of Personnel Services to send him a copy of the Executive Director’s appraisal of his rebuttals to his two periodic reports and to let him know which procedure had been used in the investigation of his second rebuttal. On 15 August 1974 the Chief of Personnel Services complied with the Applicant’s first request and, as to his second request, referred him to paragraph 13 of Administrative Instruction ST/AI/115. The Applicant having asked to be informed of the status of his case, the Chief of the Personnel Administration Section advised him on 4 September 1974 that:

“UNIDO and the Office of Personnel Services at Headquarters have jointly recommended to the Appointment and Promotion Committee your separation from United Nations Service in conjunction with the review of your probationary appointment under Staff Rule 104.12 (a). The Committee has not, as yet, concluded its consideration of your case, however, I expect that a recommendation to the Secretary-General will be formulated very soon. You will be informed as soon as a decision is made. . . .”

On 25 October 1974 the Chairman of the Appointment and Promotion Committee reported

to the Chairman of the Appointment and Promotion Board as follows:

“1. The Committee, at its meetings Nos. 1518, 1565 and 1577, held on 17 April, 13 June and 15 October 1974, respectively, considered the case of Mr. Herbert Adler (USA), a P-3 Information Officer in the Office of the Executive Director in UNIDO, who was serving on a probationary appointment. It had before it a memorandum from Mr. F. Villanueva, Personnel Officer, Office of Personnel Services, dated 27 March 1974, stating that both UNIDO and the Office of Personnel Services were recommending that Mr. Adler, who failed to demonstrate his suitability as an International Civil Servant and to show that he meets the high standards of efficiency, competence and integrity established in the Charter, be separated from the service in accordance with the provisions of Staff Rule 104.12 (a). All relevant documents are attached herewith.

“2. The Committee noted that two periodic reports had been prepared on Mr. Adler's performance during his probationary period and they both gave him fourth rating on item 8 (Quality of work accomplished) although the overall evaluation was: 'a staff member who maintains a good standard of efficiency.' Mr. Adler rebutted both reports.

“3. At its first meeting, held on 17 April 1974, the Committee decided, for the sake of due process, to seek the staff member's views on the matter and wrote to him. He replied extensively. The Committee, at its second meeting, held on 13 June 1974, decided to postpone again the consideration of the case because it was not known at that time whether the second rebuttal by Mr. Adler had been investigated by the Executive Director of UNIDO.

“4. At its third meeting, held on 15 October 1974, the Committee was informed by the Office of Personnel Services that Mr. Adler's second rebuttal was duly investigated and that the Executive Director of UNIDO agreed that no change should be made in the staff member's second periodic report. At the same meeting, the Committee was also informed that both UNIDO and the Office of Personnel Services maintained their recommendation that Mr. Adler be separated from the service.

“5. The Committee, having examined all aspects of the case, came to the conclusion that although Mr. Adler's work in the field of Information in general was regarded as satisfactory, he failed to demonstrate any ability to write feature articles, showed a lack of interest in the tasks for which he was recruited and proved unable to write satisfactorily in German or to translate English Press Release into German. In examining the voluminous documentation which he sent to it, the Committee became more and more convinced that Mr. Adler, as pointed out by the Investigative Committee appointed by the Executive Director of UNIDO, did not react positively to suggestions to improve his performance and broaden his scope of work and that he was seriously lacking sound judgement. As, in the opinion of the Committee, the Staff Rules are clear on the requirements for granting a permanent appointment to a holder of a probationary appointment, it unanimously agreed that Mr. Adler has failed to meet these requirements and therefore *decided to recommend that he be separated from the service in accordance with Staff Rule 104.12 (a).*”

On 21 November 1974 the Assistant Secretary-General for Personnel Services wrote the following letter to the Applicant:

"As you are aware, a recommendation was submitted to the Appointment and Promotion Committee in connection with the review of your probationary appointment indicating that you had failed to meet the conditions of Staff Rule 104.13 (a) (i) for the granting of permanent appointment and a recommendation was made for your separation from service in accordance with Staff Rule 104.12 (a).

"The Appointment and Promotion Committee has made its recommendation to the Appointment and Promotion Board which in turn reviewed your case and submitted its recommendation to the Secretary-General. On the basis of these recommendations, the Secretary-General has decided to terminate your probationary appointment with the United Nations under the provisions of Staff Regulation 9.1(c), that is, in the interest of the United Nations.

"This letter constitutes formal notice of termination of your probationary appointment as required by Staff Rule 109.3 (b). The notice period stipulated in that rule is thirty days. However, in view of the fact that your services will not be required during the notice period, the Secretary-General has decided to pay you compensation in lieu of one month's notice in accordance with paragraph (c) of Staff Rule 109.3. Consequently, the effective date of your separation will be 25 November 1974."

"You will also receive termination indemnity in accordance with Annex III of the Staff Regulations.

"You are entitled to receive excerpts from the recommendation of the Appointment and Promotion Board to the Secretary-General. Should you wish to do so, I would be glad to supply you with the relevant portions of the said recommendation.

" . . . "

A third periodic report, covering the period from 16 January 1974 to 25 November 1974 and prepared by Miss Doss on 19 December 1974, contained the same ratings as the second report, with the following comments from Miss Doss:

"There has been no significant change in either the quality or the quantity of staff member's work. As in previous years, though adequate, it failed to reach the standard required without extensive revision."

"I have told Mr. Adler that I did not see any improvement in his performance."

