
ADMINISTRATIVE TRIBUNAL

Judgement No. 433

Cases Nos. 288 to 297: ZIEGLER

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, President; Mr. Jerome Ackerman;
Mr. Ioan Voicu;

Whereas, at the request of Heinrich J. Ziegler, a former staff member of the United Nations Development Programme, hereinafter referred to as UNDP, the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of applications in each one of the above-cited cases, for a series of successive fixed-term periods running from 6 January 1974 until 15 August 1982;

Whereas, on 17 August 1982, the Applicant filed ten individual applications in which he requested the Tribunal to rescind a series of decisions taken by the Respondent after the Applicant's departure from the UNDP Office in Bogotá, Colombia, where he acted as Deputy Resident Representative, and for compensation on account of the injury he suffered as a result of these decisions;

Whereas the Respondent filed his answers on 23 November 1982;

Whereas the Applicant filed written observations on 31 August 1988;

Whereas, on 10 October 1988, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 10 October 1988, the Applicant reiterated his request for oral proceedings;

Whereas, on 11 October 1988, the Tribunal put questions to the Respondent, and on 13 October and 1 November 1988, the Respondent provided answers thereto;

Whereas, on 24 October 1988, the Tribunal, pursuant to article 17 of the Rules of the Tribunal, heard the parties at a private meeting;

Whereas, on 24 October 1988 and 28 October 1988, the Applicant requested, inter alia, the production of witnesses and documents, requests which the Tribunal rejected on 2 November 1988;

Whereas, on 2 November 1988 and 7 November 1988, the Applicant submitted additional documents;

Whereas the facts in the case are as follows:

Heinrich J. Ziegler entered the service of UNDP on 15 September 1969. He was initially offered a two year fixed-term appointment at the P.4 level and was assigned to the UNDP Office in Bogotá, Colombia, as Deputy Resident Representative. From January 1970, in the absence of the UNDP Resident Representative, the Applicant acted as Resident Representative ad interim. In May 1970, the Applicant travelled to Headquarters and discussed with officials of the Personnel Division, Bureau of Administrative Management and Budget (BAMB) some administrative problems which had arisen in the UNDP Office in Bogotá. At the Applicant's request, the Chief, Latin America Division, Bureau of Operations and Programming (BOP), UNDP, visited the Bogotá Office to investigate and clarify those problems.

In a memorandum dated 16 July 1970 to the Deputy Director, BAMB, UNDP, the Chief, Latin America Division, BOP, UNDP, recorded the substance of an agreement with the Applicant whereby the Applicant would take annual leave "to start as soon as possible" after the arrival of the then Deputy Resident Representative in Ecuador; the Applicant would remain in Bogotá "only the time strictly necessary to settle his personnel affairs" and the Applicant would "be authorized to visit Headquarters to discuss his future assignments, which might include transfer to Headquarters, transfer to another

post or return to his post in Bogotá." The memorandum was countersigned by the Applicant. In another memorandum dated 20 July 1970 to the Deputy Director, BAMB, UNDP, which was confidential in nature, the Chief, Latin America Division, BOB, UNDP, discussed the administrative problems in greater detail and recorded his impressions and assessment of the Applicant's manner of dealing with them and its effect.

According to the Applicant's personnel files, the UNDP Administration desired to assign the Applicant to the European Area Division but the Applicant, when offered a post, declined to accept it. He proceeded on further annual leave.

Upon his return to Headquarters on 20 September 1970 and after further discussions with the UNDP Administration, the Applicant was initially placed, as of 28 September, as an operations officer in the United Nations Fund for Population Activities (UNFPA). The temporary nature of this placement was confirmed by the contents of a memorandum dated 18 November 1970 from the Director of UNFPA to the Chief, Personnel Division, UNDP, in which it was stated that the Applicant's services would be required only until the end of December 1970 and that the manning table for 1971 did not include a post into which the Applicant could fit, since he had been accepted only on a temporary basis. Further confirmation was contained in a memorandum dated 30 September 1970 from the Chief, Personnel Division, UNDP, to the Director, BAMB, in which he stated that the Applicant's reassignment to UNFPA was considered part of his career development and that it was UNDP's intention to reassign him to a field post whenever a suitable opening occurred.

On 1 October 1970, the Chief, Personnel Division, UNDP, requested the Applicant, who at the time of his initial appointment by UNDP, held a United States resident visa, "to convert to G-4 status without delay, which is the visa status applicable under personnel directive in [his] case". In a reply dated 5 October 1970, the Applicant asserted that the request "must have been prepared erroneously" since he had been allegedly advised by the

Chief, Personnel Division himself, as well as by the Chief, Latin America Division, that he could keep his US resident visa in case he returned to work at Headquarters.

On 25 November 1970, the Chief, Personnel Division, UNDP, referring to his previous request concerning the Applicant's visa status, asked the Applicant whether he had complied with the request and added that the delay in regularizing his visa status was "holding up the processing of the P.5 [Personnel Action Form] on [his] current standing."

