

consult Dr. Barach and although this was denied by Dr. Barach about five years later, the Tribunal accepted the conclusion of the Joint Appeals Board that such a discussion did take place. An assessment by Dr. Barach in 1972 of the Applicant's condition would have been a natural expectation, especially in view of his concern for the Applicant's welfare as recorded in his certificate of 8 June 1977. Besides, Dr. Barach was writing to Dr. Welborn about the Applicant and it is reasonable to conclude that, assuming his anxiety about her and her health at the time, he would have made his views known to the United Nations medical authorities as well. He however took no such initiative in the matter.

IV. The application is rejected.

(Signatures)

Suzanne BASTID

President

Samar SEN

Member

Arnold KEAN

Member

Jean HARDY

Executive Secretary

Geneva, 13 May 1981

Judgement No. 272

(Original: English)

Case No. 256:
Châtelain

Against: **The Secretary General of
the International Civil
Aviation Organization**

Request for rescission of a decision to terminate an appointment on the ground of unsatisfactory service.

It is unnecessary to decide the question whether, at the date of the contested decision, the Applicant was still on probation.—Description of the system of confidential reports established by Article IV, paragraph 12, of Part III of the Service Code and by General Secretariat Instruction 1.4.2 (Rev.4).—Consideration of the procedure followed in the Applicant's case.—Conclusion of the Tribunal that the procedure did not comply with General Secretariat Instruction 1.4.2 (Rev.4).—Denial of the Applicant's right to defend herself against the accusations made against her.—The contested decision is vitiated.—Award to the Applicant as compensation of a sum equivalent to eight months' net base salary and of her costs.—The Respondent is ordered to place a copy of the judgement in the Applicant's personal file.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, Vice-President, presiding; Mr. Arnold Kean; Mr. Herbert Reis;

Whereas at the request of Nicole Châtelain, a former staff member of the International Civil Aviation Organization, hereinafter called ICAO, the President of the Tribunal, with the agreement of the Respondent, extended to 25 August 1980 the time-limit for the filing of an application to the Tribunal;

Whereas, on 18 August 1980, the Applicant filed an application in which she requested the Tribunal:

“A. As a preliminary measure, to request the Respondent to produce the Form 382—(Request for a Temporary Post)—and the Form 380—(Request for filling vacant established post)—used in connection with the recruitment of the Applicant.

“B. To rescind the administrative decision of 31 August 1979 by which the Respondent terminated the appointment of the Applicant under Part III, Article IV, paragraph 5, of the ICAO Service Code.

“C. To review Opinion No. 61 of the ICAO Advisory Joint Appeals Board, and in particular to hold *ultra vires* the recommendation contained in paragraph 50 (b) that no further investigation is needed or desirable.

“D. To rescind the decision of 1 May 1980 by which the Respondent, after studying the Conclusions and Recommendations embodied in Opinion No. 61 of the Advisory Joint Appeals Board, maintained the aforementioned administrative decision.

“E. To order the Respondent to reinstate the Applicant in the services of ICAO.

“F. To order payment of full salary to the Applicant from the date of termination to the effective date of reinstatement, less such amounts already paid to the Applicant by way of termination indemnity.

“G. To order removal from the Applicant's file of improper and adverse material submitted in violation of the ICAO General Secretariat Instructions.

“H. To order reimbursement of expenses reasonably incurred by the Applicant in prosecuting this Appeal, such as long-distance telephone calls, preparation of documentation, and postage, such expenses to be determined by the Tribunal before the close of the proceedings.

“Should the Respondent decide to exercise the option given to him under Article 9.1 of the Statute:

“A. To order payment of one year's salary to the Applicant, being the balance due under the Contract of Employment dated 24 May 1978.

“B. To order payment of \$5,000, to compensate Applicant for her removal from her former professional domicile in Geneva, such removal having been undertaken in reliance on the contract offers of 8 and 24 May 1978, and as part of the bargain embodied in her contract of appointment.

“C. To order reimbursement of such just and reasonable expenses as the Tribunal may determine.”

Whereas the Respondent filed his answer on 29 October 1980;

Whereas the Applicant filed written observations on 10 December 1980;

Whereas the Respondent produced the documents referred to in plea A of the application on 18 February 1981;

Whereas the Applicant submitted a statement of expenses on 15 April 1981;

Whereas the facts in the case are as follows:

The Applicant entered the service of ICAO on 14 November 1977 as a Language Officer (Interpreter/Translator) in the Language Branch, French Section, under a temporary appointment due to expire on 28 February 1978. On 30 January 1978 this appointment was extended to 30 May 1978. On 8 May 1978 the Secretary General decided to appoint the Applicant to a regular P-3 post of Language Officer. On 10 May 1978, in a memorandum addressed to the Secretary General, the Chief of the Personnel Branch stated that the Applicant would not accept an appointment at Step I of that level and would want Step IV in view of her experience and the fact that she was being considered as locally recruited; he recommended that she be offered an appointment at Step II of P-3. On 12 May 1978 the Applicant refused to consider such an offer. On 17 May 1978, in a further memorandum to the Secretary General, the Chief of the Personnel Branch discussed the Applicant's step on appointment and recommended a compromise solution on the following lines:

“ . . .

