

the Administration to pay compensation for the injury that the Applicant would have suffered.

IV. The Joint Appeals Board concluded that, taking into account such factors as the unjustified Performance Evaluation Report and the uncommunicated changes in future employment recommendations, the Administration should make an *ex gratia* payment to the Applicant of an amount equivalent to eight months of net base salary. In turn, the Secretary-General decided to make an *ex gratia* payment equivalent to three months of net base salary at the time of separation from service. The Tribunal is unable to find any grounds advanced by the Applicant that would enable it to make an additional award.

V. The Applicant has also sought production of two documents originating in the Port-of-Spain Office during the period of his service there. These documents were produced by the Respondent in the course of this proceeding. The Tribunal does not consider that they have any relevance to the issues raised in this case.

VI. Included in the documentation submitted by the Applicant during the course of the proceedings is a telegram with new pleas. Even if these pleas had been properly presented to the Joint Appeals Board, the Board expressed no opinion thereon and, therefore, these pleas are not receivable by the Tribunal under Article 7, paragraph 1, of the Statute.

VII. For these reasons, the Tribunal rejects the application.

(Signatures)

Suzanne BASTID  
*Vice-President, presiding*

Herbert REIS  
*Member*

*New York, 6 October 1982*

Luis de POSADAS MONTERO  
*Member*

Nicholas TESLENKO  
*Acting Executive Secretary*

---

## Judgement No. 298

(Original: English)

Case No. 276:  
Délano de Stiven

Against: The Secretary-General  
of the United Nations

---

*Non-renewal of the fixed-term appointment of a staff member of the Latin American Institute for Economic and Social Planning (ILPES).*

*Precarious contractual position of the Applicant in ILPES.—Facts which encouraged the Applicant to believe that some solution would be found for her continued employment in the United Nations system.—Judgement No. 142.—The Applicant could reasonably expect continued employment.—Allegations by the Applicant that she was subject to discrimination and prejudice on the part of the Respondent.—Allegations rejected by the Joint Appeals Board and the Tribunal.—Acceptance by the Respondent of the recommendation of the Joint Appeals Board to make renewed efforts during a period of 6 months to find a post for*

*the Applicant.—Inadequacy of the efforts by the Respondent to that end.—Award to the Applicant of compensation in the amount of \$4,000.—The other pleas are rejected.*

---

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Arnold Kean, Vice-President; Mr. Luis de Posadas Montero;

Whereas at the request of Mrs. Beatriz Délano de Stuyen, a former staff member of the Latin American Institute for Economic and Social Planning (hereinafter called ILPES), the President of the Tribunal, with the agreement of the Respondent, extended to 1 February 1982 the time-limit for the filing of an application to the Tribunal;

Whereas, on 1 February 1982, the Applicant filed an application in which she requested the Tribunal:

“A. To re-examine the Joint Appeals Board’s Conclusions and Recommendations paras. 48 and 49 in the above-captioned case in the light of its own jurisprudence and the Argument offered herein; and

“B. To overrule the decision of the Secretary-General dated 22 April 1981 rejecting the Board’s recommendation for an indemnity payment; and

“C. To find that the Applicant had an expectancy of continued service within the United Nations system until she reached normal retirement age, or at minimum through 31 December 1978; and

“D. To find that this expectancy created a reciprocal obligation on the part of the Respondent, which was not fulfilled; and

“E. To find that both before and after the non-renewal of her appointment the Respondent failed to meet reasonable standards of fairness and good faith towards the Applicant, causing her moral, emotional, physical and financial damage; and

“F. To order payment to the Applicant of full salary and allowances at least through 31 December 1978; and

“G. To order payment to the Applicant of a termination indemnity of 12 months of pensionable remuneration based on 16 years of service according to the schedule contained in Annex III; and

“H. To order payments to the Applicant of a just and reasonable compensation for the damages suffered and for the loss of expected pension benefits.

“I. To order reimbursement of expenses reasonably incurred by the Applicant in prosecuting this Appeal, such as typing and secretarial services.”

