

ADMINISTRATIVE TRIBUNAL

Judgement No. 499

Case No. 496: AMOA

Against: The Secretary-General  
of the United Nations

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

Whereas, on 15 August 1988, Rowland Ga-Kwami Amoa, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, at the request of the Applicant, and with the agreement of the Respondent, the President of the Tribunal extended until 29 December 1988, the time-limit for the filing of an application to the Tribunal;

Whereas, on 6 January 1989, the Applicant, after making the necessary corrections, again filed an application, containing the following pleas:

"THE PLEAS

THE APPLICANT (APPELLANT) RESPECTFULLY PRAYS THE  
ADMINISTRATIVE TRIBUNAL OF THE U.N. TO TAKE THE  
FOLLOWING ACTIONS AND CONSIDERATIONS IN THE CASE OF  
MR. ROWLAND GA-KWAMI AMOA VS. U.N. SECRETARY-GENERAL.

A. PRELIMINARY MEASURES:

DOCUMENTS

(i) To accept Document (...) as an integral part of my appeal material;

(ii) To kindly order the procurement in Headquarters of the following documents of the Organization which have

been cited in this application for the Tribunal's use, but whose reproduction by the appellant has proved impractical in view of the poor facilities available to him:

(a) Eight copies of Staff Rules, ST/SGB/Staff Rules/1/Rev. 5 (1979);

(b) Four copies of Staff Rules, ST/SGB/Staff Rules/2/Rev. 6, 1984;

(iii) Where it proves impracticable to procure the documents requested in (ii) above, to kindly accept:-

(a) An integral quotation of staff rule 103.23(c) in ..., in lieu of Staff Rules, ST/SGB/Staff Rules/1/Rev.5 (1979);

(b) The photocopies of staff rules 203.8.(b) and 205.3(c) included in the ANNEXES in lieu of Staff Rules, ST/SGB/Staff Rules/2/Rev.6, 1984 in four copies of the application.

B. DECISION AND ACTIONS BEING CONTESTED BEFORE THE TRIBUNAL

1. The U.N. Secretary-General's decision of June 1980

(a) That the above decision is legally defective within the Jurisprudence of the United Nations. The Applicant (appellant) demands two years of his normal U.N. salary to compensate for the libel caused;

(b) That the subsequent use of the decision by the U.N. Administration was illegal, injurious to the profession of the appellant and tantamount to an abuse of power by some highly-placed officials of the United Nations.

The Applicant (appellant) respectively demands reparation in the following amounts to be ordered by the Tribunal:

(i) The present value of seven years of his normal U.N. salary. This amount is to be partly offset by a similar present value of whatever amounts the Applicant (appellant) has managed to earn since his normal U.N. service had been damaged by the acts of the Administration against him;

(ii) The Applicant (appellant) respectfully requests a

retroactive promotion to the U.N. professional grade of D-2 which the use of the decision had prevented from being effected;

(iii)The Applicant (appellant) further alleges serious moral, mental and social injury from the unlawful acts committed by the Administration. He respectfully demands one year's salary in damages;

(iv)The Applicant requests that he should be immediately reinstated in his capacity as an employee of the Organization.

2. Other Unlawful Acts of the U.N. Administration against the Applicant (Appellant).

(i)That, contrary to the impression of the Joint Appeals Board [JAB], the Administration had exercised bad faith in the delay of the Applicant's (appellant's) appeal in the JAB for seven years. That in one of their depositions on behalf of the Respondent, some members of Administration had lied to the JAB concerning a possible settlement out of court of the case in dispute.  
The Applicant respectfully demands punitive damages in consonant with this wilful delay of his appeal;

(ii)The Applicant alleges that the Administration has a case to answer regarding the arbitrary change of his normal contract from annual to monthly basis, six months before the Secretary-General's decision which took advantage of Applicant's made use of the monthly contract, and that the first these monthly contracts had been signed by a highly-placed official of the Administration, as opposed to the story of the Administration that an administrative [sic] had been responsible for the unlawful act.  
The Applicant respectfully requests the Tribunal to order punitive damages for this highly arbitrary act which caused him severe physical and mental strains and bears the marks of a cover-up of wrong doing;

(iii)The Applicant respectfully prays the Tribunal to undertake an investigation into possible unlawful acts by some members of the U.N. and ECA [Economic Commission for Africa] officials during the period of 1978 to 1980 in respect of the disciplinary proceedings leading to the decision now under dispute, and draw its own conclusions. The humble prayer is expanded upon in the last section of the

'Explanation' (according to the scheme of the Tribunal for appeal purposes);

(iv)The Applicant finally prays the Tribunal to order 'as null and void' the various machinations of the Administration to bring his SLWOP [Special Leave Without Pay] to an end as a means of limiting their normal obligations to a U.N. employee, notwithstanding the fact that the order giving the SLWOP, also specified the conclusion of this appeal against the decision of the U.N. Secretary-General as the condition for ending the SLWOP."

