
ADMINISTRATIVE TRIBUNAL

Judgement No. 464

Case No. 472: EAMES

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 John Robert Godfrey Eames, a former staff member of the United Nations Environment Programme, hereinafter referred to as UNEP, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 September, 31 October and 31 December 1986, 30 June, 31 July and 30 November 1987 and 29 January 1988 the time-limit for the filing of an application to the Tribunal;

Whereas, on 27 January 1988, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 6 June 1988;

Whereas the pleas of the application read in part as follows:

"...

Witnesses and additional documentation: (...)

- 2.2 The Applicant does not propose to call witnesses unless the Tribunal itself decides to institute oral proceedings.
- 2.3 The Applicant reserves the right to request the production of additional documents should he consider this necessary in the

course of the Tribunal's consideration of the case.

- 2.4 Provisional lists of witnesses and additional documents are provided in ...

Contested decision (...)

- 2.5 The Applicant contests the Secretary-General's decision not to accept the findings of the UN Joint Appeals Board, as set out in paragraphs 49-56 of its Report No. 514, dated 22 July 1985, in respect of Case No. 84-14. (...)

This decision was conveyed to the Applicant, inter alia, in a letter from the ASG [Assistant Secretary-General] for Personnel Services, dated 8 October 1985, viz:-

NB: In subsequent correspondence, OPS [Office of Personnel Services] was to acknowledge a series of errors leading eventually to an amendment of the Secretary-General's decision - in effect, extending compensation to cover a period of 22 months (from 1 March 1984 to 31 December 1985.)

...

Obligation invoked/relevant pleas: (...)

- 2.6 With regard to the provisions of Article 9, paragraph 1 of the Statute, the Applicant submits the following plea:-

- that, 'if the Tribunal finds the application is well founded, it shall order the specific performance of the obligation invoked' (i.e. in paragraphs 49-56 of JAB [Joint Appeals Board] Report No. 514, dated 22 July 1985). The particular paragraphs, in which the obligation is both implicit and explicit, are:-

...

CONTINGENT PLEAS

Re-instatement or re-employment

- 2.7 With respect to the obligations invoked in these specific 'conclusions and recommendations' of the JAB panel - and with reference to the ... - the Applicant submits the following contingent pleas:-

that the Tribunal should call upon the Secretary-General to:-

- (i) Amend his decision not to accept the findings of the JAB;

- (ii) Accept, in particular, the findings in paragraphs 50, 54 and 55 of the JAB report;
 - (iii) Fulfil the obligation, both implicit and explicit in the aforementioned paragraphs, i.e. to extend formally the Applicant's appointment (with UNEP) through to the end of 1985, upholding the JAB panel's opinion (in paragraph 54) that the decision (of the Executive Director of UNEP) 'not to extend the appellant's contract cannot be sustained';
 - (iv) Order or arrange the reinstatement or re-employment of the Applicant in UNEP - or, at the discretion of the Secretary-General, in a suitable post in another organization of the United Nations common system (at the P.3.vii level or above) having regard to the JAB panel's comment in paragraph 55 on 'thus utilizing to advantage his (the appellant's) many years of proven experience in the field of his expertise.'
- 2.8 In the event that the Tribunal will accept the plea submitted in the preceding paragraph (2.7), or a substantial or relevant part of it, the Applicant puts forward a further contingent plea as follows:

- that the Tribunal should call upon the Secretary-General to:-

- (i) Declare the disputed performance evaluation report (1 January to 5 June 1983) 'null and void', and order its removal from the Applicant's official status file, having regard to the JAB panel's findings (in paragraphs 51 and 53) that the PER [performance evaluation report] was 'deficient procedurally and substantively in terms of administrative instruction ST/AI/240, dated 13 January 1977.'
- (ii) Order or arrange for a further, de facto (unpaid) extension of the Applicant's contractual status with the United Nations so that a record of continuous service is maintained (inter al. to safeguard the Applicant's pension rights) over the period 1 January 1986 to the date of reinstatement in UNEP or re-employment elsewhere in the UN system.

