

ADMINISTRATIVE TRIBUNAL

Judgement No. 496

Case No. 506: Mr. B

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Ahmed Osman, Vice-President, presiding;  
Mr. Samar Sen; Mr. Ioan Voicu;

Whereas, at the request of Mr. B, a former staff member of the United Nations University, hereinafter referred to as UNU, the President of the Tribunal, with the agreement of the Respondent, extended to 14 April 1989, the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 March 1989, the Applicant filed an application, containing pleas which read in part as follows:

"PLEAS

7. The Applicant respectfully requests the Tribunal to take the following preliminary and provisional measures and decisions:
  - (1) To declare the present appeal receivable;
  - (2) To declare itself competent in the present dispute;
  - (3) To order the case be remanded for institution of the investigation the Panel on Discrimination and Other Grievances at U.N. Headquarters intended to undertake but was prevented from doing so by the Rector of the UNU [United Nations University], and to order payment of compensation in the sum of three months net base salary to the Applicant for the procedural delay incurred (...);
  - (4) To grant (...) in view of the complexity of the case and inevitable incompleteness of the written evidence submitted - oral proceedings (...), and allow statements to be taken;
  - (5) To request that the Respondent reply to the questions set by the Applicant in the attached questionnaire (...)

relating to the present case and provide evidence to the statements made therein, as well as submit the record of the formal conversation held between the Applicant and the Rector of the UNU in early September 1986;

- (6) To request an oral (...) or written statement from the Senior Programme Officer of the Global Learning Division of the United Nations University to attest the treatment the Applicant received from his former direct supervisor; and
- (7) To grant a hearing to the Co-ordinator of the former sixth UNU Staff Council (...) and, as may be deemed pertinent, other duly authorized representatives of the staff representative body of the United Nations University.

8. The Applicant further respectfully requests the Administrative Tribunal:

- ...  
(c) To adjudge and declare, the UNU's administrative decision of 5 June 1987 not to renew the Applicant's contract beyond 31 December 1987 null and void thereby rescinding it; and
- (d) To order the Respondent to restore the status quo ante by reinstating the Applicant in his former position at the UNU and by retroactively paying the salary emoluments and staff benefits accrued since 29 January 1988; should the Secretary-General decide, under article 9, para. 1 of the Tribunal's Statute not to take further action on the finding by the Tribunal that the Applicant's request is well founded, to order instead a compensation payment of two years net base salary.

9. In addition the Applicant requests the Tribunal:

- ...  
(d) To order that (i) compensation in the amount of two years net base salary be paid to the Applicant, that (ii) a letter of apology be offered by the Respondent to the Applicant for the distress and impairment caused, and that (iii) disciplinary measures be instituted against the responsible officers in the UNU Administration for their negligence in not taking any corrective measures to put an end to the unfair treatment given to the Applicant (...).

10. Further, the Applicant requests the Tribunal:

- ...  
(c) To adjudge and declare that the Panel on Discrimination and Other Grievances at U.N. Headquarters has jurisdiction to deal with cases originating from the UNU, and therefore, that the rejection by the Rector of the UNU, as expressed in his letter of 23 December 1987

- to the Secretary of the Panel, is null and void; and
- (d) To order the Secretary-General to (i) institute the investigation requested by the Panel, to (ii) implement the Panel's request made in accordance with the powers accorded to it in ST/AI/308/Rev.1 by extending retroactively the Applicant's fixed-term contract for two months, (should the Tribunal decide in its stead to conduct its own investigation, the Tribunal is requested to order the payment of two months gross-base salary (i.e. including staff benefits as the original request for extension would have provided for)), to (iii) pay compensation of three months net-base salary for the loss caused by the procedural delay involving the remand of the case for institution of the aforementioned investigation, and to (iv) make effective the jurisdiction of the Panel to deal with cases from the UNU.

...

12. Further, the Applicant requests the Tribunal:

...

- (c) To declare and adjudge that, besides the letter of 23 December 1987 from the Rector to the Co-ordinator of the Panel being null and void, the statements found in the latter constitute (i) a discrimination towards the Applicant, and (ii) a grave abuse of authority in that the Rector appropriated the Panel's prerogatives; and
- (d) To order the Respondent to (i) offer an apology to the Applicant, and (ii) to pay compensation of two months net-base salary for the distress and embarrassment caused by the act of discrimination in question.
13. Further, the Applicant requests the Tribunal:
- 6.(a) To affirm that (i) the memorandum of 28 December 1986 from the Applicant's former direct supervisor to the Chief of Personnel of the UNU is invalid and unwarranted in its entirety, that (ii) the way this document was handled did not reflect due process, and that (iii) the Rebuttal Panel's report does not constitute an adequate report;

...