Whereas the Respondent filed his answer on 21 April 1989;

Whereas the Applicant filed written observations on 16 May 1989 and requested the amendment of certain paragraphs in Part I of his application;

Whereas, on 1, 18 and 26 April 1990, the Applicant submitted an additional statement and additional documents;

Whereas, on 27 April 1990, the Tribunal put questions to the Respondent and on 3 May 1990, the Applicant submitted comments thereon;

Whereas, on 8 May 1990, the Respondent provided answers to the questions put by the Tribunal;

Whereas, on 17 May 1990, the Tribunal put further questions to the Respondent and on 21 and 23 May 1990, he provided answers thereto;

Whereas, on 21 and 25 May 1990, the Applicant submitted additional statements and documents;

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 5 and 8 October 1990, the Applicant submitted additional statements and documents;

Whereas, on 8 October 1990, the Tribunal put questions to the Respondent and on 12 October 1990, he provided answers thereto;

Whereas, on 19 and 25 October 1990, the Applicant commented

on the Respondent's answers to the questions put by the Tribunal and submitted additional documents;

Whereas the facts in the case are as follows:

Rowland Ga-Kwami Amoa entered the service of the United Nations on 6 December 1965, as an Associate Economic Affairs Officer at the Centre for Development Planning, Projections and Policies, in New York. He was initially offered a three month fixed-term appointment at the P-2, step III level. He served on a succession of fixed-term appointments until 1 October 1967, when he was offered an intermediate term appointment as a Lecturer in Financing of Development at the L-3 level, at the African Institute for Economic Development and Planning (IDEP) in Dakar, Senegal. His appointment was extended for further fixed-term periods through 31 December 1970. On 3 September 1970, the Applicant assumed the functions of Deputy Director and Head of Training, a post at the L-5 level. He continued to serve on a series of fixed-term appointments of different duration, ranging from one month to one year, through 31 December 1979.

During the course of his employment with the United Nations, the Applicant listed as his wife, simultaneously, two different persons for different purposes related to his employment. Upon his recruitment in 1965, the Applicant reported that Esperance Amoa was his dependent spouse for purposes of the U.N. Staff Regulations and Rules. In 1971, the Applicant requested that Elisa Andrade be included in his U.N. Laissez-Passer, for travel purposes and to obtain a residence visa for her in Senegal, the Applicant's duty station. In 1972, Esperance Amoa returned to Ghana, the Applicant's home country. Nevertheless, the Applicant continued to list her as his "dependent spouse" in all U.N. personnel action forms and status reports. At the same time, in July 1972, the Applicant requested that Elisa Andrade Amoa be considered his wife for purposes of the Van Breda Group Medical Hospital and Dental Insurance Scheme (Van Breda). In 1974, he filed a claim for medical expenses incurred in

respect of her, and was reimbursed by Van Breda the amount of US\$391.77.

In May 1978, in connection with an audit conducted by the Internal Audit Division, the Administration discovered that the Applicant was listing two different persons as his wife for different purposes related to his employment. When the Administration confronted him with the facts, on 13 June 1978, the Applicant wrote a memorandum to the auditors, admitting that "arising from a customary and a de facto conjugal relationship which existed between Ms. Elisa Andrade and [himself, he] used her as [his] dependent spouse for the purpose of medical insurance and passport coverage". He argued that "while one can admit a possible misconception, arising from [his] social background, in the interpretation of spouse for the purposes of the United Nations Regulations", he denied there had been "any deliberate falsification ...". The Applicant subsequently requested the United Nations Passport Office in Geneva to cancel his U.N. Laissez- Passer and to issue a new one, removing the name of Elisa Andrade as his spouse. On 13 June 1978, he returned to Van Breda a cheque in the amount of US\$391,77, sum which he had received in respect of medical claims filed for his wife Elisa Andrade. He also requested Van Breda to accept claims for reimbursement of all medical expenses incurred in respect of his first wife Esperance since 1972, when he had formally become a participant in the plan. This request was rejected by Van Breda.

