

revision, whether to take account of the salary the Applicant would have received had he been employed in Beirut for the nine months in question, or because of his liability to taxation in the USA, or by reason of his pension fund contributions, or for any other reason.

V. However, under Article 12 of its Statute, the Tribunal may at any time, of its own motion or on application of any of the parties, correct "clerical or arithmetical mistakes in judgement, or errors arising therein from any accidental slip or omission". In making its award in Judgement No. 347, the Tribunal accepted the statement of the Applicant that he had been paid \$25,000 (U.S.) by way of termination indemnity. It later appeared that the Applicant had overstated the amount so paid, which in fact was \$16,201.80 (U.S.). Upon discovery of this error, the Respondent voluntarily and promptly made good the difference. To correct the record, the Tribunal now substitutes \$16,201.80 (U.S.) for \$25,000 (U.S.) in paragraph XXIV of Judgement No. 347. The Tribunal is not aware of any accidental slips or omissions which require to be corrected.

VI. The award in terms of net base salary, was made "bearing in mind all the circumstances of the case, and in accordance with its [the Tribunal's] previous Judgements No. 113, para. XIII (*Coll*, 1967) and No. 172, para. XVI (*Quémérais*, 1973)." It was not the result of "an accidental slip or omission" within the meaning of Art. 12.

VII. In view of the above, no further action by the Tribunal is called for.

(Signatures)

Samar SEN

President

Arnold KEAN

First Vice-President

Geneva, 23 May 1986

Roger PINTO

Member

R. M. VICIEN-MILBURN

Executive Secretary

Judgement No. 367

(Original: English)

Case No. 354:
Poppinga

Against: The Secretary-General
of the United Nations

Request by a staff member of the United Nations for the rescission of the decision withdrawing her parking entitlement and for reinstatement of that entitlement, and for compensation.

Direct submission of the application to the Tribunal under article 7 of its statute.

Consideration of the circumstances of the case.—Finding that neither the Applicant's letter of appointment nor the Staff Regulations and Staff Rules refer to the provision of parking space at United Nations Headquarters.—Grant to the Applicant of a parking permit under administrative instruction ST/AI/178.—Withdrawal of the permit under administrative instruction ST/AI/288.—Finding that the decision to withdraw the parking permit correctly interpreted the provisions of the latter instruction.—Applicant's contention that the decision violated her acquired rights.—The Tribunal holds that neither the Applicant's letter of appointment nor administrative instruction ST/AI/178 gave rise to any legal right to a parking permit.—Applicant's contention that the use of the parking space during 12 years gave her "a right of property".—The Tribunal holds that use of a parking space on the basis of a permission and not

as of right cannot result in a prescriptive right.—Conclusion that the question of acquired rights does not arise.—Applicant's contention that the parking permit was withdrawn in an arbitrary and discriminatory manner.—Contention rejected.—Applicant's contention that the Administration violated her right to privacy.—Contention rejected.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Endre Ustor; Mr. Luis M. de Posadas Montero;

Whereas on 25 June 1985, Esmeralda Poppinga, a staff member of the United Nations, filed an application in which she requested the Tribunal:

“1. To rescind the decision of the Secretary-General, the Respondent, under which her parking entitlement was withdrawn as of 31 May 1985;

“2. To publicly recognize the acquired right of the Applicant to the parking entitlement and adjudge and declare that the entitlement cannot be changed with retroactive effect by subsequent amendments to the Staff Regulations and Rules;

“3. To order the reinstatement of the parking entitlement which was withdrawn in an arbitrary and discriminatory manner and to ensure that the Respondent follows the standards of due process;

“4. To safeguard the Applicant's right to privacy in matters which are of a private nature or irrelevant to the preservation of the parking entitlement;

“5. To order the Respondent to compensate the Applicant for additional costs for parking since November 1984, such amount to be computed and fixed by the Tribunal on the basis of documentary evidence to be submitted upon completion of these proceedings.”

