ADMINISTRATIVE TRIBUNAL

Judgement No. 445

Case No. 478: MORALES

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, First Vice-President, presiding; Mr. Jerome Ackerman, Second Vice-President; Mr. Ahmed Osman;

Whereas at the request of José Luis Morales, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 30 September 1988 the time-limit for the filing of an application to the Tribunal;

Whereas, on 30 September 1988, the Applicant filed an application in which he requested the Tribunal:

"...

10. To order the Secretary-General:

(a) To rescind his decision of 19 June 1985 summarily dismissing the Applicant from the Service of the Organization;

(b) To rescind his decision of 2 May 1988 to maintain his original decision of 19 June 1985, thereby rejecting the unanimous recommendation of the JAB [Joint Appeals Board] to reinstate the Applicant in the service of the Organization;

(c) To accept, in good faith and in the cause of equity and justice, the unanimous recommendation of the JAB to reinstate the Applicant in the service of the Organization, and to reinstate him retroactive from 1 July 1985;

(d) To pay the Applicant the arrears of his salary and allowances, with interest, retroactive from the date of his dismissal to the date of implementation of the judgement on this case;

(e) To pay appropriate contributions to the United Nations Joint Staff Pension Fund, on behalf of the Applicant as well as of the Organization, retroactive from the date of his summary dismissal to the date of implementation of the judgement on this case.

11. To award the Applicant appropriate and adequate compensation for material and moral injuries suffered by him since 1 July 1985 as a consequence of the illegal decisions taken by the Respondent, causing thereby a 'miscarriage of justice' in his case.

12. To award the Applicant appropriate and adequate compensation, at least three months' net base salary of the Applicant, for unreasonable delays in the JAB procedures for over two years, constituting thereby a 'denial of justice'.

13. To award the Applicant, as cost (Counsel's fees and other expenses) assessed at the time of filing the application at $2,000.00, subject to adjustment upon the completion of the proceedings.

14. To hold oral proceedings on the case in order to hear the Applicant and the witnesses concerned, particularly the following:

Mr. Louis-Pascal Negre
Former Assistant Secretary-General for Personnel Services

Mr. Donald R. La Marr
Former Director of the Accounts Division
Office of Financial Services

Mr. Issa Diallo
Special Assistant to the Secretary-General

Mr. Alberto Perez-Perez
Former Chief of the Administrative Review Unit
Division of Personnel Administration, OPS [Office of Personnel Services]

Mr. T. Tanaka
Chairperson of the JAB Panel

Dr. Noel J. Brown
Director, New York Liaison Office of UNEP [United Nations Environment Programme]
Counsel for the Applicant before the JAB Panel

Ms. Anna Frangipani Campino
President, Staff Committee"

Whereas the Respondent filed his answer on 30 December 1988;

Whereas, on 6 March 1989, the Applicant filed written observations in which he requested the Tribunal "to award him as cost a total sum of $3,000.00 to cover the Counsel's fees" and the President of the Tribunal, should he decide not to hold oral hearing in the case, "to designate, pursuant to article 10 (3) of the Rules of the Tribunal, a member of the Tribunal or any disinterested person to take oral statements from the Applicant and the witnesses concerned.";

Whereas the presiding member ruled on 30 March 1989 that no oral proceedings would be held in the case and that no oral statement would be taken under article 10(3) of the Rules;

Whereas the facts in the case are as follows:

The Applicant, a national of the United States of America, entered the service of the United Nations on 13 April 1970 as a Security Officer under a fixed-term appointment which was converted to a probationary appointment on 13 October 1970. On 1 April 1972 he received a permanent appointment and on 1 September 1982 he became Senior Security Officer.

Since the Applicant is a national of the United States of America, he is subject to payment of United States taxes on his United Nations earnings. Whenever any staff member paid from the regular budget is subjected to both staff assessment and national income taxation in respect of the salaries and emoluments received from the United Nations, the Secretary-General is authorized, under staff regulation 3.3(f), to refund to him or her, by way of double

taxation relief, the amount of staff assessment collected from him or her under the Staff Regulations and Rules, provided that "the amount of such refund shall in no case exceed the amount of his income taxes paid and payable in respect to his United Nations income."