“C/LAN [Chief, Language Branch] is anxious to retain Miss Châtelain in view of her interpretation ability and after discussion with her, has suggested a compromise solution which Miss Châtelain would be prepared to accept, namely, to recruit Miss Châtelain at P-3, Step II from 1 September. This would entail recruiting her from Geneva where she had maintained her professional domicile and to where she will be returning in the summer after expiry of her present temporary appointment on 30 May.

“I consider this to be a reasonable solution. While it does involve her recruitment expenses from Geneva, such recruitment costs would be more than offset by the saving of salary during the summer months. On the other hand, it would ensure that we would have an additional competent interpreter to serve the many meetings, beginning with the Diplomatic Conference, which are scheduled during the last few months of the year.

“In view of the above, I recommend that you approve Miss Châtelain's appointment at P-3, Step II from 1 September 1978, it being understood that she will be recruited from Geneva.”

The Secretary General accepted that recommendation and by a letter dated 24 May 1978 he offered the Applicant a two-year appointment at the P-3 level, Step II, effective 1 September 1978; paragraph 5 of the letter read:

“5. You are invited to note particularly the provisions in the ICAO Service Code concerning probation (Part III, Article IV), periods of notice (Part III, Article V) and renewal of appointment (Part III, Article IV, paragraph 5.1).”

On 26 May 1978 the Applicant accepted the offer. On 30 May 1978 she received a temporary appointment as an interpreter for the period from 5 to 22 June 1978.

On 8 May 1979 the chief of the Interpretation, Terminology and Reference Section sent to the Chief of the Language Branch a memorandum entitled "Management problems arising from the conduct of Miss N. Châtelain" which read in part:

"In view of Mrs. Golay's recent complaint of harrassment I feel that the time has come to inform you officially of the serious difficulties that are affecting the French booth as a consequence of the subversive activities of the above language officer.

"Since she returned to ICAO in September 1978 Châtelain has quarrelled openly with my decisions on interpretation assignments, assignments to translation, use of relay, use of trainee-interpreters, etc. and made it clear that she regards the status and management of interpretation at ICAO as 'unprofessional'. In spite of my efforts to resolve these differences by convening the French interpreters and explaining the different criteria applicable to UN interpreters and ICAO language staff providing interpretation services, Châtelain has continued to dictate 'rules' and foster attitudes among her colleagues that conflict with my directives and the broad objectives of management policy. As she possesses a very forceful and aggressive manner, Châtelain has succeeded in enlisting some support among the younger interpreters and this has led to a conflict of loyalties and a duplication of authority which are destroying my control of the staff and complicating the day-to-day management of assignments.

"In this connection I must also draw your attention to the illegitimate attempts that have been made to drive colleagues from the booth by negative criticism and harrassment. . . . These incidents occurred despite my repeated injunctions to Châtelain to refrain from derogatory attacks, and I therefore view them as serious breaches of discipline.

"Finally, I am told on reliable authority that Châtelain has made improper approaches to members of national delegations with the object of influencing management policy and criticizing her superiors.

"In view of the above, and notwithstanding the acknowledged merit of her personal performance as an interpreter, I must request that Châtelain be terminated as soon as possible in the interests of relieving the present tensions and restoring my control over the French booth."

On 18 May 1979 the Chief of the French Section addressed the following memorandum, entitled "Appraisal of the performance and attitude of Miss N. Châtelain", to the Chief of the Language Branch:

"The following appraisal of the performance and attitude of Miss Nicole Châtelain, which I am giving at this time at your request, applies only to her translation activities.

"Miss Châtelain is not a translator and does not claim to be one. She does not seem to be overly interested in improving her translation skills, where she has much to learn. Since she joined the Section she was mostly assigned to interpretation and there have been very few opportunities to train her as a translator. The few translations she made required very heavy revision and appeared to be scamped work, some with unforgivable inaccuracies. She seems to be more interested in doing terminology research and I am satisfied with her work in that field."

On 24 May 1979 the Chief of the Language Branch forwarded those two memorandums to the Chief of the Personnel Branch under cover of a memorandum reading:

"I am transmitting herewith copies of memoranda from C/ITR and C/FR in relation with Miss Châtelain's probationary period.