In a reply dated 2 December 1970, the Applicant asserted that he could not give up his US permanent resident status and requested the Chief, Personnel Division, UNDP, to process a Personnel Action Form to record his current status at Headquarters, as well as payment of daily subsistence allowance (DSA), until the Form was issued. On 16 March 1971, a Personnel Action Form was issued to record the Applicant's transfer to New York and his assignment to UNFPA as of 1 September 1970. On 15 April 1971, the Applicant reiterated his request for payment of DSA. Not having received a positive reply, he requested the Secretary-General to review the decisions reflected in the Personnel Action Form. On 16 June 1971, he lodged an appeal with the Joint Appeals Board (JAB), hereinafter referred to as the "first appeal".

An exchange of correspondence ensued between the Applicant and the Personnel Division concerning possible field assignments for the Applicant. On 13 September 1971, the Chief, Personnel Division, UNDP, informed the Applicant that the Administration had decided to offer him an extension of his appointment for a further fixed-term period of two years, on condition that the Applicant surrender his US permanent resident status and accept a G-4 visa. In two separate replies dated 14 September 1971, the Applicant accepted the offer of the post of Deputy Resident Representative in the Sudan and sought a reversal of the Administration's position concerning his visa status since he would be serving outside the United States of America.

Another exchange of correspondence then ensued between the

Applicant and the Administration concerning his visa status. On 27 October 1971, the Applicant sent his passport and his residence card to the Personnel Division and on the form surrendering his immigration visa he stated: "on condition of receiving a new UNDP appointment and assignment to the Sudan". The form, as signed, with its restrictive notation, was not acceptable either to the Personnel Division, or to the United States Government. The Applicant was warned by the Chief, Personnel Division, UNDP, in a telephone conversation on 12 November 1971 that if he did not sign correctly the form by 18 November 1971, UNDP would not extend his appointment.

In two memoranda dated 14 November 1971 and 16 November 1971, the Applicant stated that he was reluctant to sign a waiver that did not include the title of his new post. He would, however, sign a blank waiver if, at the same time, he was given the new letter of appointment for signature.

In a memorandum dated 18 November 1971, the Chief, Personnel Division, UNDP, reserving the UNDP's position with respect to all the assertions in the Applicant's memoranda of 14 and 16 November, informed the Applicant that since he had not executed in a valid manner the forms for the waiver of his US permanent resident status, UNDP had been forced to reach the following conclusions: (a) the Applicant did not intend to execute a valid waiver; (b) the offer of a further fixed-term appointment, being conditioned on abandonment of the Applicant's US permanent resident status, was withdrawn; and (c) the Applicant would be separated from the service of UNDP, effective 19 November 1971.

On 19 November 1971, the Applicant, insisting that he had fulfilled the condition of abandonment of his visa, requested the Secretary-General to review the decision not to extend his appointment beyond 19 November 1971. Having received a negative reply from the Director of Personnel, United Nations, the Applicant lodged his "second appeal" with the JAB on 11 February 1972.

In the meantime, on 19 November 1971, the Applicant had requested the Chief, Personnel Division, UNDP, to provide him with a

"statement relating to the nature of [his] duties, duration of assignments and the length of [his] service with UNDP". He also requested that the statement refer to the quality of his work and to his official conduct. The Applicant reiterated his request for a certificate of service twice. Not having received a reply, on 28 February 1972, the Applicant asked the Secretary-General to recommend to UNDP's Bureau of Administrative Management and Budget to issue the requested certificate and to pay him his salary from 19 November 1971 as compensation for the financial losses suffered because of the delay in the receipt of the statement. On the same day, the Officer-in-Charge, BAMB, UNDP, transmitted to the Applicant a certificate of service and in a separate letter stated: "As regards your request for a statement on the quality of work and your official conduct, we should be glad to provide you with one if you will confirm your previous request." In replies dated 6 March 1972 and 12 March 1972, the Applicant commented on the contents of the certificate and noted that it fell short of meeting his original request. On 7 April 1972, the Director, BAMB, wrote to the Applicant stating that he had been provided with a standard certificate of service form, conveying the relevant information regarding his assignment and length of service with UNDP. He also attached to the letter two reports evaluating the Applicant's performance during his period of service with UNDP and UNFPA. The Applicant signed both reports on 20 April 1972 and wrote on each the following statement:

"I refuse to accept the content of this report because it is completely unacceptable with regard to formal requirements and to content. It is unjustified and nil because of containing formal defects, improper motives and misrepresentation of facts. Details are given in attached rebuttal."

On 27 April 1972, the Applicant lodged his "third appeal" with the JAB, concerning the failure by UNDP to provide him with a correct statement of work and evaluation of the quality of his work and his official conduct.

On 26 October 1972, the Applicant requested the Secretary-General to review the administrative decision by UNDP not to provide him with "written results of the investigation by the Head of [the] Department and an appraisal of [his] rebuttals." He noted that the JAB would be conducting a hearing on his first three appeals and would be deciding his case without knowing the results of the investigation and the rebuttal, and this would cause him prejudice.

According to a memorandum dated 13 December 1972 from the Deputy Administrator, UNDP, to the Head of the Secretariat of the Secretary-General of the United Nations, the Secretary-General had stated at a staff meeting on that date that UNDP's delay in investigating the Applicant's six month old rebuttals made it "impossible for UNDP to issue to him the Certification of Service ... to which he is entitled under the Staff Rules..." and this in turn made it impossible for the Applicant to obtain further employment, even outside the United Nations. The Deputy Administrator further noted that on returning to his office, he had verified that the Applicant had indeed received a Standard Certificate of Service, and that the additional information he had requested was the object of a rebuttal by the Applicant to which the UNDP Administration was responding that day.

