

of an investigation after he had ceased to be a staff member by virtue of the expiration of his appointment. The Tribunal notes further that the Respondent on 31 March 1976 rescinded the Applicant's suspension with half pay by reinstating him to full pay status as from 6 October 1975.

XIV. For the foregoing reasons, the Tribunal rejects—

(a) the Applicant's claim to termination indemnity and to supplementary compensation;

(b) the Applicant's request that an investigation of his alleged misconduct be ordered;

(c) all other claims and requests of the Applicant.

*(Signatures)*

Endre USTOR  
*President*

Arnold KEAN  
*Vice-President*

Roger PINTO  
*Member*

Geneva, 6 June 1983

T. MUTUALE  
*Alternate Member*

Jean HARDY  
*Executive Secretary*

## Judgement No. 308

*Original: English*

**Case No. 282:**  
**Karlik**

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

*Request by a staff member of UNIDO to recognize that he had a right to be promoted to the P-5 level when assigned to IOB (Inter-Organization Board for Information Systems and Related Activities), and to award him compensation for loss of income.*

*Conclusion of the Joint Appeals Board that the Applicant suffered unduly from the unclarified administrative status of IOB and that his career development suffered from the breach of a promise of promotion.—Recommendation that the Applicant be compensated for financial loss and that the Administration review his present and future career prospects.—Recommendation rejected.*

*Respondent's contention that the application, based on a promise given in 1972, was time-barred.—Staff rule 111.3.—The Tribunal finds that the decision denying promotion only became definitive upon the end of the Applicant's assignment to IOB on 1 November 1977.—Application declared receivable.*

*Question whether there was a contractual obligation of promotion to P-5.—Controversy about the nature of the Applicant's assignment to IOB.—Conclusion of the Tribunal that change of status from transfer to secondment was made to preserve the Applicant's security of employment and did not put in doubt the good faith of the Administration.—Status of IOB.—Conclusion that there was no contractual commitment to secure the Applicant's assignment to IOB at P-5 level.—In the absence of such commitment the claim for compensation fails.—The Tribunal finds no evidence that conclusions of the Appointment and Promotion Board were flawed by prejudice or lack of due process.—Consideration of reasons for termination of the*

*Applicant's service with IOB and his reassignment to UNIDO.—The Tribunal concludes that this decision was not due to prejudice.*

*Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Arnold Kean, Vice-President; Mr. Herbert Reis;

Whereas at the request of Lubor Karlik, a staff member of the United Nations Industrial Development Organization, hereinafter called UNIDO, the President of the Tribunal, with the agreement of the Respondent, extended to 15 June 1982 the time-limit for the filing of an application to the Tribunal;

Whereas, on 15 June 1982, the Applicant filed an application in which he requested the Tribunal to:

*“As to the receivability*

*“Consider this Complaint receivable under the Statute and Rules of the United Nations Administrative Tribunal.*

*“As to the merits*

*“1. Quash the decision of the Secretary-General of 9th February, 1982 rejecting the recommendations of the Joint Appeals Board dated 28 July, 1981.*

*“2. State that the Complainant had a right to be promoted to P-5 starting no later than 31st July, 1972 when he was assigned to IOB [Inter-Organization Board for Information Systems and Related Activities].*

*“3. Instruct the Secretary-General to bring the Complainant's grade and step in grade in line with what he may have been expected to attain after fulfilling 16 years of satisfactory service and being promoted to P-5 no later than 31st July, 1972.*

*“4. Grant the Complainant full compensation for the loss of income suffered since 31st July, 1972 as a consequence of the breach in his normal career resulting from his assignment to IOB at the P-4 grade, such compensation to amount to the difference between the P-4 step 12 salary he has been earning and the salary which he could have been expected to earn in the course of normal service, up to grade and step in grade mentioned under plea number 3, with an additional allowance for the fact that promotion from P-4 to P-5 carries the right to diplomatic status, with all the associated financial and other advantages.*

*“5. If plea number 3 is granted and the Secretary-General decides to exercise the option given to him under article 9 paragraph 1st of the Statute, award the Complainant full financial compensation, computed as under plea number 4, for the remaining years of anticipated service.*

*“6. Award costs against the Organization, including the fees of the Complainant's counsel.”*

Whereas the Respondent filed his answer on 11 November 1982;

Whereas the Applicant filed written observations on 29 March 1983;