On 23 December 1974 the Applicant addressed a letter to the Secretary-General requesting that the decision to terminate his appointment be reviewed; he enclosed copies of the letters he had sent to the Chairman of the Appointment and Promotion Committee. On 27 December 1974 he asked the Assistant Secretary-General for Personnel Services to provide him with the relevant portions of the recommendation of the Appointment and Promotion Board to the Secretary-General. On 16 January 1975 the Officer-in-Charge of Personnel Services accordingly sent him the memorandum of 25 October 1974 from the Chairman of the Appointment and Promotion Committee to the Chairman of the Appointment and Promotion Board, together with two memorandums dated 29 October and 18 November 1974 from the Chairman of the Appointment and Promotion Board to the Secretary-General and to the Chief of Staff Services respectively. On 17 January 1975 the Officer-in-Charge of Personnel Services advised the Applicant that the Secretary-General had once again reviewed the case but had found no reason to reverse his decision. On 27 February 1975 the Applicant filed an appeal, requesting that his case be considered by the Joint Appeals Board at Geneva. On 25 March 1975 he filed a rebuttal dated 29

January 1975 to his third periodic report. On 9 March 1976 the Executive Director informed the Chief of the Personnel Administration Service that he had investigated the rebuttal and found that the periodic report represented a fair and accurate assessment of the staff member's performance. A copy of the Executive Director's appraisal was sent to the Applicant on the same day. The Joint Appeals Board submitted its report on 23 April 1979. The considerations, conclusions and recommendations of the Board read as follows:

"18. The Appellant claims that the fact that he held, at the time of his transfer, a permanent appointment with the Food and Agriculture Organization of the United Nations (FAO) made him 'a permanent international civil servant within the United Nations system'. The established practice, however, is that there is no automatic transferability in this respect among international organizations of the system. Therefore the permanent status of the Appellant with the FAO did not constitute a guarantee that he would be granted permanent status with the United Nations Industrial Development Organization (UNIDO).

"19. A related question was the possible reduction of the probationary period of the Appellant with UNIDO. The Board notes that there is evidence on file of an informal understanding between UNIDO's Administration and the Appellant to the effect that his period of probation might be reduced to six months. On the other hand, the Appellant's P.5 form on appointment mentions the date for review as 31 October 1972, that is to say after one year of service. The Board feels somewhat disturbed at the fact that UNIDO's Administration did not adhere to any of the various tentative dates for review indicated in the Appellant's P.5 form, in the Letter of Appointment or in Mr. Hausner's note for the file of 11 June 1971. The Board further notes that there were two memoranda from Mrs. M. Achton, Personnel Officer, UNIDO to Miss Leila Doss of 29 August and 8 November 1972 requesting her urgent recommendation concerning the review of the Appellant's probationary appointment, and regrets that no recommendation was obtained from Miss Doss at the expected date. While it agrees with the contention of the Representatives of the Secretary-General at the hearing that no 'contractual obligation' was broken by the Administration in not respecting such tentative dates, the Board considers that it is a sound principle of administration to be very careful in meeting the expected dates for review as closely as possible in the best interests of the Organization and the staff.

"20. The Appellant complains that his immediate supervisor, Miss Doss, completed and signed both Sections I and II of his three periodic reports, thus violating his right to have another person familiar with his work review his performance. The Board notes that, according to the "Instructions for Completing Periodic Reports", Sections I and II of the reports are to be filled out by two different persons, except when the First Reporting Officer is the Head of a Department, in which case he or she proceeds to complete Section II as well. The Board has not been offered an evidence that Miss Doss was the Head of a Department, the title which appears under her signature on the three periodic reports being "Chief, UNIDO Information Service". There was, therefore, a departure in this respect from the "Instructions" referred to above. The Board is, however, aware that, in the absence of any other nominal supervisor, either Miss Doss or Mr. Abdel-Rahman would have had to sign the periodic reports twice, but considers that, in the circumstances of the case, this

procedure may not have contributed to a fair assessment of the Appellant's performance. The Board cannot, however, determine whether or not this caused any damage to the Appellant's interests.

"21. As regards the dates of preparation of periodic reports, the Staff Regulations and Rules and the relevant administrative instructions establish certain procedures and rules for preparing periodic reports. While recognizing that these are not hard and fast rules and that, in special circumstances, they admit of a certain flexibility in their implementation, the Board considers, since it was not supplied with evidence of any special circumstances justifying departure from normal practice in the present case, that disregard of time limits and the resulting long delays in completing the periodic reports were damaging to the Appellant inasmuch as he had a right to know in time what his ratings were, in order to have a chance to rebut his reports and/or make efforts to improve his performance.

"22. As regards the question of due process, the Board, while noting that the Appellant was informed on 6 June 1973 that UNIDO was contemplating a recommendation for his termination, finds that the absence of a special report relating to termination constituted a clear violation of the procedure set out in Administrative Instruction ST/AI/115. Similarly, special reports should have been issued in order to withhold the within-grade annual salary increments, since those reports would have afforded the Appellant a chance to contest the relevant administrative decisions. Absence of such special reports also constituted a violation of ST/AI/115.

"23. In this connexion, the Board has also addressed itself to the matter of the investigations into the Appellant's rebuttals of his periodic reports. Although it has not found, in the manner in which the investigations were conducted, any departure from the provisions of ST/AI/115 which, in this report, are of a very general nature, and although it has no reason for doubting the Administration's statement that the rebuttals were thoroughly investigated, the Board would have preferred to have clear and conclusive evidence that it was indeed the case. Specifically, there is the question of the Appellant's knowledge of the German language—one of his weak points, according to his periodic reports—which, on the basis of the evidence available to the Board, does not seem to have been properly assessed. It is the Board's conclusion, therefore, that the Appellant's contention of lack of due process in respect of points discussed in this and the preceding paragraphs 21 and 22 is well founded.

"24. The Board has given special consideration to the question of whether or not this lack of due process in the above instances was due to prejudice and it found no evidence that any such irregularities were caused by prejudice on the part of the Administration towards the Appellant.

