

Article explicitly grants compensation. Therefore, the legal costs incurred by the Applicant in presenting his claim to the ABCC are his responsibility and are not reimbursable by the Respondent.

VIII. The Applicant has also advanced a claim for compensation equivalent to three month's net base salary for loss caused by procedural delay. The record does not, in the view of the Tribunal, reveal delay resulting from any fault on the part of the Respondent. Indeed, the ABCC reacted promptly to the Applicant's first request for upward revision of its earlier disability award from 15 per cent to 20 per cent in 1981 following his retirement, and two years later, it acted with reasonable despatch in convening the Medical Board to assist it in determining the Administration's response to his second request for upward revision of the disability award. Subsequently, the ABCC and the Secretary-General reached conclusions as to the claims for increased disability and diminution of earning capacity in a prompt manner, and the Respondent likewise waived the requirement that the Applicant have recourse to the Joint Appeals Board before proceeding to the Tribunal. Accordingly, there was no delay in this case of a character that might give rise to entitlement to compensation.

IX. In view of the foregoing, there is no legal basis for the claim of the Applicant for reimbursement of his expenses in prosecuting this appeal before the Tribunal. It is denied.

X. For all these reasons, the Tribunal rejects each of the pleas put forward by the Applicant.

*(Signatures)*

Samar SEN  
*Vice-President, presiding*

Arnold KEAN  
*Vice-President*

*New York, 1 November 1985*

Herbert REIS  
*Member*

Gurdon WATTLES  
*Acting Executive Secretary*

### Judgement No. 353

*(Original: English)*

**Case No. 351:**  
**El-Bolkany**

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

*Request by a former staff member of the United Nations for the payment of the repatriation grant and for compensation for procedural delays.*

*Conclusion of the Joint Appeals Board that the Applicant was not entitled to the repatriation grant.—Recommendation to reject the application.*

*Question of the Applicant's entitlement to benefits of internationally recruited staff following her detail to mission from Geneva where she had the status of a locally recruited staff member.—The Tribunal notes that the Applicant was fully aware of the distinction between locally recruited and internationally recruited staff and that her request to be granted international status while in Geneva had been rejected.—Consideration of the circumstances under which various benefits of internationally recruited staff were granted to the Applicant while she was detailed to a*

*mission.—Doubts as to the authority under which these benefits were granted.—Finding that the granting of these benefits was to the Applicant's advantage and did not adversely affect her rights.—Conclusion that the granting of benefits not normally extended to locally recruited staff cannot by itself, whatever the reasons for such a measure, entitle a locally recruited staff member to claim the status of internationally recruited staff.—Applicant's contention of estoppel.—The Tribunal holds that in order to establish estoppel it is necessary to prove that an action of the Respondent worked against the accepted and contractual rights of the Applicant.—Contention rejected.—Applicant's claim for compensation on account of procedural delays.—Finding that the delay of five years in the disposal of the case was inordinate and unjustified.*

*Award of compensation of \$US 1,000 for procedural delays.—Subject to this award, application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas on 18 September 1984, at the request of Anne El-Bolkany, a former staff member of the United Nations, the Tribunal extended under article 7, paragraph 5 of its Statute, the time-limit for the filing of an application to 17 December 1984;

Whereas on 18 November 1984 and 12 February 1985 the Applicant filed an application which did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, after having made the necessary corrections, the Applicant resubmitted a corrected application on 9 May 1985, in which she requested the Tribunal:

“(1) To order, as provided in the Staff Rules then in force, the payment by the Respondent of the Applicant's claim to repatriation grant, with interest at an appropriate rate; and

“(2) To find that the delays relating to the procedures in the Geneva Joint Appeals Board in regard to the decision complained of constituted non-observance by the Respondent of his obligations towards the Applicant under Chapter XI of the Staff Rules, thereby causing unnecessary anxiety, distress and suffering to her; and to award appropriate compensation which, in the circumstances, should be an amount equivalent to six months of the Applicant's net base salary at the time of separation.”

