

Suzanne BASTID  
Vice-President

Jean HARDY  
Executive Secretary

Luis de POSADAS MONTERO  
Member  
Geneva, 13 May 1982

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## Judgement No. 289

(Original: French)

Case No. 264:  
Talan

Against: The Secretary-General  
of the United Nations

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*Request for compensation for injury caused by the delay in the payment of life insurance benefits.*

*Grounds on which the Applicant, the widow of a technical assistance expert who died as a result of a traffic accident, bases the claim.—Participation of the expert in the group life insurance plan subscribed to by the United Nations in accordance with Staff Rule 206.2—Application of that provision.—Claim for compensation for injuries caused by the negligence of the Respondent's services.—A ruling on the claim necessitates reference to the general principles applicable with respect to administrative responsibility.—Consideration of how the Respondent acted.—Delay of nine months in the payment of the insurance benefits.—Assessment of the injury sustained by the Applicant as a result of the delay.—Argument of the Applicant based on the decline during that period in the rate of exchange for the United States dollar vis-à-vis the French franc.—Argument rejected.—Argument of the Applicant based on changes in the cost-of-living index.—Argument rejected.—Obligation to compensate by the payment of interest for the damage resulting from undue delay in the payment of a sum of money.—Award to the Applicant of interest at the rate of 12 per cent per annum for the nine months' delay on the full amount of the insurance benefits due.—Claim for compensation for moral damage.—Award of \$2,000 to the Applicant for such damage.—The other claims are rejected.*

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### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Samar Sen, Vice-President; Mr. T. Mutuale; Mr. Herbert Reis, alternate member;

Whereas on 12 June 1981, Mrs. Geneviève Talan, the Applicant in this case and the widow of Mr. Rolland Talan, a former United Nations technical assistance expert, filed an application which failed to fulfil some of the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 June 1981, the Applicant submitted a preliminary application requesting the Tribunal to order that a copy of the recommendations transmitted to the Secretary-General by the Joint Appeals Board should be made available to her;

Whereas the Respondent forwarded the report of the Joint Appeals Board to the Applicant on 15 July 1981;

Whereas, on 28 August 1981, the Applicant filed a proper application dated 15 June 1981, the pleas of which are as follows:

“The Applicant, Mrs. Geneviève Talan, acting on her own behalf and on behalf of her children Tiphaine Talan and Rolland-Thibaud Talan, who are both under her legal administration and in her custody (see annex 12, symbol 2.a and annex 13, symbol 2.b), requests the Tribunal to order and take measures and decisions to make amends for the substantial financial loss suffered by the Applicant and her children through misconduct on the part of the Administration of the United Nations, which resulted in an 11-month delay in the payment of benefits under the life insurance taken out on 24 November 1977 by her husband, Rolland Talan, who designated the beneficiaries on 21 March 1978 (see annex 23, symbol 3.a). Mrs. Talan is claiming damages to compensate for the following losses:

“1. *Loss caused by the decline in the exchange rate of the dollar*

“Aetna Life Insurance Company paid to Mrs. Talan death benefits totalling \$US 214,968.96 by six cheques dated 8 October 1979 and 2 October 1979 and payable through Hartford National Bank and Trust Company. These cheques were received on 11 October 1979 (see annex 14, symbol 2.c and annex 15, symbol 2.d), in other words 11 months after Mr. Talan's death.

“Five days after Mr. Talan's death, that is, on 16 November 1978, the exchange rate was 4.352 French francs to the dollar (see annex 16, symbol 2.e).

“On 29 October 1979, the date on which Mrs. Talan converted \$80,000 into French francs, the exchange rate was 4.162 francs to the dollar (see annex 17, symbol 2.f).

“A loss of FF 15,200 was therefore incurred in the conversion of \$80,000 into francs.

“In addition, on 29 October 1979, Mrs. Talan converted \$30,000 into deutsche mark at the rate of DM 1.7865 to the dollar. As at 11 December 1978, the exchange rate was DM 1.890 to the dollar. The loss was therefore DM 3,300.

“On 12 November 1979, Mrs. Talan converted \$10,120 into Swiss francs at the rate of SwF 1.655 to the dollar. As at 11 December 1978, the exchange rate was SwF 1.691 to the dollar, a difference of SwF 0.036 per dollar. A loss of SwF 364 was therefore incurred (see annex 18, symbol 2.g).

