

ADMINISTRATIVE TRIBUNAL

Judgement No. 481

Case No. 508: EL SHAMI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Ahmed Osman, Vice-President, presiding;
Mr. Arnold Kean; Mr. Francisco A. Forteza;

Whereas, at the request of Taisseer Mansour Mahmoud El Shami, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended until 16 March and 16 April 1989, the time-limit for the filing of an application to the Tribunal;

Whereas, on 14 April 1989, the Applicant filed an application, the pleas of which read as follows:

"II-PLEAS

A -Applicant requests the Tribunal to order the Respondent to produce:

(1) All documents containing rules, guidelines or any other system used for determination of entry level of translators for appointment on a temporary or permanent basis, together with any amendments or alterations thereof.

(2) Text of the 1980 advertisement inviting candidates to sit for the Arabic translators examination.

(3) The complete results of the competitive examinations for Arabic translators held in 1980 and 1984.

(4) Copies of qualifications and experience sections of Personal History Forms (P-11) and the letters of appointment for the Applicant and his collaterals mentioned in tables 1 and 2 of section III-A of the present application, namely:

...

(5) All staffing tables of Arabic Translation Service since 1983.

(6) Performance evaluation reports of ... and ...

(7) Any other documents in his possession relating to this case as the proceedings may require.

For this purpose the Applicant waives his right of access to those documents, or parts thereof, which the Tribunal, in its wisdom and discretion, consider to be confidential. Should the Respondent refuse or fail to produce these documents, the Tribunal should draw from such refusal or failure the appropriate inferences against the Respondent.

(8) The Applicant makes no request at this time for hearing of witnesses but reserves his right to do so at a later date.

B - Applicant requests the Tribunal to:

1. Rescind the decision of the Secretary-General of 16 November 1988;
2. Adjudge that each and every fixed-term appointment of the Applicant is a new appointment and is neither a renewal nor an extension of any fixed-term appointment preceding it;
3. Adjudge that the Applicant's status throughout his service with the United Nations is not one of secondment and that any actions by the Respondent, directly or indirectly involving a third party, are extraneous to the relevant letters of appointment;
4. Adjudge that the special condition '(You) are on secondment from Government of the Arab Republic of Egypt' introduced by the Respondent in the Applicant's letters of appointment concluded after 27 March 1987, the date on which the Applicant filed his appeal on this matter with JAB [Joint Appeals Board], are null and void;

5. Adjudge correction of entry level with all related salaries and benefits including within-grade salary increments for letters of appointment starting
 - (A) 11 December 1985 (...)
 - (B) 11 December 1987 (...)
 - (C) 11 December 1988 (...)
 - (D) 11 February 1989 (...)
 - (E) 11 April 1989 (...)
 - (F) 11 December 1983 (...)

with effect from the date of starting work in each case.

6. Order payment of compensation in an amount equivalent to the difference between the sums of salaries and benefits the Applicant would have earned if he had been appointed at the correct level and the sums he actually received in each case as given in (5);
7. Order the contract relating to service starting 11 December 1983 changed from 'fixed-term' to 'probationary' with effect from 11 December 1983 and appropriate correction of all subsequent contracts;
8. Order the payment of reasonable compensation under article 9, paragraph 1, of its Statute, should the Secretary-General decide, within thirty days, that the Applicant shall be compensated without further action being taken in his case, and any additional compensation it may deem appropriate."

Whereas, the Respondent filed his answer on 5 July 1989;

Whereas, on 5 August 1989, the Applicant filed written observations in which he amended his pleas as follows:

"II. 'PLEAS'

The Applicant requests the inclusion of the following request as plea No 9 after plea No 8 in section A of Part II-PLEAS of his original application.

9. Hear, as witnesses, Mr. ..., Acting Chief, Arabic Translation Service, UN, New York, and/or Mr. ... of the same Service to verify that:

1. The Applicant had never worked as a trainee in the Arabic Translation Service.

2.The Applicant's duties and the work he actually performed during the period he served at P-2 level were not different in any way from those of his collaterals initially appointed at P-3, such as those mentioned in tables 1 and 2 of part III of the application, or from those of the Applicant himself after he was promoted to P-3 level.

3.The Applicant had worked as fully qualified translator from the first day he joined the Organization."

