

ADMINISTRATIVE TRIBUNAL

Judgement No. 579

Case No. 631: TARJOU MAN

Against: The  
Secretary-General  
of the  
United  
Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de  
Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas, on 12 November 1991, Mahmoud Tarjouman, a staff  
member of the  
United Nations, filed an application containing the following  
pleas:

"II. PLEAS

10. With respect to competence and procedure, the Applicant  
respectfully requests the Tribunal:

(a) to find and rule that it is competent to hear and  
pass judgement upon the present application  
under article 2 of its Statute;

(b) to consider the present application receivable

under article 7 of its Statute;

(c) to decide to hold oral proceedings on the present application in accordance with article 8 of its Statute and Chapter IV of its Rules;

11. On the merits, the Applicant requests the Tribunal:

(a) to rescind the decision of the Secretary-General rejecting the unanimous recommendations of the Joint Appeals Board in favour of the Applicant;

(b) to find and rule that the findings of the Joint Appeals Board in its Report No. 847 were correct insofar as the panel's determination of the facts of the case were concerned and insofar as the legal and moral obligations of the Respondent towards the Applicant were sustained;

(c) to find and rule that the Joint Appeals Board erred as a matter of law in failing to sustain the Applicant's request for full pay and entitlements including pension coverage for the period 7 July 1979 through 15 September 1985 and for immediate consideration for promotion to the P-4 level;

(d) to order the Respondent to pay the Applicant his full salary and entitlements at the appropriate step of the P-3 level, for the entire duration of his imprisonment;

(e) to order the Respondent to pay the Applicant the equivalent of the difference in pay between the T-II-L level at which he was recruited in 1985 and the appropriate step of the P-4 level to which he should have been entitled for the period 1985 to the present, in recognition of the adverse effect of the Respondent's negligence upon his career;

(f) to order the Respondent to make the entire period of the Applicant's service since 1977 pensionable or, alternatively, to pay him the equivalent of the difference in actuarial value of what he is presently entitled to and what he would have been entitled to had his contributory service not have been interrupted

from 7 July 1977 through 15 September 1986;

(g) to award the Applicant additional compensation in the sum of \$100,000.00 for the moral damages including pain and suffering as well as injury to his professional reputation suffered by the Applicant as a result of the unconscionable negligence and delays by the Administration in handling his case;

(h) to fix, pursuant to article 9, paragraph 1 of the Statute and Rules, and in light of the exceptional circumstances surrounding his claim, the amount of compensation to be paid in lieu of specific performance at \$380,000.00, calculated as follows:

-loss of salary and entitlements:  
\$280,000.00;

-damage to career and loss of promotion opportunities and permanent status:  
\$50,000.00;

-loss of pension entitlement: \$50,000.00;

(i) to award the Applicant the sum of \$10,000.00 for legal costs."

Whereas the Respondent filed his answer on 5 May 1992;

Whereas the Applicant filed written observations on 15 July 1992;

Whereas, on 14 October 1992, the President of the Tribunal, pursuant to article 10 of the Rules of the Tribunal, put questions to the Respondent and on 16 and 19 October 1992, the latter provided answers thereto;

Whereas, on 20 October 1992, the Applicant provided his comments on the Respondent's submissions;

Whereas, on 26 October 1992, the Tribunal put further questions to the Respondent and on 29 October 1992, he provided answers thereto;

Whereas, on 17 November 1992, the Tribunal ruled that no

oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 7 January 1975 on a six month fixed-term appointment as an Arabic Proofreader at the P-2, step VIII level in the Department of Conference Services at Headquarters. The Applicant's appointment was extended for a further fixed-term period of two years, through 6 July 1977. With effect from 16 August 1975, the Applicant was transferred, as Associate Administrative Officer, to the Economic Commission for Western Asia (ECWA), located in Beirut.

On account of civil disturbances in Lebanon during 1975 and early 1976, part of the ECWA staff, including the Division of Administration, was evacuated to Amman (Jordan). On 7 August 1976, the Chief, Division of Administration, ECWA, informed the Director, Division of Personnel Administration at UN Headquarters in New York that the Applicant had been placed under detention by the Government of the Syrian Arab Republic. In an exchange of communications between ECWA and Headquarters, ECWA advised Headquarters that it was not possible to approach the Government of the Syrian Arab Republic for details concerning the Applicant's arrest and the specific charges against him because of the "delicate" nature of the problem, as the Applicant's detention related to a matter of Syria's "internal security".

