
ADMINISTRATIVE TRIBUNAL

Judgement No. 449

Case No. 466: JANITSCHKE

Against: The Secretary-General
of the United Nations

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

Whereas at the request of Hans Walter Janitschek, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 December 1987, 31 March, 15 and 28 April 1988 the time-limit for the filing of an application to the Tribunal;

Whereas, on 5 May 1988, the Applicant filed an application in which he requested the Tribunal:

"...

r. To order the Secretary-General:

- (i) To rescind his decision of 18 May 1987 not to renew the Applicant's fixed-term appointment beyond 31 December 1983.
- (ii) To reinstate the Applicant in the United Nations Secretariat retroactive 1 January 1984.
- (iii) To pay the Applicant salary and allowances, with interest, covering the period from 1 January to 30 December 1984, during which time he was compelled to remain unemployed as a direct consequence of the arbitrary, discriminatory and prejudicial decisions taken by the Respondent not to renew his fixed-term appointment beyond the

31 December 1983.

(iv) To pay to the United Nations Joint Staff Pension Fund, on behalf of the Applicant and of the United Nations, appropriate contributions, with interest, covering the Applicant's unemployed period from 1 January to 30 December 1984;

(v) To give serious consideration to the Applicant's promotion to the D-1 level, since he has been serving at [the] P-5 level for more than 5 years, in accordance with the relevant Staff Rules and Regulations.

(vi) To restore the Applicant's seniority in service at the P-5 level, in view of his re-appointment within one year on 31 December 1984 in the United Nations Fund for Population Activities, pursuant to staff rule 104.3.

(vii) To pay to the Applicant appropriate and adequate amount of compensation for considerable financial loss and immeasurable moral injuries suffered by him as well as for prolonged physical ailments and emotional stress suffered by him during the unemployed period from 1 January to 30 December 1983.

(viii) To pay to the Applicant appropriate and adequate amount of compensation for the unreasonable delays in the JAB [Joint Appeals Board] procedure for over three years, thereby causing the Applicant 'a denial of justice' in his appeal to the JAB, pursuant to the jurisprudence of the Administrative Tribunal.

s. To hold oral proceedings on the case to hear the Applicant and the witnesses concerned."

Whereas the Respondent filed his answer on 15 August 1988;

Whereas, on 31 October 1988, the Applicant filed written observations in which he requested the Tribunal "to award him as cost \$3,000.00 to cover the Counsel's fees and other relevant expenses";

Whereas the President of the Tribunal ruled on 30 March 1989 that no oral proceedings would be held in the case;

Whereas, on 20 April 1989, the Applicant requested the President of the Tribunal, "pursuant to article 10 (3) of its Rules, to designate a member of the Tribunal or any disinterested person to take oral statements" from certain witnesses;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 18 April 1977 as a Special Assistant to the Assistant Secretary-General for Public Information under a fixed-term appointment for one month at the D-1 level which was successively extended to 17 June 1977 and 30 September 1977. On 1 October 1977 he was granted a fixed-term appointment for two years in the same capacity but at the P-5 level - the level recommended by the Appointment and Promotion Board. On 17 September 1979 the Applicant was reassigned as Thematic Task Force Coordinator within the Department of Public Information and on 1 October 1979 his appointment was extended for two years. On 11 June 1980 he was reassigned as Senior Information Officer within the same Department and on 1 October 1981 his appointment was extended for six months on an interim basis pending receipt of a performance evaluation report and approval of the appointment for the duration of two years.

On 10 February 1982 the Applicant, whilst on his way to the United Nations Secretariat building, was approached by a NBC TV Nightly News reporter around 43rd Street and First Avenue, under the "Isaiah Wall", and asked to comment on certain statements derogatory to the United Nations attributed to the Mayor of New York City. The Applicant's remarks were featured on the NBC TV Nightly News on the same day and reported in the New York Post and the Daily News the following day. A panel was established to investigate the incident upon instructions from the Secretary-General. In its report, dated 5 March 1982, the Panel recommended that the Applicant be formally advised at the appropriate supervisory level that his statements before the media had been ill-advised and that he should refrain in the future from expressing personal views to the media. On 24 March

1982 the Under-Secretary-General for Public Information wrote a memorandum to the Applicant cautioning him to refrain in future from making any personal statements to the media on matters relating to the United Nations without proper authorization.