Whereas the Respondent submitted additional information at the request of the Tribunal on 26 May 1983;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 29 August 1966 under a fixed-term appointment for three months at the P-4 level, step VI as an Industrial Development Officer with the Centre for Industrial Development, which subsequently became UNIDO. On 29 November 1966 his appointment was converted to a probationary appointment. On 13 June 1967 the Director of the Division in which he was serving requested correction of his entrance level from P-4 to P-5, referring to the lack of a P-5 post at the time of his appointment and to a "tacit understanding" that "the anticipated extension of UNIDO would create posts comparable to his qualifications". The Executive Director of UNIDO supported the request which, however, was not submitted to the Appointment and Promotion Board in view of the absence of any new facts which were not known at the time of the initial consideration for appointment. On 1 November 1967 UNIDO was transferred from New York to Vienna and the Applicant's duty station was changed accordingly. On 1 August 1968 his appointment was converted to a permanent appointment. On 2 November 1971 his supervisor recommended him for promotion to the P-5 level. On 28 March 1972 the Director of the Secretariat of the IOB at Geneva requested, in a memorandum to the Chief of the Secretariat Recruitment and Training Service of the United Nations Office at Geneva, that the "second P-5 post in the IOB Secretariat" be offered to the Applicant. On 20 April 1972 the Chief of Personnel Services of UNIDO informed the Chief of the Secretariat Recruitment and Training Service in Geneva that the Applicant "was indeed recommended by his Division for promotion to the P-5 level this year" but that "in the final reading with the Executive Director he just failed to be included in the UNIDO departmental recommendations". On 16 May 1972 the Chief of Personnel Services of UNIDO advised the Office of Personnel in New York that the Executive Director of UNIDO had agreed to the "transfer" of the Applicant to IOB; he recommended "the approval of the Director of Personnel to this transfer" and noted *inter alia* that if the Applicant "had been in a working environment better suited to the exercise of his specialized talents, he would already have been promoted to the P-5 level". On 9 June 1972 the Office of Personnel in New York informed the Chief of Personnel Services of UNIDO that the Director of Personnel had approved on 8 June 1972 the "secondment" of the Applicant to the IOB Secretariat for two years, adding:

"After careful consideration of the nature of IOB, which appears not to be a specialized agency of the United Nations, it seemed wiser, in view of the safety of the staff member, to release him on secondment instead of proceeding with his transfer."

On 23 June 1972 UNIDO replied by cable that its Executive Director would not agree to the Applicant's secondment but only to his transfer. On 1 August 1972 the Applicant was accordingly "transferred" to the IOB Secretariat at Geneva. On 6 October 1972 the Director of the IOB Secretariat requested the promotion of the Applicant to the P-5 level in a memorandum addressed to the Chief of the Personnel Division of the United Nations Office at Geneva; after referring to his memorandum dated 28 March 1972, he stated:

". . . I was later informed by the Director of Personnel in New York that for administrative reasons Mr. Karlik would have to be first of all transferred at the P.4 level to the IOB Secretariat and then be promoted separately to P.5 level.

"The IOB Secretariat followed the advice of the Director of Personnel. Mr. Karlik commenced his duties with the IOB Secretariat on 9 August last.

He is still at P.4 level/step 12 but in fact he is filling the second P.5 post on the Secretariat's manning table."

On 6 November 1972, 18 December 1972, 21 February 1973, 31 August 1973, 19 October 1973 and 12 November 1973 the Director of the IOB Secretariat reiterated his request and, on 14 and 15 March 1974, he asked for an *ad hoc* promotion of the Applicant to P-5 under Staff Rule 104.14 (f) (iii) (B). On 15 March 1974 the Applicant, who had received a copy of a Personnel Action form providing for the "Extension of [his] secondment to IOB Secretariat" as from 1 January 1974, wrote to the Chief of the Personnel Division of the United Nations Office at Geneva to express his surprise about the change of his status from "transfer" to "secondment" without any previous consultation, adding that he had no objection to secondment from the United Nations Secretariat on the understanding that his relationship with the IOB Secretariat would remain unchanged. On 1 April 1974 the Director of the IOB Secretariat sent the following memorandum to the Applicant:

"The hopes of strengthening the management consultant functions of the IOB Secretariat, by allocating at least one senior officer for this purpose, have not materialized. At its sixth session the Board, following the recommendations of the Review Panel, approved a manning table which shows a reduction of posts from eleven in 1973 to seven in 1974.

"In the light of this decision and the requirements of the IOB work programme for the next year I am obliged to terminate your secondment to the IOB secretariat as of 31 July 1974.

"I very much regret this decision. Your excellent judgement and frankness have been of great help to all of us in the IOB secretariat and I would like to express our appreciation of the valuable contribution you have made to the 1972/73 IOB work programme."

On 26 June 1974 the Director of the Division of Personnel Administration in New York addressed the following memorandum to the Director of the IOB Secretariat:

"Mr. Chackal [then Chief of the Personnel Division of the United Nations Office at Geneva] has communicated to this office your request to see Mr. Karlik's assignment to IOB end on 31 July 1974.

"I understand that this stems from the fact that you are less than fully satisfied with his services.

