

Judgement No. 368*(Original: English)***Case No. 357:
Roy****Against: The Secretary-General
of the United Nations**

Request by a former staff member of the United Nations for the rescission of the decision not to renew his fixed-term appointment and for reinstatement, as well as for compensation.—Request for preliminary measures: production of various documents and of information.

Conclusion of the Joint Appeals Board that the reasons for the non-renewal of the Applicant's fixed-term appointment were justified.

Request for preliminary measures.—Consideration of the various sets of measures requested.—Finding that the documents requested are not necessary for deciding the case.—Unusual nature of the requests for information.—Requests rejected.

Applicant's request that members of the Office of Legal Affairs should not represent the Respondent.—Request rejected.

Question of the legality of the decision of non-renewal.—Staff rules 104.1 and 104.12 (b).—The Tribunal's jurisprudence that the decision to renew a fixed-term appointment is within the discretion of the Secretary-General and does not give rise to any rights of the staff member, in the absence of countervailing circumstances (Judgement No. 199: Fracyon).—Finding of the Joint Appeals Board that the Applicant had no legitimate expectancy of renewal.—Applicant's objections to the report and recommendations of the Board.—The Tribunal holds that the Applicant is in part responsible for the delays before the Board.—Unusual style and tone of the Applicant's submissions.—Irrelevance to the present case of Judgements No. 142 (Bhattacharyya), No. 305 (Jabbour) and No. 192 (Levcik) invoked by the Applicant.—The Tribunal's jurisprudence that neither exceptional competence nor favourable recommendations create an entitlement to a particular type of appointment (Judgement No. 205: El-Naggat).—Applicant's contention that the handling by the Office of Legal Affairs of the task which was entrusted to him was not adequate.—The Tribunal holds that it has no competence to pronounce on the manner in which the Administration organizes its functions.—The Tribunal regrets that the Applicant's case, while already under consideration by the Joint Appeals Board, was also dealt with by the Panel to Investigate Allegations of Discriminatory Treatment, which could lead to duplication and conflicting decisions.—Finding that by re-employing the Applicant within six months after his separation the Respondent acted in a way which should have satisfied the Applicant.—Finding that the Applicant's claims concerning retroactive salary are out of time.—Conclusion that all the Applicant's claims for compensation are unfounded.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Endre Ustor; Mr. Ahmed Osman;

Whereas at the request of Mark Roy, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 9 May 1985, 31 May 1985, 30 June 1985, and 10 July 1985, the time-limit for the filing of an application to the Tribunal;

Whereas on 10 July 1985, the Applicant filed an application in which he requested the Tribunal:

"II. PLEAS

"7. The Applicant respectfully requests the Administrative Tribunal:

"Preliminary Measures

"1. To order the Secretary-General

"(a) To furnish to the Applicant with the pertinent documents from the Office of Legal Affairs (OLA)/Budget Division, as requested in his memoranda dated 23 March 1984 and 18 June 1984 addressed to Ms. Victoria Aranda, Alternate Secretary of the Joint Appeals Board (JAB), which documents JAB had failed to obtain and furnish him, pursuant to Staff Rule 111.2 (1).

"(b) To furnish to the Applicant with the pertinent documents from OLA/Budget Division, as requested in his separate memorandum dated 18 June 1984 addressed to Ms. Victoria Aranda, Alternate Secretary of JAB, which documents JAB had failed to obtain and furnish him, pursuant to Staff Rule 111.2 (1).

"(c) To furnish to the Applicant with the written answers, with relevant supporting documents, from the Respondent's witness Mr. Paul C. Szasz, then Principal Officer in the Office of the Legal Counsel, to 25 questions duly submitted to him, through the JAB, by the Applicant's Counsel, vide his memoranda dated 26 and 27 June 1984 addressed to Ms. Victoria Aranda, Alternate Secretary of the JAB, on the order of the JAB, pursuant to the definitive decision taken by the JAB Panel at its second oral hearing held on 6 June 1984, which written answers, with relevant supporting documents, JAB had failed to obtain and furnish him, pursuant to Staff Rule 111.2 (1).

"(d) To furnish to the Applicant with the pertinent information and details, as requested in his memoranda dated 1 February 1985 and 16 April 1985 addressed to Ms. Victoria Aranda, Alternate Secretary of the JAB, which request she had failed to comply with.

"(e) To furnish to the Applicant with the pertinent information, as requested in his memoranda dated 23 January 1985 and 16 April 1985 addressed to Mr. Elias M. Cacouris, Chairman of the JAB Panel, which request he had failed to comply with.

"Substantive Measures

"2. To *find and rule* that the administrative decision taken by OLA, on 22 December 1980, not to renew the Applicant's fixed-term appointment as Repertory Co-ordinator in OLA beyond 31 March 1981, primarily on the basis that he was not a lawyer, was contrary to the provisions of Article 101 of the United Nations Charter, Staff Regulation 4.2 and of Articles 2 and 7 of the Universal Declaration of Human Rights, as well as to the jurisprudence of the Administrative Tribunal.

"3. To *find and rule* that the Respondent failed to maintain the administrative decision taken, on 24 March 1981, by the Assistant Secretary-General for Personnel Services on behalf of the Secretary-General on the basis of the administrative review, pursuant to the then Staff Rule 111.3 (a), that the Applicant's fixed-term appointment as

Repertory Co-ordinator in OLA should be extended beyond 31 March 1981.

"4. To *find and rule* that the Respondent failed to overrule the administrative decision taken, on 25 March 1981, by OLA, in *defiance* of the administrative decision referred to in item 3 above, not to extend the Applicant's fixed-term appointment as Repertory Co-ordinator in OLA beyond 31 March 1981.

"5. To *find and rule* that the JAB failed to deal with the Applicant's appeal with "maximum dispatch", pursuant to Staff Rule 111.2 (m), and thereby wilfully caused unreasonable delays in the JAB procedures for almost 4 years, from 13 March 1981 to 10 December 1984, constituting a "denial of justice" in his appeal to the JAB.

"6. To *find and rule* that the JAB (a) failed to make a fair, independent and impartial review of all the pertinent facts of the Applicant's appeal to the JAB, pursuant to Staff Rule 111.2 (m); (b) denied him due process of law, fair play and impartiality in the administration of justice through the JAB procedures; (c) as a consequence, evidently committed gross errors of facts and law in its findings, conclusions and recommendations which are obviously tainted with prejudice and discrimination against him, being a non-lawyer; and (d) thereby wilfully caused flagrant "miscarriage of justice" in his appeal to the JAB.