Whereas, on 27 March 1990, the presiding member of the Panel ruled that no oral proceedings would be held in the case;

Whereas, on 19 April 1990, the Applicant submitted further observations on the Respondent's answer;

Whereas, on 27 April 1990, the Tribunal put questions to the Respondent and on 3 May 1990, he provided answers thereto;

Whereas, on 2 May 1990, the Tribunal put questions to the Applicant and on 4 May 1990, he provided answers thereto;

Whereas the facts in the case are as follows:

Taisseer El Shami, an Egyptian national who successfully passed a U.N. competitive examination for Arabic translators held in 1980, entered the service of the United Nations on 11 December 1983.

He was offered a two year fixed-term appointment as an Associate Translator at the P-2, step I level in the Translation Division, Arabic Service of the Department of Conference Services. At the Applicant's request, on 7 February 1984, his entry level was corrected from the P-2, step I level to the P-2, step IV level, with retroactive effect to 11 December 1983 and he was offered a new letter of appointment, showing the correction. This administrative action was taken in recognition of the Applicant's work as a translator for the United Nations Industrial Development Organization (UNIDO), and his translation work while Vice-Dean of Tanta University in Egypt. Neither of the original letters of appointment stated that

the Applicant was seconded from the Government of the Arab Republic of Egypt.

During 1985, the then Office of Personnel Services issued revised guidelines to determine grade levels of staff upon initial recruitment. Guidelines applicable to language staff recruited by competitive examination were issued on 8 August 1985. According to those guidelines, six years of relevant experience in the field were required for recruitment at the P-3, step I level, by successful candidates, holders of an M.A. level degree.

On 29 July 1985, the Administration asked the Government of the Arab Republic of Egypt for its consent to the extension of the Applicant's secondment to the United Nations, for a further fixed-term period of two years. The Government consented on 9 December 1985. The Applicant's appointment was thus extended for a further fixed-term period of two years. According to the Applicant, when he was offered this letter of appointment, he informed the Personnel Officer that he would not sign it because it contained the "special condition" that he was seconded from the Government of the Arab Republic of Egypt. Subsequently, the condition was deleted, and the Applicant signed the letter of appointment. Effective 1 December 1985, he was promoted to the P-3, step I level as a Translator pursuant to personnel directive PD/9/59.

On 10 December 1986, the Applicant requested review of his entry level as stated in his letter of appointment, on the ground that he had been recruited in less favourable conditions than other Arabic translators who had joined the U.N. after him. The Applicant argued essentially that standards for determining entry levels of staff appointed after the 1984 competitive examination were clearly different from those used for staff appointed after the 1980 competitive examination. On 15 December 1986, the Applicant's request was denied. On 29 January 1987, the Applicant requested review of the decision to deny him a correction of his entry level.

He argued that the renewal of his fixed-term appointment constituted a new offer of employment and consequently a new entry on duty. The Applicant did not request review of a decision concerning the offer to him of a probationary appointment. On 27 March 1987, the Applicant lodged an appeal with the Joint Appeals Board (JAB), against the decision to deny him correction of his entry level and requesting a change in his first appointment (entry on duty 11 December 1983) from fixed-term to probationary.

The Applicant's appointment was extended for a further fixed-term period of one year effective 11 December 1987. In this letter of appointment was stated, for the first time, as a special condition, that the Applicant was seconded from the Government of the Arab Republic of Egypt. The Applicant asserts that "this was done without consultation with, or the consent of the Applicant and at a time when the Applicant and the Respondent were in contention about secondment".

In a cable dated 21 July 1988, the President of Tanta University informed the Applicant that his leave of absence from the University ended on 18 July 1988 and that if he did not return to his job within the time-limits set forth by law, his employment with the University would be terminated as of 19 July 1988. The Applicant did not return to his post at the University.

The Board adopted its report on 9 November 1988. The conclusions and recommendation by the majority of the Board read as follows:

"Conclusions and recommendation

36. The majority of the Panel concludes that the appellant was on secondment from his government service at the time of his initial appointment and subsequent extensions thereof, and remained on secondment until 19 July 1988 when his employment relationship with his government was severed. Accordingly, the majority concludes that the appellant's recruitment on a fixed-term rather than a probationary appointment was appropriate.

37. The majority of the Panel, however, feels that since the appellant's employment relationship with his government has terminated, he should be awarded a probationary appointment. Accordingly, the majority recommends that the Administration take immediate action to convert the appellant's fixed-term appointment to a probationary appointment, and that the appellant be credited with the maximum number of months permissible towards the fulfilment of the probationary period.
38. The Panel concludes further that the established procedures and guidelines were applied in determining the appellant's entry level.
39. Accordingly, the majority of the Panel makes no further recommendation in support of the appeal."