Having received no reply to his letter of 26 October 1972, the Applicant lodged his "fourth appeal" with the JAB on 22 December 1972, concerning the failure by UNDP to provide him in a timely manner, with a correct, complete and fair written record of appraisal of his rebuttal to the performance evaluation reports.

In a letter dated 13 December 1972, the Assistant Administrator, Bureau of Administration and Finance, UNDP, transmitted to the Applicant the Administration's appraisal of his rebuttal to his performance evaluation reports. The appraisal concluded that the delays in the preparation of the reports did not affect the validity of their content and that the reports were impartial, objective and technically correct except for the delay in their preparation.

The Board adopted its reports on the "first", "second" and "third" appeals on 15 December 1972. Its considerations, conclusions and recommendations read as follows:

FIRST APPEAL

"Conclusion and recommendation

34. The Board recommends to the Secretary-General the payment to the appellant of the appropriate subsistence allowance from 20 September 1970, when he assumed his duties at UNFPA [United Nations Fund for Population Activities], to 19 November 1971, his last day of service with UNDP, less the assignment allowance and installation grant already paid to the appellant for this period of service."

SECOND APPEAL

"Considerations

...

38. The Board found that the surrender of the resident visa as requested in the form signed by the appellant on 27 October 1971 - that is to say with the addition of a clause which made it conditional upon receiving from UNDP a 'new ... appointment and assignment to the Sudan' - made it, as confirmed by the United States authorities, unacceptable for processing. It could not therefore be considered as a surrender sufficient to meet the condition specified by the respondent.
39. The Board noted further that after more than a year of discussions, the appellant finally agreed, as stated in his memoranda of 14 and 16 November 1971, to sign an unconditional surrender of his visa, but had on this occasion insisted on receiving a confirmed extension of appointment and assignment to the Sudan in exchange for the surrender.
40. The Board considered therefore that, in view of the length of time during which the appellant had resisted the demand for the surrender of his United States resident visa, the respondent was justified in doubting the appellant's willingness to fulfil the condition underlying the offer of appointment and was thus within his rights in withdrawing it.
41. The Board does not consider however, that the withdrawal of the offer entitled the respondent summarily to terminate the employment relationship without notice forthwith. The

appellant had, since the expiration of his previous fixed-term appointment on 14 September 1971, been tacitly maintained by the respondent at the same rate of salary, allowances and other conditions of employment as those which had prevailed immediately prior to that date. The Board believes that these conditions must be presumed to have included a provision giving the appellant, in the event that the offer of a new appointment was withdrawn, the benefit of a reasonable period of notice that the tacit extension would come to an end. In the circumstances the Board is of the opinion that a period of such notice of one month would be reasonable, which the respondent would be at liberty to treat as compensation, if he so desired, within the terms of staff rule 109.3(c). One member of the Board considered that, by reason of the tacit extension referred to above, the appellant was at the material time in possession of a temporary appointment not for a fixed term and was entitled, in addition to notice or compensation in lieu thereof, to an indemnity under Annex III to Chapter IX of the Staff Regulations, amounting to one month's base salary, taking into account the total length of his service with the Organization.

Conclusion and recommendation

42. The Board recommends, in the light of the above, that the appellant be paid compensation equivalent to one month's salary and allowances in lieu of notice of the expiry of his appointment. The Board makes no further recommendation in respect of the appeal."

THIRD APPEAL

"Considerations

...

25. The Board was aware of the fact that this certificate was incomplete, as it did not mention that the appellant had served as Acting Resident Representative for part of his assignment in Bogotá. Moreover, the Board noted that the last paragraph of this certificate was phrased in such a way as to convey - by mentioning the manner in which the appellant left UNDP service, a matter which had been the subject of an earlier appeal - a connotation unfavourable to him.
26. The Board was disturbed by the degree of negligence - and by the apparent lack of good faith - shown by the respondent in his dealing with the appellant on this aspect of the case.

The Board noted in this connexion that no proper certificate had been provided even as of the date of the present report.

27. The Board considered that the appellant had suffered substantial injury through not having received within a reasonable time the certificate of service to which he was entitled under the Staff Rules and that he should be granted an appropriate indemnity.
28. The Board noted that an indemnity equivalent to at least three months' salary would seem to be in accord with awards recently made by the United Nations Administrative Tribunal.

Conclusion and recommendation

29. The Board concludes that the appeal is well founded and recommends to the Secretary-General that the appellant be granted an indemnity equivalent to three months' salary and emoluments."

On 23 January 1973, the Deputy Administrator, UNDP, transmitted to the Applicant a certificate of service concerning the Applicant's "quality of ... work and official conduct". On 5 March 1973, the Applicant lodged his "fifth appeal" with the JAB, challenging the date when this latest certificate was finally issued and the alleged defamatory and invalid reports on which the certificate was based. On 10 March 1973, he lodged his "sixth appeal" with the JAB, concerning the contents of his performance evaluation reports which he asserted were based on improper motives and misrepresentation of facts and the appraisal of 13 December 1972.