On 2 September 1976, the Legal Counsel, in a Note Verbale, advised the Permanent Mission of the Syrian Arab Republic to the United Nations, that the Applicant was an official of the United Nations and requested details of his arrest and detention.

In a reply dated 15 December 1976, the Permanent Representative of the Syrian Arab Republic to the United Nations

informed the Legal Counsel that the Applicant "ha[d] been arrested for a crime related to the State's security" and requested that the Applicant's appointment be terminated.

On 16 December 1976, the Administration approved special leave with full pay for the duration of the Applicant's detention.

On 28 February 1977, the Legal Counsel wrote to the Permanent Mission of the Syrian Arab Republic explaining that it would not be possible to terminate the Applicant's appointment without precise information about the crime that the Applicant had allegedly committed. In addition, since the Applicant was an official of the United Nations, only the Secretary-General could waive his immunity and, such waiver would require information about the alleged crime and whether it was related to the Applicant's employment.

On 6 July 1977, ECWA advised Headquarters that the Applicant remained under detention and that ECWA did not intend to renew his appointment after its expiration on 6 July 1977.

Seven months later, on 1 March 1978, ECWA advised Headquarters that the Applicant had been released from prison and wished to be reinstated and that ECWA agreed as "no formal charges or court verdict [had been] involved in his case".

The Applicant was expected to report for duty on or about 1 April 1978. In a cable dated 18 April 1978, the Assistant Secretary-General for Personnel Services confirmed a two year extension of the Applicant's appointment, through 6 July 1979.

According to the statement of facts provided by the Applicant, this decision was communicated to him in Damascus by officials at ECWA who asked him to go to Beirut to sign the letter of appointment and report for duty. However, he alleges that 6 hours before departing Damascus to report for duty, he was arrested and detained in a local jail until July 1985.

The Applicant's personnel files do not contain any records concerning the Applicant's detention. The Respondent has been unable to provide any ECWA file relating to the Applicant which would indicate the Applicant's situation in the Syrian Arab Republic during the period in question. The Applicant states that "following his release from prison, he left Syria and came to New York, seeking employment".

On 16 September 1985, the Office of Personnel Services (OPS) offered the Applicant a one month temporary appointment in the Official Records Editing Section. The Applicant then received four temporary short-term appointments at the T-II-Local level, from 15 October 1985 through 15 March 1986.

On 16 March 1986, the Applicant received a two month fixed-term appointment as an Editor at the P-3, step I level, which was extended first, until 15 July 1986 and then, through 15 August 1986.

On 25 August 1986, the Under-Secretary-General for Administration and Management wrote to the Under-Secretary-General for Conference Services stating that the Organization was under "a moral obligation" to offer the Applicant a permanent job and indicated his willingness to recommend to the Secretary-General an exception to the recruitment freeze in force at the time. While the search for a suitable placement for the Applicant continued, his contract was extended for a further 11 months, through 15 July 1987 and then, through 15 July 1988, and through 31 December 1989.

On 22 March 1989, the Assistant Secretary-General for Human Resources Management\* wrote to the Department of Conference Services, referring to the Organization's "moral obligation" and expressed disappointment that no "meaningful functions" had been assigned to the Applicant. In a reply dated 31 March 1989, the Under-Secretary-General for Conference Services replied that he required the "co-operation and assistance" of the Office of Human

\* Successor of OPS  
Resources Management "in placing [the Applicant] elsewhere in the Secretariat or in providing [the Department of Conference Services] with a post for him."

On 24 January 1990, the Applicant's appointment was extended for a further fixed-term period of two years, through 31 December 1991.

On 22 October 1990, the Applicant requested the Secretary-General to consider reimbursing him "back pay from August 1977 to September 1985 at the P-3 level ... validation of pension coverage for this period of time; ... immediate recommendation for ad hoc promotion to the P-4 level and conversion to a permanent appointment; [and] assignment to a permanent post at the P-4 level with commensurate and clearly defined functions."