"25. As regards the reason given for the Appellant's termination, on the basis of Staff Regulation 9.1 (c), the Board considers that it cannot base a decision on precedent, since the Administration's practice in this respect varies greatly. The Board finds that the Appellant is not the only staff member to have been terminated with the general middle rating of 'a staff member maintaining a good standard of efficiency'; but the records show that there are also cases of staff members with lower ratings who were granted permanent appointments at the end of the probationary period. In any event, the Board considers that there is an inconsistency

between the three successive reports in which the Appellant was rated as 'a staff member who maintains a good standard of efficiency', and the general motive given for his termination, i.e. that he had 'failed to demonstrate his suitability as an International Civil Servant and to show that he meets the high standards of efficiency, competence and integrity established in the Charter'.

"26. The Board wishes to express concern over the technical reason given for the termination of the Appellant's provisional appointment, namely, failure to demonstrate his suitability as an international civil servant and to show that he meets the high standards of efficiency, competence and integrity established by the Charter. In the view of the Board the fact that the staff member fails to demonstrate his suitability to perform the functions required in a specific post does not *per se* exclude the possibility that he might be able to perform efficiently in a different post within the United Nations family. In fact it is a matter of record that the FAO had recognized him as meeting such general standards in granting him a permanent appointment.

"27. Turning to the matter of home leave, the Board finds here an example of inconsistency of UNIDO's Administration in dealing with the Appellant. On the one hand, the granting of home leave after 19 months of probationary service seemed to be in contradiction with Staff Rule 105.3 (e) and was all the more surprising in the case of a staff member whose future contractual status was, to say the least, unclear; it may, however, be constructed in the light of document CO-ORDINATION/R.931/Add.1 as an indication of good will, on the part of UNIDO's Administration, in taking into account the previous service of the Appellant with FAO. All this could have given him expectations for continuity of employment. On the other hand, the Board notes that, at the same time, on the eve of the Appellant's departure on home leave (6 June 1973), UNIDO's Administration suggested that he look for another job and advised him to meet with Mr. Salameh, Director of Personnel Administration at Headquarters, New York, to that effect. It further notes that the granting of home leave does not appear to have been prejudicial to the Appellant other than in respect of his job expectations.

"28. The Appellant has taken exception to several seemingly contradictory steps taken by the Administration in his case. However, the fact that he was designated to serve on UNIDO's Staff Assistance Committee for a period going beyond the date of expiration of his probationary contract could not constitute in itself a basis for him to expect a permanent appointment with UNIDO. Nor was there any incompatibility, in principle, between the Appellant's appointment as a fire warden and the subsequent termination of his appointment as an Information Officer. The Appellant has also challenged the fact that his immediate supervisor and UNIDO's Administration contemplated the possibility of assigning him to another post in UNIDO or elsewhere in the United Nations. This, in his view, was in contradiction with his being assessed as unsuitable for International Civil Service. The Board was of the opinion that this could not be regarded as particularly damaging to his situation.

"29. In the view of the Board, the two periodic reports covering the Appellant's first two years of service, together with his rebuttals and the reports on the investigation into those rebuttals, provided the Appointment and Promotion Committee, in principle, with sufficiently up-to-date material to review UNIDO's recommendation for the termination of the Appellant, which was submitted by the Office of Personnel Services on 27 March 1974. The Board takes note of the im-

possibility for reviewing bodies to consider performance during the time of review and afterwards.

“30. The Appellant claims, throughout his statement, that his periodic reports were ‘biased, incomplete and untrue’ and that the decision of the Appointment and Promotion Committee to recommend his termination was ‘not based on the facts and therefore ill-founded’; consequently, in his view, the decision of the Secretary-General to terminate his appointment was also ill-founded. In addressing itself to this question, the Board has kept in mind its mandate to consider ‘only evidence that the decision has been motivated by prejudice or by some other extraneous factor’, without going into the substantive question of efficiency. The Board has found no evidence that the recommendation to terminate the probationary appointment was motivated by prejudice. As for the contention that the periodic reports were incomplete and untrue, the Board considers that the validity of this contention could only be assessed by an appraisal of the Appellant’s efficiency, which is precluded by the terms of reference of the Board. The Appellant has mentioned an incident, which allegedly took place shortly after his appointment to UNIDO’s Information Service, between himself and Miss Doss, his immediate supervisor, an incident when he was critical of the press releases issued by UNIDO and one which, he claims, influenced for worse his subsequent relationship with his supervisor and, therefore, the ratings that she gave him in the periodic reports. Noting that there is some evidence in the record of a sudden deterioration of the work relationship between the Appellant and his immediate supervisor very soon after the Appellant’s entry on duty with UNIDO, and in the absence of any evidence to the contrary produced by the Administration, the Board cannot exclude the possibility that this alleged incident might constitute an ‘extraneous factor’ in the sense of Staff Rule 111.1 (b). However, it considers that it cannot, on the basis only of the Appellant’s contention, determine that the decision contested was motivated ‘by some other extraneous factor’.

“31. The Board finds that, on the whole, the Appellant has not made a conclusive case against the decision taken by the Secretary-General. The Board has noted, however, certain inconsistencies on the part of UNIDO’s Administration as well as violations of administrative instructions, procedures and policies, and wishes to put on record its concern at these instances of lack of due process which, by and large, may have placed strain on the Appellant and perhaps contributed to the unfavourable assessment of his performance. Accordingly, the Board recommends to the Secretary-General that the Appellant be paid six months salary at the level P-3, step III, at the rates obtaining at the time of his termination plus reimbursement of travel expenses incurred in connexion with his appearance before the Board on 22 and 23 November 1978.”

On 29 October 1979 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General had taken note of the Board’s report and had decided:

“(a) to maintain the decision of termination of your probationary appointment, and

“(b) to accept the Board’s recommendation that you be paid six months’ net base salary at the rate in effect at the time of your termination, in settlement of the appeal, and that you be reimbursed the travel expenses incurred in connexion with your appearance before the Board on 22 November 1978 and 23 November 1978, subject to the limitations established in the Staff Rules for the reimbursement of official travel expenses.”