On 30 March 1982 the Executive Officer of the Department of Public Information informed the Office of Personnel Services that the Under-Secretary-General for Public Information had decided that the Applicant's appointment, due to expire the following day, "should be extended for a final period of nine months from 1 April 1982 to 31 December 1982. Our earlier request [for an extension of two years from 1 October 1981] is therefore withdrawn". The Applicant's appointment was extended accordingly. On 21 April 1982 the Applicant asked for a copy of the report of the Panel of investigation. A copy was submitted to him on 16 June 1982. On 29 September 1982 the Applicant wrote to the Under-Secretary-General for Public Information stating that his memorandum of 24 March 1982 inaccurately reflected the finding of the Panel and requesting that the record be amended accordingly. On 16 November 1982 he was informed that the memorandum in question would be appropriately amended. In the meantime, the Executive Officer of the Department of Public Information had advised the Applicant, on 1 September 1982, that the Department did not intend to recommend an extension of his fixed-term appointment beyond 31 December 1982. The Applicant having requested an explanation, the Executive Officer, in a memorandum of 11 November 1982, advised him as follows:

- "2. The post which you are now occupying had been assigned for functions of Thematic Task Force Coordinator. These functions were transferred to the Planning, Programming and Evaluation Unit when this Unit was established in DPI [Department of Public Information], and therefore the post should have been redeployed at that time.
3. This redeployment was delayed for certain administrative reasons, including providing support to UNISPACE 1982 by making your services available as Senior Information Officer to that Conference, since it was not adequately budgeted for

public information activities. It is now necessary to redeploy the post by the end of this year, and therefore it is not available for the extension of your contract."

On 12 November 1982 a Senior Administrative Officer at the International Conference on the Question of Palestine (ICQP) asked the Executive Officer of the Department of Public Information whether the Applicant could be loaned to ICQP on a non-reimbursable basis through 31 December 1982, on the understanding that ICQP would be responsible for his continued appointment starting 1 January 1983. On 17 November 1982 the Under-Secretary-General for Public Information confirmed to the Secretary-General of ICQP that the Applicant's services could be made available to ICQP against his Senior Information Officer's post, which could be loaned to the ICQP Secretariat on a non-reimbursable basis until 31 December 1982; after that date, when the Applicant's contract with the Department of Public Information would expire, the post would revert to that Department; it was therefore understood that the ICQP Secretariat would assume responsibility from 1 January 1983 for any further appointment for the Applicant. On 9 December 1982 the Applicant wrote to the Executive Officer of the Department of Public Information with reference to his memorandum of 11 November 1982; he stated that this memorandum was not only inaccurate in regard to the redeployment of the post of the Thematic Task Force Coordinator but also failed to take into account that staff members having served more than five years had "reasonable expectancy" that their contract would be renewed. On 21 December 1982 the Applicant requested the Secretary-General to review the administrative decision not to recommend an extension of his fixed-term appointment beyond 31 December 1982. His request was acknowledged but was not acted upon. On 1 January 1983 the Applicant was transferred to ICQP and his appointment extended to 31 August 1983 then to 30 September 1983. On 14 October 1983 the Under-Secretary-General for Administration and Management wrote a memorandum to the Assistant Secretary-General for Personnel Services asking him to extend the

Applicant's appointment until 31 December 1983 with an assignment in the Department of Disarmament; he added:

"It has to be clear to all, including Mr. Janitschek, that this arrangement extends only until 31 December 1983."

