

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.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Herbert Reis, Vice-President; Mr. Endre Ustor;

Whereas on 4 December 1985, Mark Roy, a former staff member of the United Nations, filed an application the pleas of which read as follows:

"7. The Applicant respectfully requests the Administrative Tribunal:

"A. *Preliminary Measures*

"1. To *find and rule* that the Applicant's request to the Respondent for his agreement to submit an application directly to the Administrative Tribunal, pursuant to Article 7, paragraph 1, of its Statutes [sic], was reasonable and justified, particularly in view of the fact that, in respect of his first appeal to the Joint Appeals Board (JAB) against the Office of Legal Affairs (OLA), the Secretary, the Chairman and Members of the JAB Panel, apparently in collusion with OLA, had caused unreasonable delays in the JAB procedures for almost 4 years (from 13 March 1981 to 10 December 1984), virtually constituting a 'denial of justice', and had arbitrarily rejected his appeal by wilfully denying him due process of law, fair play and impartiality in the administration of justice, thereby causing a 'miscarriage of justice' in his appeal, through gross irregularities in the JAB procedures, contrary to the relevant provisions of the Charter of the United Nations, Staff Regulations and Rules, Universal Declaration of Human Rights and the jurisprudence of the Administrative Tribunal.

"2. To *find and rule* that the Respondent's arbitrary rejection of the Applicant's first request dated 22 March 1985 and thereafter, his failure to respond to the Applicant's second request dated 17 May 1985, including reminders on 16 August 1985 and 27 November 1985, for his agreement to submit an application directly to the Administrative Tribunal, pursuant to Article 7, paragraph 1, of its Statutes, were abusive of his administrative powers vested in him under Article 97 of the Charter of the United Nations and constituted not only wilful obstruction of justice, but also wilful denial of due process of law, fair play and impartiality in the administration of justice with respect to, *inter alia*, the following matters:

"(a) the failure on the part of the Respondent to implement, in good faith and in the cause of equity and justice, the unanimous recommendations made as far back on 16 June 1982 by the Discrimination Panel (Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat, duly constituted by the Respondent, pursuant to the General Assembly resolution 31/26 of 29 November 1976) to re-instate the Applicant to the Repertory post (P-5) in OLA, or, if it was impossible to do so, to re-instate him to a P-4 post (his recruitment level in OLA) within the Secretariat.

"(b) the prejudicial, discriminatory, arbitrary and illegal administrative decision taken by OLA, on 24 March 1983, rejecting the Applicant's candidature for the vacant Repertory post (P-5) in OLA, primarily on the basis that he was not a lawyer, properly presented to OLA on his behalf by the Career Development and Placement Unit (CDPU) in OPS, purporting to be in full implementation of the unanimous recommendation of the Discrimination Panel to re-instate him to the Repertory post (P-5) in OLA.

“(c) the failure on the part of the Appointment and Promotion Board (APB) to give a fair, equitable and impartial consideration to the Applicant’s candidature for the vacant Repertory post (P-5) in OLA, properly presented to OLA on his behalf by the CDPU in OPS, purporting to be in full implementation of the unanimous recommendation of the Discrimination Panel to re-instate him to the Repertory post (P-5) in OLA, in accordance with the provisions of Articles 8 and 101 of the Charter of the United Nations, Staff Regulations 4.2 and 4.4, Staff Rule 104.14, General Assembly resolution 2482 (XXIII) of 21 December 1968 on the budget for the financial year 1969, by which the said Repertory post (P-5) had been established in the General Legal Division (GLD) of OLA for the Repertory co-ordination functions, General Assembly resolution 36/123 of 11 December 1981, by which OLA was required to restore the said Repertory post (P-5), which had been wilfully misused for legal work in GLD since the middle of 1977, for the continuing Repertory co-ordination functions in the Office of the Legal Counsel (OLC) to which those functions had been transferred from GLD as a consequence of the re-organization of OLA in the middle of 1979, Article 2 and 7 of the Universal Declaration of Human Rights and the jurisprudence of the Administrative Tribunal.