- (d) To order (i) the removal of the memorandum in question and all other related documents from the Applicant's official status file, (ii) the insertion in the same file of a statement attesting to the professional capacity and moral integrity of the Applicant including an explicit mention of his suitability for employment within the U.N. system,

(iii) the issuance of an apology, and (iv) the payment of compensation amounting to three months net-base salary for the embarrassment and distress caused by both the memorandum and the way it was handled by the UNU Administration.

14. Further, the Applicant requests the Tribunal:
  - 7.(a) To affirm that both the Joint Appeals Board [JAB] and the Secretary-General failed to deal adequately with the request for suspension of administrative action that the Applicant filed before the JAB on 25 November 1987 pursuant to staff rule 111.2(f);  
...
  - (d) To order the Respondent (i) to assume and divulge the clarifications made by the Tribunal concerning the extent of the powers of the JAB under staff rule 111.2(f) to (ii) provide a clarification of the ground given for failing to give effect to the Applicant's request for stay of action and (iii) to procure the modifications of the above rule so as to make the decision of the Secretary-General under such rule appealable when the grounds invoked for rejecting a request are spurious or irrelevant;
15. And, finally, the Applicant requests the Tribunal:
  - 8.(a) To affirm that the JAB's report (...) on the appeal filed by the Applicant on 25 November 1987, fell far short of the thoroughness, non-biased presentation of the facts available to it, logic, and rigorous analysis expected from the Board;
  - (b) To find that the presentation of facts in the JAB's report section 'summary of the facts' is partial and biased against the Applicant ...;  
...
16. The Applicant requests the Tribunal:
  - 9.(a) To affirm that the Applicant is entitled to a certificate of service -- without prejudice to the Applicant's plea for reinstatement -- in accordance with staff rule 109.11;
  - (b) To find that neither (i) the UNU's Director of Administration's letter of 6 December 1988 (...) where it is indicated that the certificate will be provided 'in due time', nor (ii) the certificate of service of 13 March 1989 which does not contain any reference to the Applicant's quality of work and to his official conduct, comply with the request made by the Applicant (...) in accordance with staff rule 109.11 (...);
  - (c) To adjudge and declare the certificate of service (dated 13 March 1989) invalid; and

- (d) To order the Respondent to issue a new certificate of service complying with the request made by the Applicant in accordance with staff rule 109.11."

Whereas the Respondent filed his answer on 27 June 1989;

Whereas, on 6 December 1989, the Applicant filed written observations, submitted a revised statement of his pleas and requested that his name not be used to identify his case;

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

Whereas, on 27 April 1990, the Applicant submitted an additional document and further observations;

Whereas, on 10 May 1990, the Tribunal requested the Respondent to provide the Tribunal with "the record of the formal conversation held between the Applicant and the Rector of the United Nations University in early September 1986" and on 11 May 1990, the Respondent informed the Tribunal that no such record existed;

Whereas, on 22 May 1990, the Applicant submitted his comments on the answer provided by the Respondent and an additional document;

Whereas, on 31 May 1990, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn its consideration of the case until its next session to be held in New York in October 1990;

Whereas, on 2 August and 11 October 1990, the Applicant submitted additional documents and further observations;

Whereas, on 16 October 1990, the Tribunal put questions to the Respondent and on 19 October 1990, he provided answers thereto;

Whereas, on 27 October 1990, the Applicant submitted his comments on the answers provided by the Respondent and also filed additional documents;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 October 1983. He was initially offered a two year fixed-term appointment at the P-3, step I level, as a Programme Officer at the

Global Learning Division (GLD) of the UNU in Tokyo, Japan.