Whereas the Respondent filed his answer on 13 June 1985;

Whereas the Applicant filed written observations on 23 July 1985;

Whereas, in reply to a question posed by the Tribunal, on 23 October 1985, the Respondent submitted additional information on 25 October 1985;

Whereas the facts in the case are as follows:

The Applicant, a national of the United Kingdom of Great Britain and Northern Ireland entered the service of the United Nations on 1 June 1970 as an Internal Audit Clerk at the Internal Audit Service, UNOG [United Nations Office in Geneva]. She was initially offered a three-month, fixed-term appointment at the G-4 level, which was converted to a probationary appointment on 1 October 1970. On 15 March 1971 the Applicant requested the Chief, Personnel Services, UNOG to change her status from that of a “locally recruited” staff member to that of an “internationally recruited” staff member. In a reply dated

1 April 1971 her request was rejected. On 1 June 1972 the Applicant was granted a permanent appointment.

On 17 June 1974 the Chief, Field Operations Service, Office of General Services [OGS] at Headquarters was advised by the Director, Division of Personnel Administration, Office of Personnel Services, [OPS] that a "mission assignment" of initially six months to one year had been approved for the Applicant, who would be "detailed from Geneva" to UNEF [United Nations Emergency Force] as of 29 June 1974. Two Personnel Action Forms [P-5] were issued to implement the "mission assignment". The first one, dated 27 June 1974, issued by Personnel Services, UNOG stated that the purpose of the action was "assignment to UNEF, Cairo . . ."; described the "Department" as "Internal Audit Service detailed to United Nations Emergency Force" and the "Official Duty Station" as "Geneva, detailed to Cairo". The second one, dated 28 August 1974 issued by OPS at Headquarters stated that the purpose of the action was "Detail from UN/Geneva to UNEF/Cairo"; described the "Department" as "Internal Audit Service/Geneva" and the "Official Duty Station" as "Geneva". A travel authorization with itinerary "Geneva/Cairo/Geneva" was issued on 17 June 1974 to enable the Applicant to travel to Cairo, then the Headquarters of UNEF.

The Applicant's "mission assignment" to UNEF was extended for a further period of six months effective 1 January 1975. The Personnel Action Form issued at Headquarters on 18 September 1974 to implement the extension stated that the purpose of the action was "Extension of detail to UNEF for six months"; described the "Department" as "Internal Audit Service/Geneva" and the "Official Duty Station" as "Geneva". The Personnel Action Form issued at UNOG on 25 September 1974 stated that the purpose of the action was "Extension of assignment to [UNEF], Cairo . . ."; described the "Department" as "Internal Audit Services detailed to UNEF" and the "Official Duty Station" as "Geneva (detailed to Cairo)."

In a cable dated 5 March 1975 addressed to the Chief, Personnel Administration Section, UNOG, an Associate Personnel Officer informed her that UNEF had requested "EXTENSION DETAIL ANNE EL-BOLKANY, INTERNAL AUDIT SERVICE, GENEVA, ONE YEAR EFFECTIVE ONE JULY 1975." In a reply dated 5 March 1975 the Chief, Personnel Administration Section, UNOG stated: "NO OBJECTION TO EXTENSION OF ANNE EL-BOLKANY'S DETAIL TO UNEF FOR FURTHER YEAR FROM ONE JULY 1975".

Two Personnel Action Forms were once again issued to implement the extension. The Form issued at Headquarters on 14 March 1975 indicated: "Extension of detail to UNEF for ONE YEAR, i.e. through 30 June 1976"; described the "Department" as "Internal Audit Service/Geneva" and the "Official Duty Station" as "Geneva". The Form issued at UNOG on 24 April 1975 stated: "Extension of Assignment to [UNEF] Cairo for a further period of one year"; described the "Department" as "Internal Audit Services detailed to UNEF" and the "Official Duty Station" as "Geneva (detailed to Cairo)".

At the request of UNEF, on 3 February 1976 the Chief, Personnel Administration Section, UNOG informed OPS at Headquarters that "Geneva has no objection extension UNEF detail El-Bolkany . . . to 30 June 1977 . . ." and on 5 March 1976, the Chief, Field Operations Service, OGS was informed of the approval of the Applicant's "detail" to UNEF until 30 June 1977. A Personnel Action Form was issued on 9 March 1976 at Headquarters to implement the extension. Its purpose was described as "Extension of Detail

with UNEF for one year" from "Internal Audit Service/Geneva". The "Official Duty Station" remained "Geneva". On 1 July 1976 the Applicant was authorized to go on home leave to the United Kingdom. The Travel Authorization stated that the "Official Duty Station" was "UNEF HQ. [Headquarters] ISMAILIA . . ." and described the authorized itinerary as "CAIRO/SUSSEX(U.K.)/CAIRO . . ."