This understanding was conveyed to the Applicant on 14 November 1983 by the Deputy Chief of Staff Services. Effective 1 October 1983 the Applicant was accordingly granted a final extension of three months on loan to the Department of Disarmament as a Senior Political Affairs Officer.

On 29 February 1984 the Applicant requested the Secretary-General to review the administrative decision to separate him from the service. On 20 March 1984 the Assistant Secretary-General for Personnel Services advised him that since a fixed-term appointment "does not carry any expectancy of renewal or of conversion to any other type of appointment" and "shall expire automatically and without prior notice on the expiration date specified in the letter of appointment", his separation was not effected by any administrative decision subject to administrative review. On 19 April 1984 the Applicant lodged an appeal with the Joint Appeals Board. The Board adopted its report on 1 May 1987. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations"

33. The Panel finds that the administrative decision not to renew the appellant's fixed-term appointment beyond 31 December 1983 was taken in accordance with the Staff Rules, and that the appellant was granted ample notice that this would occur, although such notice is not required under these rules.
34. The Panel finds that the appellant had no legal expectancy that his contract would be renewed beyond 31 December 1983. The following factors point to this conclusion: the conditional nature of his last appointment with DPI which expired on 31 December 1982, the understanding reached between DPI and ICQP in November 1982 that ICQP would be using the appellant's services for the purpose of the Conference and that ICQP would be responsible for any further employment of the appellant after January 1983 and the conditional nature of his last fixed-term appointment with

ICQP as outlined in Mr. P. Ruedas' [Under-Secretary-General for Administration and Management] memorandum of 14 October 1983 to Mr. L.P. Nègre [Assistant Secretary-General for Personnel Services] and as communicated to the appellant on 14 November 1983 by Ms. H. Tsubota-Gruson [Deputy Chief of Staff Services].

35. The Panel finds that the appellant has not been able to prove to its satisfaction that the non-renewal of his appointment was motivated by prejudice or other extraneous factors.
36. Accordingly, the Panel makes no recommendation in favour of the appeal and rejects the specific remedies sought by the appellant in full."

On 18 May 1987 the Applicant was informed that the Secretary-General, having re-examined the case in the light of the Board's report, had decided to maintain the contested decision. On 5 May 1988 he filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Unreasonable delays in the Joint Appeals Board procedures constituted a denial of justice.
2. The Applicant was awarded a series of fixed-term appointments in order to perform professional functions of a continuing nature. The Respondent's failure to renew the Applicant's appointment was contrary to the jurisprudence established by the Tribunal in Judgement No. 4.
3. The Respondent used the Applicant's expertise to suit this convenience.
4. The Applicant had a presumptive right to consideration of posts elsewhere within the United Nations Secretariat but the Respondent made no efforts at all to find him any alternative employment within the United Nations Secretariat beyond 31 December 1983 in spite of his outstanding or very good performance.
5. The Respondent's failure to give a statement of cause for non-renewal of the Applicant's fixed-term appointment beyond 31 December 1983 was contrary to the provisions of Article 101(3) of the United Nations Charter, staff regulation 4.2, staff rule 104.12,

articles 2 and 7 of the Universal Declaration of Human Rights, as well as to the jurisprudence of the United Nations and ILO Administrative Tribunals.

6. The Applicant had a legal expectancy for the renewal of his fixed-term appointment beyond 31 December 1983.

Whereas the Respondent's principal contentions are:

1. The fixed-term contract excludes expectancy and in the present case no circumstances outside the scope of the contract gave rise to legally cognizable expectations:

(a) A fixed-term appointment does not carry any expectancy of renewal or conversion to any other type of appointment;

(b) Since no legal expectancy was created by the conduct of the Administration, the non-renewal of the Applicant's appointment did not violate his rights.

2. The Applicant's separation from the United Nations occurred as a result of the expiration of his fixed-term appointment and was not motivated by prejudice.