In a confidential inter-office memorandum dated 18 May 1985, Mr. Edward Ploman, at the time Vice Rector of the University and also the Applicant's supervisor, recommended that the Applicant's appointment be extended for one year. In support of his recommendation, he evaluated the Applicant's work as "generally good"; the quantity of his work and the ability to meet schedules as "somewhat varying", and noted "certain difficulties" regarding his ability to work harmoniously with other colleagues. In a subsequent memorandum dated 4 June 1985, Mr. Ploman elaborated on his recommendation, stating that, although the Applicant had proved "to be conscientious and diligent in his work", he was "often quite meticulous which sometimes leads to difficulties in meeting deadlines"; and that although the Applicant showed "potential for career development", he still required "more experience in a professional work situation, particularly in respect of establishing more harmonious relations with other staff members". Mr. Ploman further stated that he had "indicated [to the Applicant] the need for him to choose between a continuation of his education (PhD studies) and continued professional work ...".

The Appointment and Promotion Board (APB) endorsed Mr. Ploman's recommendation and noted his wish that the Applicant's appointment be extended for one year only, although "he was of the view that Mr. [B] is a competent and effective s/m [staff member]".

The Board also expressed its hope "that during the extension period the [Applicant] may be able to decide where his own future lies, i.e. working for UNU or returning to complete his studies". In a letter dated 24 June 1985, the Chief of Personnel informed the Applicant that the Rector had approved the Board's recommendation to extend his appointment for a further fixed term of one year, through 2 October 1986.

On 15 April 1986, the Chief of Personnel asked Mr. Ploman for his recommendation concerning the extension of the Applicant's appointment beyond 2 October 1986 and an evaluation of the

Applicant's performance.

On 24 April 1986, Mr. Ploman recommended a further extension of one year, after a "careful review of relevant facts, in particular the needs of the Division in the current situation as related to [Mr. B's] strengths and weaknesses, and taking into account the undesirability of changing staff (for organizational and financial reasons) at the present moment". He explained that he had held "extensive discussions" with the Applicant concerning his "work performance, the needs of the Division and [his] own future" and had "made clear to him that he cannot make a career at the UNU and that he therefore should prepare a plan for his future based on this consideration".

The APB endorsed Mr. Ploman's recommendation and noted that "if necessary, [Mr. B's] contract could be renewed until the end of the calendar year, i.e. December 1987, and the Board informed of such renewal, it being understood that this case could not be construed as having created a precedent". The Applicant was offered a new one year fixed-term appointment, scheduled to expire on 2 October 1987.

According to information provided by the Respondent, at the Tribunal's request, Mr. Ploman was absent from Headquarters from 16 September to 26 December 1986, on sick leave. He returned to Tokyo on 27 December 1986 and was scheduled to retire from UNU on 31 December 1986.

During his brief stay at Headquarters, on 28 December 1986, Mr. Ploman wrote to the Chief of Personnel, recommending that the Applicant's appointment should not be extended further. In support of his recommendation, Mr. Ploman stated that "at the last renewal of [Mr. B's] contract it was made clear to him, in several long conversations, that he could not count on permanent employment with the UNU to provide the financial basis for his studies in Japan and that his performance, while acceptable in certain respects, still showed serious errors of judgement and curious lacunae, neither being acceptable in a professional officer of his background and

standing...". He asserted that during the last extension of the Applicant's appointment, the Applicant had "not given reason for a change in [his] overall evaluation...". This memorandum was not shown to the Applicant at the time.

On 20 March 1987, Dr. Cecil Blake, a Senior Programme Officer, GLD, asked the Chief of Personnel to submit the Applicant's case to the next APB meeting, noting that Mr. Ploman had informed him that "he had taken a concrete decision" on the Applicant's contractual status and had informed the Chief of Personnel accordingly. On 13 May 1987, the Chief of Personnel, in accordance with the provisions of personnel circular 85/02, transmitted to the Applicant Mr. Ploman's recommendation of 28 December 1986 and asked him for his comments, to be submitted to the APB, which was scheduled to meet on 22 May 1987.

In a reply dated 19 May 1987, the Applicant informed the Chief of Personnel that he intended to rebut Mr. Ploman's memorandum of 28 December 1986, "on substantial and procedural grounds" and asked him not to discuss the matter of the extension of his contract at the forthcoming APB meeting. In a reply dated 20 May 1987, the Chief of Personnel assured the Applicant that Mr. Ploman's recommendation would not be submitted to the APB. The APB met on 22 May 1987, and confirmed its previous recommendation "including [the] extension [of the Applicant's appointment] up to 31 December 1987".