Additional compensation in lieu of re-instatement or re-employment

- 2.9 In the event that the Tribunal should decline to accept the pleas for reinstatement or re-employment (in paragraph 2.7 (iv) above), the Applicant puts forward a contingent plea - relevant to the Statute, the findings of the JAB panel, and ... The Applicant pleads that the Tribunal should find:-
- (i) That 'a further extension of the Applicant's contract was warranted from 1 March, 1984 to the end of 1985' (Ref: JAB Report 514, paragraph 50);

- (ii) That 'the decision (of the Executive Director of UNEP) not to extend the contract cannot be sustained' (Ref: JAB Report 514, paragraph 54);
- (iii) That, de facto, a contract of service between the Applicant and the United Nations existed, and was in force, over the period 1 March 1984 to 31 December, 1985;
- (iv) That decisions of the Executive Director of UNEP not to re-instate or re-employ the Applicant demonstrated unwarranted prejudice against the Applicant in contravention of the Staff Rules;
- (v) That the injury sustained by the Applicant was severe as a direct consequence of the unwarranted prejudice and decisions of the Executive Director not to extend the Applicant's contract and, subsequently, to reject recommendations, appeals and written applications for his re-employment;
- (vi) That - with due acknowledgement to the Secretary-General's favourable consideration of the case, notwithstanding his decision in respect of the JAB findings - the grant of compensation, as ultimately determined, was not wholly adequate or commensurate with the severity of the injury sustained - and, in this sense, was therefore not wholly an 'appropriate financial settlement' as recommended in the JAB report (paragraph 55);
- (vii) That an additional amount of compensation should be paid to the Applicant, related, inter alia, to the discretionary clause in article 9, paragraph 1 of the Statute which states that 'The Tribunal may, however, in exceptional cases, when it considers [it] justified, order the payment of a higher indemnity';
- (viii) That the amount of additional compensation should, in the first instance, be based on a calculation of 'loss of actual earnings' and 'loss of future earnings' suffered by the Applicant as a consequence of the non-extension of his contract, taking account of compensation already paid through the intercession of the Secretary-General in his 'attempt to settle the case';
- (ix) That, further to the discretionary provision in article 9, paragraph 1 of the Statute, an exemplary award of damages should also be granted in compensation for the aggravated injury to the health of the Applicant sustained as a consequence of a series of unwarranted and prejudicial actions of the Executive Director and Administration of UNEP. (...)

Amount of compensation (...)

Conditional waiver of claim

- 2.10 No compensation (over and above that which has already been paid to the Applicant) would be claimed in the event of a favourable judgement of the Tribunal on the pleas for reinstatement or re-employment in paragraph 2.7 above.
- 2.11 Similarly, no additional compensation would be claimed if the plea in paragraph 2.8 (ii) above is accepted by the Tribunal, provided that reinstatement or re-employment is subsequently ordered or arranged by the Secretary-General.

Contingent claims

(i.e. in the event of rejection of the pleas for re-instatement or re-employment)

- 2.12 With regard to the pleas in paragraph 2.9 (viii), the following submission is made:-
- (i) That additional compensation for 'loss of actual earnings' should be paid in an amount not less than US \$7,000, and that the precise calculation of the amount should be referred for settlement by mutual agreement between the Secretary-General and the Applicant, inter alia, taking account of costs to the Applicant in pursuing the case over more than four years. (...)
- (ii) That further, additional compensation for 'loss of future earnings' should be paid at the discretion of the Tribunal, in an amount equivalent to the net salaries and allowances the Applicant would have received from further extension(s) of his contract with UNEP beyond 31 December 1985. (...)

Damages

- (iii) With regard to the plea in paragraph 9 (ix) above, the Applicant submits that the award of discretionary damages is warranted in consideration of medical evidence of aggravated injury to the health of the Applicant as a direct consequence of actions and events relevant to the case, both before and after non-renewal of his contract with UNEP at the end of February 1984. The Tribunal is requested to exercise its discretion under the terms of article 9, paragraph 1 of the Statute; find exceptional circumstances in the case, and grant substantial additional compensation in an amount to be determined by the Tribunal, having regard - inter alia - to the severity of the aggravated injury and the current prognosis on the health of the Applicant. (...)

..."

Whereas the Respondent filed his answer on 22 March 1989;

Whereas the Applicant filed written observations on 25 May 1989 in which he amended his pleas as follows:

"3.14. I wish, therefore, to amend the relevant plea (application, para. 2.11, iii) and enter a claim for exemplary damages in the amount of

five hundred thousand US dollars (\$500,000),

adding the rider that this amount may be decreased or increased 'according to expert evidence or advice.'

...