3. The Applicant is not entitled to any monetary compensation:

(a) As the Applicant did not substantiate any violation of his rights he is not entitled to any redress;

(b) The Applicant's claim for compensation for wrongs suffered as a consequence of the delayed response of the Respondent to the Joint Appeals Board should be rejected because he suffered no loss as a result of the delay.

The Tribunal, having deliberated from 12 to 30 May 1989, now pronounces the following judgement:

I. In a letter dated 20 April 1989 the Applicant's counsel requested the President of the Tribunal to exercise his power under article 10.3 of the Tribunal's Rules to obtain any necessary information in order to complete the documentation of the case and

for that purpose to designate a member of the Tribunal or any other disinterested person to take oral statements from persons referred to in the letter. However, the Tribunal considers the documentation (which includes 113 annexes) to be sufficient to enable the case to be properly decided and that, in any event, the power of the President to obtain evidence under article 10.3 can only be exercised prior to the case being placed on the list. Accordingly, the request is rejected.

II. The plethora of documents covers essentially two basic issues in this case. First, whether the Applicant had valid expectation of his continued service with the United Nations and, if so, the extent and nature of the Respondent's failure to fulfil his obligation and the consequent award to the Applicant of fair compensation; and at the same time the grant to him of other facilities and privileges to which he may be entitled. Secondly, whether the measures taken by the Respondent were vitiated by prejudice.

III. As regards the first issue, the Tribunal examined the Applicant's claim that in 1977 he was appointed to the United Nations with a promise by the then Secretary-General (Mr. Waldheim) that he would be given a D-1 post "with the understanding that it was to lead to a permanent contract with the United Nations". There is no direct evidence to substantiate this claim and a certificate of Mr. Jankowitsch (who was Permanent Representative of Austria to the United Nations in 1977), written 10 years later (on 28 August 1987), is what the Applicant essentially relies upon. At a later date the Applicant produced a copy of a memorandum which Mr. Jankowitsch had sent to the Austrian Government. This memorandum simply showed that the Applicant needed a job and that the Chancellor of Austria should take this up with the Secretary-General. However, the Tribunal notes that in March-April 1977 there was a flurry of activities to recruit the Applicant, but without any indication of how he appeared on the scene and how he

attracted the attention of so many senior officers. Thus, on 24 March 1977, Mr. Akatani, Assistant Secretary-General for Public Information, asked that the Applicant be immediately recruited as "my Assistant, to fill vacant post..." at the P-5 level. Two weeks later, on 8 April 1977, he suggested that the Applicant should be recruited at the D-1 level. On 25 April 1977 a letter was sent to the Applicant by Mr. W.H. Tarzi, Director of the Division of Recruitment, Office of Personnel Services, offering the Applicant "a one-month fixed-term appointment to the Secretariat, at step I of the Principal Officer (D-1) level, as Special Assistant to the Assistant Secretary-General, Office of Public Information" and suggesting that "this appointment became effective on 18 April 1977" - i.e. a week before the date of the letter or offer. This contract was extended by a month until 17 June 1977. Subsequently, the Applicant's contract was extended by another three months and 13 days - that is, until 30 September 1977. This extension was necessary to cover the period from 17 June 1977, when the first extension expired, until the Appointment and Promotion Board approved the Applicant's appointment at the P-5 level on a fixed-term basis for a period of two years.

IV. From these developments, the inference is clear that the Applicant's first entry as a staff member to the United Nations was due to some high-level initiative, but there is nothing in the records to show how or at whose initiative this came about. A letter from the Applicant to the former Secretary-General (Mr. Waldheim) asking for clarification has not been answered. If there were any discussions between him and the Applicant, the Applicant has produced no evidence to show what they dealt with or to support his claim that his job was on the basis of a commitment made by the Secretary-General, or to indicate what was the nature of that commitment. He was indeed taken on at the D-1 level originally, but when his case was referred to the Appointment and Promotion Board on 22 April 1977 the relevant memorandum contained

these two paragraphs:

- "3. The Office of Personnel Services considering the nature of the functions decided not to circulate the job description.
4. As at 1 January 1977, the desirable range for Austria was set at 13-18; as at 31 December 1976, Austria had 27 staff members in the Secretariat. Of these, 21 hold permanent and 6 fixed-term appointments."