“(d) the failure on the part of the Respondent to implement, in good faith and in the cause of equity and justice, the correction of the entrance level of the Applicant in the Department of International Economic and Social Affairs, from P-3 to P-4 level, within one year from 1 October 1981, as recommended by OPS and APB, and approved by the Assistant Secretary-General for Personnel Services on behalf of the Secretary-General.

“3. To *declare* that, in the light of the facts stated in paragraphs 2 and 3 above, the Applicant’s application is receivable, pursuant to Article 7, paragraph 1, of the Statutes of the Administrative Tribunal.

“4. To *order* the Secretary-General:

“(a) To furnish to the Applicant with the original memorandum dated 16 June 1982 from . . . , Co-ordinator of the Discrimination Panel, addressed to . . . , Assistant Secretary-General for Personnel Services, which the Respondent has failed to furnish him in spite of his repeated requests, or to place on his Official Status File in Personnel Records Unit in OPS.

“(b) To furnish to the Applicant with all correspondence (such as letters, memoranda, notes, etc.) exchanged between OPS and OLA, or any other unit in the Secretariat in connection with the implementation of the unanimous recommendations of the Discrimination Panel to re-instate him to the Repertory post (P-5) in OLA, or, if it was impossible to do so, to re-instate him to a P-4 post within the Secretariat.

“(c) To designate a competent legal officer in the United Nations Secretariat, outside of OLA which is the ‘virtual Respondent’ in the Applicant’s present application to the Administrative Tribunal in order to handle the present application on behalf of the Respondent, in the cause of due process of law, fair play and impartiality in the administration of justice.

"B. Substantive Measures

"5. To *find and rule* that the Respondent failed to implement, in good faith and in the cause of equity and justice, the solemn undertaking given by . . . , Director of the Office of the Legal Counsel to the Appointment and Promotion Committee (APC), vide the minutes of its meeting No. 1106 held on 22 October 1980, as confirmed by OPS that:

"The minutes of the meeting establish that although no post was available at that time for Mr. Roy beyond the end of 1980, . . . [the Director and Deputy to the Under-Secretary-General, OLA] assured the Committee that the work being done by Mr. Roy was important and of a continuing nature and that any other vacancy in the Office of Legal Affairs could be utilized to finance the continuation of his employment. The Committee had expressed its serious concern over the treatment which Mr. Roy had received and accepted . . . [the Director and Deputy to the Under-Secretary-General, OLA]'s statement that any vacancy would be utilized for Mr. Roy.'

"6. To *find and rule* that the Respondent failed to implement, in good faith and in the cause of equity and justice, the unanimous recommendation made by APB (chaired by the present Secretary-General, then serving as Under-Secretary-General for Special Political Affairs) on the basis of . . . [the Director and Deputy to the Under-Secretary-General, OLA]'s solemn undertaking given to APC to utilize any vacant post in OLA for the Applicant's continuing services in OLA, and approved by the Assistant Secretary-General for Personnel Services on behalf of the Secretary-General 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-ordination work related to the publication of the Repertory.'

"7. To *find and rule* that the Respondent failed to overrule the prejudicial, discriminatory, arbitrary and illegal administrative decision taken by OLA, on 22 December 1980, not to renew the Applicant's fixed-term appointment beyond 31 March 1981 as Co-ordinator of the *Repertory of Practice of United Nations Organs*, primarily on the basis that he was not a lawyer, contrary to the solemn undertaking given by [the Director and Deputy to the Under-Secretary-General, OLA] to APC as well as to the APB recommendation, and in defiance of the authority of the Secretary-General duly exercised by the Assistant Secretary-General for Personnel Services, and thereby contravened the provisions of Articles 8 and 101 of the Charter of the United Nations, Staff Regulations 4.2, General Assembly resolution 2482 (XXIII) of 21 December 1968 on the budget for the financial year 1969, Articles 2 and 7 of the Universal Declaration of Human Rights and the jurisprudence of the Administrative Tribunal.