5.2. I therefore request the Tribunal to:

- (i) Set aside the Respondent's 'conclusion and pleas' and find that the application is well founded;
- (ii) Call upon the Secretary-General to review his decision not to accept the findings of the Joint Appeals Board and order performance of the obligations invoked, with particular reference to the Board's findings that the Applicant had 'legitimate hopes of continuance with UNEP;' that there were circumstances in the case 'warranting a further extension of (his) appointment through to the end of 1985;' and that 'the decision not to extend (his) contract cannot be sustained.' (...);
- (iv)[sic] Uphold the pleas in Section 11 of the application in all respects, essentially that the Tribunal should:-
- Either order or arrange the Applicant's reinstatement in UNEP or reemployment in the UN, by whichever means may be open to the Tribunal or in whatever form of expression it deems appropriate;

- Or, alternatively, order payment to the Applicant of a 'higher indemnity provided for in para. 1 of article 9, of the Tribunal's Statute', taking into account the specific amendment to the plea for exemplary damages (2.11. iii) as set out above (in para. 3.14).

5.3. I should like to add that:-

- Assuming the plea for reinstatement can and will be accepted, the Tribunal might, in the circumstances of the case, also find it appropriate to consider the grant of additional token or nominal compensation for loss and damage (with respect to application paras. 2.11.i and 2.11.iii)
- If, on the other hand, the Tribunal decides to award exemplary damages in the order of the sum requested, it may wish to consider this as total compensation, i.e. with no additional amount(s) granted for loss of actual or future earnings (with respect to application paras. 2.11.i and 2.11.ii)

5.4. In any event, whatever decision is taken on the principal and contingent pleas, I would ask the Tribunal to give special and separate consideration, if necessary, to the issue of my pension (...) and find that the period 1 March 1984 to 35[sic] December 1985 is properly counted as pensionable service.

5.5. I should also request the Tribunal to allow me professional legal representation at the hearing, again if deemed necessary or may be helpful to my case, and/or to appear myself, or produce witnesses or submit further written evidence.

..."

Whereas, on 13 October 1989, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 4 October 1989 and 30 October 1989, the Applicant submitted additional documents;

Whereas the facts in the case are as follows:

John Robert Godfrey Eames entered the service of the United Nations on 5 October 1980. He was initially offered a one year, two months and 27 days fixed-term appointment, "limited to service with the United Nations Environment Programme", as an English

Writer/Editor at the P-3, step I level, in the Information Division of the Office of the Executive Director. This appointment was extended first, for a further fixed-term period of one year, until 31 December 1982; then, for a further fixed-term period of one year, until 31 December 1983.

The Applicant's performance during the period 5 October 1980 to 31 December 1982 was evaluated in a performance evaluation report, hereinafter referred to as "the first report", that contained six "A" (outstanding) ratings and eight "B" (very good) ratings, and in which his overall performance was rated as a "very good performance". The Chief, Publications Programme noted that the Applicant's work as an "editor and organizer of the Annual Review has been exceptional" and that "in addition to his regular work load [the Applicant] contributed far beyond the call of duty towards creating a public information support programme."

On 18 August 1982, the UNEP Executive Director established, on account of financial constraints and after discussions with the UNEP Joint Advisory Committee, certain criteria to be applied by the Administration in cases of extensions of fixed-term appointments and conversions of fixed-term to probationary appointments, in respect of staff serving with UNEP. The criteria to be applied in reviewing appointments expiring in 1982 were as follows:

"1. Extension to end of 1985 ...

- Five years minimum service with UNEP and with 'outstanding' or 'very good' performance evaluation reports, or,
- Three to five years service with UNEP and 'outstanding' performance evaluation reports.

2. Extension to end of 1984 ...

- Three to five years minimum service with UNEP and 'very good' performance evaluation reports, or,
- Less than three years but 'very promising'.

3. Extension to end of 1983 open to staff with 'outstanding' or 'very good' performance evaluation reports who are

encumbering project posts ... and to borderline cases where improvement in performance must be demonstrated."

These criteria and guidelines, which were applied in 1983, were later modified in that for staff members with three to five years of service with UNEP, extensions of fixed-term appointments were allowed up to 31 December 1985, even with only "very good" performance evaluation reports.

The Applicant's fixed-term appointment was due to expire on 31 December 1983. In view of the "very good" rating of his overall performance and according to the criteria established by the Executive Director, he expected a renewal of his appointment.