On 19 June 1973, the Applicant requested the Secretary-General to review the administrative decision contained in the memorandum of 13 December 1972 from the Deputy Administrator, UNDP, to the Head of the Secretariat of the Secretary-General of the United Nations mentioned above, which had come to his attention when he examined his official status file in May 1973. The Applicant alleged that it was improper to establish a link between the certificate of service and the appraisal, as the Secretary-General had done in the note referred to in the contested memorandum. On

24 July 1973, the Officer-in-Charge, Personnel Services, replied on behalf of the Secretary-General that the request did not relate to any separate and independent administrative decision, and that the memorandum was a mere record of internal contacts with regard to the issuance of the certification of service, which was already the subject of various appeals. On 18 September 1973, the Applicant lodged his "seventh appeal" with the JAB.

The Board adopted its report on the "seventh appeal" on 13 November 1973 and concluded as follows:

SEVENTH APPEAL

"...

4. The Board notes that it has been established to consider and advise the Secretary-General regarding appeals filed under the terms of staff regulation 11.1, that is, 'any appeal by staff members against an administrative decision'. Although the Staff Rules contain no definition of the expression 'administrative decision', it is clear to the Board that the memorandum impugned by the appellant, which is essentially an exchange of information between two senior officers of the Organization, cannot be regarded as an administrative decision subject to appeal. Considering that the appeal is not brought against an administrative decision and therefore does not fall within the Board's competence as defined in staff regulation 11.1, the Board, acting under the authority vested in it by staff rule 111.1(c), decides that the appeal is not receivable."

On 11 March 1974, the Director, Division of Personnel Administration, informed the Applicant that the Secretary-General had re-examined his complaints on the basis of the reports of the JAB and had reached the following decisions in regard to the Applicant's "first", "second", "third" and "seventh" appeals:

"Case No. 220 ['First appeal']

The Secretary-General has decided in this case to accept the Board's unanimous recommendation that payment be made to [him] on the appropriate subsistence allowance from 20 September 1970, the date on which [he] assumed duties in New York, to 19 November 1971, which represents [his] last day of service with UNDP, less the assignment allowance and

the installation grant already paid to [him] for this period of service.

Case No. 221 ['Second appeal']

The Secretary-General has also decided to accept the Board's recommendation in this case that [he] be paid compensation equivalent to one month's salary and allowances in lieu of the notice of termination of [his] appointment.

Case No. 222 ['Third appeal']

The Secretary-General has agreed with the Board's view in this case regarding the principle of compensation and the evaluation of the amount of indemnity to be paid to [him] for the delay in providing [him] with an appropriate certificate of service. He has therefore decided to grant [him] an indemnity equivalent to three months' salary and emoluments;

Case No. 231 ['Seventh appeal']

In regard to this appeal, the Secretary-General has taken note of the Board's decision that the appeal was not receivable."

On 20 March 1974, the Applicant requested the Secretary-General to review the decisions contained in a letter dated 21 November 1973 from the Chairman, JAB and confirmed in a letter dated 21 February 1974 from the Secretary, JAB, in which the Applicant was advised that the Board had rejected his request that it delay further the submission to the Secretary-General of its reports on the "first", "second" and "third" appeals described above, related to his separation from service. On 19 April 1974, the Assistant Secretary-General, Personnel Services, informed the Applicant that the Board was fully competent to determine its procedure and that the Secretary-General would not dictate to the Board how to proceed with appeals pending before it. On 19 July 1974, the Applicant lodged his "eighth appeal" with the JAB.

The Board considered the "fourth", "fifth" and "sixth" appeals and adopted its report on those appeals on 15 October 1974. Its conclusions and recommendations read as follows:

FOURTH, FIFTH AND SIXTH APPEALS

"Conclusions and recommendations

159. The Board finds that the evidence does not sustain the appellant's allegations of improper motives, malice and vengeance.
160. The Board concludes that the delay in issuing the record of appraisal of 13 December 1972 was not excessive in the circumstances of the case, and accordingly makes no recommendation in support of the appellant's pleas in the fourth appeal.
161. The Board finds that the periodic reports of March 1972 and the record of appraisal of December 1972 are defective because they contain a retroactive reappraisal of the appellant's performance which is inconsistent with his performance record established during his two years of service with the UNDP.
162. The Board finds further that the certificate of service of January 1973 is defective because it is based partly on the defective reports of March 1972 and appraisal record of December 1972 and partly on confidential reports that were not shown to the appellant, and because the first sentence relating to the appellant's conduct is not supported by any element in the appellant's service record.
163. Having considered all the appellant's pleas in the fifth and sixth appeals, the Board recommends that the Secretary-General
 - (a) Pay to the appellant one year's net base salary as a fair and reasonable compensation for the injury sustained by him, and
 - (b) Issue to the appellant a proper certification of service, as required by staff rule 109.11.

The Board recommends that the appellant's other pleas should be rejected."

On 2 January 1975, the Assistant Secretary-General, Personnel Services, transmitted to the Applicant the Board's report dated 15 October 1974:

"... regarding [his] three appeals, namely the appeal of 22 December 1972 concerning the failure of the Administration to supply [him] in time with a written record of appraisal of [his]

rebuttal to certain periodic reports, the appeal of 5 March 1973 concerning the certificate of service issued to [him] in January 1973 and the appeal of 10 March 1973 concerning the periodic reports and the record of the appraisal of [his] rebuttal to the periodic reports."

He informed him that:

"The Secretary-General has agreed with the Board's recommendation in respect of the three appeals in question and has decided to grant [him] an amount equivalent to one year's net base salary in settlement of the claims made in [his] fifth and sixth appeals and to issue to [him] a proper certification of service under the provisions of staff rule 109.11."