Having received no reply, on 10 January 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 2 July 1991. Its recommendations read as follows:

"Recommendations

29. The Panel unanimously recommends that:

- (1) the Appellant be considered as having been continuously employed by the United Nations from July 1975

(a) for the period for which there was a firm offer from the United Nations for a two-year contract which the Appellant was prevented from signing through no fault of his own; namely, for the period 6 July 1977 through 6 July 1979, the Appellant should be paid his full salary at the P-3 level with applicable post adjustment and related entitlements and benefits;

(b) for the period 7 July 1979 through 15 September 1985, the Appellant should be put on leave without pay.

(2) The Appellant's pension rights should be fully safeguarded. Therefore, in conformity with his continuous employment from July 1975, his pension rights should be maintained in their entirety. For the period of leave without pay, namely, July 1979 to September 1985, the United Nations should pay the amounts necessary to the Joint Staff Pension Fund and the Appellant should pay his share of the contributions. Consequently, the short-term contracts from 16 September 1985 to 15 July 1986, which, according to the P/5 Action

Forms, were not covered by the Pension Plan, should also be pensionable, with the United Nations paying the amounts necessary for that purpose and the Appellant paying his share of the contributions.

30. As to the present and future status of the Appellant, the Panel unanimously recommends that:

(a) The Appellant be given immediately either a permanent contract or a contract of a duration that would cover the whole period of his employment until the mandatory age of retirement.

(b) The Appellant be put on a post where he could make his contribution to the work of the United Nations and show his capacities, and which would carry with it reasonable expectations for promotion. This post should be searched for throughout the Secretariat and should be one where the administrative and/or language capacities of the Appellant would be efficiently used.

31. The officials of ECWA in Beirut at the time and the Resident Representative's Office in Damascus who did not



advise Headquarters and who did not enquire after the Appellant should be - if they are still with the United Nations - reprimanded."

On 23 September 1991, the Director, Office of the Under-Secretary- General for Administration and Management, transmitted to the Applicant a copy of the JAB report and informed him that:

"The Secretary-General has re-examined your case in the light of the Board's report.

In respect of the period 7 July 1977 to 6 July 1979, he has decided, in accordance with the terms of the contract for your reinstatement for this period:

- (a) that you be placed on special leave without pay from 7 July 1977 up to 1 April 1978 (the date when you were expected to report to duty); and
- (b) that from 1 April 1978 to 6 July 1979 you be paid full salary at the appropriate step in the P-2 level with related allowances and other benefits less the separation monies which had been paid to you. Your services for this period (1 April 1978 to 6 July 1979) should be deemed contributory for pension purposes in

accordance with article 25(e) of the United Nations Joint Staff Pension Fund (UNJSPF) Regulations and Rules, with you paying your share of the contributions.

In respect of the period 7 July 1979 through 15 September 1985, the Secretary-General cannot accept the Board's recommendation since you had no contractual ties during this period with the Organization. Moreover, it should be noted that placing you on special leave without pay would not have the effect of making this period of non-employment pensionable.

In accordance with articles 22(b) and 25(b) of the UNJSPF Regulations and Rules, pension contributions must be paid concurrently with special leave without pay and, thus, a period cannot be made pensionable by retroactively granting special leave without pay.

In respect of the period from 15 September 1985 to 15 July 1986, the Secretary-General has decided that this period should be made pensionable with you paying your share of the contributions, as recommended unanimously by the Board.

With regard to the Board's recommendations concerning your future status, it should be noted that the efforts to place you are well documented in your file. Our Office of Human Resources Management will continue its efforts to find a suitable post for you."

On 12 November 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The JAB correctly decided to waive the applicable time-limits in the light of the exceptional circumstances of the case, including the long years of imprisonment and torture suffered by the Applicant.

2. The Respondent had continuing obligations to maintain the Applicant in service and take other actions on his behalf while he was in prison.

3. The Convention on Privileges and Immunities of the United Nations to which the Syrian Arab Republic is a party

requires that officials of the UN be immune from prosecution for acts performed in connection with their official duties.

Whereas the Respondent's principal contentions are:

1. The Applicant was paid for all periods during which he had contractual ties to the Organization but was not paid for periods where there were no such ties. This decision did not violate his rights.

2. Staff members do not have a right to automatic extension of their fixed-term appointment while in detention for words or acts unconnected with words or acts performed by them in their official capacity.