In a dissenting opinion, a member of the Board recommended that:

"Recommendation

13. The nature of the appointment should be amended to probationary, with the effective date of 11 December 1983."

On 16 November 1988, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided:

"... to maintain the contested decision concerning the correction of [his] entry level from P-2, step I, to P-2, step IV, retroactive to the date of [his] official entry on duty, 11 December 1983, in accordance with the then relevant procedures and guidelines, and to take no further action with regard to the level of [his] subsequent appointments."

and

... that subject to official confirmation by the proper authorities concerning the termination of [his] secondment from his] Government and of [his] employment with Tanta University, Egypt, as of 19 July 1988, [his] case be referred

to the appropriate appointment and promotion bodies for early consideration of conversion of [his] fixed-term appointment to a probationary appointment in accordance with staff rule 104.12 and the relevant procedures and guidelines. In this connection, it should be noted that it is within the discretionary authority of the Secretary-General under the Charter and the Staff Regulations and Staff Rules to determine the type and duration of a staff member's appointment in the interest of the Organization."

On 14 April 1989, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant had an acquired right, derived from service performed at UNIDO, to be initially recruited at the P-3 level.
2. The Applicant's status throughout his service in the U.N. has not been one of secondment. The special condition introduced by the Respondent in letters of appointment offered after 27 March 1987, is null and void.
3. Each and every one of the Applicant's fixed-term appointments constitutes a new appointment.
4. The Applicant was entitled to a probationary appointment effective 11 December 1983, under the applicable Staff Regulations and Rules.

Whereas the Respondent's principal contentions are:

1. The entry level of the Applicant's appointment was properly determined in accordance with the established procedures and guidelines.
2. The granting to the Applicant of a fixed-term as opposed to a probationary appointment did not violate his rights.

The Tribunal, having deliberated from 2 to 23 May 1990, now pronounces the following judgement:

I. The Applicant has requested an oral proceeding to examine a number of witnesses and he has also requested the production of documents. The Tribunal considers that the documentation in the case is sufficiently complete and therefore rejects the Applicant's requests in this regard.

II. The Applicant, in his pleas, raises two central issues. The first relates to the correction of his entry level when he was first appointed on 11 December 1983 and on each and all of his subsequent appointments; the second concerns his request to change his first fixed-term appointment to a probationary appointment starting 11 December 1983, with appropriate corrections of all subsequent contracts.

The question before the Tribunal is whether, in determining the Applicant's entry level and granting him a fixed-term appointment instead of a probationary appointment at the time of his recruitment, the Respondent acted in accordance with the pertinent Staff Regulations and Rules, established procedures and guidelines.

III. With regard to the correction of his entry level, the Tribunal notes that the applicable rules at the time of his recruitment are contained in personnel directive PD/9/59 of 4 March 1959, on "Policy for the Recruitment and Promotion of Translators and Translator-Précis-Writer Trainees", which provides for two possible levels of entry:

According to paragraph I(a) on General Policy:

"Translators ... are normally recruited as trainees at the Associate Officer (P-2) level by competitive examination in which staff members of the Secretariat may participate as well as 'outside' candidates ...".

According to paragraph II(d) on Outside Recruitment, "fully

qualified translators recruited from outside the Secretariat will be engaged ... at the Second Officer (P-3) level ...", a higher entry level.

IV. The Tribunal notes that the Applicant, having succeeded in the Arabic translator's examination held in 1980, was granted a two-year fixed-term appointment on 11 December 1983, as an Associate Translator at the P-2, step I level, in implementation of paragraph I(a) of PD/9/59.

By a letter dated 18 September 1983, the Applicant had gladly accepted this offer after reading its particulars; at the same time he submitted an updated P.11 Personal History Form.

V. On 18 December 1983, the Applicant, who felt he had been under-estimated, requested his Recruitment Officer to reassess the level and/or step of his appointment, in the light of information contained in his new updated Personal History Form.