On 24 March 1977 the Applicant submitted her resignation from the United Nations, effective 30 June 1977.

On 1 April 1977 the Applicant asked the Chief, Personnel Division, UNOG to arrange for her final payments to be made to Lloyd's Bank in Geneva and described them as follows:

- "Salary for June at G.5 step 10 (date of increment)
- "Accrual of Annual Leave
- "Repatriation Grant."

A Travel Authorization was issued on 1 April 1977 for the purpose of "Repatriation, following resignation of appointment with UN". The authorized itinerary was described as "CAIRO/SUSSEX/UK". The "Official Duty Station" was described as "UNEF HQ [Headquarters] Ismailia . . .".

On 25 April 1977, the Chief, Personnel Administration Section, UNOG accepted the Applicant's resignation. On 20 June 1977 a Personnel/Payroll Clearance Action form was issued by UNOG. It stated that the Applicant was authorized return travel to "Switzerland".

In letters dated 8 July 1977 and 4 August 1977 addressed to the Chief, Personnel Administration Section, UNOG the Applicant asked about the status of payments of her salary and entitlements including the repatriation grant. In a reply dated 12 August 1977, the Chief, Personnel Administration Section, UNOG informed the Applicant that "locally recruited officials do not enjoy entitlement to repatriation grant upon separation". However, the Applicant asserted in a reply dated 16 August 1977 that

"Although I was locally recruited in Geneva, at the time of my resignation my duty station was Ismailia, Egypt where I have served for 3 years. I was, therefore, not 'local' at the time of my resignation from the United Nations. This question has been discussed with my colleagues both from Internal Audit and Finance New York before my resignation and they informed me that I enjoyed full International status for the following reasons:

"1. At the time of my resignation my duty station was Ismailia, not Geneva.

"2. I had already served in Egypt for 3 years.

"3. After 2 years on July 1976 I was granted home leave which is only applicable to International Staff and according to the Staff Rules providing I return to my duty station for a further six months I am entitled to repatriation to my home country. I served a further year.

"4. I have received Education Grant for my son which is also only applicable to staff of International Status.

"5. My final Travel Authorization from Ismailia Index No. 186973 specifies Repatriation Travel to my home country for which I was given an air ticket for myself and son together with authorization for the transportation of Household and Personal Effects.

"If I was not entitled to repatriation my travel would have been paid only to Geneva, not my home country. No mention is made in the Staff Rules of not paying repatriation grant if repatriation travel has been authorized, even though the grant may be made without payment for travel Staff Rule 109.5 (i)."

In a cable dated 14 September 1977 addressed to the Chief, Personnel Administration Section, UNOG and in reply to a request for advice dated 1 September 1977 on whether or not repatriation grant should be paid to the Applicant, the Deputy Director of Field Operations Service, OGS stated:

"WE HAVE NOTED THAT YOUR PT. 8 NO. 7-06-EF-008 AUTHORIZED HER TRAVEL AND P/E [personal effects] SHIPMENT CAIRO/SUSSEX (UK) WHEREAS HER NORMAL ENTITLEMENT SHOULD BE CAIRO/GENEVA SINCE SHE WAS A LOCAL RECRUIT IN GENEVA. ADVISE REASONS FOR SUCH AUTHORIZATION AND ANY CORRECTIVE ACTION CONTEMPLATED."

In a cable dated 21 September 1977 the appropriate official at UNOG informed Field Operations Service at Headquarters that the Applicant's travel authorization had been issued incorrectly and would be amended and that they "regretted" the administrative error. On 20 September 1977 an amendment was issued to the travel authorization. It provided under itinerary "AMEND; Cairo/Geneva . . .".

In a memorandum dated 22 September 1977, the Director, Field Operations Services, OGS confirmed to the Chief, Personnel Administration Section, UNOG that the Applicant was only "entitled to travel upon her separation back to Geneva, the place from which she was recruited". In addition, he stated:

"3. A General Service staff recruited locally by an established office and later detailed to a mission may under certain circumstances be entitled to home leave travel, but never a repatriation grant.

"4. He is entitled to home leave after two years of detail to a mission provided he returns to the mission for at least another 6 months' detail.