As far as United States nationals or permanent residents of the United States are concerned, the procedure set forth in information circulars issued from time to time requires that such staff members annually submit a copy of their income tax returns to the Income Tax Unit of the United Nations, along with a "Request for Settlement of Income Tax" form (form F. 65). The staff member certifies on this form (a) that any cheque received from the United Nations in response to his requests has been or will be used promptly and solely to meet his income tax obligations; (b) that he will provide the United Nations, upon request, with acceptable proof of taxes paid, or other documents as may be required to verify the computation of his taxes; (c) that he will notify the United Nations promptly if for any reason it is necessary for him to file a return which is different from the return he has submitted and furnish a copy of the new return to the United Nations; (d) that he will refund to the United Nations any over-payment of tax, together with any interest received as a result of any such over-payment; (e) that he has utilized all exemptions and deductions to which he is entitled; (f) that any funds received from the United Nations for the purpose of meeting income tax liabilities of previous years have been paid to the appropriate tax authorities and that any part of such money refunded to him by the tax authorities has been refunded to the United Nations. The staff member also certifies that the signed copy of the income tax return he submits to the United Nations is a true, correct and complete copy of his final return, correctly reflects his income tax liability for the particular year and is the basis on which settlement for that year is requested. The United Nations then reimburses the staff member the amount of tax he or she paid.

On 1 March 1983 the Applicant submitted a "Request for Settlement of Income Tax", attaching a signed copy of his income tax return for 1982 for which he made all the certifications listed above. The Applicant had declared a tax liability of $9,667.40. The Applicant was reimbursed accordingly.

On 20 June 1983 the Internal Revenue Service (IRS) sent to the Applicant a correction tax notice claiming underpayment of $556.95 in taxes for 1982. The Applicant brought this notice to the Payroll Unit for payment. However, in reviewing the IRS document, the Payroll Unit discovered that the Applicant had reported a tax liability of $8,567.40 to the IRS for 1982. On 29 June 1983 the Chief of the Payroll Unit drew the Applicant's attention to this discrepancy and asked him to produce a copy of his 1982 return showing a tax liability of $8,567.40. The Applicant did not respond to this request.

On 25 November 1983 the Director of the Accounts Division sent him a reminder; he drew his attention to the certifications in his form F.65 and, in accordance with the conditions of reimbursement set forth in paragraph 6(b) of that form, asked him to sign and return an IRS form 4506 ("Request for Copy of Tax Form") in order to verify the propriety of the tax reimbursement paid to him in 1982. On 30 November 1983 the Applicant responded by submitting a cheque in the amount of $1,100 "for overpayment by the United Nations of my 1982 income tax". He did not, however, sign and return the form 4506.

On 8 February 1984 the Director of the Accounts Division reiterated the request for a signed form 4506 for 1982 and asked the Applicant also to sign such forms for 1980 and 1981, advising him that reimbursement of his future taxes had been stopped until he complied. On 3 April 1984 the Applicant signed the form 4506 for 1980, 1981 and 1982, and the decision to stop reimbursing his future taxes was therefore revoked.

A review of the Applicant's tax returns revealed that for 1980, 1981 and 1982 he had filed with the IRS tax returns different

from those submitted to the United Nations for reimbursement, resulting in an over-reimbursement by the United Nations in the amount of $2,404.35. The Applicant had already remitted $1,100 to the United Nations, leaving an overpayment of $1,304.35 which was deducted from his August 1984 salary.

On 2 May 1984 the Director of the Division of Personnel Administration sent to the Applicant a memorandum in which, after referring to his "unwillingness to clarify the issue by signing and returning IRS form 4506", he stated:

> "Should you fail to clarify the ... discrepancy to the satisfaction of the Office of Financial Services, the Organization would have no alternative but to assume that this is a case involving the submission of false returns to the United Nations. Those actions would constitute very serious misconduct warranting the most severe measures including summary dismissal pursuant to staff regulation 10.2."

This memorandum was withdrawn when the Applicant pointed out that he had signed the forms 4506.

On 18 October 1984 the Controller referred the case to the Assistant Secretary-General for Personnel Services for appropriate disciplinary action. In a memorandum of 6 December 1984 the Director of the Division of Personnel Administration summarized the facts set out above and formally charged the Applicant with having profited personally at the expense of the United Nations by the amount of $2,404.35; he advised the Applicant that unless he could prove to the satisfaction of the Organization that the facts described in the memorandum did not fully and accurately reflect the truth, his pattern of behaviour would constitute a violation of the standards of integrity expected of international civil servants as well as misconduct warranting the imposition of a disciplinary measure; the Applicant was requested to submit his written version of the matter by 20 December 1984 and was informed that he could avail himself of the assistance of a member of the Panel of Counsel.