VI. On 1 February 1984, the Applicant's Recruitment Officer wrote a memorandum to the Director, Division of Recruitment, concerning correction of the Applicant's entry level. The memorandum states:

"Subject: Revised salary recommendations - 1980
Arabic Translators

Based on a salary recommendation made on 20 October 1980, offers were made in August 1983 to 12 Arabic Translators still on the 1980 roster of successful candidates. All candidates when made the offer were asked to submit a newly completed Personal History Form in order to update and complete their files. Taking into account the new information provided by two candidates and verified by the OPS [Office of Personnel Services] I would like to have your approval for the following revised salary recommendations in order to amend my offers:

Mr. Taisseer El Shami (45 years old - Egyptian)

In addition to all the facts taken into account in the 1980

salary recommendation, Mr. T. El Shami has worked as a translator for three months with UNIDO. His job as the Head of the Chemistry Department and then as Vice-Dean of the Faculty of Science of Tanta University included scientific translations (posts held since 1974). I feel step IV at the P-2 level would be more appropriate than step I."

VII. By a memorandum dated 6 February 1984, the Applicant was informed that he would be granted three additional steps, i.e. P-2, step IV, with retroactive effect to his date of entry. The Tribunal notes that all necessary information concerning the Applicant's qualifications and relevant experience was at the disposal of the Administration.

The Tribunal notes that the Applicant could have challenged the determination of his entry level and claimed instead a P-3 entry level, as a fully qualified translator, in accordance with paragraph II(d) of PD/9/59, on two occasions.

VIII. The Applicant could have first appealed, in accordance with staff rule 111.2(a), within two months of the administrative decision of 6 February 1984, informing him of the correction of his entry level to P-2, step IV. But he failed to do so.

Moreover, the Applicant had ample time to acquaint himself with the rules applied in determining entry level. He had in fact one year from the date of his initial appointment, namely by 11 December 1984 at the latest, within which to preserve his right to correct his entry level, by submitting the written claim required by staff rule 103.15 governing retroactive payment of an entitlement. But he failed to do so.

The Tribunal recalls its Judgement No. 392, Joiner (1987). In paragraph V, it was stated:

"The Tribunal notes in this respect, that staff rule 103.15 clearly requires a claim submitted in writing, as the only way of preserving the staff member's rights beyond the one year time-limit, and as a condition precedent to his

receiving payment. Consequently, the failure to file a claim in writing within the time-limit deprives the staff member of any possibility of receiving a retroactive payment, irrespective of the reasons he may have had for not complying in due time with the requirements set forth by the staff rule." (Emphasis added)

IX. In paragraph VI of the said Judgement, the Tribunal stated:

"... Even if such rule had never been invoked by the parties, the Tribunal would have to apply it ex-officio, in order to ensure that retroactive payments are granted only in accordance with the rule. In this respect, the Tribunal recalls its Judgement No. 281 (Hernández de Vittorioso)."

Therefore, the Applicant's attempt later on to re-open the determination of his entry level on the ground that it compared unfavourably with other members of his service, cannot be entertained by the Tribunal.

X. The Tribunal finds that the Applicant failed to avail himself, within the prescribed time-limits, of the recourses available to him under the Staff Rules. Accordingly, the entry level of his first appointment, commencing on 11 December 1983, had been determined properly, according to the Staff Rules, established procedures and guidelines, and therefore the Applicant's request to review this entry level must fail.

XI. Having forfeited his right to challenge the determination of the entry level of his first appointment, the Applicant, on 10 December 1986, submitted a request for correction of the entry level of his second appointment, commencing on 11 December 1985.

He justifies the receivability of this second request, arguing that his second letter of appointment constituted a new offer of employment and not a renewal or extension of his fixed-term appointment, which by its nature is non-renewable according to staff

rule 104.12(b). Consequently, the Applicant contends that 11 December 1985 was his new date of entry on duty, thus providing him with a new opportunity to challenge the entry level of his second appointment. According to this interpretation, the Applicant claims that the rule providing that requests for reviewing entry level can only be entertained within one year of the date of the new letter of appointment, cannot be invoked against him.

XII. The Tribunal cannot subscribe to the Applicant's interpretation of staff rule 104.12(b), which assumes that renewal is totally incompatible with its provisions, for the following reasons:

1. A careful reading of the rule shows that it does not absolutely exclude renewal but it speaks of something less, of "no expectancy of renewal", a different thing.