“On 24 October 1979, Mrs. Talan purchased 241.13 ounces of gold at the rate of \$396 per ounce. At 11 December 1978, the price of gold was \$205.40 per ounce. A loss of \$45,959 was therefore incurred (see annex 19, symbol 2.h, annex 20, symbol 2.i, and annex 21, symbol 2.j).

“2. *Loss caused by the low interest paid by Aetna Life Insurance Company*

“Aetna paid a total of \$4,998 as interest for 11 months on benefits amounting to \$105,000, and zero per cent interest on the balance of \$105,000.

“Between December 1978 and October 1979, the interest rate offered by the major American banks averaged 12 per cent on a principal sum of \$200,000. It follows that the interest which should have been paid to Mrs. Talan for that period amounts to \$23,000. Considering the \$4,998 in interest paid by Aetna, the real loss sustained by Mrs. Talan was \$18,102 (see annex 14, symbol 2.c and annex 15, symbol 2.d).

*“3. Loss caused by the depreciation of the death benefits*

“Because of the increase in the cost of living, the purchasing power of the benefits paid to Mrs. Talan declined substantially in the 11 months between the death of Mr. Talan and the payment of the benefits. Mrs. Talan is requesting that the salary-adjustment index used by the United Nations for its staff, either in New York or in Paris, should be applied to the benefits of \$210,000 paid to her. In Paris, the National Institute for Statistics and Economic Studies (INSEE), a State agency, fixed the monthly consumer price index for Paris (where Mrs. Talan lives) at 208.3 for December 1978 and at 229.5 for October 1979 (when the benefits were paid). It follows that the cost-of-living increase for that period was 10.17 per cent (see annex 22, symbol 2.k). Mrs. Talan would accept an adjustment index based on the difference between the International Civil Service Commission scale applicable in Paris on 8 November 1978 and the scale applicable on 6 August 1979 (see annex 31, symbol 3.i and annex 32, symbol 3.j).

*“4. Moral injury caused by the delay in payment of death benefits*

“The Applicant requests the Tribunal to take into account the financial hardship and mental distress which she has suffered as a result of the delay in payment of the death benefits. As compensation for that moral injury, she is claiming the sum of \$10,000.

“The Applicant requests the Tribunal to order and take all measures and decisions to compensate her for the substantial moral injury sustained by her and by her children as a result of the considerable delay in the payment of life insurance benefits, a delay for which the United Nations Administration is responsible.

“Inasmuch as Mrs. Talan filed her first appeal with the Secretary-General of the United Nations on 8 November 1979 but received no reply and inasmuch as, having filed an appeal with the Joint Appeals Board on 16 June 1980, she has to date not been notified of the Board’s recommendations, any more than she was notified of the Secretary-General’s decision, the Applicant requests the Tribunal to order with effect from 16 June 1980, the payment of interest (computed at the average rate paid in the United States of America since 8 November 1979) on the damages and interest payable to her.

“The Applicant also requests the Tribunal to order whatever measures are necessary to reimburse her for at least a portion of the substantial correspondence costs which she had to incur because of the procedure, which was protracted through no fault of hers and which she was obliged to follow in order to vindicate her rights (see annex 24, symbol 3.b). The correspondence costs amount, in part, to 761.05 French francs.”

Whereas the Respondent filed his answer on 28 January 1982;

Whereas the Applicant filed written observations on 9 March 1982;

Whereas, at the request of the Tribunal, the Respondent submitted additional information on 21 and 26 April 1982;

Whereas the facts in the case are as follows:

Mr. Rolland Talan entered the service of the United Nations on 24 November 1977 on a one-year contract as a public administration expert and was assigned to Bujumbura, Burundi. On 21 March 1978, he completed and signed a United Nations group life