"C/ITR's memorandum contains very serious charges and a recommendation for termination of services. I also received similar indications from other sources on Miss Châtelain's actions and attitudes, which in my view show clear inability or unwillingness to maintain harmonious working relationships. I called Miss Châtelain to my office and, in the presence of C/ITR, communicated the tenor of the complaints orally to her, giving her an opportunity to reply or comment. She declined to do so, although I indicated to her that her actions and attitudes as reported were considered intolerable and were likely to lead to an unfavourable assessment of her probationary period.

"C/FR's memorandum hardly contains any redeeming factors and indicates inability and/or lack of interest in performing part of the duties of the post.

"In view of the above, I am unable to recommend that Miss Châtelain should be continued in the post to which she was given probationary appointment."

On or about 18 June 1979 the Applicant received from the Chief of the Interpretation, Terminology and Reference Section a Confidential Staff Report for the period from 1 September 1978 to 31 January 1979 where two entries had been handwritten. The first, under the heading "Management skills and leadership" read:

"Performance of interpretation duties. Despite occasional misrenderings and a tendency to paraphrase, Miss Châtelain has done useful work in the booth. Unfortunately, the value of her interpretation has been largely offset by her arrogant and selfish attitude to certain colleagues in the booth and her inability to conform to the collective principles on which language work at ICAO is based. P.J.B. C/ITR."

The second, under the heading "Over-all comments on Staff Member's performance and attitude", read:

"TRANSLATION: Miss Châtelain does not seem to be overly interested in improving her translation skills, where she has much to learn."

On 22 June 1979, the Applicant wrote a memorandum to the Chief of the Interpretation, Terminology and Reference Section saying that before she refuted or accepted the accusations contained in the draft confidential report, she would like to obtain some clarification. If, in fact, it referred to her attitude to her colleagues in the booth, she could only express surprise since she got on very well with such colleagues, who had been kind enough to confirm these good relationships in notes written on the memorandum. If, on the other hand, the report was the result of any complaint received, she requested to see the complaint. On 26 June 1979 the Chief of the Interpretation, Terminology and Reference Section forwarded the Applicant's memorandum to the Chief of the Personnel Branch through the Chief of the Language Branch, noting: "For reasons which I believe to be self-evident I do not intend to reply". On 27 June 1979 the Chief of the Language Branch, in reply to a form letter dated 22 June 1979 from the Chief of the Personnel Branch, advised the latter that he did not recommend that the Applicant should be continued in the post to which she had been given probationary appointment. On 23 July 1979 the Chief of the Staff Administration Section interviewed the Applicant, who had just returned from leave, and passed to her a letter dated 12 July 1979 from the Chief of

the Personnel Branch to which were attached the appraisals of the Applicant's service referred to above. The letter read as follows:

"In accordance with the provisions of paragraph 9 of GSI 1.4.2 (Rev.4), I attach hereto copies of confidential reports on your services during your probationary period.

"You may, if you so wish, make a written reply to these reports, which should be sent to reach me not later than the close of business on Friday, 3 August 1979. All or part of such reply may be transmitted to your supervisors if such action is considered to be in your or the Organization's interest."

The Chief of the Staff Administration Section summarized his interview with the Applicant in the following note, placed in the Applicant's confidential file:

"I interviewed Miss Châtelain on her return from leave today, and passed to her the letter and enclosures at E.4. I emphasized to her that I was in no way prejudging the Secretary General's decision whether or not to confirm her probationary appointment, and also that the recommendations in the reports related to her unsatisfactory conduct and not to her services as an interpreter. I suggested to her that the Secretary General might be prepared to consider, as an alternative to termination of probation, her resignation if she wished to so request. Miss Châtelain gave no indication of future action in this respect but wished to have some time to consider her next move. She took away with her the letter of 12 July with copies of the reports."

On 30 July 1979, in reply to the letter dated 12 July 1979 from the Chief of the Personnel Branch, the Applicant asked for an extension of the time-limit for responding to the confidential reports and questioned the correctness of the statement that she was still under probationary service in view of her employment record and previous contracts. On 6 August 1979 the Chief of the Personnel Branch confirmed to the Applicant that her probationary period was to expire on 31 August 1979 and extended the time-limit for a response to 10 August 1979. On 7 August 1979 the Applicant wrote again to the Chief of the Personnel Branch stating that since her arrival at ICAO in November 1977 she had always worked to the best of her knowledge and goodwill. She had been convinced that the interpretation practices of the United Nations were applicable to ICAO. It was only during an interview with the Secretary General, at the end of May 1979, that she learned that the ICAO practices were different from those at the United Nations. She had promised the Secretary General to continue her work without further reference to the United Nations Rules. She had always tried to act only in the interest of the Organization and what she had considered to be her duty. If she had been wrong, it was sincerely regretted and she would, henceforth, do her best to work in complete harmony with her colleagues and supervisors. On 10 August 1979 nine of the Applicant's colleagues wrote to the Chief of the Personnel Branch with a copy to the Secretary General expressing concern at the adverse report regarding the Applicant and requesting a review of the situation. On 15 August 1979 the Chief of the Personnel Branch recommended to the Secretary General that, as the Applicant's services during her probationary period had been unsatisfactory on grounds of misconduct, her appointment be terminated under the provisions of paragraph 5, Article IV, Part III of the Service Code. On 22 August 1979 the Applicant was interviewed by the Secretary General, who informed her of his decision

to terminate her appointment during her probationary period for reasons of unsatisfactory service. On 31 August 1979 he sent her the following notification:

“I regret to have to advise you that your services have not been satisfactory during the probationary period of one year. In accordance with the provisions of the ICAO Service Code, Part III, Article IV, paragraph 5, to which your attention was drawn in paragraph 5 of my letter dated 24 May [1978], I have, therefore, decided to terminate your appointment with effect from the close of business of Friday, 31 August 1979, and to authorize payment to you of one month's salary in lieu of notice. I have further decided, in accordance with the provisions of Part III, Article V, paragraphs 10.1 and 10.3 to authorize payment to you of a termination indemnity of one half of one month's pensionable remuneration, less staff assessment.”

On 31 August 1979 the Applicant requested the Secretary General to review his decision to terminate her appointment. On 7 September 1979 the Secretary General confirmed his decision and on 21 September 1979 the Applicant lodged an appeal with the Advisory Joint Appeals Board. The Board submitted its report on 19 March 1980. Its conclusions and recommendations read as follows:

“Conclusions

“33. The Board examined and studied all the relevant documentation and information available to it, including the ICAO Service Code and the General Secretariat Instructions (GSI). It began its considerations by first addressing the main question of the probationary period. In particular, the termination date of the probationary period was considered central to the case.

“Probationary period

“34. The letter of appointment dated 24 May 1978 does not specify the dates of the probationary period. The only reference to probation is in paragraph 5 of that letter which draws the Appellant's attention to all of Article IV in Part III of the ICAO Service Code. That paragraph reads as follows:

“ ‘5. You are invited to note particularly the provisions in the ICAO Service Code concerning probation (Part III, Article IV), periods of notice (Part III, Article V) and renewal of appointment (Part III, Article IV, paragraph 5.1).’

“35. As a consequence, and in the absence of any further elaboration regarding probation in the letter of appointment, the Board considered that the entire text of Article IV of the Service Code applies to the Appellant's case. Thus, the Board considered most pertinent Part III, Article IV, paragraphs 5 and 9 of the Service Code, the text of which reads as follows:

“ ‘5. Appointments in the Director and Principal Officer category and Professional category shall be for a period of two years, which shall include a probationary period of one year during which, if the Secretary General is not satisfied with the services of the staff member, the appointment may be terminated by one month's notice in writing or salary in lieu thereof. The decision of the Secretary General in this respect shall be final.

“ ‘9. A probationary period shall not be required for staff members who have completed an equivalent period of satisfactory service in the Organization or the Provisional Organization, including service on secondment, loan or temporary employment, whether in the same or different level.’

“36. After a lengthy analysis and review of Part III, Article IV, paragraphs 5 and 9, the Board considered that these paragraphs were directly related and that a strictly literal meaning (interpretation) of these two paragraphs taken together was that a probationary period of one year, terminating on 31 August 1979, could be required in this case.

“37. Nevertheless, the Board could understand that a new or prospective staff member could also interpret paragraph 9, Part III, Article IV, as meaning that completion of satisfactory service would take into account previous temporary employment as part of the probationary period, since that is not specifically excluded in that paragraph. Further, such a staff member would not readily recognize the significance of paragraphs 5 and 9, nor would be in a position to grasp their strict meaning at the time of signing the letter of appointment, unless specifically advised to this effect.

“38. The significance and meaning of Article IV, paragraphs 5 and 9 are further complicated by the provision of Part III, Article II, paragraph 3 of the Service Code. This paragraph reads as follows:

“ ‘3. Where a period of secondment or temporary employment is immediately followed by *permanent employment*, such permanent employment may be considered to have commenced at the beginning of the period of secondment or temporary employment in respect of leave privileges, credit for service towards any required probationary period and participation in the United Nations Joint Staff Pension Fund.’

“39. Although that paragraph is not mentioned in the letter of appointment it was considered by the Board for possible implication with respect to probation. In relating it to Part III, Article IV, paragraph 5, the Board found that the two paragraphs were contradictory if a strict interpretation was taken. Specifically, Part III, Article IV, paragraphs 5 to 5.1.2 clearly show that a two year appointment, including a probationary year, is required before *permanent employment* can be offered. However, Part III, Article II, paragraph 3 states that *permanent employment* can be followed immediately after a period of temporary employment. Thus the two paragraphs cannot be reconciled if a strict interpretation is taken. The Board can only conclude that these two paragraphs which have been in effect for many years, have either not been applied with respect to permanent employment, or if applied, have not been strictly and literally interpreted by the Administration of ICAO.