The Board adopted its report on the "eighth appeal" on 15 April 1975. Its conclusions and recommendations read as follows:

EIGHTH APPEAL

"...

4. As the appeal is directed against a procedural ruling made by the Board itself and not against an administrative decision, the Board decides under the authority granted to it in staff rule 111.1(c) that the appeal does not fall within its competence as set out in staff regulation 11.1.
5. Furthermore, in so far as the appeal may be considered to be directed against the thirteen items listed in the statement of appeal of 19 July 1974, the Board, noting that the administrative decisions included among these items were all taken long before the filing of this appeal, decides in accordance with staff rule 111.3(d) not to entertain the appeal since the relevant time-limits laid down in staff rule 111.3(a) and (b) have not been observed as to these decisions.
6. Lastly, the Board unanimously considers this appeal to be frivolous within the meaning of article 7.3 of the Statute of the Administrative Tribunal."

On 15 April 1975, the Secretary, JAB, transmitted the report to the Applicant and informed him that the Board had decided not to entertain his appeal and had requested the Secretary-General to take

note of the Board's decision in the case.

On 15 May 1975, the Applicant lodged his "ninth appeal" with the JAB against a series of "administrative decisions, actions, and omissions" by the Secretary-General after the JAB had forwarded to him its reports.

The Board adopted its report on the "ninth appeal" on 4 March 1976. Its conclusions read as follows:

NINTH APPEAL

"...

6. The Board considers that all the claims put forward by the appellant in this case arise from the final decisions taken by the Secretary-General on 11 March 1974 and 2 January 1975 after the Board forwarded to him its reports on the appellant's first seven appeals. It notes that in some of these claims the appellant contests the adequacy of the relief granted by the Secretary-General while in others he objects to the way in which the Secretary-General's final decisions have been carried out. The Board concludes that the appellant's claims are directed against final decisions taken by the Secretary-General in respect of the administrative decisions contested in the appellant's earlier appeals and against the alleged failure to carry out the Secretary-General's final decisions properly, and that they are not directed against administrative decisions subject to appeal under staff regulation 11.1. Accordingly, the Board, acting under the authority granted to it in staff rule 111.1(c), decides not to entertain the appeal. In the Board's view, the appellant should bring his claims before the Administrative Tribunal as provided in article 7 of the Tribunal Statute."

On 21 September 1976, the Applicant lodged his "tenth appeal" with the JAB concerning correspondence exchanged between the Applicant and the Secretary-General in which the Applicant complained against the JAB's recommendations on his first set of appeals and the Secretary-General's decisions on those appeals, as well as an offer made by the Secretary-General in order to reach an out-of-court settlement in his case before the Administrative Tribunal.

The Board adopted its report on the "tenth appeal" on 31 May

1978. Its conclusions and recommendations read as follows:

TENTH APPEAL

"...

6. The Board observes that this appeal is directed against an offer made by the Secretary-General to settle the appellant's claims, which in its view is not an administrative decision subject to appeal under staff regulation 11.1. Accordingly, the Board decides under the authority granted to it in staff rule 111.1(c) that the appeal does not fall within its competence as set out in staff regulation 11.1.
7. Moreover, the Board unanimously considers this appeal to be frivolous within the meaning of article 7.3 of the Statute of the Tribunal."

On 31 May 1978, the Secretary, JAB, informed the Applicant that, for the reasons stated in the report, the Board had decided not to entertain the appeal and had requested the Secretary-General to take note of its decision in the case. On 12 July 1978, the Assistant Secretary-General, Personnel Services, informed the Applicant that, the Secretary-General, having re-examined his case, had taken note of the Board's conclusion that the appeal did not fall within its competence and of its unanimous finding regarding the frivolousness of the appeal.

On 17 August 1982, the Applicant filed with the Tribunal the applications referred to above;

Whereas the Applicant's principal contentions are:

1. The Applicant was not assigned specific tasks during the period of his assignment to New York.
2. The Applicant was advised by UNDP officials that he could retain his US permanent resident status.
3. The Applicant was not provided with a timely certificate of service that met the requirements of Article 101 of the Charter and the resulting regulations and rules.
4. The Applicant's performance evaluation reports were

prepared with delay. The contents of the reports were highly irregular, based on improper motives, vengefulness and misrepresentation of facts.

5. The Secretary-General acted on the recommendation of the Joint Appeals Board fifteen months after they were communicated to the Applicant.

Whereas the Respondent's principal contentions are:

1. There is no allegation that daily subsistence allowance paid to the Applicant by the Respondent, pursuant to the JAB recommendation, has been erroneously calculated in respect of the Applicant's stay in New York.

2. Despite repeated warnings that the terms of the offer of further fixed-term appointments were made subject to the Applicant's relinquishing his US permanent resident status and obtaining a G-4 visa, the Applicant sought to dispute the terms of the offer until it was withdrawn.

3. Fixed-term appointments expire automatically on the date specified in the letter of appointment and create no expectancy of renewal or conversion to any other type of appointment.

4. The certificate of service provided to the Applicant complies fully with staff rule 109.11 and the compensation paid to the Applicant, in accordance with the JAB recommendation adequately compensates him for the delays in the issue of the certificate.