Whereas the Respondent filed his answer on 13 September 1985;

Whereas the Applicant filed written observations on 15 October 1985;

Whereas the facts in the case are as follows:

The Applicant, an Associate Political Affairs Officer at the Centre against *Apartheid*, PSCA [Department of Political and Security Council Affairs], has been a staff member of the United Nations since 14 August 1961 and is the holder of a permanent appointment since 1 August 1963.

The Applicant and the Respondent agree that in 1974, the Applicant applied for, and was granted a parking permit to park her car in the United Nations garage. At the time, ST/AI[ADMINISTRATIVE INSTRUCTION]/178 of 12 August 1963 regulated the use of parking space in the UN Garage at the Secretariat building in New York.

On 16 June 1982 the Secretary-General informed the staff in ST/SGB[SECRETARY-GENERAL'S BULLETIN]/192 that he had decided to establish a Garage Review Board to advise him on matters pertaining to the allocation of garage space “for all users at Headquarters except those in possession of DPL [Diplomatic] and accredited FC [Foreign Consul] plates,” and to “advise on and review the issuance of parking permits under a new set of criteria to be approved by [him]”. ST/AI/288 issued on 16 August 1982, set forth the “arrangements for the authorization of parking” in the UN Garage, and “the role of the Garage Review Board”. The Board was mandated *inter alia* to “(a) undertake a one-time review of all current parking permits (formerly

known as permits, medallions or stickers) . . .” and set forth criteria to be followed in order to establish a new list of parking permit holders. Except for medical permits, “no permits [would] be issued to applicants with residence in Manhattan south of 168th Street”.

On 7 February 1983 the Under-Secretary-General for Administration and Management issued ST/IC[INFORMATION CIRCULAR]/83/5 entitled “United Nations Garage, membership of the Garage Review Board and application procedures for parking permits”. The circular reiterated that permits would not be issued for applicants with residence in Manhattan south of 168th Street and required “all persons, except members of delegations, who would like to use the UN Garage parking facilities on a regular basis . . . to submit new applications irrespective of whether they presently have stickers or temporary parking permits”.

On 3 March 1983 the Applicant submitted an application for a parking permit to the Garage Review Board. She stated that her address was “16 Scenic Drive, Hyde Park, NY 12538”.

On 17 May 1984 the Chairman of the Garage Review Board informed the Applicant that on the basis of paragraph 9 of ST/AI/288 which provides that “no permit will be issued to applicants with residence in Manhattan south of 168th Street”, her application had been rejected and her current parking permit would be withdrawn within a year from the date of that letter.

On 5 June 1984 the Applicant requested the Garage Review Board to reconsider her request for a parking permit on four grounds:

(a) her primary residence was in Hyde Park which is located 98 miles from Manhattan;

(b) she had been entitled to a parking permit for more than ten years;

(c) she had to work on weekends and therefore, met the criteria of paragraph 9 (a) of ST/AI/288;

(d) “sometimes” personal and other “compelling reasons” required her to remain in the city because of the “great distance” between her primary residence and Headquarters.

On 16 October 1984 the Chairman of the Garage Review Board informed her that her request had been denied.

On 5 November 1984 the Applicant wrote to the Chief, Commercial Management Service, OGS [Office of General Services] to reiterate that her “correct address” was “16 Scenic Drive, Hyde Park, NY 12538” and that “as far as the United Nations and the United States Government [were] concerned” her residence was in Hyde Park, New York. In addition, she requested his assistance to change the “relevant records” and to reconsider her request for a parking permit.

In a reply dated 29 November 1984, the Chief, Commercial Management Service, OGS informed the Applicant that the Board was unable to grant her a parking permit, because according to the information available to the Board at the time of her application for a parking permit under the one-time review, she was a resident of Manhattan, south of 168th Street. In addition, he had proof that she still had a residence in Manhattan and, in this connection, drew her attention to paragraph 9 (b) of ST/AI/288 which provides that if an applicant “has two or more residences, the criteria . . . will be applied to the residence closest to the Secretariat building”. The Applicant was asked to return her parking permit no later than 30 November 1984.