"7. To *find and rule* that the Respondent erred in taking the decision on 9 January 1985 to maintain the contested administrative decision of OLA, entirely on the basis of the JAB Panel's report, evidently containing gross errors of facts and law in its findings, conclusions and recommendations which are obviously tainted with prejudice and discrimination against the Applicant, being a non-lawyer.

"8. To *find and rule* that the Respondent discriminated against the Applicant with respect to his grade and salary at the time of his first appointment in OLA on 13 June 1978, contrary to the recruitment procedures as laid down in the OPS [Office of Personnel Services] documents: *Determination of Grade and Salary* (paragraph 9 (c) (ii)) of 10 December 1974 and *General Grade Level Description* of 13 February 1980.

"9. To *order* the Secretary-General

"(a) To rescind his decision of 9 January 1985 to maintain the contested administrative decision of OLA, as well as the administrative decision taken, on 22 December 1980, by OLA not to renew the Applicant's fixed-term appointment as Repertory Co-ordinator in OLA beyond 31 March 1981, primarily on the basis that he was not a lawyer.

"(b) To maintain the administrative decision taken, on 24 March 1981, by the Assistant Secretary-General for Personnel Services on behalf of the Secretary-General, pursuant to the then Staff Rule 111.3 (a), that the Applicant's fixed-term appointment as Repertory Co-ordinator in OLA should be extended beyond 31 March 1981.

"(c) To reinstate the Applicant's seniority at the P-4 level, with retroactive [*sic*] [effect] from 13 June 1978 (date of first appointment in OLA) in accordance with the recommendation of the JAB Panel, as contained in paragraph 227 of its report, namely:

“However, noting that in the prevailing circumstances the appellant had little choice but to accept a post at the P-3 level after being a P-4 for several years, the Panel recommends that the Secretary-General look into the possibility of restoring the appellant’s seniority as a matter of appreciation and esteem.”

“(d) To reinstate the Applicant as Repertory Co-ordinator in OLA, with retroactive [*sic*] [effect] from 1 April 1981, to the established Repertory Post No. UNA-26195-E-P-5-001, or in lieu thereof, to a suitable post in OLA pursuant to:

“(1) the solemn assurances given by the Director of the Office of the Legal Counsel [Director and Deputy to the Under-Secretary-General, OLA] to the Appointment and Promotion Committee, at its Meeting No. 1106 held on 22 October 1980, that any vacant post in OLA would be utilized for the Applicant’s continuing services as Repertory Co-ordinator in OLA,

“(2) the recommendation made, on the basis of the aforesaid assurances, by the Appointment and Promotion Board on 22 October 1980 that the Applicant’s appointment should be regularized by reassigning the necessary post in OLA, particularly in view of the fact that the General Assembly did establish a P-5 Repertory post in OLA for the Repertory co-ordination functions;

“(3) the administrative decision taken on 24 March 1981 by the Assistant Secretary-General for Personnel Services on behalf of the Secretary-General, pursuant to the then Staff Rule 111.3 (a), that the Applicant’s fixed-term appointment as Repertory Co-ordinator in OLA should be extended beyond 31 March 1981; and

“(4) the recommendation made by the Special Committee on the Charter, at its 1981 Spring Session that “in view of the importance of timely issuance of the *Repertory*, it was necessary to retain the post of the Co-ordinator of the *Repertory* and that that should be done within the existing number of posts available to the Office of Legal Affairs”.

“(e) To refix the Applicant’s salary (which was inequitably and discriminatorily fixed at *Step I* of P-4 level at the time of his first appointment in OLA on 13 June 1978) at *Step VI* of P-4 level, with retroactive [*sic*] [effect] from 13 June 1978, in accordance with the recruitment procedures as laid down in the OPS [Office of Personnel Services] documents: *Determination of Grade and Salary* (paragraph 9 (c) (ii)) of 10 December 1974 and *General Grade Level Description* of 13 February 1980.

“(f) To pay the Applicant arrears of amounts representing the difference between the adjusted salary and allowances at *Step VI* of P-4 level and the actual salary and allowances received at *Step I* of P-4 level, with retroactive [*sic*] [effect] from 13 June 1978.

“(g) To pay the Applicant adjusted salary and allowances for six months from 1 April to 30 September 1981, during which time he was forced to remain unemployed as a direct consequence of OLA’s administrative decision not to renew his fixed-term appointment as Repertory Co-ordinator in OLA beyond 31 March 1981, but nevertheless, *without having any contract but with the consent of OLA, the*

Applicant continued to perform his Repertory co-ordination functions from 1 April to 8 May 1981 in order to complete all work on Volume II of Supplement 4 to the Repertory and thereby fulfilled his obligations to the Repertory co-ordination functions in the best interests of the high priority Repertory programme.

“(h) To pay appropriate contributions to the United Nations Joint Pension Fund, on account of the Applicant and of the United Nations, based on the adjusted salary and allowances, with retroactive [*sic*] [effect] from 13 June 1978, including on the adjusted salary and allowances for six months covering the unemployed period from 1 April to 30 September 1981.

“(i) To pay the Applicant adequate compensation for the accumulated material and moral injuries continuously suffered by him during the last seven years as a direct consequence of a series of prejudicial, discriminatory, arbitrary and illegal actions wilfully taken by OLA against him, primarily on the basis that he was not a lawyer.

“(j) To pay the Applicant adequate compensation for material and moral injuries suffered by him as a direct consequence of the unreasonable delays in the JAB procedures for almost four years, from 13 March 1981 to 10 December 1984, constituting a “denial of justice”.

“(k) To pay the Applicant adequate compensation for material and moral injuries suffered by him as direct consequences of the gross irregularities in the JAB procedures, involving wilful denial of due process of law, fair play and impartiality in the administration of justice, which evidently resulted in the “miscarriage of justice” in his appeal to the JAB as a direct consequence of the gross errors of facts and law in the JAB Panel’s findings, conclusions and recommendations, which are obviously tainted with prejudice and discrimination against him, being a non-lawyer.

“10. To *hold* oral proceedings, particularly in view of the complex factual and legal issues involved in the case and of the numerous documents submitted to the Tribunal in support of the present application.”