On 27 November 1978, the Chief, Staff Services, Office of Personnel Services (OPS), wrote to the Chief, Administration and Conference Services Division, ECA, requesting information concerning the Applicant's conduct and asking what administrative action ECA proposed to take.

On 19 October 1979, the Acting Chief, Division of Administration and Conference Services, ECA, informed the Applicant that his "requests to include another person as [his] spouse on a number of Laissez-Passers seems to involve misrepresentation and a

serious violation of the standards of conduct of an international civil servant." He also referred to the filing of the medical insurance claims and in view of the "seriousness of [the] allegations of acts of misconduct" attributed to him, asked him to give his own version of the matter in writing not later than 31 October 1979. The Applicant was also informed that, in accordance with Personnel Directive PD/1/76 concerning "Disciplinary Procedure for Staff Serving at Offices away from Headquarters and Geneva", the Executive Secretary had appointed an ECA official to conduct an inquiry.

The Executive Secretary appointed an ad hoc Investigating Team to investigate the allegations against the Applicant. On 30 October 1979, the Applicant appeared before the Investigating Team to explain his position. A summary of the Applicant's statement before the Investigating Team was recorded in a memorandum dated 31 October 1979, from its Secretary. The Applicant was asked to comment on the statement and to submit any evidence he might wish.

In a memorandum dated 2 November 1979, the Applicant provided an explanation to the Acting Chief, Division of Administration and Conference Services, ECA, concerning the allegations contained in his 19 October 1979 memorandum. He argued essentially that the inclusion of Mrs. Elisa Andrade's name on his U.N. Laissez-Passer and his submission of claims for reimbursement of her medical expenses, were actions "derived from an effective and public conjugal relationship according to well-known customary laws". He noted that his first wife Esperance was still his legal and dependent spouse and stated that no change of marital status under staff rule 103.23(c) was required since he was still married to her.

He argued that he did not inform the United Nations of his second spouse Elisa, because this implied seeking to obtain double privileges and financial benefits. He stated that, in his view, it was legitimate that one of his spouses be covered by his medical insurance and he chose to include Elisa Andrade for this purpose, as

Esperance was living in Ghana where "medical expenses ... tend to be minimal". He further stated that since the filing of a medical claim for his second spouse, Elisa Andrade, derived from an effective and public conjugal relationship, according to well-known customary laws of Ghana, the charges of misrepresentation of facts and of fraud were unfounded.

Also on 2 November 1979, the Applicant submitted to the Secretary of the ad hoc Investigating Team comments on his summary of the interview conducted on 30 October 1979.

On 8 November 1979, the ad hoc Investigating Team submitted its report on the investigation to the Executive Secretary, ECA. While recognizing the existence of customary marriages, the Investigating Team considered that the Applicant should have notified the Organization of any decision to substitute Elisa, his second customary spouse, for Esperance, his recognized dependent spouse. Having held the position of Deputy Director at IDEP for a considerable time, it was "inconceivable that [the Applicant] should be ignorant of the rule concerning dependency and change of status".

The Investigating Team found that except for the Van Breda medical claim, no "financial or material benefit accrued to [the Applicant]" and the "diplomatic privileges Elisa derived ... [could not] be assessed". They concluded however that "the granting of diplomatic privileges to Elisa who is not the recognized spouse of Mr. Amoa for United Nations purposes, appear[ed] ... to be unlawful".

On 10 December 1979, the Chief, Personnel Section, ECA, informed the Applicant that the IDEP Governing Council had decided to extend his appointment "for one final year through 31 December 1980". However, in a handwritten note dated 3 January 1980, is stated an instruction, that the Applicant's fixed-term appointment be extended for only one month, pending the decision by Headquarters concerning the disciplinary case. Accordingly, the Applicant's appointment was extended, first, for one month through 31 January 1980.

On 8 January 1980, the Acting Chief, Division of



Administration and Conference Services, transmitted to the Applicant the final investigation report of 8 November 1979 and asked him to submit comments prior to the Secretary-General's decision on the case. He noted that the report had been previously pouched to him on 11 November 1979, but had been "reported not received".