2. The clause providing "no expectancy of renewal" is addressed to the holder of a fixed-term appointment, to warn him in advance that he should not rely on his fixed-term appointment to claim a right to an extension thereof. But this clause was not meant to limit the statutory discretionary power of the Secretary-General to retain a staff member, holder of a fixed-term appointment, in U.N. service, by granting him one or more successive fixed-term appointments.

The procedure used and firmly established to express the Secretary-General's determination to retain a staff member on a fixed-term appointment in U.N. service is the act of renewal of his fixed-term appointment. The new fixed-term appointment is not intended to recruit the staff member anew, but to continue his period of service which commenced on the date of his entry on duty, as provided in his initial letter of appointment. Such an arrangement explains why staff members on successive fixed-term appointments benefit from the entitlements provided for in the Staff Rules which are dependent on the continuation of service, like seniority, home

leave, credit for sick leave, repatriation grant, etc.

XIII. To sustain his argument that a renewal is a new contract, the Applicant invokes paragraph X of Judgement No. 422, Sawhney (1988), in which the Tribunal stated: "... after the expiration date of a fixed-term appointment, there is no automatic renewal, but a new contract must be concluded to keep the staff member in the service of the United Nations".

The true meaning of this Judgement is that a new contract is required to maintain the staff member in the service of the United Nations, not to initiate a new relationship between the Organization and the staff member.

XIV. The Tribunal therefore cannot subscribe to the Applicant's interpretation, that each and every fixed-term appointment he was granted after 11 December 1983, is a new appointment and consequently opens the way to correction of the entry level indicated in letters of appointment subsequent to the first one.

XV. With regard to the second central issue, the Applicant claims that the Respondent, by granting him a fixed-term appointment on 11 December 1983, has wrongly denied him a probationary appointment.

The Tribunal will consider whether the Respondent in so doing has acted properly, according to the pertinent rules.

XVI. To justify his refusal to grant the Applicant a probationary appointment, the Respondent claims among other things that, at the time of his recruitment, the Applicant was on secondment from Tanta University, a governmental institution. Therefore, in the Respondent's view, it was proper to grant the Applicant a fixed-term appointment in accordance with staff rule 104.12(b), which provides that "the fixed-term appointment ... may be granted ... to persons

recruited for service of prescribed duration, including persons temporarily seconded by national governments or institutions for service with the U.N.".

The Applicant on his part asserts that at the time of his recruitment he was not on secondment from his Government, that his status was one of "leave of absence", which is not a secondment and that he was therefore entitled to a probationary appointment.

XVII. The Tribunal observes that according to its jurisprudence in its Judgement No. 92, Higgins (1964) and Judgement No. 192, Levcik (1974), a staff member who is seconded from his Government serves on the basis of a tripartite agreement between the releasing organization, which is, in this case, Tanta University in Egypt, the receiving organization, which is the U.N., and the staff member concerned.

The Tribunal will ascertain if each of the three parties had actually given his consent to the status of secondment at the time of the Applicant's initial appointment in 1983.

XVIII. With regard to the U.N. Administration, the Tribunal finds that:

1. In the first offer of appointment dated 24 August 1983, for a two-year fixed-term appointment, it is nowhere mentioned that the Applicant was seconded from the Government of the Arab Republic of Egypt.

2. In a letter dated 24 August 1983, the Secretariat of the U.N. merely informed the Permanent Mission of the Arab Republic of Egypt to the United Nations that the Applicant, a national of Egypt, had been offered a two-year fixed-term appointment, without soliciting the Government's consent to his secondment.

3. In his initial letter of appointment of 11 December 1983, signed by both parties, the Respondent did not include the usual

formal mention of secondment. When, two months later, a new letter of appointment was signed to reflect the correction made in the Applicant's entry level, no mention was made of secondment either. Moreover, the two corresponding P.5 action forms failed to specify that the Applicant was on secondment.

XIX. With regard to Tanta University, there is nothing in the Applicant's personnel file showing that it expressly agreed to the Applicant's secondment.

XX. With regard to the Applicant, the Tribunal does not find documentary evidence that his consent to a secondment had been obtained or sought with regard to his initial appointment.

XXI. From the foregoing analysis, the Tribunal finds that, at the time of his initial appointment, the Applicant was not on secondment, due to the non-existence of an agreement between the three parties concerned, which is an essential requirement for a secondment.

XXII. The question still remains whether the Applicant, in this case, was entitled to a probationary appointment, and whether the Respondent had a corresponding obligation to grant him such an appointment according to the pertinent regulations and rules.