3. The Convention on Privileges and Immunities of the United Nations establishes the privileges and immunities of the Organization to carry out its functions. It does not regulate the manner of dealing with salary and emoluments of detained staff.

4. The United Nations was unaware of the Applicant's detention. The United Nations practice in arrest and detention cases does not automatically require renewal of fixed-term appointments or payment of salary when detained. The United Nations conduct in this case was consistent with established practice.

5. The Applicant's claims are untimely.

6. The Organization never made a commitment to the Applicant to pay full salary and emoluments for the period of detention.

7. The Applicant was fairly considered for further employment and has no right to retroactive promotion.

The Tribunal, having deliberated from 23 October to 18 November 1992, now pronounces the following judgement:

I. The Applicant in this case appeals from a decision of the Respondent dated 23 September 1991, in which the Respondent re-examined the case of the Applicant in the light of the Joint Appeals Board (JAB) report and accepted its recommendations for his reinstatement as a staff member with respect to the period from 7 July 1977 to 6 July 1979, with the Applicant being placed on special leave without pay (SLWOP) from 7 July 1977 to 1 April 1978, and being paid full salary with his service deemed contributory for pension purposes with respect to the period from 1 April 1978 to 7 July 1979. As to the period from 7 July 1979 through 15 September 1985, the Respondent declined to reinstate or compensate the Applicant. The Respondent also declined, inconsistently with the JAB majority recommendation, to place the Applicant on SLWOP for that period. In that regard, the Respondent pointed out that, contrary to the belief of the JAB majority, placing the Applicant on SLWOP for that period would not, under article 25 of the UN Joint Staff Pension Fund (UNJSPF) Regulations, have made the period pensionable. But with respect to the period from 15 September 1985 to 15 July 1986, during which the Applicant had been serving under otherwise non-pensionable short-term contracts, the Respondent decided to make that period pensionable as permitted under the UNJSPF Regulations. As to the JAB recommendations regarding the Applicant's present and future status, the Applicant has been assured of employment in the Organization until mandatory retirement and the Respondent noted that the Administration would continue its efforts to find a suitable post for the Applicant.

II. The Applicant contends that he is entitled to full pay and allowances, including pension coverage, for the period from 7 July 1977 through 15 September 1985, and to promotion to the

P-4 level effective 15 September 1985. In addition, the Applicant seeks an award for moral damages and other injury, as well as for legal costs.

III. The claims in this case arise out of events beginning in 1976, while the Applicant was serving under a two year fixed-term appointment, due to expire on 6 July 1977, at ECWA in Beirut, Lebanon. Because of the intermittently dangerous conditions in Beirut during 1976, ECWA suggested to its staff that, for reasons of personal safety, they should remain away from Beirut until the dangers there had abated. As a result, the Applicant, who was a Syrian national, went to Damascus, his home, where he was arrested by the Syrian authorities.

IV. When, on 2 September 1976, inquiry was made of the Government of the Syrian Arab Republic as to the reason for the Applicant's arrest and detention, the Legal Counsel was informed by the Government of the Syrian Arab Republic, that State security matters were involved and that it wished the Organization to terminate the Applicant's contract. No further details were provided by the Government. The Legal Counsel advised the Government of the Syrian Arab Republic that such action could not be taken by the Organization until it had ascertained all of the relevant facts. The Legal Counsel again asked the Government of the Syrian Arab Republic to provide the detailed information requested, but there was no response. There is no record of any further steps having been taken by the Legal Counsel or by anyone else to obtain the information, or to contact the Applicant or his family. In February 1977, when the Legal Counsel's last inquiry was made, no procedures had yet been established for close monitoring of or other action in cases involving arrest and detention of staff

members. Counsel for the Respondent says that this was presumably because such episodes were rare at that time. The Tribunal considers this to be a weak and unsatisfactory excuse. In so serious a matter as the detention of a staff member, the Organization had a duty, at the very least, to persist in efforts to obtain pertinent information.