On 21 December 1984 the Applicant replied by a memorandum

reading in part:

"2. During the course of events as outlined in your memorandum it is important to point out that some misunderstandings had arisen. I must honestly say that initially I did not realize the seriousness of the situation or its implications. I was advised by my staff representative and by Mr. George Irving, U.N. staff member from the Office of Legal Affairs and Chairman of the Staff Committee, not to sign IRS form 4506. I took their advice very seriously at first. But I soon realized that little effort was being made to resolve my situation.

3. I decided that the best thing to do was to see Mr. La Marr [Director of the Accounts Division] personally, which I did on 3 April 1984. On his advice I signed the IRS form 4506 for the years 1980, 1981 and 1982 in the presence of Ms. Lindenmayer and left them with him. He was pleased that I had willingly co-operated and told me that if I had a question I should speak to him or someone who would be able to advise me correctly. I presumed that the matter was resolved.

4. I have fully co-operated by signing the IRS forms as requested and by reimbursing the full amount on 31 August 1984. I was, therefore, surprised to receive your memorandum since I thought that the situation had been rectified to the satisfaction of all concerned.

5. I should like to say that, as a staff member with nearly 15 years of service, I have a very satisfactory record, not only at Headquarters but in four overseas assignments as well. I hope that my loyalty to the United Nations and my record to date will be fully considered in this matter. I sincerely regret any misunderstanding that might have arisen between the administration and myself and hope that this clarification will serve to remove any questions concerning me in this matter."

On 11 April 1985 the Assistant Secretary-General for Personnel Services recommended to the Secretary-General that the Applicant be summarily dismissed for serious misconduct. On 17 June 1985 the Under-Secretary-General for Administration and Management informed the Assistant Secretary-General for Personnel Services that, on behalf of the Secretary-General, he was summarily dismissing the Applicant for serious misconduct under the second

paragraph of staff regulation 10.2. On 19 June 1985 the Assistant Secretary-General for Personnel Services informed the Applicant of the Secretary- General's decision.

On 3 July 1985 the Applicant requested the Secretary-General to review the dismissal decision. On 12 August 1985 this request was denied and on 27 November 1985 the Applicant lodged an appeal with the Joint Appeals Board. The Board adopted its report on 17 March 1988. The Board's conclusions and recommendations read as follows:

"Conclusions and Recommendations

65. The Panel concludes that the delay of over one year in processing the charges against the appellant and in finalizing the case, clearly indicated doubts within the Administration as to the patent nature of his action or the appropriate disciplinary action to be taken against him and that the delay estopped the Administration from asserting that the appellant's conduct was obviously incompatible with the interest of the service and that it required his immediate and final dismissal. (Emphasis added).

66. Moreover the Panel concludes that the appellant was made to understand that co-operation with the Administration would be taken into account when a decision on his case was to be taken, and that in the event that a disciplinary measure was to be imposed, such disciplinary action would be less than the most severe, to wit, summary dismissal.

67. The Panel further concludes that the withdrawal by the Director of the Division of Personnel Administration of his memorandum of 2 May 1984, which stated inter alia, that 'should you fail to clarify the above-mentioned discrepancy to the satisfaction of the Office of Financial Services, the Organization would have no alternative but to assume that this is a case involving the submission of false returns to the United Nations. Those actions would constitute very serious misconduct warranting the most severe measures including summary dismissal pursuant to staff regulation 10.2', demonstrated the Administration's acknowledgement of the appellant's co-operation with it and borne out the fact that the Administration did not consider the appellant's actions as being 'obviously incompatible with continued service' warranting summary dismissal, despite its acknowledged awareness of the discrepancy between the federal tax liability reported by the appellant and that certified by the appellant on his form F.65.

68. While the appellant's reliance on the advice of his tax adviser did not exculpate him from his misconduct for 'double-filing' contrary to his obligations under form F.65, the Panel, in the light of the extensive testimonies presented and through a series of thorough reviews in executive sessions of all submissions, concludes that there was no patent intent on the part of the appellant to defraud the Organization.

69. In addition, the Panel concludes that in some previous disciplinary cases involving similar acts of alleged misconduct of staff members resulted in hearings before the JDC [Joint Disciplinary Committee] and that the appellant, too, should have been accorded the right to appear before the JDC.

70. Accordingly, the Panel strongly recommends (a) that the decision of 19 June 1985 by which the Secretary-General summarily dismissed the appellant from the service be rescinded and (b) that the appellant be reinstated in the service of the Organization, without back pay and with a demotion by one level."