V. The Tribunal finds nothing in the job description which would seem to justify the decision "not to circulate" it. On 28 September 1977, Mr. Akatani, finding delay and difficulty in the Appointment and Promotion Board, decided to propose the Applicant's appointment "at the Senior Officer (P-5) level with appropriate steps". The Appointment and Promotion Board, which had not approved of the Applicant's appointment at the D-1 level, agreed to his recruitment at the P-5 level. Mr. Akatani wrote to the Applicant on 23 December 1977 about his "intention to recommend your promotion to [the] D-1 level by June 1978 through the ad hoc promotion procedures". However, nothing apparently was done about this and Mr. Akatani retired in May 1979. On 28 June 1979, his successor, Mr. Akashi (USG/DPI), wrote that the Applicant's current contract would expire on 30 September 1979 and asked for an extension of two years, again at the P-5 level. The record shows that in these years, the Applicant accepted these decisions and never took up the question of his promotion to D-1. In the circumstances, the plea that he was unjustifiably denied D-1 promotion must fail. The Tribunal finds that there was no commitment and there was no protest when he was given successive contracts at the P-5 level.

VI. Another fixed-term contract, also at the P-5 level and ending on 30 September 1981, was entered into, but on 3 August 1979, the USG/DPI decided to move the Applicant from his job as Special Assistant to the Under-Secretary-General for Public Information and to post him as Thematic Task Force Coordinator from 17 September 1979. The Tribunal views this reassignment as normal, as the

Applicant suffered no disability from it, and the USG/DPI was within his rights to decide what would be the best disposition of staff members within his department. The Applicant might have been dissatisfied to be deprived, as a consequence, of being Secretary of the Committee of 41 (to review United Nations public information policies and activities), and some acerbic correspondence took place between the two, but it seems that no bitterness remained. Meanwhile, on 22 June 1981, on the USG/DPI's recommendation, another extension for two years, until 30 September 1983, was requested.

VII. While this request was still under consideration, the so-called "Isaiah Wall" incident took place and the Applicant's conduct came under investigation by a panel which recommended that

"Mr. Janitschek be formally advised at the appropriate supervisory level that his statements before the media on the 10 and 11 February 1982 were ill-advised and that he should refrain in the future from expressing personal views to the media."

The USG/DPI, as the principal supervisory officer of the Applicant, took action on the panel's finding; his communication to the Applicant was slightly at variance with what the panel had found and was described by the United Nations spokesman as a "censure". The Applicant protested and eventually the record was put right.

VIII. In view of this incident, there is very little doubt that the USG/DPI concluded that the value of the Applicant's services had diminished: as a result, a series of administrative measures followed, and eventually on 30 March 1982, the request for the Applicant's extension until 30 September 1983 was withdrawn; instead, it was decided to extend his appointment only until 31 December 1982 - that is, nine months earlier than originally planned. This was followed by various fixed-term contracts terminating eventually on 31 December 1983, when the Applicant was separated. For the whole of 1984, the Applicant had no employment

with the United Nations, but effective from 31 December 1984, he obtained a fixed-term contract with the United Nations Development Programme/United Nations Population Fund (UNDP/UNFPA) at the P-5 level.

IX. The Tribunal has examined the series of fixed-term contracts the Applicant had over a period of nearly 7 years (April 1977 to end of 1983) with a view to determining

(i) Whether the Applicant had reasonable expectation of continued service with the United Nations;

(ii) If so, whether the Respondent attempted to find alternative employment for the Applicant after having decided to separate him; and

(iii) Whether due process has been given to him at all stages.