“40. The Board noted that the Appellant had completed approximately 7 months of temporary appointment prior to signing the final letter of appointment dated 24 May 1978. In a strict interpretation of the Service Code this is, of course, short of the one year requirement and cannot be deducted therefrom, particularly since service was not continuous and paragraph 3 of Part III, Article II implies continuity. If this interpretation is taken then the probationary period would terminate on 31 August 1979 and the dismissal of the Appellant under Part III, Article IV was correct.

“41. However, as stated previously, a new or prospective staff member cannot readily be aware of this interpretation at the time of signing the letter of appointment unless specifically advised accordingly. The Board therefore considered that the text of the appointment letter should have included the starting and termination dates of the probation period and that in the absence of such dates the Appellant could not be expected to fully understand the implications of what she was signing and could

well believe that all, or part, of her previous temporary service could be considered as part of the probation period.

“42. The Board did not consider that an attempt to relate the 7 months temporary service of the Appellant to a specific probation termination date, earlier than 31 August, would be fruitful in this case in view of other considerations.

“Requests of the Appellant

“43. The Board considered the Appellant’s requests for reinstatement and compensation in the form of salary. It was noted that this claim was based mainly on a number of points of procedure and terminology related to the Service Code and the General Secretariat Instructions.

“44. As indicated in its considerations on the probationary period, the Board to some extent agreed with some of these points, however, the majority were not considered relevant. For instance, the Appellant claimed that the system of Confidential Reports referred to in the Service Code, Part III, Article IV, paragraph 12 and in GSI, 1.4.2 was the only system that could be used by the Secretary General to determine the suitability of staff for retention. The Board noted that complementary procedures had been in effect for many years and one system could not possibly cater for all contingencies. The Board did not agree with the Appellant and considered that the Secretary General was correct in using memoranda to determine the suitability of the Appellant, particularly since the administrative progress of the Appellant’s confidential staff report referred to in GSI 1.4.2 had been stopped, mainly by the actions of the Appellant.

“45. The Board noted that the letter of appointment clearly stated that the post was one of ‘interpreter/translator’ in accordance with the ICAO Establishment. Since the Appellant claimed that she was not a translator there would be a fair expectation on the part of both parties that they would work towards the Appellant becoming a translator. However, the Board noted that the Appellant had been unwilling to progress towards this common goal and considers that this may have been one of the underlying factors for the Appellant’s attitude and activities. The Board could not find any substantive procedural irregularities, improper motives, incorrect facts or other such matters on behalf of the Secretary General.

“46. Accordingly, the Board considers that the Applicant’s request for reinstatement should be rejected. However, in view of the circumstances relating to the letter of appointment and its signing, the Board considers that the Appellant’s request for compensation in the form of salary is reasonable, and that the provisions of Part III, Article V, could be applied with one important exception: that of investigation.

“47. Paragraphs 4 and 5 of Article V read:

“ ‘4. Any staff member may be discharged by notice in writing given in accordance with this paragraph, if the Secretary General, after due investigation, is satisfied that his services are unsatisfactory;

“ ‘4.1 In the case of a staff member in the Director and Principal Officer category and Professional category, three months’ notice shall be given.

“ ‘4.2 In the case of a staff member in the General Service category, one month’s notice shall be given.

“ ‘5. The investigation required by paragraph 4 shall be conducted on the basis of a written report by the immediate superior or superiors of the staff

member concerned, who shall be given an opportunity to see the report and to make representations thereon to the Secretary General.'

"48. In this case an investigation to clearly establish the remaining facts is not considered necessary in view of the depth of the hearings of the Board. Further, to conclusively establish all the facts regarding the Appellant's activities would have to involve communications with National Delegations which does not seem to be an appropriate course of action.

"Request by the Secretary General's Representative

"49. The Secretary General's Representative requested, among other things, that the appeal be considered as frivolous. The Board was unable to do so in view of its conclusions under 'probationary period'.

"Recommendations

"50. The Board recommends that:

"(a) the Appellant not be reinstated;

"(b) the Appellant be terminated under paragraph 4, Article V, Part III of the Service Code with the *caveat* that no further investigation is needed or desirable;

"(c) the Appellant be paid a salary in accordance with (b) above, taking into account the amount already paid to her for termination;

"(d) the Service Code, Part III, Articles II and IV be reviewed for clarity and intent; and

"(e) letters of appointment in the future include the dates of the probation period."