Whereas the Respondent filed his answer on 31 March 1982;

Whereas the Applicant filed written observations on 31 May 1982;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Economic Commission for Latin America (hereinafter called ECLA or CEPAL) on 16 March 1950 on a three-month appointment as a bilingual steno-typist. After a three-month extension, her appointment was converted into a temporary indefinite appointment and subsequently into a regular appointment under Staff Rule 104.13 (b). On 31 March 1962, the Applicant, who, in the meantime,

had become an Administrative Assistant at the G-7 level, resigned because of a family financial emergency. On 9 July 1962, she re-entered the service as a Personnel and Finance Clerk with ILPES on a fixed-term appointment for two years at the G-6 level. On 1 October 1962, she was reclassified to G-7 as an Administrative Assistant. On 1 January 1964, the Applicant was promoted to G-8 and on 9 July 1964 her appointment was extended to 30 June 1967. On 1 July 1967, her appointment was extended for four years. On 1 January 1968, she became an Assistant Administrative Officer at the L-1 level. On 1 July 1971, the Applicant was granted a three-year project personnel appointment under Staff Rule 204.3. On 1 January 1972, she became an Associate Administrative Officer at the L-2 level. On 1 January 1973, her appointment was converted to long-term status and thereafter it was successively extended for seven months, five months, two months, four months, one year, six months, six months and two months, the last extension being due to expire on 28 February 1978.

On 18 August 1977, Mr. Cure, Acting Chief, Personnel Section, ECLA, wrote to Mr. Clément, ECLA, in connexion apparently with a loan requested by the Applicant, that her fixed-term appointment was expected to be renewed for at least another year.

In a letter dated 16 January 1978, the Executive Secretary of ECLA informed the Applicant that her post would be abolished because of the restructuring of the administrative services of ECLA and ILPES and that consequently her fixed-term appointment would not be extended beyond 28 February 1978. On 20 January 1978, a number of female staff members of ILPES wrote to the President of the Staff Council expressing their deep concern at the decision to abolish the Applicant's post and their support for the Applicant. On 13 February 1978, over one hundred female staff members signed a petition to the Executive Secretary of ECLA expressing their dismay at the Applicant's treatment and requesting a new study in search of a satisfactory solution. On 23 February 1978, in a memorandum to the Acting Chief of the Personnel Section of ECLA, the Applicant asked whether she was entitled to an indemnity payment in view of her continuous service on fixed-term contracts since 9 July 1962; the response was negative. On 24 February 1978, Mr. José María Puppo, Special Assistant to the Executive Secretary, wrote to the Applicant that the abolition of her post was motivated solely by the administrative restructuring, denying that there was anything discriminatory in the decision since the appointments of a number of male staff members had not been renewed. In her answer, dated 6 March 1978, the Applicant pointed out that all except four of the male staff members referred to had either resigned or been reabsorbed elsewhere. On 30 May 1978, the Applicant applied unsuccessfully for a vacant P-2 post of Administrative Officer in ECLA. On 12 September 1978, she wrote to the Secretary-General to request a review of the decision not to renew her fixed-term appointment, pointing out that she was the only employee of ILPES whose post had been abolished for budgetary reasons and asserting that the termination of her contract after 28 years of loyal and devoted services to the Organization was a discriminatory measure. On 10 November 1978, the Assistant Secretary-General for Personnel Services sent her the following reply:

"... Because you failed to observe the time-limit prescribed in Staff Rule 111.3 the present reply is given to you without prejudice to the non-receivability of any appeal you may decide to file with the Joint Appeals Board.

"Your statement to the effect that you were the only staff member of ILPES whose post was abolished in 1978 is not factually correct. Other staff members' fixed-term appointments were also not extended because of the same financial con-

straints. In fact, the Director of ILPES himself was separated on 28 February 1978 upon the expiry of his fixed-term appointment which was not renewed.

“Furthermore you have been offered, but declined to accept, employment with the Mexico Office of ECLA beyond the expiry date of your appointment which coincided with the effective date of the abolition of your post.

“For the above reasons the Secretary-General, having reviewed your case, has decided to maintain the decision of which you requested review.”

On 23 November 1978, in a letter the Assistant Secretary-General for Personnel Services, the Applicant denied that employment with the Mexico Office of ECLA, with no break in service, had been offered to her. On 5 December 1978, she wrote again to the Secretary-General asking him to reconsider the situation. On 12 December 1978, the Applicant lodged an appeal with the Joint Appeals Board against the decision notified to her on 10 November 1978, requesting that the time-limits under Staff Rule 111.3 be waived for exceptional circumstances. The Board granted the Applicant's request as to the receivability of the appeal and submitted its report on 21 January 1981. The Board's Conclusions and Recommendations read as follows:

“48. The Board concludes that the appellant had no legal expectancy of continued employment and that the decision not to renew her fixed-term appointment did not violate her terms of employment.