insurance application form, designating as beneficiaries his wife, the Applicant, a national and a resident of France, and his two children, both minors. On 8 November 1978, Mr. Talan suffered serious injuries in an automobile accident in Bujumbura and, on 11 November 1978, he died as a result of his injuries. On 12 November 1978, the Resident Representative a.i. of the United Nations Development Programme (UNDP) in Bujumbura notified the Department of Technical Co-operation for Development by cable. On 14 November 1978, an Acting Administrative Officer of the Department transmitted to the Chief of the Insurance Unit (Office of Financial Services) a copy of the cable, adding that the death certificate would be forwarded as soon as it was received. On 15 November 1978, an Administrative Officer of the Department requested by cable the Resident Representative a.i. to "forward soonest five copies certified death certificates, complete police and medical reports, your report circumstances travel on official [United Nations] business . . .". At a later date, the Administrative Officer reminded by cable the Resident Representative a.i. to "expedite urgently police report late Rolland Talan car accident for life insurance indemnity payment his widow". On 20 November 1978, the Applicant transmitted to an Administrative Officer of the Department five copies of Mr. Talan's death certificate issued by the French Embassy in Burundi. On 28 November 1978, an Acting Administrative Officer of the Department transmitted one of the copies of the death certificate to the Chief of the Insurance Unit. On 4 December 1978, the Applicant wrote to Aetna Life and Casualty—the insurance company which had issued the group life insurance policy—to inform it of the death of her husband and to request it "to be so kind as to inform me what my rights are". Aetna referred the letter to the Insurance Unit and, on 8 January 1979, a staff member of the Unit acknowledged receipt of the letter and informed the Applicant that:

" . . . before we can process the death claim with Aetna Life and Casualty, we must be furnished with the police report indicating that the cause of death was of an accidental nature. The Administrative Section of TCD is assisting us in obtaining the required document."

On 15 January 1979, the Chief of the Insurance Unit filled in and signed the "Employer's Statement" required by Aetna Life and Casualty. On it, he indicated that the Applicant was the beneficiary and noted that the application card "was not contained in S/M's file", but that, according to the contract with Aetna, the benefit could be paid "to either estate or widow, surviving children, parents, brothers and sisters in that order". On the same day, a staff member of the Insurance Unit transmitted by letter to Aetna the "Employer's Statement", together with a certified copy of Mr. Talan's death certificate. The letter stated, *inter alia*:

"We cannot locate the Staff Request for Group Life Insurance application card for the late Mr. Talan, however, he was employed as an Expert under the 200 Series Staff Rules, and as you know, the United Nations Group Life Insurance Plan is compulsory for Project Personnel Staff. In this connexion our Payroll Section has confirmed that premiums for group life insurance were being deducted from his salary.

"With reference to the circumstances surrounding the automobile accident, the police report has not yet been received, however, upon receipt it will be forwarded without delay."

A handwritten note at the bottom of the letter read: "We have thoroughly checked the

Insurance and Finance files for Mr. Talan's Staff Request for Group Life Insurance Card''. On 25 January 1979, an Acting Administrative Officer of the Department wrote to the Applicant:

"Upon receipt of the telegram dated 18 January 1979 from the Paris Information Centre, and after consulting our Insurance Unit, I wish to inform you that within the next two weeks you should receive a cheque for \$210,000 under the life insurance taken out by your husband at the time of his recruitment on 24 November 1977."

On 5 February 1979, a staff member of the Insurance Unit wrote a letter to the Applicant stating:

"Please be advised that Aetna Life and Casualty has requested additional information pertaining to the decedent's estate. Therefore, it would be advisable to supply us with the name and address of the attorney handling the matter, so that the insurance company can communicate directly with the attorney, in order to avoid any further delay in effecting payment of the benefits due under the United Nations Group Life Insurance Plan."

On 16 February 1979, the Resident Representative a.i. addressed a cable to the Administrative Officer of the Department requesting him to act promptly, since the Applicant was facing hard financial difficulties. On 23 February 1979, he forwarded to the Administrative Officer the report on Mr. Talan's car accident drawn up in French on 8 November 1978 by a police officer of Bujumbura. It was on 21 May 1979 that the Insurance Unit transmitted the report to Aetna with an English translation. On 28 February 1979, an Officer of the Paris Information Centre cabled to an Administrative Officer of the Department that the Applicant "would appreciate knowing when forthcoming pension payments and other outstanding dues will be effected and insurance settlement available. Mrs. Talan in urgent need money for meeting living expenses herself and children. Gratefully welcomes cables concrete details". On 2 March 1979, the Administrative Officer replied: "... Insurance Unit advises no reply received their letter 5 February Mrs. Talan in order effect insurance settlement ...". On 5 March 1979, the Information Officer cabled back: "... Mrs. Talan informs has not received letter 5 February from Insurance Unit. Grateful expedite copy to Centre ...". On 2 April 1979, the Applicant wrote to the staff member of the Insurance Unit to acknowledge receipt of the copy of the letter of 5 February, which had been forwarded to her through the Information Centre. She added:

"The American term 'attorney' has more than one meaning in French. Could you indicate to me very clearly what kind of information you want from him so that I shall know whether I should put you in touch with an *avocat* or a *notaire*, because in France they have very specific functions."