V. While he was being detained, the Applicant's salary under his then fixed-term appointment was paid. In July 1977, ECWA informed Headquarters that the Applicant was still being detained and that it did not intend to renew his appointment. The appointment expired on 6 July 1977. On 1 March 1978, ECWA informed Headquarters that the Applicant had been released, and that ECWA wished to reinstate him since no formal charges or court verdict had been involved in his case. It appears that the detention had been arbitrary. The Applicant, however, had not asserted to ECWA that his imprisonment was related in any way to his official functions as a staff member. Moreover, nothing of this nature was communicated to Headquarters by ECWA.

VI. Approval was given to ECWA by Headquarters for the Applicant's reinstatement as of 7 July 1977, and a two year extension of his contract was authorized pursuant to staff rule 104.3(b). The Applicant was to report to ECWA in Beirut in April 1978. According to the Applicant, he was prevented from doing so because when he was about to leave Damascus for Beirut, he was re-arrested and detained by the Syrian authorities.

VII. The Applicant, in an unsigned statement given to Executive Office, Department of Conference Services, on 8 August 1986, stated that the reasons for his arrest were political. Also, the Applicant, in an earlier communication dated 5 June

1986, to the Assistant Secretary-General for Personnel Services, had described his imprisonment as "political". In the August 1986 statement, he surmised that the arrest was "probably because telephone lines were tapped and the authorities knew of my impending departure for Beirut". The August 1986 statement was provided to the Department of Conference Services in connection with the Applicant's successful request for an extension of his fixed-term appointment. He was being assisted in his request, by the President and the Vice-President of the Staff Committee who were not only familiar with his situation, but were fully capable of advising him of any entitlements he might have. Indeed, the President of the Staff Committee, in a letter dated 13 February 1987, sought permanent contract status for the Applicant and pointed out that ECWA had been derelict in 1978, in not notifying Headquarters of the Applicant's situation, so that it might have investigated and possibly rendered assistance. It is obvious from this that the Applicant was, at that time or earlier, aware that his personnel file contained no such notification.

Nothing in the Applicant's August 1986 statement asserts that the imprisonment was related to his functions as a staff member or sought the added benefits that would have been available had such an assertion been made and found persuasive by the Respondent. Until the submission of his claim to the Respondent in 1990, the Applicant had never indicated to the Organization that his detention had been related to his official functions as a staff member, or that at any time during the years of his imprisonment the Syrian authorities had so indicated. Indeed, nothing submitted by the Applicant indicates what, if anything, the Syrian authorities told him during those years regarding the reason for his detention, other than his statement that political reasons were involved. The Applicant simply stated that he remained in prison until July 1985, when he was

released and left Syria to come to the United States. On his arrival he sought re-employment by the UN. He was re-employed on 15 September 1985, and has remained in service ever since.

VIII. The files of the Organization also appear to be devoid of anything dated earlier than 8 August 1986, almost a year after the Applicant was re-employed, which refers to events between April 1978 and July 1985, other than a statement dated 6 May 1986, signed by the Chief, Arabic and Middle East Unit Radio Service, that the Applicant had, on 27 May 1985, obtained an official family card from the Syrian Ministry of Interior, Directorate of Civilian Affairs. The Tribunal notes that, because of events in Lebanon since 1978 and other reasons, ECWA\* offices have been moved. They are now located in Amman, Jordan.

With the passage of time and relocation, records relating to the Applicant that may have existed previously are no longer available and individuals formerly on the staff of ECWA who may have had first-hand knowledge of events relating to the Applicant are no longer there. The only records still available are those at UN Headquarters in New York. But those records disclose nothing more regarding the Applicant's arrests and detentions than is set forth above.

IX. So far as the Tribunal can tell, there is no conclusive evidence showing whether ECWA officials who were aware of or who should have had reason to suspect that the Applicant had again been detained in April 1978, made any effort to be of assistance.

Nor, if they did not, whether this was due to negligence, the wishes of the Applicant's family or some other valid or invalid reason, about which one can only speculate at this late date. Similarly, there is no way of ascertaining now why there was apparently no report to UN Headquarters in New York in 1978, by



ECWA officials in Beirut about what would seem to have been, at the very least, a mysterious failure by the Applicant to arrive at work in Beirut in April 1978. The lack of any such report obviously prevented any further inquiries or action by UN Headquarters.