Whereas the Respondent filed his answer on 11 October 1985;

Whereas the Applicant filed written observations on 5 March 1986;

Whereas on 13 March 1986 and 27 March 1986 the Applicant requested the President of the Tribunal to rule on his request for “preliminary measures” as set forth in paragraph 1 of his pleas;

Whereas on 7 April 1986 the Acting President of the Tribunal informed the Applicant that the Tribunal would rule on his request when it met in Geneva to consider the case and that no oral proceedings would be held in the case;

Whereas on 24 April 1986 the Applicant submitted additional documents;

Whereas on 29 April 1986 the Tribunal ruled that the Applicant’s requests for preliminary measures would be dealt with by the Tribunal in the course of its deliberations and judgement;

Whereas at the request of the Tribunal, on 29 May 1986 the Respondent replied to questions put by the Tribunal;

Whereas on 3 June 1986 and 4 June 1986 the Applicant commented on the Respondent's reply;

Whereas the facts in the case are as follows:

Mark A. Roy initially entered the service of the United Nations on 27 June 1960 as an Associate Economic Affairs Officer at the P-2 level and was offered a series of short-term appointments until 31 May 1961, when he separated from the service of the United Nations. He re-entered the service of the United Nations on 23 June 1976 as an Economic and Social Affairs Officer at the Department of Economic and Social Affairs and was offered a series of short-term appointments until 31 December 1976. During the periods running from 1 March to 31 October 1977, and 3 January to 31 May 1978, he was employed as a consultant by the Department of Political Affairs, Trusteeship and Decolonization.

The Applicant was subsequently recruited by the United Nations on 13 June 1978. At the time, the Office of Legal Affairs [OLA] was involved in the updating of the *Repertory of Practice of the United Nations Organs* and required "additional professional assistance" in order to discharge this task. Even though the Applicant was not a lawyer, the Office of Legal Affairs considered that the Applicant's "considerable experience with the Repertory which he gained as a consultant for PATD [Political Affairs Trusteeship and Decolonization Department] qualifie[d] him well for this particular assignment". OLA made it clear to the Office of Personnel Services that it did not want to offer the Applicant a longer appointment because OLA might "need the post for a lawyer" and therefore did not want to commit the post for a more extensive period of time. Accordingly, the Applicant was initially offered a three-month short-term appointment at the P-4 level, which was extended for further short-term periods and was converted to a fixed-term appointment on 1 January 1979. The appointment was successively extended for further fixed-term periods until 31 January 1980—with a break in service from 1 to 25 June 1979—against different posts in OLA that were temporarily vacant.

On 17 January 1980 the Administrative Officer, OLA requested the Office of Personnel Services [OPS] to approve an extension of the Applicant's fixed-term appointment for three additional months until 30 April 1980. In a reply dated 6 February 1980, addressed to the Legal Counsel, the Chief, Recruitment Service, OPS stated:

"[The Applicant] has been with your office since 13 June 1978, with a break in service from 1 to 25 June 1979, which was barely sufficient to avoid violating the rule against continuous appointments of one year or more without submission to the appointment bodies. This kind of administration, I am sure you will agree, is undesirable".

In addition, the Director, Division of Recruitment, OPS noted that since the work that the Applicant had performed, and continued to perform, on the *Repertory of Practice of the UN Organs* was necessary, and there were no other staff members available to perform it, "a post should be provided for this function, since it is clearly needed for longer than one year". Pending an "expedited solution of the problem", the Applicant's appointment would be extended "only on a month-to-month basis". He requested that a post be established and that the Applicant's recruitment—or the recruitment of any other candidate—"be initiated and completed as soon as possible".

The Applicant's appointment continued to be extended for further fixed-term periods, charged against temporarily vacant posts in OLA of a suitable level.

On 2 April 1980, the Director and Deputy to the Under-Secretary-General, OLA in his capacity of Chairman of the Inter-Departmental Committee on Charter Repertory, sought the Secretary-General's Chef de Cabinet's assistance for "the establishment—not necessarily on a permanent basis—of the post of Repertory Co-ordinator, which could but need not be attached to OLA". He stated that OLA had not been able to regularize the Applicant's situation partly because the Applicant was "not qualified for the post of a legal officer" and because the work of the Repertory Co-ordinator did not require legal qualifications "but rather administrative skills and an extensive knowledge of the history and practices of the Organization".

On 28 April 1980, the Officer-in-charge of the Budget Division, OFS [Office of Financial Services] agreed to provide "temporary assistance resources for one year" to ensure the completion of the Repertory's edition which the Applicant was preparing and proposed that the "[Applicant's] situation be regularized by extending him a one year contract under temporary assistance".

The Applicant's appointment was extended for a further fixed-term period of one month. On 13 May 1980 the Administrative Officer, OLA asked the Director, Division of Recruitment, OPS to extend the Applicant's fixed-term appointment for a further period of four months from 1 June 1980 to 30 September 1980 and to that effect, proposed to block a post which had become vacant as a result of an internal promotion, to enable the Applicant "to complete the task of preparing Volume II of Supplement 4 for submission to the Publishing Division".

The Office of Personnel Services decided to present the Applicant's case for the first time to the Appointment and Promotion Committee, APC. On 29 July 1980 the Officer-in-charge, Division of Recruitment, OPS informed the Administrative Officer, OLA that the Committee had deferred a discussion on the Applicant's case, "as it felt that on the basis of the explanation given by the Department and the probability of existence of appropriate opportunities, the appointment of the [Applicant] could be recommended for one year rather than four months as initially proposed". In a reply dated 20 August 1980, the Administrative Officer, OLA stated that although OLA appreciated the APC's views on the Applicant's "future" status, the recommendation of the office "must necessarily be determined by the availability of a post at the appropriate level". In view of the assignment of the Principal Officer, Office of the Legal Counsel to the International Atomic Energy Agency for five months until 31 December 1980, it was then possible to extend the Applicant's appointment through the end of 1980, "against the replacement post provided by the Budget Division for a corresponding period". She added: "unfortunately, the Office of Legal Affairs is not in a position to accommodate an appointment of a longer duration".

On 22 October 1980, at its meeting No. 1106, the Appointment and Promotion Board, APB discussed the Applicant's case and approved his appointment "as Co-ordinator (UN Charter Repertory) at the First Officer (P-4) level on a fixed-term basis through December 1980". In a memorandum dated 24 October 1980 addressed to the Recruitment Officer, Professional Recruitment Service, OPS, the Secretary APB and APC stated:

"The Board further recommended that Mr. Roy's appointment be regularized and that the Office of Legal Affairs, in consultation with the Office of Personnel Services, favourably consider re-assigning the necessary post to achieve that objective, particularly in view of the fact that the

General Assembly did authorize the establishment of a P-5 post in 1969 for the purpose of co-ordinating work related to the publication of the Repertory."

The Applicant retroactively signed a letter of appointment for a fixed-term period of seven months on 19 November 1980.

During the debate in the Sixth Committee of the General Assembly, certain delegations proposed a draft resolution in which the Secretary-General was requested "to give high priority to the preparation and publication of the supplements to the Repertory". Accordingly, on 17 November 1980 the Director and Deputy to the Under-Secretary-General, OLA requested the Director, Budget Division, OFS for an additional post to update the publication. In a reply dated 18 November 1980, the Director of the Budget Division, OFS informed the Director and Deputy to the Legal Counsel that he was prepared to include in the budget for 1981 "the provision for general temporary assistance at the P-4 level".