On 31 January 1980, the Applicant submitted his comments and additional information in response to the Investigating Team's report.

The Applicant's appointment was further extended for a fixed-term period of two months, through 31 March 1980.

On 12 March 1980, the Acting Chief, Division of Administration and Conference Services, ECA, transmitted his own evaluation of the Applicant's case to the then Assistant Secretary-General, OPS. The report of the ad hoc Investigating Team and the Applicant's comments thereon had already been transmitted to the Chief of Staff Services, OPS, at Headquarters. In the Acting Chief's view, the inclusion of Elisa Andrade's name in a number of U.N. Laissez-Passers, when she was not the "spouse" recognized by the Organization, constituted an irregularity, even if the Applicant's customary marriage to her would be recognized in the Applicant's home country. He felt that, in view of the Applicant's long professional experience and his position as Deputy Director, IDEP, he should have known the procedures concerning dependency and change of marital status. He made no specific recommendation on the case but suggested that it be referred to the Office of Legal Affairs, where it could be reviewed in the light of a prior allegation of misconduct against the Applicant.

The Applicant's appointment was then extended for a fixed-term period of three months and 15 days, through 16 July 1980.

On 25 April 1980, the then Assistant Secretary-General, OPS, advised the Secretary-General, through the Legal Counsel and through the then Under-Secretary-General for Administration, Finance and Management, that in his opinion, the Applicant had failed to conform to the highest standards of integrity required for a United Nations

staff member, under Article 101, paragraph 3 of the Charter, that he should be considered unfit for further service with the Organization and that his appointment should be terminated. He recommended that the Applicant's month-to-month contract, which was due to expire, not be extended further.

In a reply dated 16 June 1980, the then Under-Secretary-General for Administration, Finance and Management, informed the then Assistant Secretary-General, OPS, on behalf of the Secretary-General, that he agreed with his recommendation.

In a memorandum dated 21 June 1980, the then Director, Division of Personnel Administration (DPA), OPS, informed the Executive Secretary, ECA, of the Headquarters decision not to extend the Applicant's appointment beyond 30 June 1980. The Applicant was notified of the decision by the Officer-in-Charge, IDEP, on 26 June 1980. The Applicant's appointment was further extended through 31 July 1980.

In a cable dated 3 July 1980, the Applicant submitted his resignation to the Executive Secretary, and requested that he be released before the expiration date of his appointment. The Executive Secretary accepted his resignation and the Applicant was separated from the service of IDEP on 16 July 1980.

On 17 July 1980, the Applicant was recruited by the United Nations Institute for Training and Research (UNITAR) as a Special Fellow in Dakar, Senegal.

On 12 December 1980, the Applicant wrote to the then Director, DPA, concerning an unflattering newspaper article which had appeared in Dakar and which brought into question the circumstances surrounding the Applicant's separation from IDEP. On 27 February 1981, his successor transmitted to the Applicant a copy of the report dated 25 April 1980 by the then Assistant Secretary-General, OPS, and a copy of the decision taken on behalf of the Secretary-General, by the then Under-Secretary-General for Administration, Finance and Management, on 16 June 1980.

In a cable dated 21 April 1981, the Applicant informed the

Director, DPA, that "... NEITHER PERSONNEL SERVICES NEW YORK NOR INVESTIGATION TEAM EVER QUESTIONED [HIM] ORALLY OR IN WRITING ABOUT SOME OF THE MOST DAMAGING ALLEGATIONS CONTAINED IN [THE THEN ASSISTANT SECRETARY-GENERAL'S (OPS)] REPORT ON THE AFFAIR", and indicated his intention to file an appeal.

On 22 April 1981, the Applicant requested the Secretary-General to review the administrative decision communicated to him on 26 June 1980, not to extend his fixed-term appointment beyond 31 July 1980, for having "failed to conform to the highest standards of integrity required of a United Nations official" and being "considered unfit for continued retention as Deputy Director of [IDEP]". On 17 June 1981, the Applicant filed an appeal with the Joint Appeals Board (JAB) against the decision of 26 June 1980. In view of the late filing of the appeal, the Respondent was asked to submit a preliminary reply on the issue of receivability.