In a letter dated 5 June 1987, the Chief of Personnel informed the Applicant that his appointment would be extended from 3 October through 31 December 1987, and that he would be separated from the University with effect from 31 December 1987. On the same date, the Applicant instituted a rebuttal procedure, pursuant to administrative instruction ST/AI/240/Rev.2, against "Mr. Ploman's memorandum of 28 December 1986 regarding the extension of [his] contract".

On 4 July 1987, the Applicant requested the Rector to review the administrative decision conveyed to him on 5 June 1987, not to



extend his appointment beyond 31 December 1987. On 3 August 1987, the Applicant requested the Secretary-General to review the same administrative decision.

On 27 August 1987, the Rector appointed a Rebuttal Panel to review the Applicant's rebuttal of Mr. Ploman's memorandum of 28 December 1986.

On 24 September 1987, the Applicant signed a new letter of appointment, through 31 December 1987, for a fixed-term period of two months and 29 days. The Applicant noted as a "Special Condition" that he "accepted [the contract] as an interim contract without prejudice to ongoing or future proceedings relating to the special report of 28 December 1986 and the administrative decision of 5 June 1987 ... and with the understanding that its acceptance does not imply [his] separation from UNU by the date the contract expires".

On 14 October 1987, the Assistant Secretary-General, Office of Human Resources Management (OHRM), informed the Applicant that the Secretary-General, having conducted administrative review of his case, was "not in a position to recommend any reconsideration of the Rector's decision as conveyed to [him]" on 5 June 1987. On 25 November 1987, the Applicant lodged an appeal with the Joint Appeals Board (JAB), requesting the Board, under staff rule 111.2(f), to recommend suspension of action on the administrative decision that was the subject of the appeal.

The Applicant was separated from the service of UNU on 31 December 1987, having previously filed a complaint with the Panel on Discrimination and Other Grievances at Headquarters, whose jurisdiction in the case was not accepted by the Rector.

On 3 January 1988, the Board adopted its report on the Applicant's appeal for suspension of action of the administrative decision. Its considerations, conclusions and recommendation read as follows:

"Considerations, Conclusions and Recommendation

19. Having heard the statements made by both parties at the hearing, the Panel was unable to support the request for suspension of action under staff rule 111.2(f).
20. The Panel observed that the appeal was directed against the decision not to extend the appellant's fixed-term appointment beyond 31 December 1987 and that the appellant requested a stay of action on that decision.
21. The Panel recognized that a recommendation that the expiration of the appellant's contract be stayed necessarily implied that the appellant's fixed-term contract be renewed. This, the Panel agreed, was beyond its competence under staff rule 111.2(f). The Panel recognized also that the request for an extension of the appellant's contract, pending investigation of the case, fell outside the JAB's competence and would more properly be addressed to the Panel on Discrimination and Other Grievances, which can make a recommendation for such an extension for a maximum period of two months, under paragraph 15 of administrative instruction ST/AI/308/Rev.1. (...).
22. Accordingly, the Panel makes no recommendation in favour of the request for a stay of administrative action.
23. In this connection, having made a preliminary review of the facts set forth in the letter of appeal, the Panel wished to emphasize that its conclusion on the request for a stay of administrative action was without prejudice to any conclusion or recommendation the JAB might make at a later stage regarding the substance of the case."

The Rebuttal Panel, established by the Rector before the Applicant's separation from service under ST/AI/240/Rev.2, to consider the Applicant's rebuttal of Mr. Ploman's evaluation of 28 December 1986, submitted its report on 17 February 1988. Its conclusions read as follows:

"Conclusions

The panel regrets that a relatively simple communication problem has led to such confrontation. It also regrets that Mr. Ploman failed to communicate in writing his reservations concerning Mr. [B]'s performance and that Mr. Ploman's memorandum of 28 December 1986 was not communicated to Mr. [B] with due dispatch.

Nonetheless, we see nothing that could be gained by pursuing

the matter any further. What transpired between the two employees concerned can never be recreated and therefore no final judgements can be made on the matter.

If we were to recommend a course of action in this case, we would suggest either (a) that all of the correspondence dealing with the case be placed on file or (b) that the University enter into direct discussions with Mr. [B] with a view to clearing his file of all adverse comment."