X. Whatever expectation the Applicant might have had despite the explicit provision in all his letters of appointment that fixed-term appointments carried no expectancy of renewal, the withdrawal of the Department of Public Information's original request for extension of two years (1 October 1981 to 30 September 1983), reducing it to one year and three months (until the end of 1982), was the clearest indication that he might be heading for separation. The Applicant asked for an explanation and received a reply stating that the re-deployment of the post he was occupying had been delayed and concluding with the sentence: "It is now necessary to re-deploy the post by the end of this year, and therefore it is not available for the extension of your contract." This decision was not satisfactory to the Applicant, who asked for an administrative review and appealed to the Joint Appeals Board.

XI. On numerous occasions the Tribunal has considered the question of expectancy of continued employment by the holders of fixed-term contracts given to staff members under staff rule 104.12 (b). The Tribunal's jurisprudence on the subject is clear; suffice

it to cite, as an example, the following from Judgement No. 142, Bhattacharyya (1971), paragraph V:

"As a general rule fixed-term appointments do not carry a right of renewal. This is explicit in staff rule 104.12 (b), the wording of which has been incorporated in the standard letter of appointment. Nevertheless, the Tribunal is competent to examine the surrounding facts in which the letter of appointment was signed. The Tribunal has to consider the contract as a whole, not only by reference to the letter of appointment but also in relation to the circumstances in which the contract was concluded."

In the present case the Tribunal finds no reasonable grounds which could have given the Applicant any expectancy for continued employment by the Respondent after he was separated in 1983. The Tribunal notes that even the Austrian authorities, who were evidently interested in the Applicant's employment continuing with the United Nations, never raised the question of expectancy but simply asked that the Applicant's case be given "benevolent consideration" or favourably considered: had there been any commitment to the Applicant for continued service, these authorities would undoubtedly have referred to it.

XII. When there is an expectancy of the continuation of a series of fixed-term contracts, before final separation, attempts must be made by the Respondent to find an alternative appointment for the staff member, taking into account his general usefulness, level of performance and other similar factors. The Tribunal finds that shortly before the Applicant's contract for work in the Department of Public Information was to expire on 31 December 1982, negotiations were undertaken to assign the Applicant to the International Conference on the Question of Palestine (ICQP) until 31 August 1983. The contract was subsequently extended by nine days, and finally until 31 December 1983 through the intervention of the Under-Secretary-General for Administration and Management. In his memorandum of 14 October 1983 to the Assistant Secretary-General

for Personnel Services, he said in part:

"1. Further to our conversation on this subject, I should be grateful if you would appoint, or extend, Mr. Janitschek until 31 December 1983, against a vacant post in Mrs. Mair's office, but assigned to work in the Department of Disarmament.

...

3. It has to be clear to all, including Mr. Janitschek, that this arrangement extends only until 31 December 1983."

Moreover, in a telegram dated 19 September 1983 to the Austrian Minister for Foreign Affairs, the Secretary-General stated inter alia:

"Mr. Janitschek's appointment has been extended to the end of September, but his services with the Conference secretariat will not be needed beyond that date. Efforts to find other suitable posts have, unfortunately, not proved fruitful. In the circumstances, I must conclude with regret that we shall be unable to provide for a further extension of Mr. Janitschek's contract."

XIII. In view of this categorical statement by the Secretary-General that other suitable posts were not available, the Tribunal holds that the plea suggesting that attempts were not made to find an alternative appointment for the Applicant could not have been sustained even if it had been relevant. The Tribunal notes that, despite the telegram quoted above, the Applicant was given a final extension until 31 December 1983, that he eventually found a post in UNDP/UNFPA on 31 December 1984 and that the Secretary-General agreed to consider the Applicant's application for one of the three available vacant posts in which he showed interest. A letter of 30 January 1985 addressed to the Permanent Representative of Austria to the United Nations by the Officer-in-Charge for Personnel Services reads in part:

"I wish to inform you that the United Nations Staff Rules stipulate that reinstatement of a former staff member must take place within a twelve-month period. We are unable to

comply with Mr. Janitschek's request since he failed to notify the Office of Personnel Services, within the allocated time, of his desire to serve again the Organization. However, his candidature could now be taken into consideration along with that of other qualified candidates for the posts mentioned in his letter. Nevertheless, I would like to remind you that, pursuant to General Assembly resolutions, priority in recruitment is given to nationals of unrepresented and underrepresented Member States. Austria is currently overrepresented with 38 nationals on the staff of the Secretariat, against a desirable range of 16 to 28."