On 18 April 1979, the staff member of the Insurance Unit replied:

"In reply to your letter of 2 April, we would advise you that, in order to be able to pay to you the proceeds of your late husband's insurance, the Aetna insurance company needs to know whether or not he died intestate. Furthermore, in the event of your having acted to take possession of his estate, the company needs the names and address of the *avocat*, *notaire* or *avoué* you contacted for this purpose.

"I would also advise you that your husband apparently failed to designate a beneficiary of his insurance with Aetna. Accordingly, unless the insurance company

has the information requested above, it will be able to pay the proceeds to you only on the condition that, if any person other than yourself subsequently proves that he or she was designated as beneficiary by your late husband, the company will be obliged to claim repayment by you of the sum you have received in this connexion.

“ . . . ”

On 12 June 1979, the Applicant forwarded to a staff member of the Insurance Unit an *expédition* of an instrument drawn up by Me. Pierre Carvais, *notaire* in Paris, stating that Mr. and Mrs. Talan were “subject to the legal community property system (*régime de meubles acquis*), since there was no prior marriage contract”, that Mr. Talan had left no will, that Mr. Talan’s heirs were his two minor children, “both under the legal administration, subject to judicial supervision”, of the Applicant, and that, as the surviving spouse, the Applicant was entitled in pursuance of article 767 of the Civil Code to the usufruct of a quarter of the estate. On 20 June 1979, the staff member of the Insurance Unit transmitted to Aetna Life and Casualty the *expédition* in question, and on 10 July 1979 an English translation thereof. On 24 August 1979, Aetna Life and Casualty addressed the following letter to the Insurance Unit:

“ROLLAND TALAN

“As you know, we have been unable to settle this \$210,000 Group Life and Accidental Death and Dismemberment claim.

“To briefly recap, the problem is there apparently is no insurance record card in existence specifying to whom the proceeds should be paid. This contract specifies, in the absence of such a card, the beneficiary provision in the Group contract will take precedence. The beneficiary provisions in the United Nations’ Group contract provides that the benefits shall be payable in order of preference to the insured’s estate, surviving spouse, down the line of succeeding beneficiaries.

“We understand that the widow is desirous of receiving the entire proceeds. The beneficiary provision provides for payment to the insured’s estate. We understand further that there will be no estate for the insured.

“Quite frankly, we would consider making payment to the insured’s wife if the claim were not for such a sizable amount.

“Our understanding of French Law is that in the absence of an estate, the proceeds would be payable equally to the insured’s wife and his surviving children. The risk at hand is twofold. Should we pay the entire amount to the wife, it is possible that a claim could be made on behalf of the children or at a later date by the children themselves for their half of the proceeds. Furthermore, should an estate later be established, there is a possibility of claim being made in that regard.

“In an effort to resolve this situation, I am wondering if you would be able to send to my attention a copy of the insured’s marriage contract as well as all the correspondence that has transpired between your office and the insured’s attorney. We know, from our review of the information that has been provided thus far, that as far as anybody can determine, the insured left no Will. We note, however, that the Central Fichier of Last Wills has not been examined. Can the insured’s attorney in Paris be sure that the Central Fichier is examined to determine the existence of a possible Will?

“Once we have the opportunity to examine the documents which I have re-

quested, we will be in further contact with you and advise you as to how we feel we should proceed.

"In the meantime, if you wish to discuss this further, please contact me."

This letter was received by the Insurance Unit on 4 September 1979. Shortly thereafter, the Unit "located" the Staff Request for Group Life Insurance filled in and signed by Mr. Talan. On 10 September 1979, a staff member of the Insurance Unit transmitted that Staff Request to Aetna Life and Casualty, adding: "As both children are minors we have requested Letters of Guardianship and will forward these documents to you upon receipt". On 11 September 1979, the staff member wrote as follows to the Applicant:

". . .

"There has been a delay in releasing the proceeds of this claim due to the absence of the original application. However, the application has just been located and beneficiaries are specified as: Geneviève Talan, wife; Tiphaine Talan, child; Rolland T. Talan, child. As both children are minors proceeds cannot be released until you furnish us with Letters of Guardianship for both children. We kindly request that you expedite this matter in order to avoid further delay in settling this matter."