On 31 March 1980 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The periodic reports were completed in violation of the applicable instructions. They were dictated by improper motives, among which may have been prejudice, jealousy and hurt pride, and misrepresented the facts on which they were supposed to be based.

2. The Applicant's performance at UNIDO was considered satisfactory and he was entitled to the salary increases which were illegally withheld. Since the Applicant's services were satisfactory, these satisfactory services could not have been the true reason for his termination and, instead, the Respondent assigned specious and untruthful reasons in order to terminate the Applicant so as to please and not upset the United Nations bureaucracy. As a result, the Respondent employed his power of termination in an arbitrary and capricious manner.

3. The Office of Personnel's recommendation to the Appointment and Promotion Committee was based almost entirely, not on the periodic reports which were basically good, but on the *Ad Hoc* Committee's report, a biased report made as a result of a biased investigation. As to the Appointment and Promotion Committee's recommendations to the Appointment and Promotion Board, they were not supported by the facts and they contained untrue elements which were highly prejudicial to the Applicant; since the Respondent's decision to terminate the Applicant was based on those recommendations, it cannot be supported and must be reversed.

4. There is evidence to show that the various allegations of shortcomings in the Applicant's performance were untrue.

5. The "investigations" of the Applicant's three rebuttals either did not take place at all or they did not meet the Tribunal's criteria for a fair and proper investigation safeguarding the staff member's rights.

6. The Applicant's alleged lack of German writing ability is disproved by the facts.

7. The Appointment and Promotion Committee consciously and deliberately did not do the job for which it was set up, namely to give the Applicant's case the thorough and scrupulously fair consideration to which he was entitled; instead, it acted like a rubber stamp for the Office of Personnel.

8. The fact that the Applicant received a permanent appointment at FAO after a year of probation made him a permanent international civil servant in the United Nations system, a status which could not be taken away from him without compelling cause. While the Respondent had the right to put the Applicant on probation to prove his suitability as an information officer—although this was a discriminatory act—he did not have the right to make the Applicant prove his suitability as an international civil servant once again.

9. The fact that the Applicant had to prove his suitability as an information officer and, therefore, was put on probation for six months before being considered for a permanent appointment (which agreement the Respondent violated), simply because he transferred from FAO, where he was a liaison officer, was an act of discrimination on the part of the Respondent.

10. The Executive Director of UNIDO failed to carry out his duties and responsibilities towards the Applicant as his Department Head and next-in-line supervisor after the Chief of the Information Service. His opinions about the suitability and performance of the Applicant, as well as his recommendation for his termination because of these, were without merit, had no basis in fact, and must be considered as being invalid.

11. The Chief of the Information Service was prejudiced against the Applicant.

12. A conspiracy existed among UNIDO and United Nations officials to violate the Applicant's terms of appointment, including all pertinent regulations and rules, to violate his right to due process, and to effect his termination in an illegal manner.

13. The Respondent, as chief administrative officer of the United Nations and as the direct superior of the Executive Director of UNIDO, cannot with any justification disclaim responsibility for the illegal actions of his subordinates towards the Applicant.

14. Any one of a number of violations of Staff Rules and Regulations and due process cited by the Joint Appeals Board in its report would, on the basis of past Tribunal decisions, have called for the Board to recommend to the Secretary-General to rescind his termination decision. The Board did not give the Applicant's case the fair hearing to which he was entitled. It subjected his case to inexcusable delays.

Whereas the Respondent's principal contentions are:

1. The Applicant's status while employed by the Respondent was that of a staff member on a probationary appointment. There is no substance to the Applicant's contentions that he was, or that he was somehow entitled to be, on a permanent appointment upon commencing his duties with UNIDO. The actions of the Respondent in offering a probationary appointment to a permanent staff member of FAO were proper since at the time of the offer there was no agreement between organizations applying the United Nations Common System of Salaries and Allowances on the transfer of staff which mandated any different procedure. Even after such an agreement was reached on 27 March 1972 it remained usual for an organization to require a probationary period.

2. The decision to extend the Applicant's probationary appointment for an additional year did not convert that appointment into a permanent appointment nor did it prejudice the Applicant.

3. The Respondent's decision not to grant a permanent appointment to a staff member holding a probationary appointment is not reviewable by the Tribunal although such decision may be invalidated by the Tribunal if that decision were motivated by improper motive or in the light of erroneous or inadequate information. There is no evidence to support the existence of such factors in the decision to separate the Applicant from the service. Consequently, the decision to separate the Applicant from the service was a proper exercise of administrative discretion.

4. Salary increments are discretionary and are dependent upon satisfactory performance and conduct of staff members in their assignments as evaluated by their supervisors.

5. The voluminous documentation submitted by the Applicant at each stage of the proceedings was the principal cause of any delays in finalizing the Applicant's claims.

6. Payment by the Respondent of the amount recommended by the Joint Appeals Board does not imply that the Respondent agreed that the Applicant's contractual or statutory rights were violated.

The Tribunal, having deliberated from 29 October 1980 to 21 November 1980, now pronounces the following judgement:

I. With reference to the Applicant's request for preliminary measures, the Tribunal notes that some of those measures were ordered by a ruling of the President dated 25 August 1980. With regard to the other preliminary measures, the Tribunal, after hearing

the parties, is of the opinion that there is no justification for these measures and accordingly rejects the Applicant's request for them.