X. It is difficult to visualize matters of greater importance and concern to staff members, and to the Organization which depends upon them for faithful and efficient performance of their duties, than the expectation by the staff that the Organization will insist on respect for the staff's functional immunity under the 1946 Convention on the Privileges and Immunities of the United Nations. Staff must be able to rely on efforts by the Organization to assure their protection against arbitrary arrest and detention and on assistance to staff members subjected to it. The Tribunal recognizes that, at least since 1987, the Administration appears to have taken appropriate measures in these regards. The Tribunal wishes to emphasize the ongoing need for vigilance and aggressive action to protect and defend staff rights in this area.

\* Now the Economic and Social Commission for Western Asia (ESCWA).

XI. Not until 22 October 1990, over five years after having been re-employed by the UN and over four years after having submitted the written statement dated 8 August 1986, referred to above, did the Applicant assert the claims which are the subject of this proceeding. The application in this case has enlarged upon the version of events first provided by the Applicant in 1986, and has sought to excuse the Applicant's delay in submitting his retroactive salary and other claims. The salary and other claims could have been submitted in 1985, upon the Applicant's return, or either in August 1986, when, as described above, he presented his written statement, or in February 1987, when the Staff Committee was seeking a permanent appointment for him, as discussed in paragraph VII above.

XII. The Tribunal is bound by the requirements of timeliness mandated by staff rule 103.15 with respect to claims for retroactive salary payments, unless the Respondent has clearly and unequivocally waived the staff rule with respect to the retroactive payment being claimed by not asserting untimeliness or by other action. That staff rule provides: "A staff member who has not been receiving [a] ... payment to which he or she is entitled shall not receive retroactively such ... payment unless the staff member has made a written claim ... within one year following the date on which the staff member would have been entitled to the initial payment." It is not within the authority of the JAB to waive that staff rule, as it did, though the JAB may waive untimeliness with respect to the time for invoking its jurisdiction to consider an appeal. The JAB may, of course, recommend that the Respondent waive untimeliness. It did not take that step in this case, and the Respondent, as is his right, has again invoked untimeliness before the Tribunal. In keeping with its jurisprudence, the Tribunal holds that it is not within

the authority of the Tribunal to waive staff rule 103.15 though the Tribunal, like the JAB, is competent to waive the time limit for an applicant to invoke its jurisdiction to consider an application. (Cf. Judgement No. 527, Han (1990)).

XIII. With respect to the period from 7 July 1979 until 15 September 1985, except as set forth in paragraph XIV herein, the Tribunal concludes that no basis exists for finding that the Respondent waived staff rule 103.15 and therefore any claims for retroactive salary relating to the Applicant's detentions are untimely. The JAB did not recommend that any salary be paid to the Applicant with respect to the 1979-1985 period and the Respondent, on his own, was unwilling to offer any. Hence, there was no need for him, in considering the JAB recommendation, to refer to staff rule 103.15, much less waive it. Nor did the Respondent take any other action which can fairly be deemed to have clearly and unequivocally waived that staff rule. Moreover, the explanation relating to the Pension Fund Regulations provided by the Respondent for not acceding to the JAB recommendation regarding SLWOP plainly constitutes no waiver of staff rule 103.15 for, again, there was no need or reason at that time for the Respondent to deal with that question. Accordingly, the Tribunal will not entertain any retroactive salary claim, other than that discussed in the succeeding paragraph.

XIV. The Tribunal finds that the situation is different with respect to the Applicant's claim regarding his salary for the period from 7 July 1977 to 6 July 1979. As to that period, the Respondent decided to pay salary to the Applicant, albeit only from 1 April 1978 to 6 July 1979, the expiration date of the Applicant's fixed-term appointment, and did not assert

untimeliness with respect to the 7 July 1977 - 1 April 1978 period. That action by the Respondent is inconsistent with an application of staff rule 103.15 and amounts to a waiver of the rule regarding the Applicant's claim for salary for that period under his fixed-term contract. The Tribunal, accordingly, holds that it is competent to consider whether the Applicant is entitled to any further salary payment.

XV. The Tribunal notes that the apparent reason for the Respondent's decision against paying any salary to the Applicant for the period from 7 July 1977 to 1 April 1978, was that the Applicant's reinstatement was approved under staff rule 104.3(b), which provided for SLWOP during that period. However, it also appears from information provided by the Respondent in answer to inquiries by the Tribunal that, after the Organization had re-examined two other cases of detention involving fixed-term appointments which had expired while the Applicant was being detained, and decided to reinstate the staff members as of the date following their separation, it was not the practice of the Organization to invoke staff rule 104.3(b). From this, the Tribunal concludes that the Respondent did not consider that staff rule 104.3(b) was applicable in such a situation, and the Tribunal holds the same view of that staff rule.