5. Delays in the disposal of this appeal were largely caused by the voluminous documentation submitted by the Applicant at every stage of the proceedings.

6. The memorandum from the Deputy Administrator, UNDP, to the Head of the Secretariat of the Secretary-General of the United Nations was an exchange of information between two senior officers and cannot be regarded as an administrative decision subject to review under staff rule 111.1(c).

7. The appeal declared frivolous by the JAB is not receivable under article 7.3 of the Tribunal's Statute.

The Tribunal, having deliberated from 24 October 1988 to 8 November 1988, now pronounces the following judgement:

I. Since the applications submitted in cases Nos. 288, 289, 290, 291, 292, 293, 294, 295, 296 and 297 are related and are submitted by the same Applicant, the Tribunal orders the joinder of these cases.

These are cases in which the Applicant, whose fixed-term appointment of a little over two years was permitted to expire, received additional compensation and emoluments for another year and four months plus subsistence allowance for over a year as a result of the Secretary-General's acceptance of the Joint Appeals Board (JAB) recommendations aimed at remedying administrative errors. Nevertheless, the Applicant has brought before the Tribunal ten appeals. As is explained later, some are within the Tribunal's jurisdiction, and the others were unanimously found by the JAB to be frivolous. Under article 7.3 of the Tribunal's statute, the Tribunal is barred from considering such appeals unless it finds that the JAB's conclusion was the product of some irregularity. Cf. Judgement No. 269, Bartel (1981). In no instance is that the case here.

II. Before examining the cases in detail, the Tribunal wishes to comment on an extraordinary feature of these appeals. The operative events which gave rise to the spate of applications occurred largely between September 1969, when the Applicant was employed by UNDP, and 19 November 1971, the date of his separation. Thus, more than 17 years have elapsed since most of the events involved in these cases took place. It is plain therefore that anyone now attempting to adjudicate disputed factual issues on the basis of conflicting or faded recollections, or controverted or missing documents would inevitably be at a severe disadvantage. In such a situation, heavier than normal reliance on the findings of the JAB is

appropriate.

III. The JAB's recommendations were issued in mid-December 1972, mid- November 1973, mid-October 1974, 4 March 1976, and, with respect to some claims deemed frivolous, as late as 31 May 1978. All the applications were submitted to the Tribunal on 17 August 1982, following extensions of time granted by the Tribunal. Although the Respondent filed his answers to the appeals with reasonable dispatch in 1982, the Applicant then sought and obtained repeated extensions of time for the filing of observations. Through these repeated extensions of time, the applications remained in the files of the Tribunal until 1988 - approximately six years - when the Applicant was finally informed in response to his most recent request for yet another extension, that the Tribunal intended to consider the applications at its Fall 1988 session and that it was the Applicant's responsibility to submit his observations, if any, for consideration at that session.

IV. The Statute and the Rules of the Tribunal prescribe specific time- limits for the filing of the application, for the Respondent's answer and for such further observations as the Applicant may wish to make. In the light of these provisions, the Tribunal considers that the extensions in these present cases have, instead of promoting the objectives of the Tribunal's Statute, had the opposite effect. In order to avoid delays of this nature in the future, the Tribunal considers it undesirable to relax time-limits save in exceptional or extraordinary circumstances, including the absence of any fault or negligence on the part of the Applicant. The Tribunal also expects that stricter adherence to the time-limits would help reduce the increasing number of pending cases.

V. In case No. 288, the Applicant challenges the Secretary-General's decision to accept the JAB's recommendation; the case before the JAB involved the Applicant's claim for daily subsistence

allowance with respect to the period from 20 September 1970 to the end of his assignment in New York, 19 November 1971. As noted above, that was the expiration date of his appointment when he separated from UNDP. The JAB upheld the Applicant's claim and recommended that the Secretary-General should pay the Applicant the appropriate subsistence allowance for the period in question. The Secretary-General accepted this recommendation by letter dated 11 March 1974. Except as noted below, there is no basis for this application since the effect of what occurred was that the Applicant obtained the relief he sought before the JAB.

VI. With respect to the Applicant's claim for additional compensation on the ground of delays by the Respondent in deciding whether to accept the JAB recommendation, the Tribunal notes that the JAB recommendation was dated 15 December 1972 and the Secretary-General's acceptance occurred approximately 15 months later. It appears from the Secretary-General's letter of 11 March 1974 to the Applicant, notifying him of the acceptance of the JAB recommendation, that the Secretary-General had under consideration at the same time, four related claims by the Applicant which had been before the JAB, and the last of which was decided by the JAB on 13 November 1973, approximately four months before the Secretary-General's decision. That fact, coupled with the delay by the Applicant in filing his appeals with the Tribunal until eight years later, leads the Tribunal to conclude that no justification exists for the award of any further compensation to the Applicant with respect to the 15-month period.

VII. With respect to the Applicant's requests for further documents, pronouncements and action by the Tribunal and for further information in case No. 288 and with respect to the other issues sought to be raised by him in his numerous pleas and explanatory statements, the Tribunal finds that these matters are either unnecessary for a proper resolution of the appeals or irrelevant to

them and the requests are, therefore, denied. As noted above, the only issue before the JAB was the Applicant's claim for subsistence allowance, and he prevailed on that issue. The Tribunal notes that, with some variations, virtually the same requests for information, pronouncements, documents, and action, the same explanatory statements and the same pleas are advanced in each of the appeals. As in case No. 288, the Tribunal finds that the requests for information, documents, pronouncements and action are either unnecessary or irrelevant and would not materially assist the Tribunal in its consideration of these cases, and they are accordingly denied.