On 29 November 1984 the Applicant requested the Secretary-General to review the administrative decisions of the Garage Review Board dated 17 May and 16 October 1984 to withdraw her parking privileges. On 28 January 1985, having received no reply from the Secretary-General, the Applicant lodged an appeal with the Joint Appeals Board.

On 19 March 1985, the Applicant requested the Secretary-General's agreement for direct submission of her appeal to the Administrative Tribunal. On 29 March 1985, the Chief, Administrative Review Unit, OPS [Office of Personnel Services] informed the Secretary of the Joint Appeals Board that the Secretary-General had agreed to the direct submission of the Applicant's appeal to the Administrative Tribunal.

On 27 June 1985 the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant's right to a parking entitlement, after twelve years of continuous use, must now be considered an acquired right under the Staff Regulations and Rules of the United Nations. The entitlement cannot be changed with retroactive effect by subsequent amendments to the Staff Regulations and Rules.

2. The Applicant's parking entitlement is a property interest that has been withdrawn in a manner that is arbitrary, discriminatory, and violates standards of due process.

3. The test of "residence in Manhattan, south of 168th Street" is arbitrary and results in an unfair employment practice. It excludes a whole class of staff members from the enjoyment of the UN Garage and favours another class of staff members—Under-Secretaries-General and Assistant Secretaries-General—who are allowed to park even if their residence is in Manhattan south of 168th Street.

4. The test of "residence closest to the Secretariat building", to be applied whenever a staff member has two or more residences, represents an intrusion into the Applicant's right to privacy.

Whereas the Respondent's principal contentions are:

1. The grant of a garage permit does not give rise to any enforceable contractual rights, but is rather a privilege subject to conditions embodied in statutory provisions which can be amended. Since the amendment did not relate to matters which formed an essential part of the Applicant's contract, since it was adopted for perfectly legitimate reasons and was not applied with retroactive effect, it did not prejudice any of the Applicant's acquired rights.

2. The Applicant's parking permit was not withdrawn in a manner which was arbitrary, discriminatory or in violation of standards of due process and the Applicant's right to privacy was not invaded in the course of determining her entitlement to a parking permit.

The Tribunal, having deliberated from 28 April 1986 to 3 June 1986, now pronounces the following judgement:

- I. The Secretary-General having agreed with the Applicant that this application should be directly submitted to the Tribunal, it is receivable under Article 7 of the Tribunal's Statute.

- II. The Applicant has held a permanent appointment at the United Nations, since 1 August 1963.

The terms of the Letter of Appointment, dated 24 July 1963, made no reference to the provision of a parking space at UN Headquarters. They were expressed to be subject to the provisions of the Staff Regulations and Staff

Rules, together with such amendments as might from time to time be made to such Staff Regulations and such Staff Rules. Neither the Staff Regulations and Staff Rules, nor any amendments to them, referred to the provision of a parking space at UN Headquarters.

III. On 12 August 1968, Administrative Instruction ST/AI/178 was issued to members of the staff of the United Nations. It was under this Instruction that the Applicant was originally granted a parking permit. The Instruction stated that, because of the steadily increasing demands on the parking space in the United Nations garage, new arrangements for parking were being made, which it set out at length. These arrangements included the requirement that fees be paid for parking at varying rates, and indicated that parking permits would not constitute any guarantee that parking space would be available on any given day. They included the following:

“All parking permits will be reviewed before and after each session of the General Assembly and withdrawn, extended or issued according to whether the holder’s functions continue to justify parking privileges.”

The system, and with it the periodical reviews, was to be administered by the Garage Administration, appointed by the Secretary-General.

IV. The Administrative Instruction of 1968 was superseded by another, ST/AI/288 dated 16 August 1982, which set up a Garage Review Board to administer the system. The Board was to:

“formulate recommendations and advise on and review the issuance of parking permits under a set of new criteria approved by the Secretary-General as outlined in this instruction.”

The criteria were listed in paragraph 9 of the Instruction “in order of importance”, as follows:

“(a) Operational needs of the Organization;

“(b) Availability and convenience of public transport and time and distance of daily commuting to Headquarters. *If the applicant has two or more residences, the criteria under this paragraph will be applied to the residence closest to the Secretariat building*; (emphasis added).