"Mr. Chackal has explained to you our position in this matter and the obligations of the Organization to Mr. Karlik. I need not repeat what he has said.

"I should add that as the recipient of your 2 strong recommendations in favour of Mr. Karlik's promotion to the senior officer level (P.5) the Assistant Secretary-General, Office of Personnel Services, is greatly disturbed by the inconsistency between recommendations for promotion followed within a few months by a request for transfer out of the IOB. I hardly need to mention that the recommendation for promotion was turned down by the Appointment and Promotion Board when it was apprised of your request to see Mr. Karlik's collaboration to IOB brought to an end. The chairman of the Appointment and Promotion Board has, in fact, requested me to convey to you the surprise and concern of the Board because of this situation."

On 29 July 1974 the Director of the IOB Secretariat replied:

“ . . .

“Your assertion that I have been less than fully satisfied with Dr. Karlik's services requires a reference because I cannot recall any statement by the IOB or by the IOB secretariat which justifies your conclusions concerning Dr. Karlik's promotion.

“In 1972, Dr. Karlik accepted my offer in good faith that he would occupy one of the two P-5 posts available. He has indeed been occupying the post of a Senior Management Officer for the last two years and his contribution to the IOB work programme fully justifies the recommendation for promotion to P-5 level.

“Dr. Karlik is an experienced senior management consultant. He was selected to provide services in management consultancy to the organizations of the United Nations as it was envisaged in 1971/1972.

“At its sixth session in March 1974, the Board decided on a reduction of the IOB staff from eleven posts in 1973 to seven in 1974. Moreover, the work programme for 1974/1975 did not include resources for management consultancy services to agencies. This staff reduction and the lack of an appropriate component in the IOB work programme which requires the particular experience and skill of Dr. Karlik have been the reasons for requesting the termination of his secondment.

“In recent years, squeezes of budgets and termination of programme components have occurred all over the United Nations system. They should not cause damage to our employees' careers. Moreover, the staff rules seem to be silent about turning down promotions when such events occur.

“Obviously, the decision of the Appointment and Promotion Board to turn down Dr. Karlik's promotion was based on information for which no evidence was provided either by the IOB or by the IOB secretariat. I should like to receive a detailed record of the information provided by your Office to the Promotion Board.”

On 31 July 1974 the Applicant sent copies of those two communications to the Chairman of the Appointment and Promotion Board, noting that the assumptions contained in the memorandum of 26 June 1974 were incorrect. The Applicant having brought his case to the attention of the Assistant Secretary-General for Personnel Services, the Director of the Division of Personnel Administration in New York gave him on 16 September 1974 the assurance that as the holder of a permanent appointment he could not be transferred until another position was found to accommodate him. In a reply dated 24 September 1974 the Applicant stated:

“ . . .

“I would like to remind you that this unfortunate situation, which is completely beyond my control, has already caused the Appointment and Promotion Board to decline promotion recommendations made on my behalf. Since the Board was unaware of these facts when the question of my promotion was being discussed, I hope that you will be able to bring them to the Board's attention during the recourse procedure so that my case may receive full and just treatment.”

On 5 December 1974, the efforts made within the United Nations Secretariat to place the Applicant having failed, the Office of Personnel Services in New York requested UNIDO to absorb the Applicant. On 23 December 1974 UNIDO rejected the request and suggested the possibility of an agreed termination or a

separation from service for abolition of post or reduction of staff. On 21 March 1975 the Director of the IOB Secretariat addressed the following memorandum to the Director of Administrative and Financial Services of the United Nations Office at Geneva:

“ . . .

“I would like to draw your attention to the fact that 31 March 1975 is the final deadline for charging against IOB accounts and expenditures connected with the employment of Mr. Karlik.

“As you are well aware, Mr. Karlik is a permanent staff member of the United Nations. His secondment to the IOB secretariat terminated on 31 July 1974, since which time he has been awaiting reassignment by the UN.

“At its seventh session in New York the IOB discussed the matter and expressed its deep concern about this treatment of a staff member by the United Nations. The Board referred to the common inter-agency practice of reassigning staff members immediately following the termination of their inter-agency secondment. Since it seems that the various agencies no longer wish to tolerate permanent staff members of the United Nations being charged against commonly funded inter-agency accounts, the Chairman of the IOB was requested by the Board to set a final deadline for this unusual practice.

“Would you please take the necessary steps to implement the IOB request and send me a copy of your memorandum to the Finance Division/Payroll Section initiating the action.”