On 1 May 1980 the Secretary General communicated his final decision to the Applicant, as follows:

"I have carefully studied the Opinion No. 61 issued by the AJAB on the Appeal of Miss N. Châtelain.

"My conclusion is that Miss Châtelain's appointment was terminated by me during the probationary period under paragraph 5, Article IV, Part III, of the ICAO Service Code; that decision is final. I have noted that the AJAB 'could not find any substantive procedural irregularities, improper motives, incorrect facts or other such matters on behalf of the Secretary General' (page 12, paragraph 45, of the Opinion).

"I will give due consideration to recommendation (e) on page 14 of the Opinion.

"The Appeal is rejected and my decision dated 31 August 1979 stands."

On 18 August 1980 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision of the Secretary General to terminate the Applicant was defective in fact, because the service for which she had been employed—the quality of her work as an interpreter—was not unsatisfactory by any account, and in law, because the limitations on the Secretary General's power were not observed.

2. The Applicant had completed her probationary period, and therefore the Respondent erred in terminating her appointment under Part III, Article IV, paragraph 5 of the Service Code.

3. The decision to terminate the Applicant was vitiated by errors of procedure, in

violation of the Service Code and the General Secretariat Instructions, so serious as to effectively deny the Applicant due process.

4. The decision to terminate the Applicant was tainted with prejudice and was discriminatory.

5. The recommendations of the Advisory Joint Appeals Board were legally defective so as to effectively deprive the Applicant of her right to review under Part III, Article X of the Service Code.

Whereas the Respondent's principal contentions are:

1. The Applicant's allegation that paragraph 9 of Article IV, Part III of the Service Code is applicable in her case is totally unfounded. She had completed approximately seven months of temporary appointments prior to signing her final letter of appointment. Furthermore, that provision clearly contemplates that the equivalent period of service had to have been completed at the time of appointment. Nor can the Applicant rely on paragraph 3 of Article II, Part III of the Service Code: there was a break in service between the temporary employment and the two-year appointment, a two-year appointment is not "permanent employment", and in any event the crediting of temporary employment towards the probationary period is within the discretionary powers of the Secretary General.

2. The Secretary General is entitled to terminate at any time the appointment of a staff member serving a probationary period if, in his opinion, such action would be in the interest of the Organization, and the Applicant's allegations of improper motives and procedural irregularities were ruled out by the Advisory Joint Appeals Board.

The Tribunal, having deliberated from 27 April to 14 May 1981, now pronounces the following judgement:

I. Argument has been addressed to the question whether, at the date of termination of her appointment, the Applicant was still on probation.

II. The Tribunal finds it unnecessary to decide this question. Whatever the answer, the decision to terminate the Applicant's appointment on the basis of adverse reports cannot stand if it is shown that

(a) the Administration has not complied with the relevant procedures laid down in the ICAO Service Code and in the ICAO General Secretariat Instructions (GSI); or that

(b) the Applicant's appointment has not been terminated in accordance with due process of law.

III. According to paragraph 5, Article IV, Part III of the Service Code, if the Secretary General is not satisfied with the services of a staff member during his probationary period, he may terminate the appointment and his decision "shall be final". Even if the Tribunal accepts the Respondent's argument that the Applicant was still on probation at the time of her termination, the Secretary General's decision, in the Tribunal's view, cannot be final if it has been improperly arrived at.

IV. Paragraph 12, Article IV, Part III of the Service Code provides for a system of confidential reports and requires any adverse report to be communicated in writing to the staff member concerned. The paragraph states that the purpose of the system is to assist the Secretary General in determining the suitability of staff members for retention by the Organization or for promotion. No exception is made in respect of staff members on probation.

V. GSI 1.4.2 Rev.4 bears the heading "Confidential Staff Reports" and elaborates on the provisions of paragraph 12, Article IV, Part III of the Service Code. It requires a single form to be used and sets it out in an attachment. It designates reporting officers and reviewing officers. Paragraph 9 reads as follows:

"Any report which contains markings, comments or statements which, in the opinion of the Reviewing Officer, may lead to or may later be material in any action or proceeding for discharge, non-renewal of appointment, transfer to a post involving lesser responsibilities, or withholding of salary increment, will constitute an adverse report within the meaning of the provision of the ICAO Service Code quoted above. Such reports should be identified by the Reviewing Officer through marking of the corresponding box in Part VI of the report, and forwarded separately and without delay to the Chief, Personnel Branch, in a sealed envelope marked 'adverse confidential report'. Upon receipt of such a report, Chief, Personnel Branch, will without delay transmit a copy thereof to the staff member concerned. The staff member may make a written reply thereto."

Paragraphs 12, 16 and 17 of GSI 1.4.2 Rev.4, which appear under the heading "Guidelines", read as follows:

"12. Parts I, II and III of the form constitute an evaluation of the staff member's performance and attitude by the Reporting Officer.