"5. Inasmuch as the conditions outlining the above were not met, the issuance of PT.8 for the travel and the P.E. [Personal Effects] shipment of Mrs. El-Bolkany to U.K. instead of Geneva was apparently done by mistake by UNEF since correct procedures were followed by them previously against the resignation of two other General Service staff whose duty station was New York."

On 4 October 1977 the Director, Field Operations Service, OGS transmitted to the Applicant the amended travel authorization and noted that he could not authorize the Cairo/Sussex itinerary because she had been "detailed from Geneva under status of a local recruit in Geneva".

On 24 October 1977 the Applicant stated her intent to appeal the decision conveyed to her in the letter of 4 October 1977 and having received no reply from the Secretary-General, on 1 December 1977 she lodged an appeal with the Joint Appeals Board. On 21 December 1977, after the Applicant lodged her appeal the Chief, Staff Services, OPS wrote in part as follows on behalf of the Secretary-General:

"It is true that during a period of detail staff members in your situation are granted certain international entitlements such as home leave travel, education grant and education grant travel. However, in view of the purpose of detail, initial travel and, consequently, travel following expiration of detail is limited to travel between the official duty station and the

mission area. Therefore, when your detail to UNEF expired on 30 June 1977 . . . the United Nations was merely obliged to bear the cost of your return travel to Geneva, your official duty station. Consequently, I have to confirm that the original travel authorization dated 1 April 1977 showing an itinerary Cairo/Sussex(UK) was incorrect.

"However, since you actually travelled under the terms of that authorization, it has been decided that, for reasons of equity, and as an exceptional measure, you will not be requested to reimburse the Organization for the overpayment that has been made to you. However, I regret having to advise you that since Staff Rule 109.5 (a) clearly excludes staff without entitlement to repatriation travel, no payment of repatriation grant can be made to you."

The Board adopted its report on 4 July 1983. Its conclusions and recommendations read as follows:

*"Considerations, Conclusions and Recommendations"*

"20. . . .

"21. The Board . . . observes that both the request for review and the appeal itself formally concern only the Appellant's repatriation travel. The record shows, however, that in the Appellant's mind the repatriation travel could not be disassociated from the repatriation grant, as subsequently confirmed by the terms of her letter of 9 May 1978, and since the repatriation travel was granted to the Appellant subsequent to the submission of her appeal, the Board decides to narrow its consideration to the second issue.

"22. The Board notes that contrary to the requirement embodied in staff regulation 11.1, no particular rule or regulation alleged not to have been observed in the Appellant's case was indicated in her various submissions. Instead, the Appellant's claims to 'international' entitlements derive from a global and hypothetical 'international status'. Thus, in her letter of appeal dated 1 December 1977, the Appellant stated: 'No authorization is to be found anywhere in the Staff Rules giving home leave, education grant and removal of household effects to a local staff member'. This latter statement is incorrect, since the entitlement of locally recruited General Service staff members to all the expatriate benefits referred to by the Appellant (as well as to travel expense of eligible family members) is specifically provided for, under certain conditions, in the staff rules quoted by the Respondent in his submissions. Therefore, the Appellant's conclusion that she was granted such benefits because she had in the meantime acquired 'full international status' was clearly mistaken.

"23. The Board recalls that, in accordance with staff rule 104.6 (a), the conditions under which staff members are to be regarded as local recruits at each duty station are set forth in appendix B. Thus, the only circumstances under which a staff member locally recruited at Geneva may acquire 'internationally recruited' status are those stipulated in paragraph 3 of the appendix B (UNOG) which reads as follows: 'A staff member who has been locally recruited . . . shall acquire non-local status if he or she becomes a member of the Professional category'. The Board observes that these provisions are not applicable to the present appeal, since they do not concern staff members in receipt of an SPA, and therefore finds that the status of the Appellant remained, throughout the duration of her mission, that of a locally recruited staff member. In addition, staff rules 104.6 (b)

and 109.5 (f) stipulate respectively that 'A staff member regarded as having been locally recruited shall not be eligible for the allowances or benefits indicated under rule 104.7' and 'No payments shall be made to local recruits under rule 104.6' in respect of a repatriation grant. The Board consequently concludes that the Appellant was not entitled to payment of travel expenses to the country of her nationality upon separation, or to a repatriation grant.