This memorandum was transmitted to the Office of Personnel Services in New York which decided, according to a note for the file dated 20 May 1975, to let the Applicant stay in the IOB Secretariat until the forthcoming departure of its Director and to await the appraisal of the new Director. In the meantime, other attempts were made to find a suitable post for the Applicant. On 3 September and 1 October 1976 the new Director of the IOB Secretariat confirmed the need to separate the Applicant from the IOB Secretariat. On 25 October 1976 he informed the Under-Secretary-General for Administration and Management that it had been decided in consultation with the Chairman of IOB to eliminate from 1 November 1976 “the post of P-5 currently occupied by a P-4 incumbent Mr. Karlik” and that, therefore, “the P-4 incumbent of the P-5 post is returned to his organization and is available for reassignment.” On 1 November 1976 the Applicant was advised accordingly. After consultations between Headquarters and UNIDO, UNIDO eventually agreed to reabsorb the Applicant who, on 6 July 1977, was instructed by the Officer-in-Charge of Personnel Services in New York to report to UNIDO at Vienna not later than 15 August 1977 to assume the duties of the P-5 post of Industrial Development Officer in the Global and Conceptual Studies Section of the International Centre for Industrial Studies, the job description of which had been sent to him on 22 April 1977, and was threatened with disciplinary action if he refused to accept the assignment. In a reply dated 22 July 1977, the Applicant denied that his post had been abolished due to the reorganization of the IOB Secretariat since the same post appeared on the approved manning table for 1977-78-79 and was being announced in a vacancy notice which in substance corresponded to his previous responsibilities with IOB. The Applicant was not selected for the post in question and his “return” to UNIDO “from secondment” to the IOB Secretariat took place on 1 November 1977. After unsuccessful appeals to the Assistant Secretary-General

for Personnel Services, the Applicant on 9 November 1977 wrote to the Secretary-General the following letter:

"I am appealing to you under Staff Regulation 11.1 and 11.2 and in accordance with Staff Rule 111.3 against the decisions taken with regard to me given under the following points:

"1. The Assistant Secretary-General for Personnel Services, informed me that I was not selected for the post of Chief, Management Improvement Section, Geneva, and that I am being transferred to UNIDO, Vienna. This would appear to be an abrogation of Staff Regulation 4.4 and Staff Rules 104.14 (a) (ii) and adjointly 109.1 (c).

"These rules indicate that I should enjoy first priority for any Secretariat vacancy in my duty station for which I am qualified, as confirmed in a memorandum to me dated 16 September 1974 from the Officer-in-Charge, Personnel Services, on behalf of the Assistant Secretary-General . . .

"2. The transfer under Staff Rule 1.2 does not appear substantiated since in spite of my repeated requests there has not been a single word of communication from UNIDO confirming an offer and indicating to me the conditions of my substantive responsibilities and employment.

"I have requested clarification on the above, as applied to me, but to date have received no response . . . ;

"I therefore respectfully request, Mr. Secretary-General, that you review:

"(i) that the decisions taken in regard to the appointment of the Chief, Management Improvement Section were objective, as the evidence appears to the contrary;

"(ii) whether the abolishment of my regular budget post under the auspices of a change in the IOB work programme was legitimate, as the post is being advertised under vacancy notice 77-114-60, which in substance corresponds to my previous responsibilities with the IOB; . . . ;

"(iii) to ascertain why the conditions contained in the offer extended to me on behalf of the IOB, as stated in the Director's memorandum to the Personnel Office, dated 28 March 1972, and communicated to me by Personnel, were not honoured . . . ;

"(iv) why my official status file was altered without my consent and knowledge as stated in my memorandum to Mr. Chackal dated 15 March 1974 . . .

" . . . "

The Applicant wrote again to the Secretary-General on 15 March 1978 to reiterate his request for review. On 26 April 1978 the Assistant Secretary-General for Personnel Services sent him the following reply:

" . . .

"Assignment of the staff to the various posts within the Secretariat lies within the discretionary power of the Secretary-General as provided for by Staff Regulation 1.2. As the Administrative Tribunal had occasion to rule, 'the Secretary-General may relieve a staff member of certain duties or invest the staff member of other duties according to the exigencies of the service, of which he is the sole judge'. Examination of the circumstances of your case did not reveal that the exercise of this discretionary power was vitiated by any extraneous factors.

"Having reviewed your case, the Secretary-General has therefore decided to maintain the decision of which you have requested review." On 25 May 1978 the Applicant lodged an appeal with the Joint Appeals Board. On 28 July 1981 the Joint Appeals Board at Geneva submitted its report. The Board's conclusions and recommendations read as follows:

"64. The Board recognizes the real difficulties concerning the administrative status of the IOB staff and the problems involved, which were indeed quite complex. Nevertheless, the Board considers that the actual delay until the situation was more or less clarified was excessive by far and was one of the main causes of the prejudice suffered. The Appellant joined the IOB Secretariat in the summer of 1972, Mr. Nottidge [then Chief of the Rules and Procedures Section]'s above-mentioned memorandum (document 33) [on procedures for appointment to inter-agency posts] was sent in August 1973, and the meeting which finally agreed on the procedures to be applied was held only in December 1973. In the meantime, the financial situation of the IOB deteriorated, the abolition of certain posts was envisaged, and the Appellant's case for promotion was considerably weakened by his forthcoming separation from the IOB Secretariat.