". . .

"16. The material in Parts I to III will serve as the basis for the subsequent appraisal review. Completion of these parts can be envisaged in several variations of format, i.e.:

"(a) At the time of the interview itself and in the presence of the staff member (in which case the blank uncompleted form should preferably be handed to the staff member before the interview so that he may be conversant with the factors, etc. which will come into play).

"(b) In draft (pencil) form (to enable later adjustments), or alternatively in final form, before the interview. In such cases it is highly recommended that the completed form be handed to the staff member ahead of, rather than simply shown to him at the time of, the interview.

"17. The personal interview between the Reporting Officer and the staff member constitutes the core of the appraisal review process. It should be prepared carefully and conducted in depth and without haste. Time and place should be set sufficiently in advance to enable the staff member to be prepared (see 16). The purpose and function of the interview should, if necessary, be explained clearly (e.g. in the case of new staff members unfamiliar with the procedure). The atmosphere of the interview should be congenial to a free exchange, and by no means limited to an authoritative one-way communication of judgements not amenable to critical examination and constructive discussion."

Paragraph 22 of GSI 1.4.2 Rev.4, which also appears under the heading "Guidelines", requires the staff member to be given "sufficient time (say a few days) to review the report and complete Part V. This should be signed by the staff member and countersigned by the Reporting Officer". The reference is to Part V of a form attached to GSI 1.4.2 Rev.4.

VI. GSI 1.4.2 Rev.4 makes no exception in respect of staff on probation. It also makes no provision for confidential memoranda outside the confidential staff report system.

VII. The draft report shown to the Applicant on 18 June 1979 was in the form prescribed by the GSI but in Part I performance assessment factors 1 to 12 had been left blank and, according to a marginal note made by the Applicant on the copy of that document attached to the application, pages 5, 6 and 7 had been omitted, a fact not denied by the Respondent. In consequence she was not made aware of her right to an appraisal interview or to a written record of it as part of the form (item IV), her right to include in the form a "review by the staff member" (item V), or her right to see, as part of the form, the "comments by reviewing officer" (item VI) including an indication that the report constituted an adverse report. Such an indication would have entitled her to a copy of the report without delay. Indeed the draft report contained only two statements, namely:

"Performance of interpretation duties. Despite occasional misrenderings and a tendency to paraphrase, Miss Châtelain has done useful work in the booth. Unfortunately, the value of her interpretation has been largely offset by her arrogant and selfish attitude to certain colleagues in the booth and her inability to conform to the collective principles on which language work at ICAO is based. P.J.B. C/ITR."

" . . .

"TRANSLATION: Miss Châtelain does not seem to be overly interested in improving her translation skills, where she has much to learn."

VIII. The report in its final form was not transmitted or shown to the Applicant until the second day of the hearing by the Advisory Joint Appeals Board, i.e., after the termination of her employment. It was still incomplete, pages 5, 6 and 7 having been left blank. It was still unsigned by the reporting and reviewing officers. It was also undated. It now included indications of performance assessment factors 1 to 12, letters having been ringed to indicate the assessments, although without comment. In Part II the Applicant was given the middle over-all rating ("Among those who perform well and produce performance results expected of a staff member of average competence and qualifications"). It also included in Part III a new over-all comment reading as follows:

"The overall rating shown above applies exclusively to her interpretation and translation skills and does not take account of her unethical behaviour towards colleagues and supervisors."

IX. At no time was the Applicant given a personal interview with the reporting officer referred to in paragraph 17 of GSI 1.4.2 Rev.4, which describes it as "the core of the appraisal review process". On the contrary, the reporting officer (the Chief of the Interpretation, Terminology and Reference Section) did not, in his own words, "for reasons which I believe to be self-evident", reply to the Applicant's memorandum of 22 June 1979 in which she expressed surprise at the accusations contained in the draft report, since (she wrote) she got on very well with her colleagues. Indeed, three of them confirmed this by notes written on her memorandum and nine out of ten of them asked for her retention by a letter dated 10 August 1979 to the Chief of the Personnel Branch.

X. Earlier, in a confidential memorandum of 8 May 1979, the Chief of the Interpretation, Terminology and Reference Section had written to the Chief of the Language Branch that

“... Châtelain has quarrelled openly with my decisions on interpretation assignments, assignments to translation, use of relay, use of trainee-interpreters, etc. and made it clear that she regards the status and management of interpretation at ICAO as ‘unprofessional’... [She] has continued to dictate ‘rules’ and foster attitudes among her colleagues that conflict with my directives and the broad objectives of management policy. As she possesses a very forceful and aggressive manner, Châtelain has succeeded in enlisting some support among the younger interpreters and this had led to a conflict of loyalties and a duplication of authority which are destroying my control of the staff and complicating the day-to-day management of assignments.”