The Advisory Committee on Administrative and Budgetary Questions, ACABQ unanimously rejected OLA's request for temporary assistance and on the ACABQ's recommendation, the Fifth Committee rejected OLA's request for a temporary post for preparation of the Repertory, at the P-4 level for 1981.

In a memorandum dated 17 December 1980 the Applicant asked the Legal Counsel to arrange for an extension of his appointment beyond 31 December 1980 against one of the vacant posts in the Office of Legal Affairs. He expressed concern and surprise because he asserted that he had just been informed by the Director and Deputy to the Legal Counsel that his services were no longer required beyond 31 December 1980.

On 17 December 1980 the Deputy Chief, Professional Recruitment Services, OPS wrote to the Legal Counsel to inquire whether there was an available post in the Office of Legal Affairs against which the Applicant's appointment could be extended. He noted that when the Director and Deputy to the Legal Counsel represented the Office of Legal Affairs at the Meeting No. 1106 of the Appointment and Promotion Committee, he had assured the Committee that the work being performed by the Applicant "was important and of a continuing nature and that any other vacancy in the Office of Legal Affairs could be utilised to finance the continuation of his employment".

On 22 December 1980 the Director and Deputy to the Under-Secretary-General, OLA wrote to the Assistant Secretary-General, OFS to inform him that he had been notified by the Chef de Cabinet in the Executive Office of the Secretary-General that a P-4 post would be made available to the Office of Legal Affairs for a period of four months, starting 1 January 1981 in order to extend the Applicant's appointment. He thanked him for making the post available to OLA and stated in addition:

"In thanking you for making the post available to [OLA] for Mr. Roy's benefit we would like to establish clearly now in order to avoid any misunderstanding later that Mr. Roy's contract will be extended for the duration of the period of availability of the post referred to above [four months] after which the Office of Legal Affairs will have no further assignment for him."

The Applicant's appointment was finally extended for a further fixed-term period of three months against a post made available by the Assistant Secretary-General, OFS. In letters dated 22 January 1981 and a 3 February 1981 the

Applicant requested the Secretary-General to review the administrative decision by OLA, not to extend his fixed-term appointment beyond 31 March 1981.

On March 1981 the Applicant lodged an appeal with the Joint Appeals Board.

In a memorandum dated 19 March 1981, the Officer-in-charge of Review of Administrative Decisions, Appeals and Disciplinary Cases, OPS informed the Director, Division of Personnel Administration, OPS of the Applicant's employment situation and recommended that an immediate three-month extension of the Applicant's appointment be granted pending a joint effort of all the organizational units concerned to settle the case.

On 24 March 1981 the Assistant Secretary-General for Personnel Services wrote a memorandum to the Legal Counsel that read in part as follows:

"Taking into account a detailed review of the history of Mr. Roy's appointment, I have come to the conclusion that Mr. Roy's appointment should be extended for three months as a matter of urgency. At the same time, the long-term issue relating to the functions of Co-ordinator of the *Repertory of the Practice of United Nations Organs*, should be jointly considered, on an urgent basis, by the Office of Legal Affairs, the Office of Financial Services, the Office of Personnel Services, and the Executive Office of the Secretary-General, so that a final decision can be made before the expiration of Mr. Roy's appointment which is due to expire on 31 March 1981".

In a reply dated 25 March 1981 the Legal Counsel confirmed that the Office of Legal Affairs had "no further assignment" for the Applicant "and no suitable post" for him. In addition, the Applicant's case had been "thoroughly reviewed" at a meeting held that same morning between the representatives of OPS, OFS and OLA.

On 30 March 1981 the Applicant asked the Co-ordinator, Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, "to investigate into the matter and assist [him] in securing the redress of [his] legitimate grievances", as set forth in his letter of 3 February 1981 addressed to the Secretary-General.

The Applicant's appointment expired on 31 March 1981 and was not extended despite a further request by the Applicant.

On 1 October 1981 the Applicant re-entered the service of the United Nations. He was offered a two year fixed-term appointment at the P-3 Step XI level as an Economic Affairs Officer in the Fiscal and Financial Branch of DIESA [Department of International Economic and Social Affairs].

In a memorandum dated 16 June 1982 addressed to the Assistant Secretary-General for Personnel Services, the Co-ordinator of the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat informed her that they had reviewed the Applicant's case and had concluded:

"Although the Legal Office should be allowed to select the best qualified professionals for its posts, it cannot categorically exclude staff members who have demonstrated that they can perform the tasks called for in the job description (and possess an equivalent degree). Mr. Roy had received outstanding periodic reports . . . As the General Assembly has mandated that the preparation of the repertory be carried out by the Office

of Legal Affairs, the Legal Office should assign at least one post full time to the repertory tasks . . .”

Consequently, “the most appropriate remedy would be to arrange for [the Applicant’s] re-instatement in the Legal Office to the Repertory post”. If this were “impossible to arrange”, the Panel recommended that the Applicant “be re-instated as a P-4 (his recruitment level) to a suitable post within the Secretariat”.

In a reply dated 27 July 1982, the Assistant Secretary-General for Personnel Services stated that although it was “not possible to re-absorb [the Applicant] into the Legal Office” she would refer the matter to the Career Development and Placement Unit, OPS “with a request that every effort be made to reassign [the Applicant] to a suitable P-4 post within the Secretariat and in line with [the Panel’s] recommendation”.

In a memorandum dated 23 August 1982 addressed to the Assistant Secretary-General, OPS the Applicant requested “the firm assurances of the Administration” that he would be given “the first preference” to occupy post UNA-26195-E-P-5-001 in the General Legal Division, OLA, when the Senior Legal Officer who encumbered it retired at the end of January 1983. This would be in accordance with the recommendations of the Panel on Discrimination and would be the “only way” in which he could be “given due consideration for [his] outstanding performance of the substantive and administrative Repertory Co-ordination functions in OLA for almost three years from 13 June 1978 to 31 March 1981”.

On 1 February 1983 the Applicant addressed a letter to the Assistant Secretary-General for Personnel Services. He requested to be reinstated in OLA to the established “non-legal P-5 Repertory post with effect from today, 1 February 1983, in the cause of equity and justice”.

On 24 February 1983 the Officer-in-charge, Career Development and Placement Unit, CDPU, OPS, submitted the Applicant’s candidacy for the P-5 post in OLA that had recently become vacant. In a reply dated 24 March 1983 the Administrative Officer, OLA stated that the Applicant’s candidacy could not be considered because “the functions of all the posts in the General Legal Division are in the legal field” and the “minimum requirements of any legal post in OLA are a law degree and at least two years practical experience in a law office or a government agency as a lawyer”.