The Applicant's performance during the period 1 January 1983 to 5 June 1983 was evaluated in a performance evaluation report, hereinafter referred to as "the second report", which contained four "A" (outstanding) ratings, seven "B" (very good) ratings and three "C" (good) ratings. The Applicant's overall performance was rated "very good". The Applicant countersigned the second report on 20 June 1983, with the following notation: "Signed [as] seen. I intend to rebut."

In a memorandum dated 21 June 1983, the Chief, Administrative Service, informed the Applicant that the Executive Director had decided not to extend his appointment beyond its expiration date on 31 December 1983.

On 22 June 1983, the Applicant instituted a rebuttal procedure, contesting the second report. He asked the Administration to "hold in abeyance any termination of [his] contract" until the Executive Director had the opportunity to review the outcome of the rebuttal. The Applicant also asked that the second report be withdrawn on the ground that it was fraught with procedural irregularities. At the Administration's request, on 18 July 1983, the Applicant filed a formal rebuttal to the report, setting forth in detail the grounds for his rebuttal. He also questioned the need for a second report, as the first report had evaluated his performance until 31 December 1982 and, in accordance

with ST/AI/240 of 13 January 1977, a new report was not required in early June 1983.

On 14 November 1983, the Applicant filed a claim with the Coordinator of the Panel on Discrimination and Other Grievances, hereinafter referred to as the Panel on Discrimination.

In a memorandum dated 28 November 1983, the Chief, Administrative Service, transmitted to the Executive Director, the report of the panel that had been designated to investigate the Applicant's rebuttal. He noted that two members of the panel considered that the report was vitiated by procedural irregularities and should be removed from the Applicant's personnel file. The report was not required since only five months had elapsed since the previous evaluation and, furthermore, the Applicant had "unfairly and unjustifiably" been denied the opportunity to discuss his own performance with his supervisor. On the "substantive aspect" of the report, two panel members recommended that two "C" ratings be upgraded to "B" and that the unfavourable comments be deleted. A third member of the panel did not support either of the recommendations.

On 5 December 1983, the Applicant requested the Secretary-General to review the administrative decision not to extend his fixed-term appointment.

On 9 December 1983, the Chief, Administrative Service, Staff Services Unit, transmitted to the Applicant the Executive Director's appraisal of the panel's report. The Executive Director had, in his assessment dated 8 December 1983, upgraded some ratings and authorized the deletion of certain negative remarks. The resulting overall rating was "B" (very good). He had noted however:

"These changes are simply on the basis of the fact indicated by the panel regarding the occurrence of the incidences[sic] which led the supervisor to use these comments before the period of the report. However this does not mean the Executive Director is accepting the fact that this is the proper evaluation."

In a cable dated 23 December 1983, the Director, Division of Personnel Administration at Headquarters, informed the Chief, Administrative Service, that the Coordinator of the Panel on Discrimination had requested the Assistant Secretary-General for Personnel Services to extend the Applicant's appointment for two months in order to enable the Panel to assess the outcome of the Applicant's rebuttal and to conclude its own investigation of the case before the Applicant's separation from service. The Director of Personnel supported the Panel's request and asked UNEP to take the necessary action.

The Applicant's appointment expired on 31 December 1983.

As a result of Headquarters' intervention, on 16 February 1984, the Assistant Executive Director informed the Applicant that the Executive Director, in accordance with a recommendation received from Headquarters, under the terms of paragraph 15 of ST/AI/308/Rev.I of 25 November 1983, had authorized an extension of his appointment from 1 January through 29 February 1984.

On 23 February 1984, the Coordinator of the Panel on Discrimination transmitted to the Assistant Secretary-General for Personnel Services its report on the Applicant's complaint. It recommended, based on the Applicant's performance, as reflected in the second report, an extension of his appointment "for a further period consistent with [his] present contract". It also noted that the criteria established by the Executive Director "should be abolished since they undermine the condition of 'no expectancy of renewal of fixed-term contracts' provided for in staff rule 104.12(b)."

The Applicant's appointment expired on 29 February 1984 and was not extended.

In a letter dated 22 March 1984, the Assistant Secretary-General for Personnel Services informed the Applicant that his case was "under active consideration" in the light of the Panel on Discrimination's report.