“(c) Date of initial application. . . . *Except for . . . medical permits, no permits will be issued to applicants with residence in Manhattan south of 168th Street.*” (emphasis added).

V. On 17 May 1984, the Garage Review Board informed the Applicant that, on the basis of paragraph 9 of ST/AI/288, quoted above, her parking permit would be withdrawn within the following year, on the ground that her residence was in Manhattan south of 168th Street.

VI The Applicant contends that her principal residence was in Hyde Park, New York, 98 miles from Manhattan, and that the apartment in Manhattan on East 52nd Street, was only a secondary residence. The Tribunal is satisfied that the Garage Review Board faithfully gave effect to paragraph 9 of ST/AI/288 by basing its decision on the location of the Applicant’s residence closest to the Secretariat building. The Instruction does not differentiate between principal and secondary residences.

VII. In addition, the Applicant asserts that this decision, resting as it does on the revised Administrative Instruction of 1982, violated her acquired rights. In the Tribunal’s view, neither the terms of her Letter of Appointment nor the Administrative Instruction ST/AI/178 of 12 August 1968 gave rise to any legal right to a parking permit. The Letter of Appointment and the applicable Staff Regulations and Rules, including all subsequent amendments, were silent on the

matter of parking facilities. The Administrative Instruction was couched in language which, far from giving staff members the right to a parking permit, specifically stated that "all parking permits will be reviewed before and after each session of the General Assembly and withdrawn, extended or issued according to whether the holder's functions continue to justify parking privileges." This is not language appropriate to a legal right to a permit, but indicates that twice a year the permit will be reviewed and possibly withdrawn according to whether the Garage Administration considers that the holder's functions continue to justify parking privileges. It is significant that the Instruction refers to "parking privileges", not to "parking rights", and indeed a right which can be withdrawn at will is not a right at all, and not a term of the Applicant's contract of employment.

VIII. The Tribunal is accordingly satisfied that neither the Applicant's contract of employment nor the Administrative Instruction gave rise to a right to a parking permit. However, the Applicant rests her case on an additional argument: she made use of a parking space in the United Nations garage for twelve years and thereby acquired a right to it, as what she calls "a right of property". The use of parking space, in the absence of a dominant tenement, is not an easement or servitude to be acquired by a long user, the more so because the Applicant was, from August 1968 onwards, under notice that her parking permit would be withdrawn unless the Garage Administration considered it was justified by the Applicant's functions. The very name "parking permit" indicates that the Applicant was not using the parking space as of right, but only by permission, which is not consistent with the acquisition of a prescriptive right.

IX. The Tribunal, having concluded that the Applicant at no time had a right to park, as distinct from permission to do so, finds that the question of acquired rights does not arise.

X. The Applicant also asserts that her parking permit (which she refers to as an "entitlement") was withdrawn in an arbitrary and discriminatory manner. The Tribunal finds that the Secretary-General, in the exercise of his administrative discretion, was entitled to treat Under-Secretaries-General and Assistant Secretaries-General more favourably than officials of lower rank, or residents of Brooklyn, Queens or New Jersey differently from residents of Manhattan below 168th Street as far as concerned the need for parking space. Moreover the Tribunal finds no evidence that the Administrative Instruction was applied in an arbitrary or discriminatory manner.

XI. The Applicant's final contention is that in resting its decision on her having a place of residence in Manhattan, the Administration violated her right of privacy. In fact, since 1975 the Applicant had continuously given her husband's address as being on East 52nd Street in Manhattan. In the Tribunal's opinion, if a staff member asks for permission to park in the Headquarters garage, the staff member must expect the Administration to seek information as to the address or addresses at which he or she resides, so that the necessity for the staff member to use and park a car may be assessed.

XII. For the foregoing reasons, the Applicant's pleas are rejected.

(Signatures)

Arnold KEAN

Vice-President, presiding

Endre USTOR

Member

Geneva, 3 June 1986

Luis de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Executive Secretary