On 1 October 1983 the Applicant’s appointment was extended for a further fixed-term period of two years and three months, at the P-3 Step XIII level.

On 1 December 1983 the Applicant requested the Chairman of the Appointment and Promotion Board to ask the Board to consider his candidacy for post No. UNA 26195-E-P-5-001 in OLA “in full implementation of the unanimous *first* recommendation of the Discrimination Panel to reinstate [him] in the Repertory post in OLA . . .”. In a reply dated 4 January 1984, the Secretary of the APB and APC stated that the Board would consider his case only if and when the post was advertised for outside recruitment.

In a memorandum dated 29 February 1984 addressed to the Administrative Officer, OLA the Applicant submitted his candidacy for the P-5 post UNA-26195-E-P-5-001. On 29 February 1984 he addressed another memorandum to the Chairman and to all members of the APB requesting the APB to consider his candidacy for that post.

On 7 March 1984, the Administrative Officer, OLA informed him that the post for which he was applying was encumbered by a Legal Officer at the P-4

level who would be recommended for promotion to the P-5 level, and that the Repertory functions in the Office of Legal Affairs had been redeployed since 1982 from the General Legal Division to the Office of the Legal Counsel. Accordingly it was "no longer possible to call any post in the General Legal Division a *Repertory* post" and there were "no vacancies at the P-5 level in the Office of the Legal Counsel".

In a memorandum dated 8 March 1984, the Applicant requested the Secretary-General to "take immediate measures in order to implement the unanimous recommendation of the Discrimination Panel" to reinstate him in the "Repertory post" of the Office of Legal Affairs. On 23 March 1984 he wrote a memorandum to the Legal Counsel and requested him to reverse the "*bad decisions* wilfully taken by the former Legal Counsel of the United Nations, as head of OLA, and by his deputies contrary to the laws of the United Nations . . ." and consider "with magnanimity" his candidacy for the vacant P-5 Repertory post in OLA in order to implement the recommendations of the Discrimination Panel.

The Applicant addressed further memoranda to the Secretary-General, to the Chairman of the APB and to all members of the APB, to the same effect, and on 8 August 1984 and 24 August 1984 instituted a recourse procedure to request that his name be included in the Senior Officer P-5 Promotion Register of 9 July 1984. He sent a copy of the letter of recourse to all members and alternate members of the Appointment and Promotion Board.

The Joint Appeals Board adopted its report on 10 December 1984. Its unanimous conclusions and recommendations read as follows.

"Conclusions and Recommendations"

"220. Having considered the circumstances surrounding the appellant's appointment and service with the Office of Legal Affairs, the Panel finds:

"(a) That the appellant had been appointed to assist bringing up to date the publication of the Repertory and therefore his function could not be considered of a continuous nature.

"(b) That there was no evidence of any unqualified commitment having been undertaken by the Office of Legal Affairs to maintain the appellant's services on a long-term basis, and

"(c) That OLA's attempt to obtain a new post for the Co-ordinator of the Repertory could be considered as nothing more than a conditional commitment to maintain the appellant on a long-term basis which no longer obliged it after this request was rejected.

"221. Accordingly the Panel concludes that there were no grounds to support the existence of a legal expectancy of long-term employment and therefore the respondent had no legal obligation to extend the appellant's fixed-term appointment beyond its date of expiration on 31 March 1981.

"222. Moreover, having carefully considered the reasons given by the Legal Office for the non-renewal of the appellant's appointment, the Panel finds:

"(a) that the redistribution of the Repertory functions and the use of the P-5 post of the Repertory Officer for legal work were decisions falling within OLA's managerial authority which decisions had been explained by it as an attempt to put limited resources to an optimum use,

“(b) that the fact that these decisions were adopted long before the appellant’s appointment to the Legal Office, dissipate any suggestion of personal prejudice or wrong motivation against him,

“(c) that the decision not to use the appellant’s service for legal assignments on grounds that he was not a lawyer was consistent with OLA’s recruitment policies and practice,

“(d) that the appellant’s contention that he had performed substantive legal Repertory duties could not be upheld on the basis of undisputed facts or of the determination made by the Rebuttal Panel who had considered this issue as part of the appellant’s rebuttal of his PER [Performance Evaluation Report] for the period June 1979–March 1981.

“223. The Panel therefore concludes that the reasons for the non-renewal of the appellant’s fixed-term appointment were justified on the basis of existing policies and in the proper use of OLA’s managerial powers.

“224. However, the Panel finds that the *ad hoc* arrangements carried out in connection with the appellant’s assignment for which there were no precedents in the Legal Office, may have led to the discrepancies between the appellant and his superiors as to the former’s functions and role and contributed to raising his expectations for long-term employment.

“225. In the light of this situation and on the basis also of the appellant’s outstanding services and dedication during his appointment to OLA, the Panel concludes that the respondent had a moral obligation in fairness and natural justice to make a *bona fide* attempt to maintain the appellant in its service.

“226. Having accepted OLA’s explanations that obtaining a new post for the Co-ordinator of the Repertory was the only manner in which it could accommodate the appellant, the Panel concludes that by providing the appellant alternative employment within a reasonable time the respondent has fulfilled its duty of fairness and moral obligation towards the appellant.

“227. However, noting that in the prevailing circumstances the appellant had little choice but to accept a post at the P-3 level after being a P-4 for several years, the Panel recommends that the Secretary-General look into the possibility of restoring the appellant’s seniority as a matter of appreciation and esteem.”

On 11 December 1984 the Applicant addressed a further memorandum to the Chairman, Appointment and Promotion Board in which he expanded on the arguments set forth in his prior communications to the APB and in which he asserted that “the established P-5 Repertory post (UNA-26195-E-P-5-001) [had] again been misused for promoting another Legal Officer in the General Legal Division . . . who [had] never been, in fact, responsible for any of the substantive or administrative Repertory co-ordination functions”.

On 9 January 1985 the Assistant Secretary-General for Personnel Services informed the Applicant that “the Secretary-General has taken note of the [Joint Appeals] Board’s report and, in the light of the Board’s report, has decided to maintain the contested decision”.

On 25 January 1985 the Chairman of the APB replied to the Applicant’s letter of 11 December 1984 and stated that “with particular reference to paragraph one thereof, I should like to inform you that the Board decided that

this did not fall within its terms of reference in the context of the recourse procedure”.

On 10 July 1985 the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Joint Appeals Board did not make a fair, independent and impartial review of all the relevant facts of the case. This led to the erroneous conclusions and recommendations contained in the Board's Report. The unreasonable delays during the JAB proceedings constituted a denial of justice.