On 3 March 1988, the Under-Secretary-General for Administration and Management transmitted to the Applicant the JAB report on his request for suspension of action and informed him that:

"...

The Secretary-General has noted the Panel's report, which made no recommendation in support of your request, and the fact that, following the expiration of your fixed-term appointment on 31 December 1987, this request has become moot. The Secretary-General has therefore decided to take no action on your request.

..."

On 23 September 1988, the JAB adopted its report on the merits of the case. Its conclusions and recommendation read as follows:

"Conclusions and recommendation

28. The Panel concludes that the appellant did not have a legal expectancy of renewal of his fixed-term appointment.
29. The Panel also concludes that the appellant had not produced sufficient material to sustain his charge that the contested decision was improperly motivated.
30. On the other hand, the Panel concludes that the UNU Administration, including the appellant's supervisor, failed to communicate properly over time with the appellant. In particular, it noted the delayed communication of the memorandum of 28 December 1986 from the appellant's supervisor, containing the recommendation not to renew the appellant's fixed-term appointment. For this reason, the Panel recommends that the appellant be given compensation in

the amount of one month net base pay."

On 28 September 1988, the Officer-in-Charge, Department of Administration and Management, wrote to the Applicant as follows:

"The Secretary-General, having re-examined your case in the light of the Board's report, has decided to maintain the contested decision of non-renewal of your fixed-term appointment. The Secretary-General has also, however, decided, in final settlement of your case, to accept the Board's unanimous recommendation to award you one month's net base salary in regard to the manner your situation was dealt with and to take no further action on the matter".

On 31 March 1989, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision not to extend the Applicant's appointment has been vitiated by lack of due process.
2. The Respondent discriminated against the Applicant by not allowing the Panel on Discrimination and Other Grievances to undertake an investigation into the allegations of unfair treatment made by the Applicant.
3. The JAB's report is partial and biased against the Applicant.
4. The Applicant suffered injury because of unfair treatment in all the circumstances of the case.

Whereas the Respondent's principal contentions are:

1. The Applicant had neither the right nor the legal expectancy of continued employment with UNU beyond the expiry of his fixed-term appointment on 31 December 1987. His separation from UNU therefore did not violate his rights.
2. The decision not to renew the Applicant's fixed-term contract was not motivated by prejudice.
3. The appropriate procedures were observed and the

Applicant has already been granted compensation for those claims considered by the JAB to be justified.

The Tribunal, having deliberated in Geneva from 7 to 9 May 1990 and in New York from 11 October to 8 November 1990, now pronounces the following judgement:

I. The Applicant appeals principally against the decision by the Rector of the United Nations University (UNU), not to renew his fixed-term appointment, the manner this non-renewal was effected and the unfair treatment to which he was subjected throughout his employment at UNU, and he raises a number of other related issues.

II. The Applicant has asked for oral hearings, for the production of testimony and additional documents as well as for the intervention by the UNU Staff Council. The Tribunal has requested the Respondent to produce documents it considered indispensable and additional information. The Tribunal does not deem that an oral hearing, intervention by the UNU Staff Council, or further production of testimony and documents are necessary.

III. The Tribunal will deal first with the Applicant's appeal against the administrative decision of 5 June 1987 by the Rector, not to renew his fixed-term contract beyond 31 December 1987, claiming that he had a right to continued employment in his position as Programme Officer.

To substantiate this claim, the Applicant contends that:

(a) He had a legitimate expectation that his contract would be renewed;

(b) The decision not to extend his contract beyond 31 December 1987, was vitiated by lack of due process, prejudice, errors of law and of fact, and should therefore be rescinded.

IV. To support the first contention, the Applicant advanced a

number of arguments, including his good performance record and the fact that the functions he performed were still required by the Organization. Hence, it was reasonable to expect, he asserts, that in normal circumstances, barring an explicit policy to the contrary, his contract would be renewed.

V. The Tribunal cannot concur with this conclusion. His appointment was governed by a letter of appointment signed by him on 3 October 1983. This letter provided, inter alia, that "the Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment in the United Nations University". The same provision was included in the letters of appointment granting successive extensions of his contract and is in full conformity with staff rule 104.12(b).

VI. The Applicant accepted his appointment, subject to the conditions specified in the letters of appointment and to those laid down in staff rule 109.7(a), which provides that "A temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment."