"8. To *find and rule* that the Respondent failed to maintain and enforce, in good faith and in the cause of equity and justice, the

definitive 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 should be extended beyond 31 March 1981 'in order to avoid serious irreversible damage to the rights of the staff member as well as to protect the interests of the Organization', as the Officer-in-Charge of Review of Administrative Decisions, Appeals and Disciplinary Cases in OPS rightly put it in his administrative review of the Applicant's case against OLA.

"9. To *find and rule* that the Respondent failed to overrule the prejudicial, discriminatory, arbitrary and illegal administrative decision taken by OLA on 25 March 1981 not to extend the Applicant's fixed-term appointment beyond 31 March 1981 primarily on the basis that he was not a lawyer, in defiance of the definitive administrative decision taken by the Assistant Secretary-General for Personnel Services on behalf of the Secretary-General on the basis of the administrative review of the Applicant's case against OLA, pursuant to the then Staff Rule 111.3 (a) (vide item 8 above).

"10. To *find and rule* that the Respondent failed to implement, in good faith and in the cause of equity and justice, the unanimous recommendation made as far back on 16 June 1982 by the Discrimination Panel to re-instate the Applicant to the Repertory post (P-5) in OLA and thereby perpetuated the prejudicial, discriminatory, arbitrary and illegal administrative decision taken by OLA on 22 December 1980 not to renew his fixed-term appointment beyond 31 March 1981 as Repertory Co-ordinator in OLA, primarily on the basis that he was not a lawyer, which contention obviously reflected OLA's new brand of 'Apartheid' against the Applicant, being a non-lawyer, virtually constituting, in the opinion of the General Assembly of the United Nations, a 'crime against humanity'.

"11. To *find and rule* that the Respondent failed to implement, in good faith and in the cause of equity and justice, the alternate unanimous recommendation made as far back on 16 June 1982 by the Discrimination Panel to re-instate the Applicant to a P-4 post within the Secretariat, as soon as possible, as solemnly undertaken by [the] Assistant Secretary-General for Personnel Services on behalf of the Secretary-General, vide her memorandum dated 27 July 1982 addressed to . . . , Co-ordinator of the Discrimination Panel.

"12. To *find and rule* that the Respondent failed to overrule the prejudicial, discriminatory, arbitrary and illegal administrative decision taken by OLA on 24 March 1983, rejecting the Applicant's candidature for the vacant Repertory post (P-5) in OLA, primarily on the basis that he was not a lawyer, properly presented to OLA on his behalf by CDPU in OPS, purporting to be in full implementation of the unanimous recommendation of the Discrimination Panel to re-instate him to the Repertory post (P-5), and thereby contravened the provisions of Articles 8 and 101 of the Charter of the United Nations, Staff Regulations 4.2 and 4.4, General Assembly resolutions 2482 (XXIII) of 21 December 1968 and 36/123 of 11 December 1981, Articles 2 and 7 of the Universal Declaration of Human Rights and the jurisprudence of the Administrative Tribunal.

"13. To *find and rule* that the Appointment and Promotion Board failed to give a fair, equitable and impartial consideration to the Applicant's candidature for the vacant Repertory post (P-5) in OLA, properly presented to OLA on his behalf by CDPU in OPS, purporting to be in full implementation of the unanimous recommendation of the Discrimination Panel to re-instate him to the Repertory post (P-5) in OLA, and thereby denied him due process of law, fair play and impartiality in the administration of justice in contravention of the provisions of Articles 8 and 101 of the Charter of the United Nations, Staff Regulations 4.2 and 4.4, Staff Rule 104.14, General Assembly resolutions 2482 (XXIII) of 21 December 1968 and 36/123 of 11 December 1981, Articles 2 and 7 of the Universal Declaration of Human Rights and the jurisprudence of the Administrative Tribunal.