2. The Applicant had a legitimate expectancy of employment beyond 31 March 1981. The Members of the Joint Appeals Board and the Secretary of the Joint Appeals Board, in collusion with certain members of the Office of Legal Affairs were determined to sustain the prejudicial, arbitrary and illegal administrative decision not to extend the Applicant's appointment beyond 31 March 1981.

3. The gross irregularities that took place during the Joint Appeals Board proceedings resulted in a miscarriage of justice because the principles of due process of law, fair play and impartiality in the administration of justice were violated.

4. The Office of Legal Affairs misused a post established by the General Assembly for legal work, contrary to the General Assembly's intent.

5. The decision by the Respondent not to renew the Applicant's fixed-term appointment beyond 31 March 1981 primarily on the basis that he was not a lawyer was contrary to the provisions of Article 101 of the United Nations Charter and Staff Regulation 4.2.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legally cognizable expectancy of continued employment in the Office of Legal Affairs of the United Nations beyond the expiration of his fixed-term appointment on 31 March 1981. The Applicant is therefore not entitled to any redress in respect of his temporary separation from UN service to that date.

2. The Applicant's rights were not violated by the Joint Appeals Board, which conducted a full and fair hearing. Any delays that occurred in the disposal of the appeal were caused by the Applicant's practice of submitting an overwhelming mass of documentation at each stage of the proceedings.

The Tribunal, having deliberated from 28 April to 6 June 1986, now pronounces the following judgement.

I. The Application commences with a request for preliminary measures. These measures would consist in the collection of a number of documents and information on several points.

The Respondent maintains that there is more than enough material already before the Tribunal and the Applicant's requests for still more data would serve no useful purpose. Nevertheless the Tribunal will briefly consider the Applicant's requests for preliminary measures.

II. Five sets of measures are requested by the Applicant as set out under paragraphs 1 (a)-(e) of the pleas (see above). The first and second of these sets repeat the Applicant's demands addressed to the Joint Appeals Board in March and June 1984 for the presentation of various documents.

The JAB declined these demands on the ground that the documents in question were not considered relevant or necessary.

The Tribunal is also unable to find that the said documents would be necessary for deciding the Applicant's case.

III. The third request by the Applicant for preliminary measures is to provide for him written answers to the 25 questions which he addressed to Mr. Paul C. Szasz, then Principal Officer in the Office of the Legal Counsel. These questions were submitted by the Applicant to the JAB in his letters dated 26 and 27 June 1984 at the request of the Board.

The representative of the Secretary-General, in a letter of 23 July 1984, questioned the relevance and necessity of the said questions in the following terms:

"(a) Many would be extremely burdensome to answer, in some cases requiring the review of actions by OLA over a period of decades, by officials who left the Organization years ago;

"(b) Many are entirely irrelevant to the appellant's claims . . . , as they are addressed to how OLA has managed its Repertory functions;

"(c) Most have already been answered in the previous written briefs, or in Mr. Szasz's extensive oral statement and answers."

The Applicant was later informed by the Chairman of the Panel that the Panel saw no need for any additional material.

The Tribunal, having perused the lengthy list of these questions, does not find that they would be decisive for the Applicant's case and holds that the wholesale demand of the Applicant for answers to these questions is unwarranted.

IV. Further, as a fourth request, the Applicant wishes to receive "pertinent information and details, as requested in his memoranda dated 1 February 1985 and 16 April 1985 [i.e. *after* the JAB had presented its report] addressed to Mrs. Victoria Aranda, Alternate Secretary of the JAB, which request she had failed to comply with".

In the first of these memoranda the Applicant asked a long series of questions of which for the sake of brevity only a few typical examples are given as follows:

"a. Did you independently, impartially and carefully consider all the relevant authentic documentary evidence submitted by me in support of my appeal to the JAB against OLA and also bring to the attention of the JAB Panel all such documents in order to facilitate proper and fair consideration of my appeal? If not, please explain why you did not do so.

" . . .

"g. Why did you consider and cause the JAB Panel to decide that the written answers with relevant supporting documents from Mr. Szasz were *not* relevant and *not* needed by the JAB Panel for proper and fair consideration of my appeal? Please explain in detail.

"h. Why did you consider and cause the JAB Panel to decide *not* to provide me and my counsel with opportunities to cross examine Mr. Szasz on the basis of his oral testimony presented before the JAB Panel at the 1st and 2nd hearings, as well as on his expected written answers, with relevant supporting documents, to the 25 questions submitted by my counsel and ordered by the JAB Panel? Please explain in detail.

"i. Why did you consider and cause the JAB Panel to decide *not* to hold complete oral proceedings and *not* to provide an opportunity to my counsel to address the JAB Panel on the salient [*sic*] facts of the case and

the legal issues, as well as on the claims for relief, as requested by him in his memorandum dated 10 February 1984 addressed to you and in his subsequent memorandum dated 27 November 1984 addressed to the Chairperson of the JAB, with a copy to you? Please explain in detail.

"j. Why did you consider and cause the JAB Panel to decide arbitrarily and to discontinue abruptly the oral proceedings on my appeal, in spite of the strong protests made by my counsel, *vide* his memorandum dated 27 November 1984 and by me, *vide* my memorandum dated 30 November 1984, both addressed to the Chairperson of the JAB, with copies to you? Please explain in detail.

". . .

"m. Did you prepare the final JAB report under advice or instruction from the JAB Panel, OPS, OLA, or any other department, office, or official in the Secretariat? If so, please specify.

"n. Did you consider and cause the JAB Panel to submit a *supplementary JAB report* to the Secretary-General on the basis of the new crucial documentary evidence in support of my appeal submitted by me to the JAB, *vide* my memorandum dated 11 December 1984 addressed to the Chairperson of the JAB, with a copy to you? If so, please furnish me with copy of the supplementary report. If not, please explain why you did not cause the JAB Panel to do so.

"o. Will you kindly specify the authentic and indisputable documentary evidence submitted by OLA to the JAB in support of its contentions, *other than the absolute lies as contained in the following OLA documents* that I did not perform the substantive Repertory co-ordination functions during the time I served as Repertory Co-ordinator in OLA from June 1978 to March 1981?

"p. Will you kindly explain in detail, in the cause of the principles of due process of law, fair play and impartiality in the administration of justice in the United Nations Secretariat, the circumstances under which as well as the basis on which you happened to prepare the final JAB report containing such gross errors of facts and law, in spite of the abundant, authentic and indisputable documentary evidence submitted by me to the JAB in support my appeal against the Office of Legal Affairs?"