"65. The IOB Director renewed on three occasions his recommendations for the Appellant's promotion (documents 1.10, 1.9 and 1.8) and, in view of the fact that the Appellant was not included in the 1973 promotion register, even proposed in August 1973 to grant him a one-year fixed-term appointment at the P-5 level (document 1.7). Then, in the summer of 1974, the Appellant's promotion was 'turned down' for the reasons described above.

"66. Hence it appears that various solutions aimed at upgrading the Appellant's level were proposed by the Director of the IOB, or the IOB itself; some had long-term implications (promotion), but others were only of a temporary nature. However, despite relevant precedents, all proposals were in turn disregarded by the Administration and the successive reasons given sometimes seem contradictory.

"67. The Board therefore considers that the Appellant suffered unduly from the unclarified administrative status of the IOB Secretariat, and it has now to assess the prejudice suffered and to fix the appropriate compensation. In this connection, the Board first notes and *accordingly recommends*, that the Appellant should be compensated for the financial loss, which may be estimated as the difference in salary between the P-4 and P-5 levels during the period of his assignment to the IOB.

"68. Nevertheless, the Board considers that financial compensation alone would not be sufficient. In fact, the Board has already found that the beneficial, as well as the adverse consequences of the non-fulfilment of an offer of assignment to a post at the P-5 level, as well as the related transfer/secondment issues, cannot now be evaluated, and this uncertainty should in the present case benefit the Appellant, who appears to have acted in good faith on the basis of the repeated assurances given to him and to his superiors.

"69. Concerning the Appellant's allegation that his career development has suffered—and still continues to suffer—from the breach of promise, the Board took note of the latest developments, which do appear to be rather unusual. The Appellant's name was included in the 1980 Promotion Register to P-5, but the promotion was not made effective by



UNIDO for reasons that, according to the Appellant, are closely linked with the issues under consideration by the Board. Further, the Appellant's name no longer appeared on the 1981 Register.

"70. Since the above issues are not the subject of the appeal, the Board is unable to consider them and to make an official recommendation. However, the documents submitted clearly show that UNIDO, even at the time of the Appellant's transfer to the IOB, was indeed reluctant to envisage the possibility of reabsorbing him and the Board notes, in addition, that the lack of opportunities and the absence of normal career prospects for the Appellant were repeatedly mentioned by the UNIDO Administration.

"71. The above elements may therefore raise doubts as to whether the Appellant's capabilities are at present being best utilized in the interests of the Organization. Consequently, the Board would be gratified if the Administration at Headquarters decided to make a careful review of the Appellant's present and future career prospects and to ensure that his services are properly rewarded in the light of his merits, qualifications and potential."

On 9 February 1982 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided not to accept the Board's recommendation for the award of compensation and to take no further action in his case, adding that this decision was based on the Secretary-General's conclusion that there had been no legal obligation either to assign him to the IOB Secretariat at the P-5 level or to promote him to that level during his service with IOB. On 15 June 1982 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Secretary-General expressly based his rejection of the Joint Appeals Board's recommendations on the merits of the case, thereby renouncing the objection that the Applicant's claims were time-barred.

2. The Applicant received a binding promise of promotion to the P-5 level. In view of the inter-agency status of the IOB, the IOB Secretariat could make, with respect to the Applicant's post, binding commitments not subject to the normal promotion procedure. Even if such status is not taken into consideration, the assurances which were unanimously given to the Applicant in 1972 by his supervisors were such as to give him contractual rights. If the promises could not give him a right to have his promotion recognized because such promotion was subject to the normal promotion procedure, they could result in a right to compensation in case of nonfulfilment.

3. The promise of promotion of the Applicant was never fulfilled. Even if the promise of a promotion to the P-5 level had been conditional upon a normal promotion procedure, the decision of the Appointment and Promotion Board on the promotion was based on improper and misinterpreted information.

4. The Applicant relied on the promise of promotion to take a decision which has oriented all his subsequent career.

5. The Applicant's retransfer to UNIDO was irregular. The documents issued at the time of his assignment to the IOB mentioned a transfer. The status was subsequently changed to "secondment" without the consent of the Applicant. The secondment was then terminated unilaterally by the IOB. The termination of the secondment was therefore irregular. In 1976, the post occupied by the Applicant in the IOB was abolished, apparently to facilitate the

Applicant's retransfer to UNIDO, and thereafter reestablished, and it was subsequently filled at the P-5 level. This constitutes an abuse of authority.