“49. The Board does not find that the decision not to renew the appellant's contract was motivated by discrimination. The Board considers that the appellant had not met the burden of proving that prejudice was responsible for the decision. However, the Board expresses regret that the appellant had to use the periodic report ‘rebuttal procedure’ in order to adjust the ratings and the comments given in the last periodic report she received. This was particularly regrettable during the difficult period facing the appellant.

“50. The Board finds further that there were reasons for the appellant's expectancy for continued employment. Assurances were given that every effort would be made to reappoint her. Colleagues of hers from the ILPES in the same situation were actually re-employed. The appellant had been given the impression that concrete steps were taken for her re-employment.

“51. The Board is of the opinion that as a matter of equity, for a staff member with such long service and such a fine record, extraordinary efforts were warranted either to place her in a junior professional post or were this not feasible in a general service post so that she could at least look forward to the possibility for early retirement. The Board is not convinced that the efforts that were made were of that order of exigency.

“52. Consequently, the Board urges the Secretary-General again to try to place the appellant if possible in a junior professional post or otherwise in a general service position at a reasonably responsible level. In the event a *bona fide* search would be fruitless and that no reasonable offer could be made the Board recommends that an *ex gratia* payment be granted equivalent to an indemnity of 12 months of pensionable remuneration at the level of her position at the time of the expiration of her appointment.”

On 22 April 1981, the Assistant Secretary-General for Personnel Services advised the

Applicant that the Secretary-General, having re-examined her case in the light of the Board's report, had decided:

“(a) to maintain the contested decision;

“(b) to make renewed efforts during a period of six months to place you in a junior professional post or, if this is not possible, in a General Service post at a reasonably responsible level; and

“(c) to reject the Board's recommendation for an *ex gratia* payment in the event that a *bona fide* search of a post for you should be fruitless.”

On 1 February 1982, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant had a legal expectancy of continued employment with ILPES at least until 31 December 1978.

2. She had a reasonable expectancy of continued employment with the United Nations system until she reached retirement age, or, in the alternative, to a termination indemnity based on her years of service.

3. The Respondent failed to use due diligence in finding her another post within the system, causing grave damage to her career and legitimate expectations for retirement.

4. The Respondent's actions towards the Applicant, both before and after the non-renewal of her contract, were not in good faith, causing her emotional, moral and physical damage.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legally cognizable expectancy of continued employment with the Organization beyond the expiry date of her fixed-term contract.

2. The Applicant has failed to establish that the use of fixed-term contracts in her case and the decision to separate her on the expiration date of her last contract without re-assignment was an abuse of discretionary power.

3. The Applicant has not established either any improper motive invalidating the impugned decision, or any non-observance of her procedural rights.

4. The Applicant on a temporary appointment for a fixed-term was not entitled to a termination indemnity on separation as a result of expiration of her contract on the due date.

The Tribunal, having deliberated from 8 to 12 October 1982, now pronounces the following judgement:

I. The Applicant's service with the United Nations was divided between 12 years with the Economic Commission for Latin America under the 100 series of the Staff Regulations and Rules and, after a break in service of about 3 months, 16 years of continuous succession of fixed-term contracts of varying duration until 28 February 1978. The Applicant's argument that the break in service could well have been covered by maternity leave is speculative; in fact no such leave was taken even though the Applicant was pregnant at the time; she simply resigned from ECLA in order to draw all her entitlements and pension benefits to meet some urgent financial needs. The Tribunal finds therefore that the Applicant's subsequent service with ILPES, which at least after 1 July 1971 was governed by the 200 series of the Staff Regulations and Rules could not be considered as a continuation of her service with ECLA and that she was aware, both

circumstantially and through her experience as an official dealing with administration, that the fixed-term contracts under the 200 series were entirely different and less favourable than the conditions of her earlier appointment with ECLA.

The Applicant was further aware that ILPES was dependent on the finances made available by the United Nations Development Programme (UNDP) and that it worked in different phases, and that the administrative support for each such phase of work was determined by budgetary considerations prevailing at the time, and that no assurance of continued employment existed for any member of the staff employed under temporary contracts in ILPES. Therefore, not only did the Staff Regulations and Rules and the letters of appointment make this abundantly clear but evidence also exists that in 1974, the Applicant had been told by several colleagues that her position in ILPES was indeed precarious.