VII. In the light of the above, the Tribunal considers that the letters of appointment and the Staff Rules in force cannot be invoked in favour of the Applicant.

VIII. In this context, the Tribunal recalls its Judgement No. 422, Sawhney (1988), paragraph X, in which it stated:

"...that a series of successive fixed-term appointments by itself is not enough to detract from the effect of staff rule 104.12(b), which stipulates that fixed-term appointments carry no right of renewal or conversion to any other type of appointment. Moreover, this provision was incorporated verbatim in each and every one of the Applicant's letters of appointment. According to staff rule 109.7(a), such appointments expire automatically and without prior notice."

IX. Moreover, in accordance with its jurisprudence, the Tribunal considers that good performance by itself is not enough to impose an obligation on the Respondent to extend the Applicant's appointment. (Cf. Judgements No. 205, El-Naggar (1975) and No. 422, Sawhney (1988)).

X. Notwithstanding the foregoing, the Tribunal has examined whether any legal expectancy for the extension of the Applicant's appointment could have arisen from the totality of circumstances surrounding his separation from service. In the present case, the Tribunal does not find that such a legal expectancy could be justified.

XI. However, the Applicant claims that the circumstances leading to the decision not to renew his contract were tainted with irregularity amounting to lack of due process, vitiating the contested decision. The Tribunal notes that the Applicant had difficulties with the Administration as early as 1985 and 1986, with regard to the renewal of his contracts, as well as with regard to the failure to extend his contract beyond 31 December 1987. The Tribunal found that on the expiration of the Applicant's initial two year fixed-term appointment in 1985, the facts and circumstances of the case reveal some extraordinary and disturbing elements; these show that the principles of good faith and due process were not fully reflected in the Administration's treatment of the Applicant.

XII. Thus, with regard to the renewal of the Applicant's contract in 1985, the Tribunal noted that:

The Appointment and Promotion Board (APB) recommended on 24 June 1985, the renewal of the Applicant's contract for only one year, while other appointments were routinely renewed for a two year period. The Tribunal found that the APB recommendation for a one year appointment was based entirely on information provided by

Mr. Edward Ploman, the Applicant's supervisor, that the Applicant was undecided about his own future (i.e. "working for UNU or returning to complete his studies").

The Applicant was unable at the time to rebut such information, which he contests, for the reason that the complete APB recommendation of 24 June 1985 was not brought to his attention.

In the Tribunal's view, such important information which may adversely affect the future of a staff member in UNU, should have prompted the APB to interview the Applicant, to try to ascertain from him, in an unmistakable way, his intentions in this regard, inasmuch as the APB in its recommendation noted the view of the Applicant's supervisor, that the Applicant was a competent and effective staff member.

XIII. When the question of the renewal of the Applicant's appointment was raised in 1986, Mr. Ploman, the Applicant's supervisor, in a memorandum to the Chief of Personnel, dated 24 April 1986, in which he generally praised the Applicant's qualities and performance, reiterated the issue of the uncertainty of the Applicant's future in UNU. He asserted that he had made it clear to the Applicant that he could not make a career at UNU and, therefore, he should prepare a plan for his future based on this consideration. Mr. Ploman recommended the extension of the Applicant's appointment for one year and the APB endorsed his recommendation.

XIV. This recommendation by the APB calls for a number of observations:

Firstly, the APB, again did not care to check with the Applicant what his intentions were regarding his future, although Mr. Ploman, in his memorandum of 24 April 1986, had practically invited him to leave UNU to make a career outside.

Secondly, the APB, in its recommendation dated 28 April 1986, on the strength of Mr. Ploman's recommendation, endorsed the renewal



of the Applicant's appointment for a year from 3 October 1986, through 2 October 1987.

The Tribunal observes that the APB did something more: it volunteered to insert in the recommendation an ambiguously drafted notation stating the following:

"If necessary, [Mr. B's] contract could be renewed until the end of the calendar year, i.e. December 1987 and the Board informed of such renewal, it being understood that this case could not be construed as having created a precedent."

This quotation, as it stands, while indicating a possibility for extension of the Applicant's contract for three months more, after the one year extension already granted, could also be construed as a hasty and premature intention, some 19 months ahead of time, not to renew the Applicant's appointment beyond 31 December 1987.