On 24 September 1979, the Applicant replied:

". . .

"I have just had an interview with my *notaire* Maître Pierre Carvais, as a result of which I would inform you of the following:

"The American expression 'Letters of Guardianship' has no equivalent in French law and there is no one possessing the authority to draw up such documents.

"Nevertheless, a literal translation of 'Letters of Guardianship' gives me to understand that what you want is an assurance that I have custody of my two children. In this connexion, I would point out that on 12 June 1979 I sent to Mrs. Anne Disclafani (Insurance Unit, Office of Financial Services) a copy (of which she acknowledged receipt) of the instrument drawn up by Maître Carvais, which states on page 2, penultimate paragraph, that *my two children are under my legal administration and are residing and legally domiciled with me*, meaning of course that I have custody of them.

"I am enclosing with my letter a copy of that instrument, which is in French, but I would point out that Mrs. Disclafani has had it translated into English [*"en américain"*]; please, therefore, refer to her if you want a copy of the translation.

"If this instrument fails to provide the information you want, kindly state very clearly what information you expect. But I would remind you that such an instrument is in France the only valid attestation that I do have custody of my children.

". . ."

On 2 October 1979, Aetna Life and Casualty issued two cheques to the order of "Geneviève Talan". The first was for \$36,636.18, representing a death benefit "straight life" of \$35,000 and interest of \$1,636.18. The second was for \$35,000—the additional benefit for accidental death; there was no interest. On 8 October 1979 Aetna issued four cheques. Two were to the order of "Genevieve Talan, Natural Guardian of Tiphaine Talan, a minor". The first was for \$36,666.39, representing a death benefit "straight life" of \$35,000 and interest of \$1,666.39. The second was for \$35,000—the additional benefit

for accidental death; there was no interest. The two other cheques issued on 8 October 1979 were to the order of "Genevieve Talan, Natural Guardian of Rolland T. Talan, a minor". The first was for \$36,666.39 representing a death benefit "straight life" of \$35,000 and interest of \$1,666.39. The second was for \$35,000—the benefit for accidental death; there was no interest. Thus, the six cheques issued by Aetna Life and Casualty on 2 and 8 October 1979 totalled \$214,968.96, including interest of \$4,968.96. They were sent by Aetna to the Insurance Unit, which forwarded them to the Applicant by two registered letters dated respectively 8 and 11 October 1979. On 12 October 1979, the Applicant submitted in writing to the Insurance Unit a claim for damages resulting from the fact that the staff request form had been misplaced and had been found more than 18 months after her husband had handed it in during his briefing in New York in March/April 1978. Having received no reply, she submitted her claim to the Secretary-General on 8 November 1979. On 19 November 1979, the Assistant Secretary-General for Financial Services acknowledged receipt and informed her that her case was under consideration. On 8 December 1979, the Applicant referred the matter to the Joint Appeals Board, which submitted its report on 10 March 1981. The Board's conclusions and recommendations read as follows:

*"Conclusions and recommendations"*

"50. The Board finds that the Organization must be held responsible for a delay of nine months—from 15 January to 15 October 1979—in the payment to the appellant and to her two children of the death benefits of \$210,000.00 under her husband's United Nations Group Life Insurance. The major part of the delay was caused by the negligence of the Administration in misplacing the document by which the appellant's husband had designated the appellant and their two children as the beneficiaries of the life insurance. The remainder of the delay was caused by the ineptitude of the Insurance Unit in requesting the appellant to produce evidence which she had produced earlier and which was in the possession of the Unit.

"51. The Board recommends that the Organization pay the three beneficiaries of the Group Life Insurance—the appellant and, through her, her two children (. . .)—the following amounts, to be shared equally by them, as compensation for the financial losses which they suffered as a direct result of the delay in payment of their entitlements, a delay for which the Organization is solely responsible:

- "(i) The amount of the difference between the value in French francs of the \$210,000 in death benefits as of 15 January 1979 and its value in that currency as of 15 October 1979, calculated at the official United Nations rates of exchange on those dates;
- "(ii) The amount of the difference between interest at 10 per cent *per annum* on \$210,000 during a period of nine months and the interest of \$4,968.96 actually paid by Aetna Life and Casualty on \$105,000.