Whereas the Respondent's principal contentions are:

1. (a) The Applicant's claim based on a "promise" of promotion made in 1972 is time-barred and therefore non-receivable;

(b) His appeal against non-promotion based on long and satisfactory service is non-receivable under article 7, paragraph 1 of the Tribunal's Statute.

2. Even if the appeals are receivable, the Applicant has failed to establish any entitlement to promotion:

(a) The Applicant has not established any offer or promise of promotion which was binding on the Organization;

(b) The Applicant's status in the Organization, following his IOB service, could not in any event have been affected by the position he occupied in the IOB Secretariat;

(c) The Applicant has not established that the change of his assignment from "transfer" to "secondment", or subsequent termination of the secondment, resulted in any compensable damages.

3. Absent proof of violation of legal rights, non-fulfilment of career aspirations do not by themselves give rise to justiciable claims for damages.

The Tribunal, having deliberated from 17 May to 7 June 1983, now pronounces the following judgement:

I. The Tribunal must first decide on the receivability of the Application in this case in view of the contention of the Respondent that it is time-barred. In the view of the Tribunal, the essence of the application lies in the claim that the United Nations, acting through the Inter-Organization Board for Information Systems and Related Activities (IOB), wrongfully failed to fulfil its contractual obligation to grant the Applicant a grade P-5 upon his reporting for duty with IOB in Geneva on 9 August 1972 where he continued to be posted until 1 November 1977. He had come to IOB from a posting with the United Nations Industrial Development Organization (UNIDO) in Vienna from which, as a P-4, Step XI, and after a period of uncertainty at IOB whether he had been transferred or seconded to it, he had eventually been seconded at the P-4, step XII level. The pleadings contain a letter from the Applicant to the Secretary-General, dated 9 November 1977, in which, citing Staff Rule 111.3, he formally appeals against a number of decisions including an asserted breach of contractual obligation in denying him a P-5 appointment. As the Joint Appeals Board has observed, the Applicant's pleas may be regarded essentially as a claim for recognition of contractual entitlement to P-5 appointment during the period of the entire duration of his IOB assignment. The claim is not an appeal from a particular administrative determination nor is it based on denial of promotion while in IOB service; it arises from his appointment at a grade lower than that to which he regarded himself as legally entitled. Accordingly, the claim to P-5 appointment is within the requirement of Staff Rule 111.3 that a request for review of an administrative decision be sent to the Secretary-General within one month from the time the staff member received notification in writing. In view of the long record of consideration by the IOB and United Nations of the Applicant's claim to P-5 appointment throughout the period of his IOB employment, an appeal to the Secretary-General against denial of P-5 status appears timely since it was made not later than one month following the termination of his IOB attachment. Until the Applicant's assignment to IOB

came finally to an end, the Administration had not made a "decision" against which the Applicant could appeal within the context of Staff Rule 111.3; his return to UNIDO made that "decision" definitive.

II. The Tribunal now turns to the question whether the Respondent acting through IOB can be held to have undertaken a contractual obligation to the Applicant to secure his appointment to IOB at grade P-5. The IOB's original intention was clearly to make the appointment at grade P-5. On 28 March 1972, Mr. Hans J. Drucks, Director of the IOB Secretariat, addressed to the Chief of the Secretariat Recruitment and Training Service of the United Nations Office at Geneva (UNOG) a memorandum entitled "Second P-5 post in the IOB Secretariat—Dr. L. J. Karlik (USA)". The memorandum observes that since a first candidate had declined for personal reasons "the second P-5 vacancy in the IOB secretariat, I should like the post to be offered to my second choice, Dr. Lubar Karlik of UNIDO". After a review of the latter's credentials, the memorandum concludes by saying that "I would appreciate it if you would make Dr. Karlik an official offer of a P-5 level 1 post to serve as Senior Officer with the IOB Secretariat". But apparently no such offer was made. There are gaps in the record; for example, the files do not contain any communication from UNOG to the Applicant while he was still at UNIDO. The files do show, however, that only three weeks before the Applicant left UNIDO for IOB, Headquarters authorized UNIDO by cable of 13 July 1972 to agree to the request for his assignment to IOB "entering on duty Karlik at Geneva, same grade and step". Accordingly, the Personnel Action form issued to him by IOB when he arrived in Geneva was at his current P-4 grade, but it raised the step one notch to step XII, the highest in that grade, while showing him as occupying a P-5 post ("22106-P.5-2").