Although it is not clear how this remark, as quoted above, was inserted in the APB recommendation of 28 April 1986, or for what reasons, it appears that the Rector approved its content in May 1986, as part of the recommendation of the APB, and without raising any questions.

Thirdly, when the Applicant was informed on 22 May 1986 and on 16 July 1986 by the Chief of Personnel that his contract was extended for a further year, no hint whatsoever was given to the Applicant about this remark, leaving him under the impression that the renewal of his appointment for one year was simply a routine matter, while in fact it was not. In addition, as it will be shown later, this rather ambiguous and secretive remark, and not Mr. Ploman's contested memorandum of 28 December 1986, containing disparaging remarks about the Applicant and not officially before the APB, was instrumental in sealing the Applicant's fate in UNU.

XV. The issue of the renewal of the Applicant's appointment was brought before the APB session of May 1987. In considering the renewal of the Applicant's appointment, the APB found it sufficient to revive the remark included in its 28 April 1986 recommendation of

the previous year, approved by the Rector in May 1986.

The APB, at its May session in 1987, simply recommended that this recommendation, ambiguous by itself, be maintained, and the Rector accepted it. Consequently, the Chief of Personnel advised the Applicant on 5 June 1987, that his contract would be renewed for three months more, from 3 October to 31 December 1987 and that he would be separated from UNU as from 31 December 1987.

XVI. In the Tribunal's view, this consideration by the APB of the renewal of the Applicant's appointment and the decision to separate him is susceptible to criticism on several grounds:

1. The APB consideration and the ensuing decision to separate him, were made exclusively on the sole basis of a prior recommendation, made a year earlier, as if the Applicant's work from April 1986, when this recommendation was first made, until the APB May session of 1987, was not relevant. The Applicant was deprived of any opportunity to have the Board evaluate his work in a fair, objective way. At the same time, the APB and the Administration did not seek a report of the supervisor on the Applicant's performance during that time and a recommendation from him on the extension or non-extension of the Applicant's appointment. It is true that a report by Mr. Ploman evaluating the Applicant's performance, with his views concerning renewal, was contained in a memorandum dated 28 December 1986, which curiously appeared on 22 May 1987, a week before the consideration by the APB of the Applicant's contract.

2. The sudden appearance of this report, unknown to the Applicant, prompted him to exercise his right of rebuttal and to request from the Chief of Personnel to adjourn the consideration of his case before the APB.

While the Chief of Personnel, in his answer of 20 May 1987, acceded to the Applicant's request not to place the memorandum of 28 December 1986 before the APB, he was silent on his other request for adjourning the case before the APB.

3. Nevertheless, the renewal of the Applicant's contract

was brought before the APB on 22 May 1987. The APB adopted the recommendation to separate him on 31 December 1987, before the Applicant could submit his rebuttal.

XVII. The conduct of the Administration is open to a number of serious questions.

(1) From the file it appears that the Administration knew about the 28 December 1986 memorandum, but for unexplained reasons withheld it from the Applicant until about one week before the APB meeting in 1987.

(2) When the Applicant requested the Chief of Personnel for the exercise of his right to rebuttal, he was immediately granted the right, but he was not informed that the renewal of his appointment would be considered anyhow and could be rejected on the strength of the remark attached to the 28 April 1986 APB recommendation.

The Tribunal believes that the Administration, faced with such a communication, containing a negative assessment of the Applicant, should have waited for the result of the rebuttal, and properly submitted both before the APB.

XVIII. Furthermore, the Tribunal notes that certain events cast additional doubt on the handling of the 28 December 1986 memorandum.

1. It seems that Mr. Ploman attached great importance to this memorandum, having written it on 28 December 1986, three days before his retirement on 31 December 1986, when he already knew in April 1986 of the APB recommendation, indicating the Applicant's separation on 31 December 1987.

2. According to the record of the case, from September 1986, Mr. Ploman was away from Headquarters and therefore out of touch with the Applicant's performance during his absence. Since his last evaluation was made on 24 April 1986, it means that his evaluation of 28 December 1986, could cover only the months of May, June, July and August of 1986. The Tribunal finds it difficult to

understand how in four months, the evaluation made in the memorandum of 28 December 1986, could depart so fundamentally from his assessment, on August 1986, of the Applicant's overall performance as "Very Good" in the evaluation report for the period of service from October 1983 to October 1985; as well as from his evaluations of 24 April 1986, 4 June 1985, or even at the time of the Applicant's recruitment on 31 May 1983.