On the other hand, the history of this case shows that at many stages and for different reasons, the Applicant was encouraged to believe that some solution would be found for her continued employment in the United Nations system, even after she had definitely been informed that her final contract could not be extended beyond 28 February 1978. She knew of several persons retrenched from ILPES for budgetary reasons being accommodated in ECLA and elsewhere, and she could, especially in view of her long and meritorious service in ILPES—confirmed by a letter of 16 January 1978 from the Executive Secretary conveying his “permanent gratitude and deep appreciation” for her work in ILPES—rely on favourable consideration. There were other suggestions, not merely from the Staff Council and the female staff members of ILPES, but by officers senior to the Applicant, that all efforts would be made to safeguard her future. For example, as late as 18 August 1977, Mr. Daniel Cure, Acting Chief of Personnel Section, wrote to Mr. Andrés Clément, ECLA—apparently in connexion with a loan from the United Nations Federal Credit Union which was subsequently granted in the amount of \$6,000—in the following terms:

“Further to our conversations regarding Mrs. Beatriz Délano de Stiven, this is to confirm that she has been a staff member since 9 July 1962, her fixed-term appointment through 31 December 1977 is expected to be renewable for at least another year.

“Mrs. Stiven is an Associate Administrative Officer serving with the Latin American Institute for Economic and Social Planning and her appointment will be renewable on a yearly basis. . . .”

A copy of the letter was forwarded to the Applicant.

II. The Tribunal has held in numerous cases (e.g. Bhattacharyya, Judgement No. 142) that expectancy for future employment by holders of fixed-term appointments should be decided not entirely by the wording of the Staff Regulations and Rules and of the letters of appointment, but by the totality of circumstances existing at the time of the staff member's separation from service. In view of the considerations set out above, the Tribunal holds that the Applicant could reasonably expect continued employment in some form or other, even though this expectation was qualified by the Applicant's reluctance to move out of Santiago de Chile and also inasmuch as she knew of the uncertainty of her position, as evidenced by her application for another post in the United Nations system: on 29 December 1977 in her application for a post in ECLA, she specifically mentioned “the difficult budgetary situation in ILPES”.

III. The Applicant alleges discrimination on the part of the Respondent insofar as he failed to treat her in the same way as the other persons retrenched for budgetary reasons from ILPES and cites in this context a letter written by the female members of the staff suggesting unfair treatment of women employees by the Administration. The Applicant further implies that the timing of termination of her final contract for two months was not perhaps entirely coincidental and might have been fixed to avoid any terminal payment. The Applicant was obliged to rebut her last periodic report which apparently put her to much stress and strain and which might have been designed to facilitate her separation from service.

The Joint Appeals Board has examined these allegations and concluded that there was no discrimination, prejudice or lack of due process. The Tribunal finds no evidence to contradict this conclusion.

IV. The Joint Appeals Board's "Conclusions and Recommendations" were accepted by the Respondent except that he stated that he rejected the recommendation for "an *ex gratia* payment in the event that a *bona fide* search of a post for you should be fruitless". Among the recommendations of the Joint Appeals Board which the Respondent stated that he accepted was an obligation "to make renewed efforts during a period of six months to place you in a junior professional post or, if this is not possible, in a General Service post at a reasonably responsible level". These "renewed efforts", if any, cannot be separated from the efforts already supposed to have been made by the Respondent to find an alternative appointment for the Applicant.

The first attempt made by the Respondent was on 24 February 1978, well before the findings of the Joint Appeals Board, and it consisted of a letter sent to the Applicant by Mr. José María Puppo, Special Assistant to the Executive Secretary, on 24 February 1978 (a Friday) asking her to see Mr. Eduardo Neira the same day for a job in Mexico which "we are considering the possibility of creating". However, Mr. Neira left Santiago de Chile the next day and nothing came out of this initiative.

The Applicant stated that it was not possible for her "to become interested in this post or to evaluate it, simply because no information was supplied with the announcement. In fact [she] even assumed at the time (erroneously, as it turned out) that the post was one at a local grade level."

The Joint Appeals Board concluded on 21 January 1981

"51. The Board is of the opinion that as a matter of equity, for a staff member with such long service and such a fine record, extraordinary efforts were warranted either to place her in a junior professional post or were this not feasible in a general service post so that she could at least look forward to the possibility for early retirement. The Board is not convinced that the efforts that were made were of that order of exigency."