V. The second of the memoranda does not contain any questions raised by the Applicant. It contains his complaint of not having received any response to his previous questions. Then it continues with various accusations. Here are some typical passages from that memorandum:

". . . Your wilful refusal to respond to my memorandum dated 1 February 1985 only reflects the deplorable legal and moral crises existing in the Joint Appeals Board (JAB) Secretariat as well as in the JAB procedure which obviously resulted in the 'miscarriage of justice' in my appeal to the JAB against the Office of Legal Affairs (OLA) . . .

"You wilfully failed to keep and maintain a complete and accurate record of the proceedings on my appeal . . .

"You appeared to have *ill-advised, misguided* and *misled* the members of the JAB Panel . . .

". . . You wilfully denied me and my counsel due process of law, fair play and impartiality in the administration of justice through the JAB procedures . . .

"You actually and entirely prepared the JAB Report No. 498 dated 10 December 1984 (ironically the Human Rights Day!) on my appeal against OLA *in a most unprofessional manner*, unnecessarily devoting some 20 of 68 pages of the report *just for listing numerous documents submitted by me to the JAB*, apparently designed to *confuse and distort* the substantive issues involved in my appeal, and . . .

"Mr. Scott's [Director and Deputy to the Under-Secretary-General, OLA] wilful *unethical* action on behalf of OLA, which was the virtual respondent in my appeal to the JAB, was in clear violations of the fundamental principles of due process of law, fair play and impartiality in the administration of justice . . .

"You wilfully sustained, by hook or by crook, the prejudicial discriminatory, arbitrary and illegal administrative decision taken by OLA . . .

"You thereby wilfully caused 'miscarriage of justice' in my appeal to the JAB . . .

"In the circumstances, I am now compelled to submit an application to the United Nations Administrative Tribunal against the legally and morally unjustifiable final decision . . . entirely based on the JAB Report, obviously containing gross errors of facts and law and tainted with prejudice, discrimination and OLA's 'Apartheid' against me, being a non-lawyer, all of which, in the opinion of the General Assembly of the United Nations, are gross violations of human rights constituting 'crimes against humanity', for which you and the members of the JAB Panel, individually and collectively, were legally and morally responsible and as a consequence, you and the members of the JAB Panel, individually and collectively, ought to be fully accountable for such actions before the appropriate judicial bodies of the United Nations."

VI. Lastly, as a fifth request, the Applicant asks that as a preliminary measure the Chairman of the JAB Panel be ordered to reply to the Applicant's questions raised in two of his letters written—in a similar vein—also after the JAB had delivered its report in his case.

VII. The Tribunal is astonished that the Applicant could be so uninformed as to expect the Secretary or the Chairman of the JAB Panel to answer his questions concerning the procedure already closed by the JAB. How can the Applicant expect the assistance of the Tribunal in obtaining answers to such questions?

The Applicant's requests for preliminary measures are hereby rejected.

VIII. In a separate letter dated 10 July 1985 addressed to the President of the Tribunal, the Applicant requested that members of the Office of Legal Affairs be prevented from representing the Respondent in the present proceedings. The Tribunal holds that the Respondent has the right to decide who shall represent him, and therefore rejects this request.

IX. The Applicant's principal claim is that he was wrongfully separated from the Office of Legal Affairs on 31 March 1981. On that ground he asks—among many other requests—for reinstatement to a suitable post in that office.

X. There being no possibility of reinstatement at the time of the rendering of this judgement—because of the Applicant's retirement—the Applicant's pleas for adequate compensation have to be examined. The question whether such compensation can be awarded turns on the alleged wrongfulness of the Applicant's separation on 31 March 1981.

XI. It is not in dispute that the Applicant served in the Office of Legal Affairs under a series of fixed-term appointments the last of which expired on 31 March 1981. All the letters of appointment, which the Applicant duly signed, specifically referred to the Staff Regulations and Rules and he was of course bound by them.

Among these rules both Rule 104.1 and 104.12 (b) are relevant to the Applicant's case.

According to the former:

"All contractual entitlements of staff members are strictly limited to those contained expressly or by reference in their letters of appointment."

"According to the latter:

"The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment."

This latter rule was specifically referred to in all of his letters of appointment.

XII. The Tribunal has consistently held that a decision whether or not to renew a fixed-term appointment is within the discretion of the Secretary-General and, in the absence of countervailing circumstances, non-renewal will not give rise to any rights on the part of the staff member (Judgement No. 199, *Fracyon*, para. I).

The question whether in the present case such countervailing circumstances existed was examined with great care and patience by the Joint Appeals Board. It considered particularly the question whether the prevailing circumstances have given the Applicant a legitimate expectancy of renewal of his appointment. The Board came to a negative conclusion. Its conclusion was accepted by the Respondent.

XIII. The Applicant, however, in his application of 103 typewritten pages to which 159 documents are attached, strongly objects to the report and recommendations of the Joint Appeals Board.

According to one of his allegations the Secretary and the Members of the JAB Panel "apparently in collusion with the Office of Legal Affairs individually and collectively, wilfully caused unreasonable delays in the Applicant's appeal to the JAB for about four years from 13 March 1981 to 10 December 1984", constituting thereby "a denial of justice".

XIV. Indeed the procedure before the Joint Appeals Board lasted too long. The Applicant is right when he complains *inter alia* that the Respondent took almost nine months to submit his reply to the appeal. For the delay of the JAB procedure, however, the Applicant had his proper share of responsibility, not only by inundating the Board with papers (submitting to the Board more than 250 documents) but by his own slowness. Thus e.g. when asked on 10 December 1981 to submit his observations on the Respondent's reply he did so—after a series of requests and grants of extension—not earlier than on 20 July 1983. Hence the Applicant himself is not without blame for the slowness of the procedure before the JAB.

XV. It is, however, not only the slowness of the JAB to which the Applicant objects. He also criticizes the Board and its procedure in other respects.

The Board's report is—according to him—"unreasonably lengthy" . . . "(68 pages)" . . . "prepared . . . in a most unprofessional manner", "containing gross errors of facts and law in its findings", "tainted with prejudice and discrimination against the Applicant", "a miscarriage of justice", "a mockery of justice" etc. and further: "The Secretary and the members of the JAB Panel,

apparently in collusion with the Office of Legal Affairs, were determined to sustain, by hook or by crook," the decision not to renew his fixed-term appointment beyond 31 March 1981.

XVI. The Applicant also criticizes the Respondent. According to him, the decision not to renew his appointment was "prejudicial, discriminatory, arbitrary and illegal". It was "contrary to the provisions of Article 101 of the United Nations Charter, Staff Regulation 4.2 and of Articles 2 and 7 of the Universal Declaration of Human Rights". "The Legal Counsel and his deputies . . . consistently violated his human rights constituting 'crimes against humanity'."