"24. This conclusion is further confirmed by other provisions: as stipulated in annex IV to the Staff Regulations, the repatriation grant is payable to staff members whom the Organization is obligated to repatriate, and 'obligation to repatriate' means the obligation to return a staff member and dependants to a place outside the country of his or her duty station. In this particular case, the Appellant's duty station had remained unchanged since her recruitment: under staff rule 101.4, detailment of a staff member from his or her official duty station for service with a United Nations mission or conference does not constitute change of official duty station, and the Organization only had an obligation to return the Appellant to her duty station, i.e. to Geneva. The Appellant should not have been unaware of this fact, since Geneva was indicated as her duty station on all P-5 forms issued during her assignment to UNEF, of which she received copies.

"25. On the other hand, the Board recognizes that the Appellant was misled by the way in which staff rule 104.6 (b) is drafted. In fact, this rule states in simple words: if a staff member is locally recruited, he or she will not be entitled to expatriate benefits (listed below in the next rule), and it was quite logical for the Appellant, after a superficial reading, to interpret this rule *a contrario*:

"'Since I was given such benefits, this means that I am considered as international'.

"In the view of the Board, much clarity would be gained if the words 'unless otherwise specified in these rules' were added at the end of the rule in question, and the Board recommends that an appropriate revision be undertaken at the earliest opportunity.

"26. The Appellant claims that since she was given repatriation travel, she was also entitled to a repatriation grant. Having examined all the circumstances of the case, the Board finds that the return travel had been clearly approved as a result of an administrative error which was beneficial to the Appellant, and therefore does not give rise to any damages.

"27. In view of the foregoing, the Board makes no recommendation in support of the appeal.

"28. The Board observes, however, that in the course of her assignment to Ismailia, the Appellant had built up, on the basis of a number of private conversations, as well as certain administrative actions reviewed above, a set of expectations relating to her acquisition of, and entitlements deriving from, 'internationally recruited' status. The Board has no reason to doubt that the Appellant actually held such conversations, of which no record was apparently kept, with a number of officials. However, there is no evidence that any such conversations could have taken place before the Appellant accepted her assignment, and in any event erroneous statements made by unauthorized officials are not binding on the Organization.

"29. While it has not been possible to find anything in the administrative actions which would have been incompatible with the relevant staff

rules, the Board none the less considers that the dispersal of the provisions relating to the entitlements of locally recruited General Service staff members on mission service can readily give rise to confusion or unfounded expectations. The Board is of the opinion that locally recruited General Service staff members detailed for mission service have the right to be fully and clearly informed of their additional entitlements, and the Administration should therefore prepare and systematically communicate to such staff members a document containing an unambiguous presentation of all benefits to which they may become entitled during their mission service."

On 5 December 1983 the Assistant Secretary-General for Personnel Services transmitted the report to the Applicant and informed her that the Secretary-General had re-examined the case in the light of the Board's report, and decided to maintain the contested decision. On 9 May 1985 the Applicant filed before this Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The movement of the Applicant from UNOG to UNEF was an "assignment" within the meaning of Rule 101.4 then in force and not a "detailment" in the context of the second sentence of that Rule and there was accordingly a change of official duty station from Geneva to Ismailia.

2. The Applicant's status of "local" recruit while she was employed with UNOG, Geneva, was altered during her stay in Egypt. Receipt of mission subsistence allowance on a daily basis, grant of home leave, and education grant in connection with UNEF service, contribute to properly consider the Applicant as "internationally recruited" because she satisfies the criteria of sub-paragraphs (a) and (b) of paragraph (i) of Appendix B to the Staff Rules concerning conditions governing local recruitment.

3. The Applicant was entitled upon separation in June 1977 and relocation to the country of her duty station, to payment of repatriation grant under Staff Rule 109.5 and annex IV to the Staff Regulations then in force because she had acquired a new duty station and new international status by reason of her service with UNEF.

4. Duly authorized officials at UNEF granted the Applicant certain rights and benefits clearly pertaining to non-locally recruited personnel and therefore they are estopped from subsequently denying the validity of their acts as "administrative errors".

5. The delays incurred by the Respondent during the proceedings before the Geneva Joint Appeals Board constituted non-observance of the Respondent's obligations under Chapter XI of the Staff Rules. Justice delayed is justice denied.