The Chief of the Interpretation, Terminology and Reference Section in his memorandum requested “that Châtelain be terminated as soon as possible in the interests of relieving the present tensions and restoring my control over the French booth”. On 12 July 1979, the Chief of the Personnel Branch wrote to the Applicant, giving her copies of this memorandum and of three other memoranda, dated respectively 18 and 24 May and 22 June 1979. The memorandum dated 18 May 1979 was from the Chief of the French Section to the Chief of the Language Branch. It criticized the Applicant for lack of interest and efficiency in translation, a criticism which, in substance, later appeared on the draft and final report forms in Part III under the heading “Overall Comments on Staff Member’s Performance and Attitude” as quoted in paragraph VII above. The memorandum dated 24 May 1979 was from the Chief of the Language Branch to the Chief of the Personnel Branch. It transmitted the memoranda of 8 and 18 May 1979, with the following comments:

“C/ITR’s memorandum contains very serious charges and a recommendation for termination of services. I also received similar indications from other sources on Miss Châtelain’s actions and attitudes, which in my view show clear inability or unwillingness to maintain harmonious working relationships. I called Miss Châtelain to my office and, in the presence of C/ITR, communicated the tenor of the complaints orally to her, giving her an opportunity to reply or comment. She declined to do so, although I indicated to her that her actions and attitudes as reported were considered intolerable and were likely to lead to an unfavourable assessment of her probationary period.

“C/FR’s memorandum hardly contains any redeeming factors and indicates inability and/or lack of interest in performing part of the duties of the post.

“In view of the above, I am unable to recommend that Miss Châtelain should be continued in the post to which she was given probationary appointment.”

The memorandum of 22 June 1979 was from the Chief of the Language Branch to the Chief of the Personnel Branch. It was headed “Subject: Probationary Period—Miss N. Châtelain” and included a notation “Report has already been submitted”. It stated that the Chief of the Language Branch did not recommend the continuation of the Applicant in her post.

XI. The Tribunal concludes that the procedures followed did not comply with GSI 1.4.2 Rev.4. In particular, the prescribed form was never completed and transmitted to the Applicant with the required notation that it constituted an adverse report. Although the Applicant commented on the draft report in a memorandum to the Chief of the Interpretation, Terminology and Reference Section, he did not reply to her observations, or give her the personal interview contemplated by GSI 1.4.2 Rev.4 as “the core of the

appraisal review process''; and the report in its final version (still incomplete) was not shown to her until the second day of the hearing of her appeal to the Advisory Joint Appeals Board against the Secretary General's decision to terminate her employment. In consequence, it cannot be said that there was compliance with the substance or with the letter of GSI 1.4.2 Rev.4.

XII. The Tribunal considers that, in the present case, the employment of the Applicant, whether or not on probation, should not have been terminated on the basis of accusations contained in a confidential staff report unless the accusations were set out with sufficient precision to give her a reasonable opportunity to defend herself and were communicated to her. The Tribunal does not regard the accusation in the report ('her arrogant and selfish attitude to certain colleagues'), unaccompanied by particulars, as sufficiently precise for this purpose. The accusations made by the Chief of the Interpretation, Terminology and Reference Section in his memorandum of 8 May 1979 do not add any precision to those in the report but relate to other matters. The accusation in the final report of "unethical behaviour towards colleagues and supervisors" became known to the Applicant only after the termination of her employment but was nevertheless before the Secretary General when he decided to terminate the Applicant's employment. This was, in the Tribunal's view, a denial of due process of law because the written accusations contained in the Confidential Staff Report were not dealt with in conformity with the regulation guaranteeing communication of such a report to the staff member concerned.

XIII. The Tribunal therefore concludes that the Secretary General's decision is vitiated for failure to adhere to the procedures prescribed by ICAO General Secretariat Instructions and also for failure to accord the Applicant due process of law.

XIV. Taking into consideration all the circumstances of the case, the Tribunal does not grant the Applicant's request for reinstatement but in lieu thereof awards her as compensation eight months' net base salary at the rate applicable on the termination of her employment. In so doing, the Tribunal has taken into account the evidence that the Applicant was unwilling or unable to enter fully into the translation work of the Language Branch. The Tribunal also awards the costs requested by the Applicant in the amount of US \$152.00. The request of the Applicant for the removal of certain pages from her personal file is rejected by the Tribunal but the Tribunal orders the inclusion and retention of a copy of this judgement in that file.

XV. All other requests are rejected.

(Signatures)

Endre USTOR
Vice-President, presiding

Arnold KEAN
Member

Geneva, 14 May 1981

Herbert REIS
Member

Jean HARDY
Executive Secretary