II. The Applicant contends that during his period of service responsible officers and bodies of the Administration committed gross violations of his legal rights under the Staff Regulations and Rules and administrative instructions, denied him due process and even infringed his human rights; and that all these violations culminated in the unlawful termination of his appointment. The Respondent admits that several procedural errors were made but denies that these errors invalidate the decision to terminate the Applicant's appointment. The Respondent refers to the report and the recommendation of the Joint Appeals Board and contends that the irregularities committed by the Administration were made good by the amount awarded upon that recommendation.

III. The Tribunal observes that the Applicant signed a probationary contract on 30 November 1971 which contained the following provisions based on the relevant Staff Regulations and Rules:

"3. Period of Probation

"The period of probationary service under the Probationary Appointment is normally two years. In exceptional circumstances it may be reduced, or extended for not more than one additional year".

"4. Tenure of Appointment

"At the end of the probationary service you will either be granted a Permanent/Regular Appointment, or your present appointment will be terminated.

"A Probationary Appointment has no specific expiration date but may be terminated by the Secretary-General on 30 days' notice in writing, in accordance with the relevant provisions of the Staff Regulations and Staff Rules . . ."

IV. The Applicant, who held a permanent appointment with FAO, left his position with the permission of his employer and entered the service of the United Nations. Throughout the relevant official correspondence, this change of position was called a "transfer". Thus, in an interoffice memorandum dated 21 September 1971, the Appointment and Promotion Board stated that it had recommended, and the Secretary-General had approved, the probationary appointment "on transfer from FAO" of the Applicant.

Having accepted and signed his letter of appointment, the Applicant must have understood that "transfer" in his case did not mean that in lieu of his permanent appointment with FAO he received a permanent appointment with the United Nations. He could not have based such a belief on the sole special condition of his letter of appointment which read as follows:

"Previous continuous service with FAO may be counted towards the completion of the probationary period referred to in paragraph 3 above".

This provision can only be interpreted as creating an option for the employer, of which he can but is not obliged to avail himself. There is no foundation for the Applicant's assertion that his status of permanent civil servant was "taken away" from him without compelling cause, nor can the fact that he was put on probation by the United Nations after having held a permanent appointment with FAO be considered discriminatory. The allegation of the Applicant that an agreement was reached between him and the Respondent concerning his permanent appointment is not supported by the evidence.

These considerations lead the Tribunal to the conclusion that the Staff Regulations

and Rules and administrative instructions which pertain to probationary appointments and particularly to the grant or denial of permanent employment are applicable to this case.

V. The Applicant's complaints in respect of the procedure followed by the Administration in his case are not without foundation. The Tribunal is indeed disturbed by the large number of unsatisfactory features of the case and particularly by the disregard or the outright violation of important procedural rules on the part of the Respondent.

The Joint Appeals Board reported extensively—as cited in the preambular part of this judgement—on

(1) The disregard of the time limits set in Administrative Instruction ST/AI/115 for the preparation of periodic reports;

(2) The violation of the same Instruction by not ensuring that sections I and II of the report form were filled out by different persons since the Applicant's direct supervisor was not the Head of the Department;

(3) The violation of the same Instruction by not issuing special reports when withholding the Applicant's annual within-grade increments;

(4) The violation of the same Instruction by not issuing a special report in connection with the termination of his appointment;

(5) The inconsistency in the Administration's attitude, *inter alia*, in granting the Applicant, who was appointed on a probationary basis, home leave notwithstanding Staff Rule 105.3 (e) and letting him know before his departure that he would be denied a permanent appointment.

The Tribunal shares the Joint Appeals Board's concern and finds in particular that the Applicant has been denied in several respects the protection afforded by Administrative Instruction ST/AI/115.

VI. As the main reason for the dismissal of the Applicant lies in the adverse assessment of his performance, the Tribunal wishes to examine in some detail the sequence of events connected with the making and investigation of the Applicant's periodic reports.

Administrative Instruction ST/AI/115, which orders that reports have to be made at the end of each year of service on staff serving under temporary appointments, was disregarded when the Applicant's first periodic report was made on 28 February 1973, four months later than prescribed in the relevant Personnel Action form, signed by the Executive Director of UNIDO three months later on 4 June 1973 and shown to the Applicant on 6 June 1973.

This report, moreover, was written by his immediate supervisor and signed only by the Executive Director. This was contrary to the clear intention of the aforementioned Instruction which, obviously in the interest of the staff member concerned, prescribes that sections I and II of the report must be filled out by two different persons except, as set out on the relevant form, where the first reporting officer is the Head of the Department, which was not the case.

VII. The Applicant rebutted this first periodic report in a paper of 44 pages dated 14 September 1973 and enclosed 27 attachments to it.

This rebuttal not only contested the evaluation of his performance ("Miss Doss's report is in significant ways unfair and unjustified") but went much further and entered into the field of personal invective. ("[Certain of my colleagues were] at times . . . shocked how Miss Doss would go after me with stiletto and hatchet"). Some remarks

of the Applicant were quite unconnected with the official relationship between him and his supervisor and served only to present her in an unfavourable light as an international civil servant.

Other parts of the rebuttal gave the impression that the supervisor was not satisfied with the performance of the Applicant, but tried at least from time to time to make him improve his efficiency. While the Applicant states in his rebuttal that during 22 months "she has never once said that I had written a good story", that it was clear to him that "less than three months after I started work, Miss Doss would be delighted to get rid of me" and that "She said this in no uncertain terms in February 1972", other parts of the rebuttal contradict these assertions. The rebuttal quotes from a note written by Miss Doss in November 1972 in which she encourages him to draft a message for the Executive Director. "Here's your chance", she wrote. Another quoted message from her dated 30 November 1972 begins: "Herb, that message for the Journal was a good effort" and ends with the words: "Here is the version I'm submitting to the Boss. I have already told him that you prepared the first draft". And again in an undated note: "Herb, here you are. The Boss agreed with you about the beginning but changed the end. I'm glad you suggested sending him your original draft".