Whereas the Respondent's principal contentions are:

1. The Applicant had no entitlement to the internationally recruited status under the Staff Regulations and Rules.

2. The receipt of benefits as an exception to the Staff Regulations and Rules gives rise to no entitlement to change of status.

3. Since the Applicant was the holder of a permanent appointment her assignment on mission in 1974 was properly determined as a detailment under the Staff Rules.

4. As a local recruit the Applicant had no entitlement to a repatriation grant.

5. The Applicant has failed to establish that the delay in considering her appeal caused her any financial loss or otherwise prejudiced her case.

The Tribunal, having deliberated from 16 October to 1 November 1985, now pronounces the following judgement:

I. All throughout her service with the United Nations, the Applicant was fully aware of the distinction between a local staff member and an internationally recruited staff member, and that each category has its procedure for recruitment and its own specific obligations and benefits. The Tribunal notes that the Applicant sought but failed to obtain the status of an internationally recruited staff member soon after she joined the Geneva Office in June 1970. The question before the Tribunal is whether by the actions of the Respondent, the Applicant's attachment to Ismailia/Cairo could inferentially or in any other way establish that her status was transformed from that of a locally recruited into that of an internationally recruited staff member.

II. There was little doubt that when she moved out of Geneva in 1974, the Applicant was treated as a local recruit. In her arguments, the Applicant states that the confusion arose principally because UNOG treated her as a local recruit while the UNEF at Ismailia/Cairo began to treat her as an international staff member. In her memorandum of 1 September 1977 addressed to the Director, Field Operations Service, OGS, the Chief, Personnel Administration Section, UNOG, wondered "whether Mrs. El-Bolkany's international status would not further entitle her to repatriation grant, in accordance with rule 107.1 (c)." The Tribunal interprets this statement as arising from the confusion referred to above. Records do not show that the Applicant took any steps whatever to have her status more clearly defined in the two years before she was allowed to go to the United Kingdom on home leave. Such an attempt would have been normal in the circumstances in which she was placed. The Applicant was under no legal obligation to go to Ismailia/Cairo and the Tribunal cannot but conclude that this move was acceptable to and convenient for her.

III. Nonetheless the Tribunal must, particularly in view of the confusion of administrative practices to which the Joint Appeals Board has rightly drawn pointed attention, examine if the steps taken by the Respondent could raise a presumption that the Applicant was being treated as an internationally recruited staff member. The Applicant cites a series of measures to justify her claim that she was so treated and is therefore entitled to the full benefits of an internationally recruited staff member and more specifically to a repatriation grant.

IV. The Applicant maintains that the cumulative effect of (a) describing her duty station as Ismailia/Cairo in forms authorizing her son's travel from Geneva to Egypt, (b) allowing an education grant for her son, (c) sanctioning her home leave in the United Kingdom in June-July 1976 after two years of service in Egypt, and finally (d) permitting her repatriation travel expenses to the United Kingdom after her resignation, rather than to Geneva where she had been recruited, was to accord her the status of an internationally recruited staff member. The Respondent points out that (d) was allowed to the Applicant by mistake, but nonetheless the Applicant was not asked to refund any excess that might have been paid to her.

V. The Tribunal is of the view that the description of the Applicant's duty station in her son's travel authorization forms should be read together with numerous other forms and communications in which the Applicant's duty station was shown as Geneva and that the weight of evidence is in favour of

treating her assignment to Egypt as a mission detail. As for the education grant for the Applicant's son, the Secretary-General is empowered under Rule 103.20 (b) to allow such a grant to locally recruited staff members and such a grant cannot, by itself, lend any substance to the Applicant's claim to be treated as an internationally recruited staff member. The granting of home leave in the United Kingdom under Staff Rule 105.3 and the repatriation travel expenses under Staff Rule 107.1 also to the United Kingdom, raise the intricate question, not so much of establishing the Applicant's claim for change in her official status, but whether the admittedly wide discretionary power of the Secretary-General has been exercised in a manner envisaged in the Staff Regulations and Rules. The Tribunal holds the view that by admitting a mistake about the repatriation expenses to the United Kingdom rather than to Geneva and by waiving any recovery from the Applicant, the Respondent has satisfied the requirements of the Staff Regulations and Rules.