"14. To *find and rule* that the Respondent failed to implement, in good faith and in the cause of equity and justice, the correction of the entrance level of the Applicant in the Department of International Economic and Social Affairs, from P-3 to P-4 level, within one year from 1 October 1981, as recommended by OPS, APC, APB and approved by the Assistant Secretary-General for Personnel Services on behalf of the Secretary-General and thereby violated the rights and privileges of the Applicant as a staff member of the United Nations.

"15. To *find and rule* that the Respondent wilfully failed to implement, in good faith and in the cause of equity and justice, the unanimous recommendations of the Discrimination Panel to re-instate the Applicant to the Repertory post (P-5) in OLA (which post became vacant as of 1 February 1983 and was still vacant as of 31 October 1985) . . . , or, if it was impossible to do so, to re-instate him to a P-4 post within the Secretariat, until his near and actual retirement from the Organization as of 31 December 1985, contrary to the intent of the General Assembly resolution 31/26 of 29 November 1976 by which the Discrimination Panel had been established in order to investigate and resolve discrimination cases in the Secretariat and thereby perpetuated the prejudicial, discriminatory and illegal personnel policy in OLA, reflecting OLA's new brand of '*Apartheid*' against the Applicant, being a non-lawyer, virtually constituting, in the opinion of the General Assembly of the United Nations, a 'crime against humanity', as well as to honour the solemn undertaking given by the Organization to Member States to resolve staff-management disputes through appropriate administrative machinery, pursuant to Section 29 (a) of the Convention on Privileges and Immunities of the United Nations.

"16. To *order* the Secretary-General, pursuant to Article 9 of its Statutes:

"(a) To pay the Applicant, in view of the Discrimination Panel's unanimous recommendation to re-instate him to the Repertory post (P-5) in OLA, salary and allowances at P-5 level 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 beyond 31 March 1981, but nevertheless, *without having any contract but with the consent of OLA, he 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 No. 4 to the Repertory and thereby fulfilled his obligations to the Repertory co-ordination functions in the best interests of the high priority programme.

“(b) To pay the Applicant arrears of amounts representing the difference between the salary and allowances at the P-5 level and at the P-3 level in DIESA [Department of International, Economic and Social Affairs], with retroactive from 1 October 1981.

“(c) To pay appropriate contributions to the United Nations Joint Pension Fund, on account of the Applicant and of the United Nations, based on the payments referred to in items (a) and (b) above.

“(d) 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 consequences [sic] 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.

“17. 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 16 January 1986;

Whereas the Applicant filed written observations on 10 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 paragraphs 7.1, 7.2, 7.3 and 7.4 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 for “preliminary measures” when it met to consider the case and that no oral proceedings would be held in the case;

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

Whereas the facts in the case are set forth in Judgement No. 368 rendered on the same date.

Whereas the Applicant’s principal contentions are:

1. The Respondent failed to implement the unanimous recommendations of the Panel on Discrimination to reinstate the Applicant to the Repertory post at the P-5 level in the Office of Legal Affairs or, if this were not possible, to reinstate him to a P-4 post within the Secretariat.

2. The Respondent failed to overrule the administrative decision to reject the Applicant’s candidacy for the vacant Repertory P-5 post in OLA on the basis that he was not a lawyer.

3. The General Assembly—when it established the Repertory post for Repertory Coordinating functions—did not prescribe any restrictions relating to the specific qualifications of the incumbent of the post.

4. The Appointment and Promotion Board failed to give a fair, equitable and impartial consideration to the Applicant’s candidacy for the vacant P-5 Repertory post in OLA.

5. The Respondent failed to implement, the correction of the entrance level of the Applicant in the DIESA from the P-3 to the P-4 level, within one year from 1 October 1981.

6. The Office of Legal Affairs, which wilfully violated the Applicant's rights and privileges as a staff member of the United Nations, was unfit to render advice on whether the Secretary-General should agree to direct submission of the Applicant's appeal to the Administrative Tribunal.

Whereas the Respondent's principal contentions are:

1. The Respondent appears to appeal the same administrative decision not to renew his fixed-term appointment beyond 31 March 1981.