III. The assignment of the Applicant to IOB was complicated by controversy whether it should be on the basis of transfer or secondment. The controversy was of special concern to UNIDO and to Headquarters, although not to IOB. While UNIDO informed Headquarters that its "Executive Director will not repeat not agree to Karlik's secondment but only to transfer", Headquarters insisted on a secondment as that would ensure "the safety [tenure] of the staff member". The Personnel Action form issued to the Applicant upon his entry on duty with IOB did not incorporate this decision by Headquarters but bears the notation "transfer and change of official duty station"; eventually, after a lapse of about 18 months, a corrected Personnel Action form was issued on 3 January 1974 reading "extension of secondment to IOB Secretariat". The Applicant alleges that the decision to second rather than to transfer him was intended to make his obtaining grade P-5 more difficult, but, having regard to Headquarters internal memoranda during 1972, the Tribunal finds no basis for doubting the good faith of the Administration, which had considered that the Applicant's security of employment merited preservation through secondment in light of the unusual character of the new institution of IOB, which was not a Specialized Agency and whose financing was not certain. That the insistence of Headquarters on secondment was in the Applicant's interest was demonstrated when, in 1974, IOB sought to terminate the services of the Applicant on the ground of its inability to continue to finance his post; without secondment, the Applicant might have faced numerous difficulties.

IV. The Tribunal notes a further controversy in connection with the Applicant's service at IOB, namely, whether IOB had the power to grade him P-5 or whether recourse to the normal procedures of the Appointment and

Promotion Board was necessary. The unusual character of IOB as a small new inter-agency institution having a scientific and technical expertise and being endowed with considerable autonomy led its Director and others to assume, for a time, that IOB, acting alone, was empowered to grant this promotion. Thus, on 6 October 1972, two months after the Applicant had come to Geneva, Mr. Drucks informed the Chief of the UNOG Personnel Division that:

"On 28 March 1972 I sent a memorandum to [the Chief of the Secretariat Recruitment and Training Service of UNOG], requesting him to offer Mr. Karlik the second of the two P-5 posts on the IOB Manning Table.

"As you stated, I was later informed by the Director of Personnel in New York that for administrative reasons Mr. Karlik would have to be first of all transferred at the P-4 level to the IOB Secretariat and then be promoted separately to P-5 level.

"The IOB Secretariat followed the advice of the Director of Personnel. Mr. Karlik commenced his duties with the IOB Secretariat on 9 August last. He is still at P-4 level/Step 12 but in fact he is filling the second P-5 post on the Secretariat's manning table.

". . .

". . . I recommend Mr. Karlik for promotion to P-5 level/step 6.

". . .

"I would like to remind you that the Inter-Organization Board is a sub-body of the ACC. The ACC has given approval to the two P.5 posts and the Inter-Organization Board has raised no objections to the promotion of Mr. Karlik. I am wondering whether it is necessary to bring the promotion of Mr. Karlik to the Promotion Board at all since the IOB Secretariat is an Inter-Agency set-up. On this matter I rely on your advice completely. I would appreciate it if you could take steps to promote Mr. Karlik to P.5, step 6, for 1 January 1973, after he has completed four months duty. May I ask you to check the appropriate step? (I learn that the payment for P-4, step 12 is already equivalent to P-5, step 4 or 5.)"

Again, on 21 February 1973, Mr. Drucks informed the Chief of the Personnel Administration Section of UNOG that, when Drucks was recently in New York, he had been informed by competent authority that "since the IOB is an inter-organization body, requests for promotion of secretariat staff members did not come under the rules of the UN Appointment and Promotion Board". To similar effect is a detailed memorandum of 14 August 1973 by the Chief, Rules and Procedures Section, Office of Personnel Services at Headquarters, which observes that "the procedures of appointment for the . . . IOB staff have been extremely variable", recalls the facts of the Applicant's secondment to IOB as a P-4, and states that "If this is an inter-agency post, his promotion to the P-5 level with the IOB could be approved by the IOB itself". However, a decision by Headquarters was recorded in a memorandum from UNOG to Mr. Drucks on 9 October 1973 stating that

". . . As the matter of his [Karlik's] secondment to IOB and promotion involves the basic issue of the appointment and promotion procedure for all IOB staff, it was deemed advisable to withhold action on Mr. Druck's request until the whole problem could be settled through consultations with the offices concerned here . . ."

Nevertheless, on 19 October 1973, Mr. Drucks made yet a further appeal to the Chief of UNOG Personnel Division for the granting of a P-5 to the Applicant in the following terms:

"In April 1972, I offered a P-5/Step 6 post with the Inter-Organization Board to Mr. Karlik. He accepted this offer and assumed his duties on 1 August 1972. I was subsequently informed by the Director of Personnel in New York that, for administrative reasons, Mr. Karlik would have to be transferred first of all at the P-4 level to the IOB Secretariat and then be promoted separately to the P-5 level. At the time, Mr. Karlik agreed to this condition in good faith . . .

"I should like to remind you that the IOB Secretariat is not subject to the UN Appointment and Promotion Board . . ."