On 17 July 1981, the Executive Director of UNITAR, placed the Applicant on special leave without pay until the Secretary-General took a final decision on the appeal filed by the Applicant on the previous day. On 2 January 1984, the Applicant informed the Organization that he had been compelled to go on an indefinite leave without pay from UNITAR on 17 June 1981, pending the outcome of his appeal. On 9 February 1984, the Executive Director of UNITAR informed the Applicant that his appointment as UNITAR Special Fellow would not be renewed and that his special leave without pay would end on 31 March 1984.

On 19 November 1985, the representative of the Secretary-General submitted the Respondent's reply to the statement of appeal. On the same date, counsel for the Applicant requested the Secretary-General's agreement to submit the appeal directly to the Administrative Tribunal. On 9 December 1985, the then Assistant Secretary-General, OPS, advised counsel for the Applicant that his request for direct submission of the appeal to the Tribunal was rejected as the issue of receivability had not yet been decided.

On 20 March 1986, in response to the denial of the

Applicant's request for direct submission of the appeal to the Administrative Tribunal, the JAB indicated its intention to consider the case. The Board adopted its report on 6 May 1988. Its decision, conclusions and recommendations read as follows:

"Decision, Conclusions and recommendations

65. The Panel decides to waive the time-limits for the filing of an appeal in the present case.
66. The Panel concludes that the four year delay in the submission of the Respondent's reply to the statement of appeal, despite the Convening Chairman's decision to grant priority consideration to this case, was directly the result of the Administration's inexcusable failure to provide adequate support for the appeals machinery. Accordingly, the Panel recommends the award of two months' net base salary to the appellant.
67. The Panel concludes further that the appellant had a legitimate expectancy of continued employment until 31 December 1980 and that in accordance with the established jurisprudence of the United Nations Administrative Tribunal the appellant should be compensated for the decision not to extend his contract beyond 31 July 1980. The Tribunal has held (Judgements No. 132, Dale; 142, Bhattacharyya) that such situation may be assimilated to the case of a one year fixed-term contract which is terminated 5 months before its date of expiration. 'In such a situation, a staff member would be entitled to a termination indemnity of one weeks salary for each month of uncompleted service'. Accordingly, the Panel recommends such payment, taking into account the fact that the appellant was re-employed by UNITAR the day following his separation from service with IDEP. Therefore, any such termination indemnity should be reduced by the amount earned by the appellant while serving with UNITAR.
68. The Panel also concludes that the failure to provide the appellant with a copy of Mr. Jonah's [the then Assistant Secretary-General, OPS] contested memorandum did not constitute a violation of due process. The Panel does conclude, however, that the decision not to extend the appellant's contract which was taken in lieu of assigning an appropriate disciplinary measure within the context of paragraph 1 of staff regulation 10.2, was improper and constituted an incomplete disciplinary procedure. The Panel concludes further that the maintaining of files and the communicating of information to the effect that the appellant's non-renewal had been for disciplinary reasons,

constitutes an abuse of power and is violative of the basic principle of fairness between the Organization and its staff members.

69. Accordingly, the Panel recommends an award to the appellant in the amount of 2 months net base salary. It recommends further that all material relating to the incomplete disciplinary proceeding be expunged from the appellant's files.
70. The Panel makes no further recommendation in support of the appeal."

On 9 June 1988, the Under-Secretary-General for Administration and Management informed the Applicant of the following:

"The Secretary-General has re-examined your case in the light of the Board's report. Considering the entire circumstances of the matter, the Secretary-General has decided, in order to settle your case, to accept the Board's recommendations:

- (a) To award you compensation in the amount indicated in paragraphs 66 to 69 of the Board's report for the injuries suffered and the delays in the disposal of your case;
- (b) To remove from your official status files all material relating to the incomplete disciplinary proceedings in your case; and
- (c) To take no further action on the matter."

On 6 January 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 was prejudiced and should be declared illegal.
2. The Respondent acted in bad faith in delaying the appeal for seven years.
3. The Respondent's illegal decision not to extend the Applicant's appointment is also libellous and he is entitled to

punitive damages.

4. The Respondent referred to a 1974 disciplinary proceeding and this played a central role in his decision of June 1980.

Whereas the Respondent's principal contentions are:

1. The decision by the Respondent not to extend the Applicant's appointment was not prejudiced by reference to an earlier disciplinary investigation in the report submitted by the then Assistant Secretary-General, OPS.