"52. The Board further recommends that the Organization pay the appellant alone an additional sum of \$5,000.00 (five thousand dollars) as compensation for the hardship inflicted upon her by the delay of nine months in the payment of the death benefits for which the Organization is responsible."

On 20 August 1981, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General could not accept the recommendations made by the

Board in paragraphs 51 and 52 of its report. On 28 August 1981, the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Insurance Unit was guilty of negligence in the legal sense of the term when it misplaced the document designating the beneficiaries under the Aetna life insurance policy.

2. There is a direct cause-and-effect relationship between that negligence and the serious injury suffered by the Applicant as a result of the 11-month delay in payment.

3. Responsibility for that negligence rests with the Respondent, first, because the United Nations Administration ascribes to itself competence with regard to, and assumes responsibility for, the decisions to be reached and the actions to be taken by its administrative apparatus in the event of the death of a staff member, and, secondly, because staff members have no say in the choice of a life insurance scheme or company, even though they bear the insurance premiums through automatic monthly payroll deductions: the United Nations Administration subrogated itself to the rights of the Applicant, who was entirely prevented from vindicating her rights, from helping to clarify legal issues and ultimately from negotiating matters of interest to her and to her children.

4. The Respondent is fully liable for the injury suffered by the Applicant. Liability cannot be shared either with the Applicant or with a third party, in this case Aetna.

Whereas the Respondent's principal contentions are:

1. The Respondent's obligation to the Applicant was to use due care in the discharge of its responsibilities as policy holder under the group life insurance policy. In any event, the Respondent's liability to the Applicant is limited to the known and foreseeable consequences of such failure, viz., the loss of the use of the money during the period of delay.

2. The Respondent cannot be liable for consequences which are remote or for connexions which are speculative when compared with the results which are known or foreseeable; the only result of delay in payment which could reasonably be known or foreseen is the loss of the use of the money. Other consequences and connexions, such as the fall in the exchange rates and the price of gold, as well as the purchasing power in a given currency, are entirely remote and speculative.

3. Moral, exemplary or punitive damages are not payable in a case such as this in which there is no evidence of wilful misconduct or reckless disregard on the part of those concerned.

The Tribunal, having deliberated from 27 April to 14 May 1982, now pronounces the following judgement:

1. The Applicant sought remedy before the Tribunal in accordance with article 2, paragraph 2 (b), of the Statute, which states that the Tribunal shall be open "to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied."

The Applicant's husband, recruited as a public administration expert and assigned to Burundi, died on 11 November 1978 as a result of a traffic accident. The rights to which the Applicant and her two minor children (who are under her legal administration) are entitled derive from Mr. Talan's participation in the group life insurance plan sub-

scribed to by the United Nations in accordance with Staff Rule 206.2. Participation in this insurance plan is compulsory for experts in the category to which the Applicant's husband belonged. The United Nations Insurance Unit deducts from the earnings of the staff members concerned their share of the premiums, which it passes on, with the Organization's share, to the insurance company (Aetna Life and Casualty). "Straight life" coverage and coverage for, *inter alia*, accidental death are thus provided.

The participating staff member is required to fill in an application form giving the name of the insured and particulars of the beneficiaries: name, address and relationship to the insured. The form indicates that, if more than one beneficiary is named, the beneficiaries shall share equally unless otherwise stated on the form.

The form authorizes the employer to deduct the required contributions from the staff member's earnings. It is kept by the Insurance Unit and is forwarded to the insurance company only when benefits are to be paid. If the form is not forwarded to the company, payment is made in accordance with the beneficiary provisions of the policy in the order stated therein: insured's estate, surviving spouse, succeeding beneficiaries.

The application of Staff Rule 206.2 entails no financial responsibility for the Respondent, except with regard to the insurance subsidies. However, the Respondent's services are directly involved in establishing contact with the insurance company, particularly when insurance benefits are to be paid to the beneficiaries.

II. The Applicant alleges that, after her husband's death, the Respondent's services were guilty of negligence; she lists the injuries which, according to her, were caused by that negligence. The main injury, to which she links all the others, was that the sums payable by the insurance company, which normally should have been paid two months after her husband's death, that is to say, on 11 January 1979, were not paid until the beginning of October 1979, or nine months late. The Applicant maintains that that delay is directly attributable to the conduct of the Respondent's services, which should have taken action to supply the documents required by the insurance company. Accordingly, she claims compensation from the Respondent for these injuries in the form of damages.