The evidence before the Tribunal shows that the Respondent faced three kinds of difficulties in finding an alternative appointment for the Applicant. First, there was the Applicant's reluctance to move out of Chile because of the difficulty involved in the transfer of a family; secondly, she apparently did not wish to take any job which would not protect her pension through retroactive appointment from 1 March 1978; and thirdly, considerations of equitable geographical distribution made it impracticable to place her in a suitable category, vacancies in which in any event did not exist. The Applicant, however, points out that despite these difficulties, another Chilean national was among

the "three junior professional posts" that "had been recently filled by promotion from General Services and transfer". The Tribunal would not wish to qualify the Respondent's prerogative and discretion in deciding who should fill what post, new or old, and would only consider whether the Respondent's undertaking of 22 April 1981 to make renewed efforts for six months to find an alternative appointment for the Applicant actually led to a "*bona fide* search of a post for you". The evidence of such a search is confined to one letter dated 10 August 1981, *i.e.* over seven months after the Joint Appeals Board's recommendation, from Mr. B. Duke, Chief, Personnel Section, ECLA, to the Applicant. This letter reads:

"I wish to refer to our meeting on 27 May 1981 and regret that circumstances have not permitted me to write to you sooner. Frankly, I was waiting for the budgetary situation to clarify itself.

"I can only confirm at this stage what I implied during our meeting, namely that for budgetary reasons, I do not see the possibility of giving you priority for any senior General Service vacancy which might occur in the near future. This view is based entirely upon the need of the CEPAL system to continue to reduce staff in the face of the ongoing financial crisis. Under such circumstances, I believe it would be inappropriate to add staff to the Manning Table.

"I must also confirm that the Secretary-General has no intention to reinstate you retroactively to 1978. This being the case, I gather from our conversation that you yourself have little interest in rejoining CEPAL on the basis of a new appointment given the implications of your pension."

In the circumstances, the Tribunal holds that not enough serious efforts in good faith were made to find an alternative appointment for the Applicant in terms of the Respondent's acceptance of the recommendation of the Joint Appeals Board. This view is strengthened by the fact that some accommodation was found for practically all persons who were in the same predicament as the Applicant. It also appears that on or about 13 October 1978 "another staff member at the GS-6 level was maintained on CEPAL's payroll for seven months in order to complete her 55th birthday and thus obtain an annuity".

V. Furthermore, the Respondent seems to have opposed the appointment of the Applicant "for any suitable vacant post at the G-8 or equivalent level", as such action would be "contrary to good personnel administration and the interest of the Organization" as it would mean "under-recruitment". Thus the Applicant could not be retained in the same kind of job as she was doing at the time of her separation from service because no such job existed; she could not be promoted because she was not sufficiently qualified; and she could not be transferred to the General Service category as it would mean "under-recruitment". The whole question seems to have been allowed to lapse through arguments and inertia.

In the circumstances, the Tribunal holds that the Respondent's undertaking for renewed search for a suitable job for the Applicant has not been fulfilled and inasmuch as the Applicant could reasonably expect continuation of her appointment, she is entitled to some compensation. The Applicant's entitlement will, however, have to be reduced because she showed reluctance to serve outside Chile, was not agreeable to an alternative appointment if it were not retroactive by three years or more from 28 February 1978, and was aware of the limitations of contracts under the 200 series.



VI. Taking all these considerations into account, the Tribunal awards to the Applicant compensation in the sum of \$4,000.

VII. The Tribunal orders the Respondent to pay \$4,000 to the Applicant.

All other pleas are rejected.

*(Signatures)*

Samar SEN  
*Vice-President, presiding*

Luis de POSADAS MONTERO  
*Member*

Arnold KEAN  
*Vice-President*

Nicholas TESLENKO  
*Acting Executive Secretary*

*New York, 12 October 1982*

---

### Judgement No. 299

*(Original: English)*

**Case No. 274:**  
**Moser (termination of appointment)**

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

---

*Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.*

*Pleas relating to the withholding of the Applicant's within-grade salary increment.—The pleas are not receivable since they were not the subject of an opinion of the Joint Appeals Board.*

*Request to reverse the decision to terminate the Applicant's appointment.—Argument based on procedural irregularities.—Procedural irregularities committed in dealing with the termination.—Although there were departures from the required procedures, the requirements of due process were satisfied.—Allegation relating to the existence of an extraneous factor.—Irrelevance of the allegation.—The application rejected.*

---

#### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President; Mr. Arnold Kean, Vice-President; Mr. Luis de Posadas Montero, alternate member;

Whereas at the request of Hans Jürgen Moser, 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, successively extended to 1 March 1981, 25 May 1981, 12 August 1981, 1 November 1981 and 2 January 1982 the time-limit for the filing of an application to the Tribunal;