XVII. In view of the style of the Applicant's submissions, the Tribunal can understand that part of the Respondent's answer, which reads as follows:

" . . . the substance, style and tone of this Application with its vicious attacks on senior officers in OLA demonstrate why the Applicant could have no reasonable expectancy for a career in OLA. How could someone wish to work in OLA under former and prospective supervisors whom he considers guilty of "crimes against humanity" and of repeatedly uttering "absolute lies"? Even if Applicant had had some sort of legal "expectancy" to continue working as a Repertory Officer, the method he chose for conducting his appeals precluded his re-employment by OLA. Indeed, it is a sad reflection on Applicant's judgement that he expects to work in OLA after his bitter attacks against it."

XVIII. The Applicant, however, besides his attacks on the Joint Appeals Board and the Respondent, puts forward legal arguments which will be examined in the following paragraphs.

XIX. Both in his application and in his written observations the Applicant refers to certain previous judgements of this Tribunal. These, however, do not support his case. So, for example, in the *Bhattacharyya* case (Judgement No. 142) the letter offering employment to the Applicant stated:

"I would also like to add that for staff members who join us there will be opportunities after their first fixed-term contract for regular employment and for more senior posts in the Organization dependent upon their qualifications and performance."

The Tribunal found in that case that "the circumstances of the Applicant's fixed-term appointment and his performance of service created a legal expectancy of continued employment". The Tribunal further decided that "such legal expectancy created a corresponding obligation on the part of the Respondent to provide continuing employment to the Applicant . . .". Thus the basis of the decision in that case was that the Respondent, when offering employment, held out promises of regular employment and more senior posts upon satisfactory performance of duties.

The Tribunal finds that in the present case no such obligation was undertaken by the Respondent for the Applicant's continued employment beyond 31 March 1981.

XX. In Judgement No. 305 (*Jabbour*, para. I) the Tribunal

" . . . has considered that after a staff member has been retained in service by a series of short-term contracts for *many years* (emphasis added) and has rendered satisfactory services to the United Nations he can reasonably expect a measure of accommodation either in the form of extension or

renewal of short-term contracts or by the Respondent trying in good faith and earnestly to find him some alternative employment."

"Many years" in that case, however, meant "about 15 years" which is three times more than the Applicant has served the United Nations altogether."

XXI. The Applicant refers also to Judgement 192 (*Levcik*) in which the Tribunal *inter alia* held that the Applicant's "continued employment by the United Nations was regarded by his superiors (emphasis added) . . . as highly desirable in the interest of the Organization . . ." and therefore found that the Applicant had a legal expectancy that his fixed-term appointment would be extended.

The circumstances in this case were precisely the opposite to those in the present case, where the Applicant's superiors, though at first they regarded his employment as useful, came to consider his continued employment as unnecessary and insisted on his separation.

XXII. The Applicant forcefully argues that his work was considered satisfactory by his superiors and sometimes praised by them. He also refers to various recommendations made in favour of the renewal of his appointment.

The Tribunal recalls in this connection its Judgement No. 205 (*El-Naggar*, para. IV), in which it stated that:

" . . . under Article 101 of the Charter the power of appointment rests with the Secretary-General. The type of appointment to be offered to a staff member is within the discretion of the Secretary-General. Neither the exceptional competence of a staff member nor favourable recommendations for a particular type of appointment by themselves create an entitlement to such an appointment"

XXIII. The Applicant makes a great effort to show that the handling of the production of the *Repertory of Practice of the United Nations Organs* by the Office of Legal Affairs was not adequate and it was not sufficiently and effectively responsive to the General Assembly's resolutions.

The Tribunal observes that it is not competent to pronounce upon the manner in which the Administration organizes its functions.

XXIV. This lack of competence, however, does not prevent the Tribunal from making the following observation:

The Applicant filed his appeal with the Joint Appeals Board on 13 March 1981.

On 30 March 1981 the Applicant addressed a request to the Co-ordinator of the Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, asking for investigation and redress of his grievances.

The Co-ordinator took up his case and informed the Assistant Secretary-General for Personnel Services of his findings on 16 June 1982.

The Tribunal observes that it is not in keeping with the best standards of administration that while a case is under consideration by the Joint Appeals Board another body should deal essentially with the same complaints as are before the Board. This could lead to unnecessary duplication and conflicting decisions.

XXV. The Applicant does not give any weight to the fact that after his separation from the Legal Office he was given new employment by the Respondent within six months from the date of his separation. Hence what he could complain of—if he found sufficient ground for that—was the interruption in his employment for six months from 1 April 1981 until 1 October 1981.

In his career with the United Nations such interruption was, however, not exceptional. After his service of 11 months in 1960-61 an interruption of 15 years followed. After his service in 1976 there was an interruption of 3 months, after that in 1977 an interruption of 2 months.

But apart from this, the Tribunal holds that the Respondent by providing employment for the Applicant within six months from separation—if not at the same grade but at the same salary level—acted in a way which should have satisfied the Applicant even if he could have established—which in the view of the Tribunal is not the case—that his expectations of continued service were, if not legally cognizable, at least subjectively comprehensible.

XXVI. In respect of the Applicant's claims concerning retroactive salary from 13 June 1978 and salary for his work allegedly done between 1 April and 8 May 1981 the Tribunal finds that these claims are, according to Staff Rules 103.15 (ii) and 111.2(a), clearly out of time.

XXVII. The Tribunal finds that all claims of the Applicant to compensation for loss or injury, to payment to the United Nations Joint Staff Pension Fund, as well as the Applicant's complaints of discrimination against him, and as to the procedure, report and recommendations of the Joint Appeals Board are unfounded.

XXVIII. On the foregoing grounds the application is rejected in its entirety.

(Signatures)

Arnold KEAN
Vice-President, presiding
Endre USTOR
Member
Geneva, 6 June 1986

Ahmed OSMAN
Member
Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 369

(Original: English)

Case No. 369:
Roy

Against: The Secretary-General
of the United Nations

Request by a former staff member of the United Nations to order the Secretary-General to pay him compensation for failure to reinstate him.—Request for preliminary measures: to declare the application, submitted directly to the Tribunal, receivable.

Applicant's contention that the Respondent arbitrarily rejected his various requests to submit his application directly to the Tribunal.—The Tribunal holds that the right of the Respondent to agree or not to agree to the direct submission of an application to the Tribunal under article 7.1 of its statute is of an entirely discretionary character.—In the absence of such agreement in the present case, the Tribunal declares the application irreceivable.—Conclusion that the Applicant's pleas have already been disposed of in Judgement No. 368 and that to entertain them again would be an impermissible duplication.

Application rejected.