The Tribunal notes that this claim has to do with the contractual obligations which made participation in the group insurance plan compulsory for the Applicant's husband, under Staff Rule 206.2. However, to give a ruling on the claim for compensation necessitates reference to the general principles which are applicable with respect to administrative responsibility.

III. The Joint Appeals Board has described in detail how the Respondent acted from the time when the Resident Representative a.i. in Bujumbura notified the Department of Technical Co-operation for Development, on 12 November 1978, of Mr. Talan's death. The Tribunal simply notes, first of all, how long it took to forward the necessary documents to the insurance company. The Employer's Statement was not sent until 15 January 1979. The accident report, which was drawn up on 8 November 1978, was forwarded to New York by the Resident Representative a.i. only on 23 February 1979. It was not until 21 May 1979 that an English translation was sent to the company by the Insurance Unit.

The Tribunal also notes that a staff member of the Insurance Unit, in a letter to the company dated 15 January 1979, stated that the Unit could "not locate the Staff Request for Group Life Insurance application card for the late Mr. Talan" but that premiums had been deducted from Mr. Talan's salary—an indication that he did have insurance coverage. It was not until 11 September 1979 that the Applicant was informed by a staff member of the Insurance Unit that Mr. Talan's original staff request form had "just been located".

No explanation of the circumstances surrounding the disappearance or the recovery was given.

The Tribunal has observed that on a letter from Mr. Talan dated 12 November 1977, accompanying the duly completed administrative forms which he returned to Headquarters when he was appointed, there was a note, probably written by the addressee, Mr. Osman, stating that the group insurance forms had not been returned and that new forms should be sent to Burundi. The staff request form was not completed and signed by Mr. Talan until 21 March 1978. By then, Mr. Talan had been in New York since 15 March on official business (for briefing).

IV. The fact that, from January to September 1979, the Respondent was unable to forward the staff request form to the insurance company had serious implications for the Applicant. The form listed the three beneficiaries and their family relationship: the Applicant and her two children, both minors. In the absence of that form, the beneficiary provision of the group insurance contract applied: the benefits could be paid, in order of preference, to the insured's estate, to the surviving spouse or to succeeding beneficiaries.

Without directly notifying the Applicant that the form was missing, and implying that it was the deceased's fault that there was no designation of beneficiaries, the Insurance Unit, on 18 April 1979, put a number of questions to the Applicant about her situation as widow, the estate of the deceased and the situation of the children. The Unit requested her to act through an attorney. The Applicant was thus obliged to go to a *notaire*, to arrange for various documents to be drawn up, including an *acte authentique*, and to have it translated for forwarding to the insurance company, all in an effort to establish her rights.

Even after locating Mr. Talan's staff request form, the Insurance Unit, on 11 September 1979, still requested the Applicant to furnish Letters of Guardianship before the proceeds would be released. It did not occur to the Unit that it need only refer to the *acte notarié* already submitted in order to dispel any doubts concerning the situation of the minors. It thus obliged the Applicant to send further supporting documents and another copy of the *acte notarié*. It is therefore beyond question that for nine months the Applicant had to keep up a running correspondence with New York and to consult the United Nations information centre in Paris, her *notaire* and an American law firm in Paris. This was a direct result of the inability of the relevant service to locate Mr. Talan's staff request form at the proper time. It was not until 8 and 11 October 1979 that the cheques for the amounts due from the insurance company to the Applicant and her children were sent to her.

V. Lastly, the Tribunal notes that the report of the Joint Appeals Board recommending the payment of compensation to the beneficiaries of the insurance and the payment of an additional sum to the Applicant was issued on 10 March 1981. It was not until 15 July 1981 that the Officer-in-Charge of the Office of Personnel Services forwarded the text of the report to the Applicant and not until 20 August 1981 that the Assistant Secretary-General for Personnel Services indicated that the Secretary-General could not accept the recommendations relating to compensation for the losses suffered, as contained in paragraphs 51 and 52 of the report.

The Tribunal regrets these delays and notes that this attitude was less forthcoming than the offer made by the United Nations on 16 June 1980, after the Applicant had referred the case to the Joint Appeals Board; that offer was for payment of interest of 10 per cent on the total benefits, less the interest already paid by the insurance company.