XIV. Taking into account all these developments, the Tribunal holds that the Respondent made serious attempts to find an alternative appointment for the Applicant and, although these attempts did not produce significant and immediate results, the plea that the Respondent failed to fulfil his responsibility and the Applicant's expectation cannot be upheld.

XV. On the question of due process, the Tribunal would wish to comment first on the delay which occurred in the Respondent's reply before the Joint Appeals Board. The Tribunal views with considerable regret that the reply of the Respondent, due on 15 August 1984, was not actually received until 8 September 1986. But the Tribunal notes that, in this particular instance, the delay inflicted no financial or other injuries to the Applicant: the Applicant filed his appeal before the Joint Appeals Board on 19 April 1984 and, even with the utmost dispatch, it could not have been disposed of before 31 December 1984, by which date the Applicant had received a new contract with UNDP/UNFPA at the P-5 level. The Tribunal disregards the initial delay in filing the appeal with the Joint Appeals Board, but takes note of the fact that in the later stages of the proceedings before the Board, counsel for the Applicant suggested conciliation and settlement, neither of which was accepted by the Respondent. In any event the Tribunal wishes to make it clear that its finding in this instance that the Applicant has suffered no injuries does not justify and far less condone the delay of the Respondent in filing his reply with the

Joint Appeals Board. In this context, the Tribunal would refer to its comments in the Ridler case (Judgement No. 327) that the Respondent "is bound as a matter of law to respect the institution of the Joint Appeals Board" (para. IX).

XVI. As regards allegations of other infractions of due process, the Tribunal finds that they were of a minor nature and did not come in the way of fair treatment of the Applicant. Thus, even the delay in the submission of an up-to-date performance evaluation report to support the extension of the Applicant's fixed-term contract from 1 October 1981 to 30 September 1983, was covered by a letter of interim appointment. Irritants like the untimely change in the Applicant's title in March 1982, the failure of the Respondent to send the Applicant a copy of the Panel report on the "Isaiah Wall" affair, or the confusion in the initial appointment of the Applicant in April 1977 can be ignored, as none of them affected the main issues. The Tribunal concludes that there has been no violation of due process affecting the course of justice.

XVII. On the question of prejudice against the Applicant, the allegations are almost entirely against Mr. Akashi, then Under-Secretary-General for Public Information. The Applicant implies that all the difficulties he faced from the time of Mr. Akashi's taking over as USG/DPI until the Applicant's separation on 31 December 1983 were directly or indirectly caused by Mr. Akashi. In order to prove his point the Applicant does not hesitate to cast aspersions far and wide, and finds the hand of Mr. Akashi in every turn. Thus the Applicant even goes to the extent of saying that Mr. Akashi wished to remove the Applicant from his post in the office of USG/DPI because he was afraid of the Applicant taking over Mr. Akashi's post. The Tribunal deplores such irresponsible accusations made without any evidence. Nor can the Tribunal be guided by what the Applicant calls, but does not define or elaborate, "power politics" in the United Nations or in the

Appointment and Promotion Board, unless some proof is forthcoming that such power politics affected the staff member's contractual rights or obligations.