Moreover, in the present circumstances, the Tribunal does not consider that the nature of the tasks assigned to the Applicant while he was in New York has a material bearing on the resolution of the issues before the Tribunal.

VIII. In case No. 289, the Applicant contests the Secretary-General's decision to accept the recommendation of the JAB that the Applicant be paid compensation equivalent to one month's salary and allowances in lieu of the notice of the expiration of his appointment. In essence, the Applicant's position is that it was improper for the Administration to have withdrawn an offer of a two-year extension of his appointment. The Tribunal has reviewed carefully the JAB analysis of the facts which led to the withdrawal of the offer of a two-year extension and the considerations and the conclusions of the JAB with respect to the facts. The Tribunal concurs with the JAB's view that UNDP was justified in doubting the Applicant's willingness to fulfil the requirement underlying the offer of appointment, i.e., surrender to the United States of his resident visa and acceptance of a G-4 visa. UNDP found, therefore, that it was obliged to withdraw the offer of extension. The Tribunal finds that UNDP manifested much patience in holding the offer open for as long as it did. The JAB made no finding of any improper or extraneous considerations having entered into the

decision to withdraw the offer of an extension and the Tribunal too has found none. Nor does the Tribunal find any basis for the Applicant's contention that verbal commitments were made regarding the need for his surrender of his US permanent resident status or that, even if made, such commitments could be given legal effect.

IX. It is quite clear that the Applicant's letter of appointment provided that it did "not carry any expectancy of renewal or of conversion to any other type of appointment". It is well settled that employment under a fixed-term appointment with the UN ceases on the expiration date of the contract. A controversy about the terms of an offer of a further appointment does not create any expectancy beyond its terms and the offer can be revoked if not accepted and confirmed before it is withdrawn. Cf. Judgement No. 96, Camargo (1965) and Judgement No. 297, Panis (1982). Here, the offer of an extension was predicated on a legitimate requirement regarding the Applicant's US resident visa. Cf. Judgement No. 66, Khavkine (1956), para. V. The Applicant failed, with no justification, to agree to or to meet this requirement before the offer of an extension was withdrawn on 18 November 1971. Accordingly, the Applicant had no further entitlement to employment with UNDP after the expiration of his fixed-term appointment on the following day.

X. It is appropriate to consider cases Nos. 290 and 291 together, since both relate to the basic issue raised by the Applicant concerning the certificate of service furnished to him. Case No. 292, to the extent that it is concerned with the certificate of service, will also be considered with cases Nos. 290 and 291 to avoid repetitious discussion. In case No. 290, the Applicant objected to the form and content of the certificate of service provided to him on 28 February 1972 on the ground that it failed to comply with staff rule 109.11. The JAB found that the certificate of service issued to him did not comply with staff rule 109.11 and recommended that the Applicant be granted an

indemnity equivalent to three months' salary and emoluments. The Respondent accepted this recommendation on 11 March 1974. The Applicant was dissatisfied and appealed. In the meantime, prior to the Secretary-General's decision to accept the recommendation, a revised certificate of service had been issued to the Applicant. That also occasioned an appeal which was dealt with by the JAB in its report of 15 October 1974 and which is before the Tribunal as part of case No. 292. The JAB sustained the position of the Applicant with respect to the certificate of service issued in January 1973, and believed that certificate to be defective, as it was based partly on deficient reports in March 1972 and an appraisal record of December 1972, partly on confidential reports not shown to the Applicant and partly because a comment in the certificate relating to the Applicant's conduct was not supported by the record.

On the basis of these findings, the JAB recommended that the Secretary-General should pay the Applicant one year's net base salary as compensation for the injury sustained by him and issue to him a proper certificate of service as required by staff rule 109.11. The Secretary-General accepted the recommendations of the JAB and a proper certificate of service was issued on 24 January 1975 and sent to the Applicant on 29 January 1975. The Tribunal finds that this latter certificate cured the defects found by the JAB in the form and content of the two earlier certificates and fully met the requirements of staff rule 109.11.

XI. In case No. 291, the Applicant also appeals from a decision of the Respondent to accept a JAB recommendation that the Applicant's appeal was not receivable. That case concerned a memorandum dated 13 December 1973 from the Deputy Administrator, UNDP, to the Head of the Secretariat of the Secretary-General. The memorandum communicated information which the Deputy Administrator had received at a staff meeting in a note handed to him by the Secretary-General, relating to a possible reason for the delay in issuance of a certificate of service to the Applicant.

The Deputy Administrator also noted in the memorandum that he had looked into the situation, had been informed that a standard certificate had been issued and that further action was being taken with respect to additional information requested to be included in the certificate.

XII. When the Applicant first learned of this memorandum in reviewing his official status file which contained a copy of it, he asked the Secretary-General to review the administrative action which the Applicant believed was represented by the memorandum. The Applicant was told on behalf of the Secretary-General that the memorandum did not embody any separate and independent administrative decision, but merely recorded internal communication of information and, therefore, could not properly be considered an administrative decision subject to review or appeal. The JAB agreed with the view of the Secretary-General, concluding that the exchange of information could not be regarded as an administrative decision and that, therefore, the Applicant's appeal was not receivable pursuant to staff regulation 11.1 and staff rule 111.1(c).