On 2 May 1988 the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined the case in the light of the Board's report, had decided to maintain his original decision on the following grounds:

> "The Secretary-General's decision is based on his conclusion that your double filing of tax returns for three consecutive years, defrauding the Organization of a total of US$2,404.35, as noted by the Board in paragraphs 4 and 10 of its report, constitutes serious misconduct, which is obviously incompatible with continued membership of the staff and warrants summary dismissal under staff regulation 10.2, paragraph 2, in the interest of the service. It should also be noted that the delay in taking disciplinary action in your case was due largely to the extensive due process rights extended to you."

On 30 September 1988 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The contested decisions were arbitrary in nature and

vitiated by discrimination, prejudice and extraneous factors.

2. The Respondent's failure to refer the Applicant's case to the Joint Disciplinary Committee for review and advice or to grant him amnesty constituted discrimination against him contrary to articles 2 and 7 of the Universal Declaration of Human Rights.

3. The Respondent's arbitrary decision to summarily dismiss the Applicant without conclusively establishing a patent intent on his part to defraud the Organization actually caused a "miscarriage of justice".

4. The Respondent's arbitrary decision to summarily dismiss the Applicant was contrary to the fundamental principles of due process of law.

5. The Joint Appeals Board procedures were unreasonably delayed causing thereby a denial of justice, as well as material and moral injuries to the Applicant as a consequence.

Whereas the Respondent's principal contentions are as follows:

1. The Staff Regulations and Rules provide for summary dismissal. It follows that the decision of the Secretary-General not to refer the matter to a Joint Disciplinary Committee for advice does not violate the rights of the Applicant.

2. Summary dismissal is an appropriate administrative reaction to tax fraud. The fact that the notion of summary dismissal, as a disciplinary measure, is under study within the Secretariat does not affect the validity of the Applicant's summary dismissal.

3. False certification is a valid ground for summary dismissal. It is not necessary that there be an affirmative finding that the staff member had "patent intent" to defraud the Organization.

4. The decision to summarily dismiss the Applicant for tax fraud was a valid exercise of administrative discretion which did not violate the rights of the Applicant.

5. Delays in the Joint Appeals Board procedure did not violate the Applicant's rights and do not entitle the Applicant to damages since he did not suffer loss from the delay. Indeed, the Applicant benefitted from the delay since he was on full salary for two years after discovery of the fraud.

The Tribunal, having deliberated from 10 to 24 May 1989, now pronounces the following judgement:

I. The Applicant in this case challenges the Secretary-General's decision dated 2 May 1988 maintaining his original decision of 19 June 1985 summarily dismissing the Applicant for serious misconduct. The basis for the decision was that the Applicant's "double filing of tax returns for three consecutive years, defrauding the Organization of a total of US$2,404.35, ... constitutes serious misconduct, which is obviously incompatible with continued membership of the staff and warrants summary dismissal under staff regulation 10.2, paragraph 2, in the interest of the service."

II. The application in this case, having been filed on 30 September 1988, understandably makes no mention of the Tribunal's decisions in late October 1988 in Bruzual, Judgement No. 425, and Ying, Judgement No. 424, both of which dealt with issues of alleged tax fraud against the Organization. Some of the issues in those cases are quite similar to issues presented in this case. The Ying and Bruzual judgements were referred to in both the Respondent's answer and the Applicant's written observations. As will be seen, the Tribunal does not agree with the Applicant's attempt to show that the principles enunciated in those decisions do not apply to his case. Accordingly, a number of the Applicant's contentions here are disposed of by the principles set forth in Ying and Bruzual.

III. The Applicant first asks the Tribunal to adopt the Joint

Appeals Board's conclusion that his "double filing" of tax returns in reliance on a "tax expert" (who not only is not shown on the tax returns - despite the requirement of U.S. law that when a person other than the taxpayer prepares a tax return, that person must also sign the return - but somewhat surprisingly was also not later identified) for three years did not involve a patent intent to defraud the Organization and that the Administration did not conclusively establish that he had such an intent. In consequence, the Applicant says that his summary dismissal was a "miscarriage of justice." The Joint Appeals Board, of course, did not have the benefit of the Ying and Bruzual decisions when it made its determination, and as those cases indicate, the Tribunal is not in accord with the Joint Appeals Board on these points.