VI. As regards home leave after two years of service on mission detail, there is doubt in the Tribunal's mind about the precise authority under which it was granted. The records and files tend to show, but do not fully establish, that each mission tended to follow the practice of allowing home leave after a long period of service, in this instance after two years of service in Ismailia/Cairo. At any rate, the granting of this leave to the Applicant was clearly to her advantage and did not adversely affect her rights and claims as a locally recruited staff member.

VII. The granting of benefits not normally extended to locally recruited staff and generally applied exclusively to internationally recruited staff members cannot by itself, whatever might be the reasons for any such a grant, entitle a locally recruited staff member to claim the status of an internationally recruited staff member.

VIII. In view of the foregoing, the Tribunal concludes that even if the Applicant was accorded some benefits which are normally available only to internationally recruited staff members, she cannot, as a result, claim a change in her status. This applies *a fortiori*, inasmuch as her attempt to change her status while at Geneva was rejected; and the Tribunal cannot be expected to countenance, much less encourage, such a change through administrative confusion which in any event was more beneficial to the Applicant than the strict application of Regulations and Rules would have been.

IX. The Tribunal notes that while the Secretary-General has wide discretionary powers in administrative matters, he cannot in view of the plain wording of Staff Rule 109.5 (i) in force, modify its requirements and allow a repatriation grant to the Applicant.

In this connection, the question of estoppel has been raised. Apart from the arguments advanced by the Respondent against the invocation of the principle of estoppel—arguments which do not seem to be refuted by the Applicant in her written observations—the Tribunal takes the view that since the Secretary-General is barred by Rule 109.5 (i) to allow repatriation grant, the question of estoppel is not relevant. In any event, to establish estoppel it is necessary to prove that an action by the Respondent has worked against the accepted and contractual rights of the Applicant. No such proof had been adduced or can indeed be forthcoming in the circumstances of this case. In view of the foregoing, the Applicant's claim to repatriation grant cannot be sustained.

X. The Applicant's plea for compensation for delay in the disposal of the case is based on the alleged suffering and anxiety she had undergone. Even

assuming that the records and files of different offices in New York, Geneva and Ismailia/Cairo were not readily available in any central place, and taking into account the troubled times in the Ismailia/Cairo area, the Tribunal finds no justification in this case for such a long and unconscionable delay as five years: the administrative details were comparatively simple and there has been no explanation for nearly twenty-five months delay between the conclusion of the Joint Appeals Board's deliberations and its final report. The Tribunal has had several occasions to emphasize that an inordinate delay of this nature not only adversely affects the administration of justice, but on occasions can inflict unnecessary anxiety and suffering to an Applicant. In this case, the Tribunal takes the view that because of the dilatory and casual way in which the Applicant's case was dealt with, she is entitled to some compensation. The Tribunal assesses this compensation at one thousand U.S. dollars and orders the Respondent to pay this amount to the Applicant.

XI. Subject to this award of \$US 1,000, the application is rejected.

*(Signatures)*

Samar SEN

*Vice-President, presiding*

Herbert REIS

*Member*

*New York, 1 November 1985*

Luis de POSADAS MONTERO  
*Member*

R. Maria VICIEN-MILBURN  
*Executive Secretary*

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## Judgement No. 354

*(Original: English)*

**Case No. 347:**  
**Khan**

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

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*Request by a staff member of the United Nations for an order that his post should be reclassified retroactively and for indemnity for the salary lost.—Request for preliminary measures: production of certain documents.*

*Conclusion of the Joint Appeals Board that it is not competent to consider the request for reclassification of a post.—Conclusion that there were certain administrative shortcomings but no recommendation in support of the application.*

*Request for preliminary measures rejected.*

*Applicant's claim that the denial to reclassify his post resulted from the Administration's failure to adhere to the procedure set out in administrative instruction ST/AI/277.—Finding that, while the said instruction does not prescribe any particular form for classification action, the normal practice is to secure the incumbent's signature, which was not done in the Applicant's case.—The incumbent has an interest in the request for reclassification which may improve his promotion prospects, even if he does not have a legal right to, or expectancy of, promotion in the reclassified post.—Conclusion that the procedure followed was defective, which may have damaged the Applicant's interest.—The injury was however mitigated by the Applicant's subsequent promotion.—Applicant's claim of alleged prejudice against him by the Administration, resulting from an altercation which he had in 1972 with his assistant who was the daughter of the then Secretary-General.—The Tribunal holds that claims arising from such an old event are time-barred, but that the Applicant is not precluded from relying on such events as*