VIII. As related in the preambular part of this judgement, the Applicant's rebuttal was investigated by an *Ad Hoc* Committee of three independent senior officers. The Committee held five meetings between 27 November and 4 December 1973. It heard the oral testimony of both the Applicant and Miss Doss. It considered the Applicant's rebuttal and a confidential interoffice memorandum from Miss Doss dated 11 October 1973 as well as a second paper of the Applicant dated 3 December 1973 in which he complained of not having been made acquainted with the memorandum of Miss Doss.

This memorandum of 19 pages responded to the Applicant's rebuttal under the following headings: basic information policy, German as a working language, day to day operations, impact, the morale of the staff, Mr. Adler's performance and behaviour: the circumstances of his recruitment, briefing on recruitment, quality of the work accomplished, quantity of work accomplished, attitude to work and colleagues, the division of labour in the Information Service and Mr. Adler's future career. Besides an apparently objective review of the Applicant's work, Miss Doss's paper includes, in reciprocating the Applicant's comments on her personally, an attack on his character. Nevertheless the paper concludes as follows:

"Mr. Adler's future career"

"It has always been my conviction that Mr. Adler's UN career should not be contingent solely on his two-year stint with the Public Information Service.

"The possibility certainly cannot be excluded of him finding congenial work and surroundings and making a useful contribution elsewhere in the Organization. If this proved to be the case, there would be cause for general satisfaction, which I would be the first to share. If not, the onus for the decision to terminate his career would not rest with one person alone.

"That is why I suggested that OPI give Mr. Adler a trial period in a Centre or as a coverage officer, and that I approached a number of my colleagues in UNIDO, including those in ISI, Editorial Services and the Secretariat of the Board, in an effort to locate an area in which he could be usefully and appropriately employed. They, and the Office of Personnel, can rest assured that should such an opportunity

arise, whatever the difficulties of a depleted Information Service, I will not stand in his way."

IX. In a memorandum of 10 December 1973 the Chief of Personnel Services replied to the Applicant's paper of 3 December 1973 mentioned in paragraph VIII above. He stated that the investigation of a rebuttal should not be confused with the appeals procedure under chapter XI of the Staff Rules and that the appraisal of the Executive Director would be placed in the Applicant's official status file.

In the course of the oral proceedings before the Tribunal, the Applicant stated that he received a copy of Miss Doss's memorandum of 11 October 1973 approximately one month before the proceedings. Unlike his previous practice, however, he did not "analyse and dissect" the memorandum in writing, but made only some oral remarks on this document calling it "to a great extent false, biased and untrue". He expressly denied some of its allegations. The Tribunal observes in this connexion that the document in question was put in the Applicant's official status file on 17 April 1974 and that from that date it was available to him.

X. Despite the refusal of the Committee to show the Applicant the paper in question, the Tribunal is satisfied that the report submitted by the *Ad Hoc* Committee constitutes a full investigation of the case in the spirit of paragraph 13 of Administrative Instruction ST/AI/115 and the fact that the investigation was made by independent senior officers gives it even more weight than if it had been carried out by the Head of the Department alone.

XI. In the course of the oral proceedings, the Applicant also remarked that the memorandum from Miss Doss dated 11 October 1973 was not restricted to the period covered by the periodic report, namely 7 November 1971-31 January 1973, and that it should have been rejected on this ground alone. The Tribunal does not share this view and does not believe that this matter has in any way influenced the conclusions of the Committee.

XII. While the main conclusion of the *Ad Hoc* Committee was that it unanimously recommended that no change be made in the Applicant's periodic report, the Tribunal finds elements in the Committee's report the importance of which goes beyond the question of the validity of the periodic report.

The *Ad Hoc* Committee noted in its report "that there was some conflict of personalities between Mr. Adler and Miss Doss" and continued as follows:

"the rift had been widened as it became apparent to Miss Doss that Mr. Adler was not fully capable of performing more than part of the job for which he had been recruited, and was not pulling his weight. Yet, at the same time, he was persistently questioning and challenging the established policies and practices of the Service. Moreover, although Mr. Adler had spoken of improving his written German there was no evidence that he made any attempt to do so."

The report, however, also recognized the positive aspects of the Applicant's work in stating:

"On the positive side, the Committee noted that Mr. Adler's work as regards the 'straight coverage' of UNIDO meetings was regarded as satisfactory. In this area, his writing was considered to be straightforward, clear and accurate. Mr. Adler had not however shown any ability to write feature articles, a type of work demanding

a degree of initiative, imagination and creativity, as well as the necessary interest and energy to investigate the subjects, which he unfortunately appeared not to possess”.

The essential conclusion of the *Ad Hoc* Committee is contained in paragraph 15 of the report which sets out that:

“Mr. Adler seemed to be basically unsuited to the job for which he had been recruited, as his talents appeared to lie more in the field of general liaison and public relations rather than writing articles within the constraints of the United Nations public information system. The Committee noted that these handicaps might have been successfully overcome if Mr. Adler had made a real effort to adapt himself to new circumstances and to learn ‘on the job’. The Committee could find no evidence that Mr. Adler made any serious effort to improve his performance or to participate actively as a member of the team of colleagues forming the Information Service, nor that he displayed any real inclination to ‘rise to the occasion’ or to grasp the opportunities that were offered him to show his merit. His attitude throughout appeared to have been both too passive and too rigid.”

XIII. The Applicant submitted to the Joint Appeals Board an 18 page “Analysis of the investigation of my first rebuttal” dated 20 June 1978 in which he challenged the report of the *Ad Hoc* Committee, questioned the competence and integrity of its members, and alleged that the report proved exactly the opposite of its conclusion and that the periodic report was factually incorrect and biased.