On 31 March 1984, the Applicant lodged an appeal with the

Joint Appeals Board (JAB). The Board adopted its report on 22 July 1985. Its unanimous conclusions and recommendations read as follows:

- "49. The Panel finds that in spite of the provisions of staff rule 104.12(b) that the fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment and a similar clause appearing in the many letters of appointment signed by the appellant, the criteria established and announced to the staff by the Executive Director, UNEP, on which the extension of fixed-term appointments had been based and authorized, gave the appellant legitimate hopes of continuance with UNEP, particularly so when his one year appointment through 31 December 1983 was approved on the basis of this criteria. (...)
50. The Panel finds that the appellant has fulfilled the requirements mentioned in the criteria established by the Executive Director, UNEP, as regards the minimum period of service with UNEP and 'very good' performance evaluation reports warranting a further extension of his appointment through the end of 1985.
51. The Panel finds that the performance evaluation report completed on the appellant for the period 1 January to 5 June 1983 is deficient procedurally and substantively in terms of administrative instruction ST/AI/240 dated 13 January 1977.
52. The Panel finds that the first reporting officer never discussed with the appellant his performance during the period covered by the report (1 January to 5 June 1983) at any time; thus the appellant had no way of knowing that he was going to receive a less favourable report, especially so when the first reporting officer only less than six months earlier had endorsed, as second reporting officer, a glowing performance evaluation report on the appellant.
53. The Panel finds that the Executive Director, UNEP, reached his decision not to extend the appellant's fixed-term appointment beyond 31 December 1983 on the basis of a performance evaluation report which was procedurally and substantively deficient in terms of administrative instruction ST/AI/240 dated 13 January 1977 without waiting for the completion of the rebuttal procedure. The decision not to extend the appellant's appointment was conveyed to the appellant by letter dated 21 June 1983 whereas the Investigation Panel's report on the rebuttal is dated 21 November 1983 and the Executive Director's appraisal is dated 8 December 1983.

54. The Panel finds that the necessity to reassess and restructure the Information Services of UNEP did not cause reduction or abolition of post in that service. Consequently it did not necessitate the non-retention of staff whose performance over the years had been evaluated and rated between 'outstanding' and 'very good'. The Panel therefore concludes that under the above circumstances the decision not to renew the appellant's fixed-term appointment cannot be sustained.
55. In view of the above, the Panel recommends that UNEP, Nairobi, should make every effort to re-employ the appellant at an early date and thus utilize to advantage his many years of proven experience in the field of his expertise. The Panel further recommends that the Secretary-General should reach with the appellant a suitable financial settlement for the period the appellant remained unemployed. In the event of UNEP not being able to re-employ him, the Secretary-General should reach with the appellant an appropriate financial settlement for the non-extension of his fixed-term appointment.
56. The Panel makes no further recommendations in respect of the appeal."

In a letter dated 8 October 1985, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided:

"While not accepting the findings of the Board ... considering the entire circumstances of the case:

- (a) To grant [him], in an attempt to settle the case, compensation in an amount equivalent to the net salaries and allowances [he] would have received from 1 March 1984 to 31 December 1984 less any remunerations [he] may have received in return for services to the United Nations or to other organizations of the United Nations common system during the same period;
- (b) That [he] be given due consideration for any suitable post for which [he might] apply, ..."

The Applicant did not accept the Secretary-General's award.

In a letter dated 22 July 1986, the Assistant Secretary-General for Personnel Services informed the Applicant that:

"... the Secretary-General has agreed to amend his decision [of 8 October 1985] with regard to the period on the basis of which compensation was granted, and, to grant you, in an attempt to settle the case, compensation in an amount equivalent to the net salaries and allowances you would have received from 1 March 1984 to 1[sic] December 1985, (and not 31 December 1984 as previously communicated to you) less any remunerations you may have received in return for services to the United Nations or to other organizations of the United Nations common system during the same period."

The Applicant accepted payment of that amount of compensation.

On 6 June 1988, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant has sought reinstatement with absolute consistency and determination. Financial compensation was a secondary consideration.
2. The award by the Respondent, accepted by the Applicant, was not strictly compensation but de facto reimbursement of salary and allowances.
3. The Applicant is entitled to additional damages to compensate him for the aggravated injury to his health, sustained as a consequence of action by the Executive Director.

Whereas the Respondent's principal contentions are:

1. The Respondent cannot be required absolutely to reinstate the Applicant.
2. The Applicant has already been adequately compensated for the non-renewal of his fixed-term contract.
3. The Applicant did not hold a contract after 29 February 1984.