2. If the Respondent appeals a different administrative decision, the application is not receivable under article 7.1 of the Tribunal's Statute.

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

I. From among the seventeen pleas submitted by the Applicant in the present case, the third one is decisive. In that plea the Applicant requests the Administrative Tribunal:

"3. to declare that in the light of the facts stated in paragraphs 2 and 3 above, the Applicant's application is receivable, pursuant to Article 7, paragraph 1, of the Statutes [sic] of the Administrative Tribunal."

II. In paragraph 2, to which the Applicant refers (the reference to paragraph 3 is an error), he complains *inter alia* that the Respondent has arbitrarily rejected his various requests to submit his application directly to this Tribunal and the Respondent's refusals:

"were abusive of his administrative powers . . . and constituted not only wilful obstruction of justice, but also wilful denial of due process of law, fair play and impartiality in the administration of justice . . ." etc.

III. The Applicant's offensive language is not warranted. Moreover, he is in error.

IV. Article 7, paragraph 1 of the Statute of the Tribunal provides as follows:

"An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the Applicant have agreed to submit the application directly to the Administrative Tribunal."

The right of the Respondent to agree or not to agree to the direct submission of an application to this Tribunal under this provision of the Tribunal's Statute is of an entirely discretionary character.

V. As in the present case agreement for direct submission between the Secretary-General and the Applicant has not been forthcoming, the Tribunal must—contrary to the Applicant's request—declare that his application is not receivable.

VI. The Tribunal observes that even if the Respondent had given his agreement to the direct submission of the application to the Tribunal, this would not have helped the Applicant's case. The substance of the Applicant's pleas was already before the Tribunal and has been dealt with by the Tribunal in Judgement No. 368 signed on this day. To entertain these pleas again in the

present proceedings would constitute an impermissible duplication and lead to the rejection of the Application on that ground.

VII. For these reasons, the Application is rejected.

(Signatures)

Arnold KEAN
First Vice-President, presiding
Herbert REIS
Second Vice-President
Geneva, 6 June 1986

Endre USTOR
Member
R. M. VICIEN-MILBURN
Executive Secretary

Judgement No. 370

(Original: English/French)

Case No. 356:

Molinier

Cases Nos.

359: Aggarwal

360: Akrouf

361: Davis

362: Goffman

363: Noaman

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

Request by a staff member of the United Nations for the rescission of the decision denying her remuneration at the level of post adjustment class 12, effective 1 December 1984.—Identical requests by four staff members of UNDP and by a staff member of the United Nations containing similar pleas.

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

The Tribunal's decision on the presence and participation of alternate members.

The Tribunal orders a joinder of the six cases which raise the same issues and include the same or similar pleas.

The Tribunal holds itself competent and rules that the applications are receivable.

Applications to intervene by six staff members.—Finding that they would not rely on evidence or arguments different from those of the Applicants.—Respondent's commitment to apply the decision to all officials who can rely on the same legal principle.—Applications rejected.

Consideration of the facts of the case.—Post adjustment system, as provided for in staff rule 103.7 and in annex I, paragraph 9, of Staff Regulations.—Question whether the Secretary-General has discretion in matters relating to post adjustment.—Purpose of the post adjustment system.—Determination of certain of its aspects by General Assembly resolutions.—Powers and functions of the International Civil Service Commission (ICSC).—Articles 11 and 10 of the ICSC statute.—Retention by the General Assembly of the power to fix two prerequisites for transition from one class to another: required percentage variation in the cost of living index and required period of time.—Noblemaire principle and the margin between the United Nations salaries and the corresponding salaries of the comparator civil service (United States).—Resolution 31/141 requesting ICSC to take conservatory measures within the operation of the post adjustment system in case of undue widening of the margin.—The Tribunal holds that a relevant General Assembly resolution, although not incorporated in the Staff Rules, is binding upon staff members as a condition of their employment (Judgements No. 67: Harris et al; No. 236: Belchamber; No.