The Tribunal, however, considers that the finding of the *Ad Hoc* Committee is significant in view of the composition of the Committee and its full and detailed examination of the Applicant’s case and that the procedure followed went even further than the requirements of the relevant Administrative Instruction.

The report of the *Ad Hoc* Committee was issued on 5 December 1973. On 12 December 1973 the Executive Director reported to the Chief of Personnel Services that on the basis of the *Ad Hoc* Committee’s findings he held that no change in the periodic report was warranted. On 21 January 1974 the Applicant’s second periodic report covering the period 1 February 1973-15 January 1974 was made by Miss Doss much in the same manner as the first. It was approved without any remarks by the Executive Director on 3 March 1974 and signed by the Applicant on 8 March 1974. On 2 May 1974 the Applicant submitted a rebuttal of 58 pages and 111 exhibits.

XIV. In a memorandum of 29 July 1974 the Executive Director informed the Chief of Personnel Services that he had investigated the second periodic report. The essence of his appraisal was as follows:

“The rebuttal of the current report does not contain any convincing evidence to dissuade me from my earlier view that Mr. Adler is basically unsuited for his job in the Information Service. I find that many of the statements in his rebuttal are either inaccurate or incomplete which results in a very distorted view of the issues involved. The Rebuttal strays far afield from the substance of the periodic report in question and reveals even more clearly than the first a basic lack of understanding of the public information function.”

The Executive Director added:

“The rebuttal represents, in my view, an enormous effort of very unusual proportions. It is regrettable that Mr. Adler has not been able to direct such energy and effort into his work in the Secretariat”.

XV. This last remark did not deter the Applicant from attacking on 29 January 1975 his third periodic report with a rebuttal of 25 pages with some 300 pages of exhibits.

The third periodic report was prepared by Miss Doss on 19 December 1974; it covered the period from 16 January 1974 to 25 November 1974 and was signed without comment by the Executive Director on 20 December 1974 and by the Applicant on 9 January 1975. This report was investigated by the new Executive Director, Mr. Abd-El Rahman Khane, who in his appraisal of 9 March 1976 wrote as follows:

“3. In reviewing Mr. Adler's career with UNIDO, I find that his latest periodic report reflects a performance which hardly varied over a period of several years and was not up to the standard required by the Staff Rules for career status in the United Nations Secretariat. This view has been confirmed by the Appointment and Promotion Board. The rebuttal contains a number of allegations, particularly directed against Mr. Adler's supervisor, which are not relevant to the staff member's performance and underline his preoccupation with matters which were not his immediate concern. It also reflects his inability to adapt to the particular requirements of the UNIDO Information Service or to accept any form of guidance in carrying out his allotted duties.

“4. I find that the periodic report represents a fair and accurate assessment of the staff member's performance and there is no reason to change either the ratings or the comments made in the report.”

XVI. All three periodic reports gave the Applicant the overall middle rating which characterized him as a staff member who maintains a good standard of efficiency. The Applicant repeatedly referred to this fact as proof partly that he was not “basically unsuited for his job” and partly that his dismissal, i.e. the refusal of a permanent appointment, was unjust and unwarranted.

The Tribunal has already had occasion to emphasize its view that for a supervisor to make periodic reports which describe a staff member's performance in unjustifiably favourable terms is as reprehensible as to report in unjustifiably unfavourable terms, though unlike the latter it cannot be held to reflect prejudice on the part of the supervisor in question (Judgement No. 225: *Sandys*, para. IV). In all three periodic reports Miss Doss remarked that the Applicant would like to make a career in the United Nations. This and the fact that she described him in all three reports as one who maintains reasonably good relations with others are consonant with the conclusions of Miss Doss's memorandum of 11 October 1973: she recognized certain of the Applicant's qualities and did not aim at his dismissal but rather at his transfer to another service of UNIDO or the United Nations. In any event, the fact that the three periodic reports gave the Applicant an overall middle rating did not in itself affect the Respondent's discretion to grant or deny him a permanent appointment.

XVII. The argument related to the third periodic report was largely futile as before the preparation of that report the Applicant had been informed by a memorandum from the Chief of the Personnel Administration Section dated 4 September 1974, that UNIDO and the Office of Personnel Services at Headquarters had jointly recommended to the

Appointment and Promotion Committee his separation from the service in conjunction with the review of his probationary appointment under Staff Rule 104.12 (a).

Consequently the termination of his appointment was decided as of 25 November 1974.

XVIII. On 23 December 1974 the Applicant addressed a letter to the Secretary-General and requested him to review the termination decision and to grant him a permanent appointment. In a reply of 17 January 1975 he was informed by the Officer-in-Charge of Personnel Services as follows:

“As you know, your case was very carefully reviewed by the Appointment and Promotion Committee which made its recommendation to the Appointment and Promotion Board which in turn reviewed your case and submitted its recommendation to the Secretary-General. All the relevant information was before the two bodies, including your two rebuttals. On the basis of the recommendations, together with all the available information, the Secretary-General decided to terminate your probationary appointment under the provisions of Staff Regulation 9.1 (c), that is, in the interest of the Organization. This action was taken because it was his conclusion that you had failed to meet the conditions of Staff Rule 104.13 (a) (i) for the granting of a permanent appointment. The Secretary-General has once again reviewed your case but has found no reason to reverse his decision.”

XIX. In both the written and the oral proceedings the Applicant took exception to the fact that he was found “unsuited to the job” of an international civil servant and that his permanent appointment was denied on the ground that he did not meet the requirements of Staff Rule 104.13 (a) (i). This rule reads as follows:

“(a) *Permanent appointment*

- “(i) The permanent appointment may be granted to staff members who are holders of a probationary appointment and who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the high standards of efficiency, competence and integrity established in the Charter.”

The meaning of this Rule is obvious. To be granted a permanent appointment a staff member on probation must meet all the conditions enumerated in the rule. If any one of these fails the permanent appointment may be denied.