XVIII. Specific charges of prejudice against the USG/DPI relate to his action in moving the Applicant from his post as Special Assistant to the Under-Secretary-General (which carried with it, apparently, the work as Secretary of the Committee of 41) to the post of Thematic Task Force Coordinator. The Applicant was not pleased with this move but the record shows that he nonetheless accepted it. The Tribunal has already held that the USG/DPI was within his rights in deploying his manpower in the way he considered best for his Department; therefore this reassignment did not connote any prejudice. The Applicant was also not content that as Thematic Task Force Coordinator, he was no longer to be the Secretary of the Committee of 41. The Tribunal does not see in this arrangement any prejudice on the part of the USG/DPI against the Applicant. In fact, on 28 June 1979, the USG/DPI recommended an extension of the Applicant's contract for two years and on 2 November 1979 he wrote to the Applicant "to thank you and commend you for serving the Committee as its Secretary".

XIX. There is evidence that the USG/DPI did not like the tone of some correspondence the Applicant addressed to him but, in the view of the Tribunal, he did not on this account develop a sense of hostility towards the Applicant. On 22 June 1981 the USG/DPI once again recommended the extension of "the appointment of Mr. Hans Janitschek for a further period of two years from 1 October 1981". On the same day, the USG/DPI agreed that the Applicant should assist in the United Nations Conference on the Exploration and Peaceful Uses of Outer Space; his memorandum to the Applicant ended:

"I believe that the assignment I have outlined above will be a challenging one, and would appreciate having your response to this offer as soon as possible so that I can inform Mr. Pal [Secretary-General of the Conference] accordingly."

XX. The performance evaluation report on the Applicant for 1979-81 had not been prepared on time and, without it, the Office of Personnel Services was having difficulty in pursuing the USG/DPI's request for the extension of the Applicant's contract until 30 September 1983. Delays, however unfortunate, in writing performance evaluation reports often occur, but there is nothing on record to show that the delay in this instance was motivated by prejudice or that the Applicant suffered from the absence of a report: the Respondent gave him an interim contract from 1 October 1981 until 31 March 1982 "pending receipt of performance evaluation report".

XXI. In February 1982, the "Isaiah Wall" incident took place and there was a noticeable change in the atmosphere. The Applicant was investigated and was given a warning. The USG/DPI was naturally exercised over the Applicant's involvement, and there is evidence that on many matters he no longer took the same degree of interest in, or showed the same measure of sympathy for, the Applicant. All this culminated in the USG/DPI withdrawing his recommendation that the Applicant's contract be extended until 30 September 1983. He now wished the contract to end on 31 December 1982. Even so, the contract was in fact extended until the end of December 1983 and, during the last few months of 1982, arrangements were made, with the USG/DPI's concurrence, to accommodate the Applicant in ICQP. The recital of these events demonstrates that while the "Isaiah Wall" incident might have made the USG/DPI revise his opinion about the value of the Applicant continuing in DPI, there is nothing to show that he was influenced by any personal prejudice. The Tribunal therefore holds that none of the allegations of prejudice made by the Applicant has been substantiated and all of them are rejected.

XXII. In one of his pleas, the Applicant has asked for his seniority to be maintained inasmuch as he obtained a post in

UNDP/UNFPA within a year of his separation on 31 December 1983. This question was not, and could not be, before the Joint Appeals Board - since the Applicant found the post after lodging his appeal with the Joint Appeals Board. The Tribunal draws the attention of the Respondent to the provision in Staff Rule 104.3(a), first sentence, in fine, which is permissive and not mandatory.

XXIII. The Applicant's written observations conclude with a request that he be awarded \$3,000 as costs to cover counsel's fees and other relevant expenses. This request is made without amending the Applicant's pleas and cannot be properly introduced by inclusion in the Applicant's written observations. The Tribunal rejects this request in any event, and finds no special circumstances which would justify the award of costs to an unsuccessful Applicant. Furthermore, in this case the matter has been unnecessarily complicated by the introduction of issues not before the Tribunal.

XXIV. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Arnold KEAN
President

Samar SEN
Member

Ioan VOICU
Member

Geneva, 30 May 1989

Jean HARDY
Acting Executive Secretary