The Tribunal, having deliberated from 17 October to 15 November 1989, now pronounces the following judgement:

I. The Applicant has asked for an oral hearing, for the production of documents and for the adjournment of the case.

As the documentation is sufficiently complete and additional details of events are not necessary for the consideration of the case, the Applicant's requests for an oral hearing, for the production of documents and for an adjournment of the case have been denied. In this context, the Tribunal notes the painstaking efforts made by the Applicant to collect and collate numerous documents.

II. In substance, the application before the Tribunal is an appeal against the administrative decision not to implement to the full satisfaction of the Applicant the recommendations of the Joint Appeals Board (JAB) in its report dated 22 July 1985.

III. The JAB recommended that the Executive Director of UNEP should make every effort to re-employ the Applicant at an early date and thus utilize his many years of proven experience in the field of his expertise and that the Secretary-General should reach with the Applicant a suitable financial settlement to compensate him for the period the Applicant remained unemployed. If UNEP could not re-employ him, the Secretary-General should reach with the Applicant an appropriate financial settlement for the non-extension of his fixed-term appointment.

IV. The Tribunal has to establish whether the Applicant's rights were violated by the administrative decision to grant him compensation instead; if not, whether the level of the compensation granted was sufficient.

V. The Tribunal concurs with the finding of the JAB that the Applicant had satisfied the criteria established, rightly or wrongly, by the Executive Director of UNEP concerning minimum periods of service with UNEP and "very good" performance. Under

those criteria, an extension of his appointment until the end of 1985 would be warranted.

VI. The Tribunal notes that the Respondent evaluated the Applicant's performance during the period 1 January to 5 June 1983 in a report dated 20 June 1983. This report was premature and was much at variance with the previous evaluations, to the Applicant's disadvantage. Furthermore, the First Reporting Officer did not discuss the report with the Applicant before completing it.

VII. In this respect, the Tribunal finds that the principles and procedures set forth in administrative instruction ST/AI/240 were not strictly observed.

In this context, the Tribunal recalls its Judgement No. 138, Peynado (1970), paragraph VI, in which it stated:

"The Staff Rules and Administrative Instructions provide a measure of protection against arbitrary assessment of the efficiency or performance of staff members. In particular, the right of rebuttal of any part of a periodic report and the procedure prescribed for handling such rebuttal afford a valuable protection to the staff member against arbitrary or prejudicial assessment."

VIII. In the present case, the Tribunal further finds that the decision not to extend the Applicant's appointment was taken before the completion of the rebuttal procedure on his performance evaluation report for the period 1 January to 5 June 1983.

IX. While observing that the recommendation of the JAB for the re-employment of the Applicant has been rejected by the Respondent, the Tribunal recalls its Judgement No. 199, Fracyon (1975), paragraph I, in which it stated that "The decision whether or not to renew a fixed-term appointment is within the discretion of the Secretary-General and, in the absence of countervailing circumstances, non-renewal will not give rise to any rights on the part of the staff member."

X. In the light of the above, the Tribunal finds that, the Secretary-General was within his rights to use his discretion in refusing to re-employ the Applicant and in deciding to compensate him, in an attempt to settle the case.

XI. The Tribunal agrees that, taking into account the Applicant's satisfactory service with UNEP and the injury caused to him by the decision of the Administration not to renew his appointment, he was entitled to compensation.

XII. The Tribunal notes the final decision of the Secretary-General to pay the Applicant an amount of compensation equivalent to the net salary and allowances he would have received from 1 March 1984 to 31 December 1985. This is the amount he would have received had his contract actually been extended for two years. The Applicant has accepted this amount. In this connection, the Tribunal notes the letter of 26 July 1986 addressed to the Applicant by the Assistant Secretary-General for Personnel Services, which was expressed to be written "in an attempt to settle the case". This language is not free from ambiguity. It does not express, beyond doubt, the Respondent's intention to pay the sum offered in full and final settlement of all the Applicant's claims, so as to bar any further action.

XIII. In the circumstances, the Tribunal concludes that the Applicant has been adequately compensated for the non-renewal of his appointment. The Tribunal finds no convincing reason to justify additional compensation.

XIV. For the foregoing reasons, the Tribunal:

(a) Rejects all of the Applicant's pleas including his claims in respect of his health and pension;

(b) Orders that a copy of this judgement be included in the

Applicant's personnel files.

(Signatures)

Arnold KEAN
President

Samar SEN
Member

Ioan VOICU
Member

New York, 15 November 1989

R. Maria VICIEN-MILBURN
Executive Secretary