In the case of the Applicant his performance was obviously found unsatisfactory and he was not as efficient as required. This factor alone was enough for the Administration to refer to the Rule in question. Such reference does not in itself constitute an insult or a judgement on the integrity of the Applicant or on his ability to fulfil the requirements of another post in the same or another international organization. While the Administration had to refer to this Staff Rule since he held only a probationary appointment, he was actually separated under Staff Regulation 9.1. (c) i.e. in the interest of the United Nations.

XX. The Tribunal has had occasion to observe that delays in the work of the Joint Appeals Board do not contribute to the proper administration of justice and are against Staff Rule 111.3 (h). This also applies to the present case. The delay in taking a decision on the Joint Appeals Board’s recommendation also causes concern to the Tribunal. The Tribunal believes, however, that the Respondent’s statement that the principal cause of the delays is the overwhelming mass of documentation submitted by the Applicant is not

without foundation. The Applicant's allegation of a lack of devotion to their duties and responsibilities on the part of the secretaries of the Joint Appeals Board is without merit, as is his allegation concerning the inexperience of the Joint Appeals Board members contained in his letter addressed to the Assistant Secretary-General for Personnel Services on 29 November 1979. Nor is there any merit in the reference in his application to the Universal Declaration of Human Rights.

XXI. The procedure followed by the Administration in the Applicant's case shows a number of serious deficiencies which were also appraised by the Joint Appeals Board as referred to in paragraph V above. The Board, as stated in its report, noted certain inconsistencies on the part of the Administration as well as violations of administrative instructions, procedures and policies, and expressed its concern at these "instances of lack of due process which, by and large, may have placed strain on the Appellant and perhaps contributed to the unfavourable assessment of his performance". The Board accordingly recommended to the Secretary-General that the Applicant be paid as compensation six months' salary at the level P-3, step III. The Joint Appeals Board found no evidence that the recommendation of the Appointment and Promotion Board to terminate the Applicant's probationary appointment was motivated by prejudice and considered that it could not, on the basis only of the Applicant's contention, determine that the contested decision was motivated by some other extraneous factor.

XXII. The Tribunal finds that the recommendation of the Joint Appeals Board was well founded and that the amount of compensation was in keeping with the practice which the Tribunal has followed in similar cases. The Tribunal finds that the Secretary-General correctly interpreted this recommendation when awarding the Applicant six months' net base salary.

XXIII. The Applicant, however, alleges that in evaluating his performance not only his supervisor, Miss Doss, but also the Executive Directors of UNIDO failed to assess his work truthfully and in an objective, fair manner and that so did the three members of the *Ad Hoc* Committee appointed for the investigation of his first periodic report. This applies also, according to him, to the seven members of the Appointment and Promotion Committee, who reviewed his work in an "improper, shallow, and slipshod" way. The Tribunal is unable to accept these allegations.

XXIV. The Tribunal has repeatedly held that it cannot substitute its judgement for that of the Secretary-General concerning the evaluation of the performance of a staff member and that this matter lies within the Secretary-General's discretionary authority.

Had there been evidence, however, that the Appointment and Promotion Board reached its conclusions in the light of inadequate or erroneous information and that the Secretary-General relied on these conclusions for the termination of the Applicant's appointment, the Tribunal would have invalidated the Secretary-General's decision. Similarly if sufficient proof had been made available to the effect that the recommendation of the Appointment and Promotion Board was motivated by prejudice or some other extraneous factor, the Tribunal would have rescinded the decision based on such recommendation.

XXV. The Tribunal is satisfied that the decision of the Respondent was taken in full knowledge of the relevant facts. The Tribunal was not furnished with evidence of prejudice or extraneous factors vitiating the decision. It does not accept the contention of the Applicant that the procedural irregularities in his case can only be explained by prejudice or by some other improper motive. The Tribunal found no evidence of conspiracy

against the Applicant and sees no merit in his allegations that the Respondent exercised his power to terminate the Applicant's employment in an arbitrary and capricious manner and that his case involved a miscarriage of justice.

For the foregoing reasons, the Tribunal, after examining all pleas of the Applicant, rejects the application in its entirety.

(Signatures)

Suzanne BASTID
President

Francisco A. FORTEZA
Member

Endre USTOR
Vice-President

Jean HARDY
Executive Secretary

New York, 21 November 1980

Judgement No. 268

(Original: English)

Case No. 239:
Mendez

Against: **The Secretary-General
of the United Nations**

Request of a staff member of the United Nations Development Programme (UNDP) to be given the benefit of the language incentive scheme.

The Tribunal is not competent to make orders of general application.—Consideration of the Applicant's individual case.—General Assembly resolution 2480 B (XXIII) and Administrative Instruction ST/AI/207.—Question whether the Applicant is in the category of staff "subject to geographical distribution".—General principle embodied in Article 101, paragraph 3, of the Charter.—Consideration of the evolution of the practice of the Organization.—General Assembly resolution 153 (II).—Study of the problem by a Committee of Experts and by the Secretary-General.—General Assembly resolution 1852 (XVII).—Conclusion of the Tribunal that the expression in question has developed into a term of art associated with the system of desirable ranges.—Consideration of the travaux préparatoires leading to the adoption of General Assembly resolution 2480 B (XXIII).—At the time of the adoption of that resolution, the General Assembly was fully aware that the UNDP staff did not belong to the class of staff "subject to geographical distribution".—Applicant's contention that the Secretary-General did not consult the staff of UNDP before submitting his proposals to the General Assembly.—Contention rejected.—Applicant's contention complaining of unjustifiable discrimination.—Meaning of the principle of equality.—Contention rejected.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Herbert Reis; Mr. Arnold Kean, alternate member;

Whereas at the request of Ruben P. Mendez, a staff member of the United Nations