According to staff regulation 4.5(b):

"The Secretary-General shall prescribe which staff members are eligible for permanent appointments. The probationary period for granting or confirming a permanent appointment shall normally not exceed two years, provided that in individual cases the Secretary-General may extend the probationary period for not more than one additional year."

Regulation 4.5(a) provides that:

"... Other staff members [than Under-Secretaries-General and

Assistant Secretaries-General] shall be granted either permanent or temporary appointments under such terms and conditions consistent with these regulations as the Secretary-General may prescribe."

Staff rule 104.12(a) provides that probationary appointments:

"... may be granted to persons under the age of 50 years who are recruited for career service ...

At the end of the probationary service the holder of a probationary appointment shall be granted either a permanent or a regular appointment or be separated from the service."

XXIII. From these provisions, the Tribunal concludes that:

1. The granting of probationary appointments is left to the discretionary authority of the Secretary-General in the absence of prejudice, improper motivation or any other extraneous reason.

In this connection, the Tribunal recalls paragraph IV of its Judgement No. 205, El-Naggar (1975) in which it stated:

"The Tribunal observes that under Article 101 of the Charter the power of appointment rests with the Secretary-General. The type of appointment to be offered to a staff member is within the discretion of the Secretary-General. Neither the exceptional competence of a staff member nor favourable recommendations for a particular type of appointment by themselves create an entitlement to such an appointment. Furthermore, the Tribunal holds that its competence does not extend to an examination of the reasons for the issue or refusal of a particular type of appointment to a staff member in the absence of entitlements in this regard."

2. According to staff rule 104.12(a), the Tribunal notes that a probationary appointment is assigned a specific function; viz. to provide a career service in the U.N.

XXIV. The Tribunal notes that under the umbrella of the above-mentioned provisions, the Respondent invokes the established policy not to grant a probationary appointment to anyone involved in

a subsisting employment relationship with another party, since a U.N. career service associated with a permanent appointment, is inconsistent with a subsisting employment relationship with another party.

The Tribunal considers that this established policy is a reasonable interpretation of Staff Regulations and Rules regulating the granting of probationary appointments.

XXV. The Tribunal observes that there is no dispute that the Applicant, at the time of his initial appointment, and throughout his employment with the United Nations, had been a permanent member of the Civil Service of his Government, at Tanta University, albeit on leave of absence.

The Applicant had the right to revert to employment within his establishment of origin, Tanta University, and his institution had the right to recall him to active service, as it actually did when his leave of absence ended on 18 July 1988.

It follows, that in these circumstances, when the Respondent granted the Applicant a fixed-term and not a probationary appointment, it was a valid exercise of his discretion.

It follows also, that as long as the Applicant was maintaining his ties with his University, it was proper for the Respondent to grant him a fixed-term appointment. Moreover, Section II of PD/9/59 confirms this analysis when it states: "(a) Staff recruited from outside the Secretariat will normally be engaged as staff members on probationary appointments ...". The qualification by the word "normally" indicates that there is no commitment on the part of the Organization to grant such appointments in all cases.

XXVI. The Applicant invokes the benefit of Section IV, para. V, of the General Assembly resolution 37/126 in which the Assembly decided that:

"Staff members on fixed-term appointments upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment."

The Tribunal notes that the Under-Secretary-General for Administration and Management, in his letter to the Applicant dated 16 November 1988, almost a month before the completion of the five years of continuing good service, had already started the process of consideration of the Applicant for a career appointment. Such a process led to the granting to the Applicant of a probationary appointment on 1 June 1989, following the severance of his ties with Tanta University.

XXVII. The Applicant questioned the consistency of the Respondent's established policy not to grant probationary appointments to staff permanently employed by another party, before severance of their ties with that other party. He cited as an example the case of one of his colleagues. The Tribunal requested a clarification from the Respondent on this subject. The Tribunal is satisfied from the clarification received, that the colleague in question was not granted a probationary appointment until he had resigned from his post with his Government.

XXVIII. Moreover, the Tribunal does not find in this case any evidence of prejudice, improper motivation or any other extraneous reason vitiating any of the Respondent's decisions concerning the Applicant.

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

(Signatures)

Ahmed OSMAN
Vice-President, presiding

Arnold KEAN
Member

Francisco A. FORTEZA
Member

Geneva, 23 May 1990

R. Maria VICIEN-MILBURN
Executive Secretary