IV. To begin with, the filing of income tax returns with the U.S. Government different from those reported to the Organization and the related false certifications - all resulting in over-reimbursement to the staff member - cannot be regarded as an "innocent mistake" as the Applicant argues. When a staff member does not come forward immediately to bring to the attention of the Organization the actual return filed and refund the overpayment, but waits until the situation is discovered by the Organization before doing anything to rectify the situation, such conduct is per se intentional fraud and thus serious misconduct warranting summary dismissal. Engaging in deceptive behaviour, in itself, signifies an intent to deceive and to reap the fruits thereof. The Joint Appeals Board was mistaken in believing that there was some obligation on the Respondent beyond the showing made by him to establish a "patent intent to defraud." Once the Secretary-General establishes "double filing" and related false certifications, the burden is then on the staff member to adduce satisfactory exculpatory evidence. If, as in this case, the staff member fails to do so, summary dismissal for serious misconduct is warranted. See Ying, para. XVII, and Bruzual,

paras. X, XI, XII and XIV. The Tribunal reiterates that a mere claim of reliance on or trust in another is not sufficient to relieve a staff member of responsibility for conduct such as that involved in the present case.

V. Next, the Applicant asks the Tribunal to find that he had reasonable grounds to believe that the Respondent did not intend to take disciplinary action - or in any event summary disciplinary action - against him. In this connection, the Applicant advances three allegations in support of his position. These are discussed below. At the outset, however, the Tribunal notes that whether or not the Applicant had reasonable grounds for such a belief is almost entirely irrelevant. Regardless of the Applicant's beliefs, the fundamental question is whether his summary dismissal was beyond the discretionary authority of the Secretary-General under staff regulation 10.2.

VI. The first alleged basis for the Applicant's belief is his claim of having voluntarily disclosed to the Administration the irregularity in his 1982 tax return. This claim is also advanced in the Applicant's written observations as a distinguishing feature between his case and the Ying and Bruzual cases. However, essentially the same sort of claim was advanced in Bruzual and was found to be lacking in merit. See Bruzual, para. XIV. For the same reason, the Tribunal finds the claim to be without merit in this case. The Applicant here did not disclose the irregularity. When he sought an additional tax reimbursement, the irregularity was uncovered because he happened to submit with his request data showing that he had filed with the U.S. Government a tax return different from the one he had submitted to the Organization.

VII. The second alleged basis is that the Applicant fully cooperated with the Administration by signing IRS form 4506 enabling the Organization to obtain copies of his U.S. tax returns, and by

his repayment of the over-reimbursement. With respect to these matters, the Tribunal observes that the Applicant did no more than what he was obliged to do in any event and that for several months he did not even reply to the Organization's request for further information concerning the apparent "double filing". Also, he initially resisted signing form 4506 despite the terms of the certification on which the over-reimbursement was based. See Bruzual, para. XV. The Tribunal notes also that instead of promptly signing the form 4506, the Applicant forwarded a check for $1,100 to the Organization representing only the 1982 U.S. tax over-reimbursement to him. He evidently hoped that this would resolve the matter without further inquiries. Significantly, he did not inform the Organization of his additional over-reimbursements from "double filings" with respect to 1980 and 1981, or tender repayment of any of these over-reimbursements. In the Tribunal's view, the Applicant signed form 4506 only in a belated effort to avoid what then appeared to be imminent summary dismissal. The Tribunal finds nothing in these allegations by the Applicant justifying either a belief that no disciplinary action would be taken or a belief that the Respondent's decision regarding summary dismissal was flawed.

VIII. The third allegation - and this also is featured prominently in the Applicant's written observations - is that four senior officials of the Organization repeatedly assured the Applicant that no disciplinary measure, or no summary disciplinary action, would be taken against him. To the extent that the written record relates to this allegation, it does not, in the Tribunal's view, establish the Applicant's claim. On the facts here, the Tribunal does not consider informal, unofficial and conjectural discussions, such as those alleged by the Applicant, to be equivalent to commitments affecting the Secretary-General's authority in disciplinary matters. However, the Tribunal would view with disfavour misleading assurances of leniency to a staff member in connection with disciplinary matters by persons who appear to act with authority,

and, as the Tribunal has held in other cases, such conduct might entail the responsibility of the Organization.

IX. The Applicant also claims that his rights were infringed because he was not promptly suspended with or without pay in 1983 or in 1984, after his tax irregularities were discovered. In essence, the Applicant appears to be arguing that because the Organization kept him on its payroll for almost two years after discovering the pertinent facts, his eventual summary dismissal was unjust.