But the matter was not resolved in the Applicant's favour. Nor did any of the Appointment and Promotion Boards to which the Applicant's name was thereafter periodically submitted for consideration for promotion to P-5 make a favourable recommendation in this regard.

V. This history leads the Tribunal to conclude that the Applicant did not obtain from IOB a contractual commitment to secure his assignment to IOB at grade P-5. The Applicant, whose field of expertise is in management, must have understood, at least by the time he prepared to depart from Vienna where for some time he had been seeking promotion to P-5, that he was being brought into the IOB at the P-4, step XII level. The hopes and good intentions of the Director of the IOB Secretariat of obtaining the P-5, identified in the Secretariat's manning table, which the Director considered as merited in light of the Applicant's academic and professional qualifications, could not reasonably be interpreted by the Applicant as constituting a legal obligation to confer the P-5 as a condition of his new assignment in Geneva. In the absence of any contractual commitment on the part of the Respondent, the Tribunal cannot entertain a claim for compensation for the Respondent's failure to grant the P-5 on the occasion of that assignment.

VI. The Applicant also contends that, assuming his obtaining a grade P-5 required a favourable recommendation by the Appointment and Promotion Board, its failure so to recommend was based on "improper and misinterpreted information" and, in any event, violated the IOB's "promise" of promotion to P-5. As stated in paragraph V, the "promise" of a promotion could not, as a matter of law, ensure a favourable outcome of the consideration of promotion, whether on an *ad hoc* basis or through the normal procedure of the Appointment and Promotion Board. Concerning the failure of the Appointment and Promotion Board to recommend the Applicant for promotion, the Tribunal has seen no evidence that the Board's conclusions were flawed by prejudice or lack of due process. It is true that the Applicant has brought to the Tribunal's attention a memorandum of 26 June 1974 from the Director of the Division of Personnel Administration at Headquarters to the Director of the IOB Secretariat explaining that in 1974 the Appointment and Promotion Board had turned down the Director's earlier recommendation for promotion "when it was apprised of your request to see Mr. Karlik's collaboration to IOB brought to an end". The memorandum noted that, some three months earlier, Mr. Drucks had formally notified the Applicant of IOB's decision to terminate the Applicant's secondment by reason of reduction of its budget and the posts available to it. The memorandum further noted dismay at Headquarters over "the inconsistency between [your] recommendations for promotion followed within a few

months by [your] request for transfer [of Mr. Karlik] out of the IOB". Mr. Drucks strenuously contested this memorandum, asserting that financial stringency had been the only reason for terminating the Applicant's assignment; he cautioned that the IOB had furnished the Appointment and Promotion Board with no information concerning termination, implying that the latter wrongly took into account rumours of termination in declining to recommend promotion. Nevertheless, these documents do not persuade the Tribunal to find that there was prejudice or improper conduct on the part of the Appointment and Promotion Board.

VII. There remains the claim by the Applicant that IOB wrongfully sought to terminate his services when, as noted above, the Director of the IOB Secretariat informed him by memorandum of 1 April 1974 that a reduced IOB budget required the abolition of the post he held. In the period that followed before he reported back for duty at UNIDO in Vienna on 1 December 1977, the Applicant responded without success to a number of United Nations vacancy notices for Geneva-based posts. In a letter addressed to the Director of the Division of Personnel Administration at Headquarters on 22 July 1977, the Applicant asserted that:

"The claim by the Director of IOB that my post was abolished due to the reorganization of the secretariat is deceitful and untrue since the same post appears on the approved Manning Table for 1977-78-79, and is currently being announced in Vacancy No.77-114-GO, which in substance corresponds to my previous responsibilities with the IOB."

However, a reading of the relevant vacancy notice of 2 June 1977, which is for two posts as "Senior Systems Officers", each at P-5, shows that, by mid-1977, IOB was apparently seeking persons with greater technical competence in information systems, rather than proficiency in management as had been the case with the post that had been occupied by the Applicant and that the Director of the IOB Secretariat had sought to abolish some three years earlier. Moreover, as just noted, this vacancy notice was issued some three years after the Director of the IOB Secretariat sought to abolish the Applicant's post. This long interval negates the contention that the reasons given by the Director for the abolition of the Applicant's post were "deceitful and untrue". The Tribunal is thus unable to conclude that the Applicant's re-assignment to UNIDO at the end of 1977 was due to prejudice or otherwise violated his legal rights.

VIII. Accordingly the Tribunal rejects all the claims contained in the application.

*(Signatures)*

Samar SEN  
*Vice-President, presiding*

Arnold KEAN  
*Vice-President*

*Geneva, 7 June 1983*

Herbert REIS  
*Member*

Jean HARDY  
*Executive Secretary*