XIII. In the Tribunal's view, the JAB was correct in concluding that the exchange of information between the two responsible officers reflected in the memorandum in question could not be regarded as an administrative decision subject to appeal. By no stretch of the imagination can mere exchanges of information between officers of the type involved here rationally be regarded as administrative decisions subject to appeal. Indeed, the only difference between the Tribunal and the JAB on this issue is that the Tribunal would have concluded that the Applicant's position on this point was frivolous.

XIV. With respect to the recommendation of the JAB, accepted by the Secretary-General in case No. 290 and the JAB recommendation

which was accepted by the Secretary-General and appealed from in case No. 292 regarding the form and content of the certificate of service, the Tribunal has reviewed the JAB's conclusions and recommendations as well as its underlying analysis and agrees with the JAB.

XV. In case No. 292, the Applicant also appeals from the decision by the Secretary-General to accept the recommendation of the JAB in its report regarding the alleged failure of UNDP to supply a timely appraisal record of the Applicant's performance evaluation reports and with regard to the content of his performance evaluation reports prepared by the Administration. On these matters, the JAB's conclusions and recommendations were that the evidence did not sustain the Applicant's charges of improper motives, malice and vengeance. The JAB also concluded that the delay in issuing the record of appraisal of 13 December 1972 was not excessive in the circumstances of the case. However, the JAB found that the reports of March 1972 and the record of appraisal were defective because they contained a retroactive reappraisal of the Applicant's performance, which was inconsistent with his performance record during his two years with UNDP. The remedy recommended by the JAB and accepted by the Secretary-General was, as noted above, one year's net base salary and the issuance of a proper certificate of service. The Tribunal has reviewed the extremely detailed and thorough report of the JAB and in particular has examined its considerations, analysis and conclusions. The Tribunal concurs with the JAB's views and appreciates its work in considering the voluminous material before it.

XVI. In case No. 293, it appears that the Applicant is contesting the Secretary-General's decision to accept the JAB report on whether to hold oral proceedings and whether to consider 13 claims which were submitted beyond the time-limits provided in staff rule 111.3. The JAB unanimously concluded that the appeal on these matters was

frivolous within the meaning of article 7.3 of the Tribunal's statute. Accordingly, the Tribunal holds it has no jurisdiction to consider case No. 293.

XVII. In case No. 294, the Applicant seeks to raise exactly the same issue with regard to the Secretary-General's acceptance of the JAB report in which it concluded that the appeal was not receivable.

This issue has already been dealt with by the Tribunal in relation to case No. 291 above and need not be addressed further. The Tribunal considers it improper and an abuse of its procedures for an Applicant to submit duplicate appeals with regard to the same JAB recommendation.

XVIII. In case No. 295, the Applicant states that he is appealing against a decision of the Respondent accepting a JAB recommendation made on 15 April 1975. Neither the JAB report nor the Respondent's decision are annexed and it is, therefore, unclear what the subject of the appeal is. On this ground alone, the appeal is subject to rejection; the Tribunal notes that the Respondent's answer suggests that the subject of the appeal appears to be the JAB report of 15 April 1975, a case in which the JAB unanimously concluded that the appeal was frivolous. If that is the subject of the appeal, the case is outside the Tribunal's jurisdiction under article 7.3 of its statute. Additionally, the Tribunal notes the Respondent's indication that the JAB decision was also the subject of the appeal in case No. 293. If that is the case, the Tribunal's comments in case No. 294 regarding duplicate appeals are equally applicable here.

XIX. Case No. 296 involves an appeal against the recommendation of the JAB communicated to the Applicant on 4 March 1976. The JAB refused to consider the appeal since it related to the same issues that had already been considered and been reported on in seven earlier cases. The Tribunal finds that the JAB was correct in

deciding not to entertain the appeal. In effect, the Applicant is now asking the Tribunal to rule on numerous appeals involving the very same issues that, in case No. 296 the Applicant sought to have the Tribunal refer back to the JAB for reconsideration by it. The Tribunal finds that the Applicant's conduct in submitting this appeal is frivolous and must invite serious criticism.

XX. Case No. 297 involved an offer of settlement by the Administration with respect to claims by the Applicant, and the withdrawal of that offer after the Applicant had objected to it. The Applicant characterized these actions as administrative decisions. The JAB took the view that an offer to settle a claim was not an administrative decision subject to appeal under staff regulation 11.1 and that the appeal was not within its competence. Moreover, the JAB unanimously considered the appeal frivolous within the meaning of article 7.3 of the Tribunal's statute. Accordingly, it is not within the jurisdiction of the Tribunal.

XXI. Having reviewed the circumstances, the Tribunal considers that the Applicant's treatment was generous and that he received adequate financial compensation for the defects and deficiencies found by the JAB in the Respondent's handling of the various aspects of these matters.

XXII. For the foregoing reasons, all of the Applicant's applications in cases Nos. 288, 289, 290, 291, 292, 293, 294, 295, 296 and 297 are rejected in their entirety.

(Signatures)

Samar SEN
President

Jerome ACKERMAN
Member

Ioan VOICU
Member

New York, 8 November 1988

R. Maria VICIEN-MILBURN
Executive Secretary