2. In deciding not to extend the Applicant's appointment, the Respondent was entitled to take into account any apparent lapses in judgement of the Applicant, who was serving as Deputy Director of a significant programme.

The Tribunal, having deliberated from 27 April to 17 May 1990 in Geneva, and from 8 October to 8 November 1990 in New York, now pronounces the following judgement:

I. At the outset, the Tribunal would like to make a brief comment on the voluminous documentation in this case, about 300 pages of application with annexes and over 2,000 pages of connected material, including personnel files; obviously, the Tribunal's exhortation in the past that unwieldy presentation of cases is not to be encouraged has still to take effect.

II. On the merits of the case, the Tribunal finds that the Applicant essentially seeks fundamental revision of the conclusions and recommendations of the Joint Appeals Board (JAB) which have been accepted by the Respondent, the Applicant's main plea being that the JAB did not take sufficiently into account the illegal wrongs the Applicant had suffered and was deficient in its analysis and recognition of facts, with the result that the Applicant has been deprived of remedies and compensation to which he believes himself

to be entitled. On the other hand, the Respondent points out that inasmuch as some of the pleas before the Tribunal were not before the JAB, the Tribunal is precluded from examining them in terms of article 7 of its Statute. Since the issues raised in the pleas are closely related to each other, the Tribunal decides to consider them all together, care being taken that specific demands which were not before the JAB will not be passed upon.

III. The JAB has discussed the principal pleas at considerable length and justly commented on the delay caused by the Respondent's failure to submit his answer for over four years. The Tribunal notes that further delay was due to the Applicant's wish, because of the Respondent's dilatory tactics, to submit the case directly to the Tribunal with the Respondent's permission. This permission was refused, and the negotiations which took place to settle the case in mutually acceptable terms between the parties also failed. This led to yet more delay with the consequence that for eight long years, that is since 1981 when the case was brought before the JAB, its final disposal had not yet taken place. Such delays are utterly irresponsible and obstruct proper justice - documents become old and questionable, persons concerned with the day-to-day dealing of cases disappear and reconstruction of what happened years ago no longer seems feasible. A few senior officials in the Secretariat seemed to be aware of the inordinate delay in the disposal of this case. However, the Tribunal cannot sufficiently condemn the delay that has taken place.

IV. The one and only substantial question before the Tribunal is whether the Respondent's failure to show to the Applicant the memorandum of 25 April 1980, which the then Assistant Secretary-General for Personnel Services (OPS), wrote to the Secretary-General, through the Legal Counsel, constituted an infringement of the Applicant's rights under the relevant procedure for disciplinary cases, either emanating from administrative

instructions or from the applicable Staff Regulations and Rules. The memorandum in question was prepared as a follow-up action of an investigation instituted by the Respondent on the allegation that the Applicant had two wives. The first marriage was supported by documentary evidence, while the second was considered to be customary, but generally recognized in Dakar where the Applicant was working. The investigation also included several alleged financial and other irregularities, such as including one wife (Esperance) as his dependent and the other (Elisa) for a United Nations Laissez-Passer, medical insurance and some undefined privileges. The investigation was thorough, and established that the Applicant's omission to declare his second marriage and his failure to take action in time to adhere strictly to the rules and regulations on these matters, were irregularities even though he or his second wife (or her children by another marriage) did not in practice receive much, if any, financial advantage through these omissions and failures on the Applicant's part. The report of the Investigating Team was shown to the Applicant and his comments obtained in accordance with personnel directive PD/1/76 of 1 January 1976 entitled "Disciplinary Procedure for Staff Serving at Offices away from Headquarters and Geneva".

V. The Respondent maintains that inasmuch as the Investigation Team report was shown to the Applicant and he commented upon it, the relevant provisions of PD/1/76 have been completely carried out. He has also asserted that the terms of PD/1/76 do not preclude the Assistant Secretary-General, OPS, from making such summaries, comments and recommendations as he wishes to include in his submission to the Secretary-General. The Respondent further argues that there was nothing in this memorandum to the Secretary-General which was not known to the Applicant and on which he had not already had an opportunity to comment. Finally, he contends that it was an internal communication between seniormost officers who were concerned with taking a comprehensive view of a staff member's



suitability and therefore such a memorandum does not fall within the purview of PD/1/76. Thus, there is no obligation to show it to the staff member concerned for his comments or rebuttal.