XIX. In view of the foregoing, the Tribunal concludes that in the circumstances of the case, UNU did not fully respect the requirements of due process and good faith in reaching its decision to separate the Applicant from service. The responsibility of the Respondent is thus engaged, entailing compensation for the injury sustained by the Applicant.

XX. With regard to the Applicant's claim that he was subjected to a number of work constraints while in UNU, the Tribunal notes that:

1. The Applicant, in order to substantiate his claim, mentioned several specific and obvious instances of work constraints.

2. The Respondent's answer to these specific examples of hardship was that even if these could be established, they could not now constitute the basis of substantive claims, nor would they prove discrimination against the Applicant.

Given the background of this case, the Tribunal would have expected a straightforward and categorical denial of these allegations. On the contrary, the Respondent contented himself in denying that the non-renewal was the direct result of the discriminatory treatment of the Applicant by Mr. Ploman, his former direct supervisor and the Rector of UNU.

The Tribunal considers that if the Applicant's case had been brought before the Panel on Discrimination and Other Grievances (Panel on Discrimination), a thorough investigation could have been possible.

XXI. The Tribunal notes that the claim addressed by the Applicant to the Panel on Discrimination was not considered, because the Rector of UNU did not accept the Panel's jurisdiction in the case.

The Tribunal concurs with the Joint Appeals Board's (JAB) finding that it was unfortunate that the Panel on Discrimination was prevented from investigating the Applicant's case. Moreover, without speculating about the possible results of such investigation, the Tribunal considers that the Applicant was prevented from exercising the right to avail himself of a recourse open to all staff members. The terms of reference of the Panel on Discrimination are defined in administrative instruction ST/AI/308/Rev.1 of 25 November 1983. As U.N. officials, UNU staff members are entitled to enjoy access to such bodies as have been set up to protect staff members' rights and which are available to their colleagues elsewhere in the United Nations.

In the view of the Tribunal, the absence of a Panel on Discrimination at UNU deprives staff members of an important protection, unless they are allowed to refer their grievances to the Panel on Discrimination at U.N. Headquarters.

XXII. The Tribunal notes that at the time the Applicant submitted his claim to the U.N. Headquarters Panel on Discrimination, no such Panel was established at UNU and the refusal by the Administration to allow any investigation on the Applicant's allegations of unfair treatment constitutes a lack of due process.

The Applicant has requested the Tribunal to remand his case to the Panel on Discrimination. The Tribunal cannot entertain this request because the terms of reference of the Panel on Discrimination would seem to be limited to consideration of claims by staff members.

XXIII. The Tribunal is of the opinion that the JAB report on the request of the Applicant for the suspension of action, under staff

rule 111.2(f), dated 3 January 1988, submitted by the JAB to the Secretary-General, contains an adequate recommendation and the request made to the Tribunal to modify that rule cannot be accepted within the terms of the Tribunal's competence.

XXIV. The Applicant has also requested the Tribunal to adjudge and clarify some aspects of a general legal and practical nature concerning the status of UNU and the extent of its autonomy. The Tribunal sees no need in this case to deal further with such questions.

XXV. The Tribunal notes that the Respondent agreed to pay to the Applicant compensation of one month's net base salary, which the Applicant did not accept.

XXVI. For the foregoing reasons, the Tribunal decides that the Applicant should be awarded compensation equivalent to three months of the Applicant's net base salary, at the level and step held by him at the time of his separation, for all the injury he has sustained.

XXVII. The Tribunal orders the Respondent:

(a) To pay to the Applicant three months of his net base salary at the level and step held by him at the time of his separation from service;

(b) To provide the Applicant with an appropriate certificate of service pursuant to staff rule 109.11;

(c) To incorporate a copy of this judgement in the Applicant's personnel files;

XVIII. The Applicant has requested that his "name not be used to identify the present case, so that, as has been done in a few other cases, the case be identified instead by a letter of the alphabet...". The Tribunal accepts the request and orders the case

to be named Mr. B.

XIX. All other pleas are rejected.

(Signatures)

Ahmed OSMAN  
Vice-President, presiding

Samar SEN  
Member

Ioan VOICU  
Member

New York, 8 November 1990

R. Maria VICIEN-MILBURN  
Executive Secretary