X. The Tribunal notes the comment of the Under-Secretary-General for Administration and Management, in the summary dismissal memorandum dated 17 June 1985, that:

> "3. The investigation in this case has been unnecessarily protracted. I am disturbed that I was not informed at an earlier date of Mr. Morales' fraudulent conduct. ..."

The Tribunal observes that ordinarily summary dismissal should involve swift action. See Judgement No. 104, Gillead (1967), para. III; see also Judgement No. 424, Ying, paras. XII and XIII. Although the delay in the present case was somewhat unusual, the Tribunal does not find that, under the circumstances here, it invalidates the action taken.

XI. The Applicant claims that he was denied due process, fair play and impartiality in the administration of justice because (a) his case was not referred to the Joint Disciplinary Committee, (b) he did not receive adequate notice that he was subject to summary dismissal, and (c) he was not provided necessary legal assistance. None of these contentions has any merit. The same claim regarding the Joint Disciplinary Committee was asserted and rejected in paras. XI-XIII of the Ying Judgement and in paras. X and XI of the Bruzual Judgement. The same reasoning applies here.

XII. As to the claim regarding alleged inadequate notice of summary dismissal, the thrust of the Applicant's argument seems to be that the 6 December 1984 communication he received regarding his misconduct did not repeat his potential exposure to summary dismissal. That possibility was mentioned in a memorandum dated 2 May 1984 of similar tenor. The Tribunal holds that, on the facts here, there was no need for the 6 December 1984 communication to have reminded the Applicant of the potential consequences of a determination that he had engaged in serious misconduct. Staff regulation 10.2 is very clear as to the potential consequences of serious misconduct. The Applicant was fully aware from the very beginning - and from the 6 December 1984 communication - of the misconduct he was being charged with. He understood very well that the burden rested on him to show that he had not engaged in misconduct or that there was some justification for either no penalty or a reduced penalty. Yet the facts regarding the misconduct were never denied or satisfactorily explained, and the Secretary-General, as was his right, found no exculpatory circumstances warranting a reduced penalty. In short, there was no prejudicial surprise of any sort calling for additional notification, and the Applicant was given ample opportunity to be heard. The requirements of due process were met, and in accordance with its well settled jurisprudence, the Tribunal is not competent to substitute its judgement for that of the Secretary-General on matters committed to his discretion.

XIII. As to the claim regarding legal assistance, it is obvious from the Joint Appeals Board's recommendations which were favourable to the Applicant that he received more than adequate assistance before that body. The Tribunal finds no prejudicial error on the part of the Administration on this point.

XIV. The Tribunal has not overlooked the Applicant's plea for clemency based on his honourable record of employment by the

Organization apart from the incidents in question. As the Tribunal observed in Ying, para. XVIII, the root cause of the Applicant's situation was his own serious misconduct and for that there can be no relief. An honourable past record may be tarnished beyond repair by fraud against the Organization, and one who has engaged in it must be prepared to suffer the consequences.

XV. It follows from the foregoing that the Tribunal, disagreeing with the Joint Appeals Board, finds that the action of the Secretary-General in summarily dismissing the Applicant for serious misconduct was proper as being within his discretion and was not vitiated by any prejudicial or extraneous factor or by significant procedural irregularity. See also Judgement No. 429, Beyele (1988), paras. IX, X and XIII. Under the circumstances of the present case, the Tribunal does not consider that the lapse of time between the Administration's receipt of copies of the Applicant's tax returns from the U.S. Government and his summary dismissal involved any prejudicial undue delay giving him a basis for complaint. Nor does the Tribunal find that any award of compensation should be made to the Applicant on his claim of undue delay by the Joint Appeals Board. That body obviously gave this case extremely careful consideration and while the Respondent should have submitted his answer much more expeditiously than he did so that the Joint Appeals Board's recommendation could have been rendered more expeditiously, the Tribunal does not consider, under the circumstances here, that the time involved was so disproportionate or that the Applicant's entitlement to special consideration is so strong as to require an award to him. In view of the Tribunal's disposition of the Applicant's contentions, no useful purpose would have been served by an oral hearing or by the taking of oral testimony as requested by the Applicant, and the request for costs is denied.

XVI. For the foregoing reasons, the application is rejected.

(Signatures)

Roger PINTO
First Vice-President, presiding

Jerome ACKERMAN
Second Vice-President

Ahmed OSMAN
Member

Geneva, 24 May 1989

Jean HARDY
Acting Executive Secretary