VI. The Applicant considers that, in order to determine the injury caused by the nine-month delay in payment of the insurance benefits, the decline in the rate of exchange of the United States dollar against the French franc during that period must be taken into account. The Tribunal notes that the Applicant, in support of her claim for compensation, provided information about her financial transactions with the dollar proceeds of the insurance and about the amounts she would have earned if those transactions had taken place nine months earlier.

The Tribunal finds that the insurance contract stipulated payment in dollars without any reference to a foreign currency or to the price of gold. The injury alleged by the Applicant has to do with the decisions she took with a view to preserving the value of these funds, and whatever favourable or unfavourable consequences might ensue, immediately or in the long run, cannot be directly attributed to the conduct of the United Nations.

Fluctuations in the rate of exchange of the dollar against the French franc cannot be used in assessing the injury caused by the Respondent's conduct. The Tribunal must base its determination of that injury on a legal principle of general application, and not on the effects of currency fluctuations.

The Applicant also advanced the argument of changes in the cost-of-living index, on the ground that the index was taken into account by the United Nations as a secondary factor when salary scales were established. The Tribunal notes that, when it comes to determining the compensation payable for the Administration's injurious conduct, claims by the Applicant on that basis can only rest on considerations of equity and not on a legal principle of general application.

VII. The Tribunal is of the view that, when payment of a sum of money is unduly delayed, interest is payable and the payment of interest constitutes compensation for the damage resulting from the delay.

In the present case, since the delay is attributable to the United Nations, the Organization is responsible for payment of the interest, which should be in United States dollars without regard to the exchange rate against other currencies prevailing on the date on which payment will be made.

The Tribunal accordingly decides that the Applicant is entitled to receive for herself and her children interest for the nine months' delay on the full amount of the insurance benefits themselves (\$210,000). There shall be deducted from the amount of that interest the sum of \$4,968.96 already paid by the company as interest in October 1979. The debt-claim thus created on the date on which the insurance benefits were received by the Applicant shall bear interest, payable by the Respondent to the Applicant and her children, from that date until the date of execution of this judgement.

VIII. In determining the applicable interest rate, the Tribunal notes that this is compensatory interest awarded as a result of injurious conduct attributable to the services of the Respondent.

In the Bérubé case (Judgement No. 280), the Tribunal, having regard to the circumstances of the case, set an interest rate of 12 per cent on the amount to be reimbursed by the Respondent. It considers that the same rate should apply in the present case.

IX. The Applicant also claims compensation for moral damages because of the hardship she suffered as a result of the delay in payment of the death benefits. The Tribunal recognizes that the Administration's conduct was the direct cause of genuine

disruption in the life of the Applicant at a time when she had to cope with all kinds of hardships and to earn her living in distressing circumstances.

The Tribunal considers that, in addition to the interest for late payment, the Applicant is entitled to receive a sum of \$2,000 by reason of the difficulties she has had to contend with and the costs which she has incurred as a direct result.

X. For the foregoing reasons, the Tribunal decides that:

(1) The Respondent shall pay to the Applicant, as beneficiary under the insurance policy and legal administrator of her two minor children:

(a) Interest for nine months at the rate of 12 per cent per annum on the sum of \$210,000, less \$4,968.96;

(b) Interest on the sum arrived at under (a) above at the rate of 12 per cent per annum for the period from 11 October 1979 to the date of payment in execution of this judgement;

(2) The Respondent shall pay to the Applicant the sum of \$2,000;

(3) All other claims are rejected.

*(Signatures)*

Suzanne BASTID  
*Vice-President, presiding*

Herbert REIS  
*Alternate Member*

Samar SEN  
*Vice-President*

Jean HARDY  
*Executive Secretary*

T. MUTUALE  
*Member*  
*Geneva, 14 May 1982*

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## Judgement No. 290

*(Original: English)*

**Case No. 269:**  
**Cipolla**

**Against: The Secretary-General of  
the Inter-Governmental Maritime  
Consultative Organization**

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*Non-renewal of the fixed-term appointment of a technical assistance expert of the Inter-Governmental Maritime Consultative Organization (IMCO).*

*Contractual status of the Applicant.—Every staff member is entitled to fair treatment from his employer.—Contention of the Respondent that he was unable to renew the contract of the Applicant because the latter's post depended on UNDP funding.—Communications exchanged between IMCO and UNDP.—Rejection of the Respondent's claim that he did not know about the personal difficulties which the Applicant had with UNDP.—IMCO cannot escape such responsibility as devolves on it as the executing agency for*