VI. The Applicant disagrees completely and states that, apart from the prescribed procedure, the memorandum in question offends the general sense of fairness, if not the Applicant's specific rights, in three ways: first, by raising the issue of an earlier incident in which the Applicant was involved in importing chemicals in the name of IDEP, but in fact meant for his friends or relatives, the memorandum tends to prejudice the Secretary-General against the Applicant, especially as the Applicant had been found to be blameworthy only for a "lapse of judgement"; secondly, many of the facts were not accurately stated, e.g. the withdrawal of the Applicant's resignation at the time the import of chemicals was being enquired into, the whereabouts of Mrs. Elisa Andrade (the Applicant maintains that he was never questioned about this); failure to establish proof of his marriage to Mrs. Elisa Andrade; thirdly, several people who were unfavourably disposed towards the Applicant were directly or indirectly able to influence this submission to the Secretary-General and therefore the presentation was vitiated by prejudice.

VII. The Tribunal has not been able to find any substance in these allegations and is of the opinion that it was not necessary for the Respondent to communicate to the Applicant the contents of the memorandum of 25 April 1980, from the then Assistant Secretary-General, OPS, to the Secretary-General through the Legal Counsel.

The Tribunal has also examined the circumstances in which the Applicant was recruited by UNITAR on 17 July 1980 and subsequently given seemingly unlimited leave without pay. The Tribunal does not consider that the Applicant is entitled to any compensation for the complications and irregularities that may have arisen as a result of

UNITAR's action in putting him on leave without pay.

VIII. The Tribunal agrees with the JAB that the confusion about whether to separate the Applicant through disciplinary action or through recourse to the easy and quick device of ending his fixed-term contract, should have been avoided. It would have been more straightforward to follow one or the other course, and not to institute a disciplinary case and then end up with the sudden termination of a month-to-month fixed-term contract. For this lack of due process, the Applicant is entitled to some compensation, as determined by the JAB.

IX. However, the Tribunal does not question the right of the Respondent to judge comprehensively the suitability of any staff member for any appointment on the basis of all available data; this right can be challenged when it could be established, inter alia, that the assessment is vitiated by prejudice or any other extraneous factors. In the present instance, the right of the Respondent is not being impugned, but it is asserted that the procedure followed has infringed due process by confusing disciplinary action with discretion not to renew a fixed-term contract.

X. In view of the above and in the light of the recommendation already made by the JAB and accepted by the Respondent, the Tribunal is of the view that the Applicant is not entitled to any further relief for the wrongs he has suffered. The Tribunal also approves of the JAB's conclusion that the Applicant could normally have expected to continue to serve on short fixed-term appointments until the end of 1981, and that the decision to employ the Applicant on a month-to-month basis, even if it was within the Respondent's power and was known to the Applicant, was taken without sufficient justification.

XI. The Respondent has informed the Tribunal that according to

the award made by the JAB in paragraphs 66 and 69 of its report, the amount due to the Applicant is US\$10,931.20 and that nothing is due to him under paragraph 67 of the JAB report as "the salary he received from UNITAR, Dakar, for the period 17 July 1980 through 16 July 1981 far exceeded the maximum termination indemnity of [US]\$3,153.25 (weekly net base pay of [US]\$630,65 times by 5 months of uncompleted service)". The Tribunal accepts these calculations and confirms that a sum of US\$10,931.20 is due to the Applicant.

The Tribunal notes, however, that there has been much delay in calculating the amount due to the Applicant as recommended by the JAB, and that, for one reason or another, no payment has been made to the Applicant. The Tribunal, therefore, considers it appropriate that the Applicant should be entitled to receive 10 per cent interest (compounded each year) on US\$10,931.20 from 9 June 1988 - when the JAB's recommendation was accepted by the Respondent - until the date when payment is finally made to the Applicant.

XII. Accordingly, the Tribunal orders the Respondent to pay the Applicant the sum of US\$10,931.20, plus 10 per cent interest (compounded each year) on US\$10,931.20 from 9 June 1988 - when the JAB's recommendation was accepted by the Respondent - until the date when payment is finally made to the Applicant.

XIII. For the foregoing reasons and except as provided in the preceding paragraph, the application is rejected in its entirety.  
(Signatures)

Roger PINTO  
President

Samar SEN  
Member

Arnold KEAN  
Member

New York, 8 November 1990

R. Maria VICIEN-MILBURN  
Executive Secretary