XVI. In short, the Tribunal finds that, once the Respondent decided to make a salary payment to the Applicant relating to part of the period between 7 July 1977 and 6 July 1979, notwithstanding staff rule 103.15 and without asserting untimeliness with respect to the period from 7 July 1977 to 1 April 1978, the Respondent waived untimeliness as to that latter period and was obliged to act in accordance with his practice in the two similar cases referred to above regarding the

inapplicability of staff rule 104.3(b). The Tribunal considers in this regard that the Applicant is receiving no less favourable treatment than the staff members in the two other cases referred to in that he is being retained in employment by the Organization until retirement, whereas their fixed-term appointments were allowed to expire approximately two years after they returned to work.

XVIII. The Applicant's submission before the Tribunal also claims compensation for moral damages and injury he alleges. In this case, it is not surprising that the Respondent has asserted untimeliness, given the clear disadvantage and prejudice resulting from the unavailability of ECWA files and staff, who might have been knowledgeable about the Applicant's situation. The Respondent's ability to ascertain facts has been impaired by the lapse of over five years since the Applicant's reappearance and over twelve years since the Applicant was imprisoned. The Tribunal has been sensitive to such problems associated with long delays in the presentation of claims and issues, and the related need for safeguards of the interests of the Organization. (Cf. Judgement No. 549, Renninger (1992), paras. V and VI). Although there may conceivably be cases in which the application of staff rule 103.15 and other principles relating to untimeliness might lead to a result perceived by some as unfortunate, the Tribunal's consistent jurisprudence is that timeliness requirements must be respected. (Cf. Judgement No. 560, Claxton (1992)).

Unless such staff rules are observed by the Tribunal, the Organization will have been deprived of an imperative protection against stale claims that is of vital importance to its proper functioning. Accordingly, the Tribunal holds that the Applicant's claims for damages relating to his detention are untimely. (Cf. Judgement No. 302, Zemanek (1983)).

XVIII. Contrary to the Applicant's allegations, the Tribunal finds that from the time the Applicant sought re-employment by the Organization in 1985, to the present, he has received fair and compassionate consideration in having been re-employed. On more than one occasion, he was retained in employment despite difficulties faced by the Administration in finding a post for which he was qualified. The Tribunal notes that during a significant portion of the period since 1985, the Organization was in a financial crisis and was being forced to retrench. That it succeeded in maintaining the Applicant in employment throughout this period out of a sense of moral obligation to assist a staff member who was imprisoned for a lengthy period is to the Organization's credit. The Tribunal finds neither any basis for criticizing the Administration as to the period subsequent to 15 September 1985, nor any basis for concluding that the Applicant is entitled to be promoted to any higher level claimed by him.

XIX. The Tribunal notes, with concern, a misleading representation in the written observations submitted by the Applicant's counsel. Those observations stated "[In] 1990, ... [the Applicant] and his counsel first became aware of the full extent of his legal rights ... based upon the official correspondence or the lack thereof in his file, including ... the failure of the Organization to protect his rights while in

prison." This was aimed at persuading the Tribunal that the Respondent's contention of untimeliness lacked merit. As indicated in paragraph VII above, however, it is plain that the Applicant was aware of ECWA's dereliction in 1987 or earlier.

It goes without saying that parties and their counsel in proceedings before the Tribunal must scrupulously refrain from submissions to the Tribunal which might be misleading. The Tribunal trusts that there will be no further occasion for the Tribunal to remind any party or counsel of this in the future.

XX. However, in view of the failures by the Administration, referred to in paragraphs IV and IX above, to persist in efforts to obtain pertinent information on the occasion of the Applicant's first imprisonment and ECWA's omission to report to Headquarters when he failed to appear after his reinstatement in April 1978, such failures having created, if not a legal, a moral obligation similar to that previously recognized by the Organization, the Respondent may wish to consider the possibility of making a meaningful ex gratia payment to the Applicant for the injury that may have been caused.

XXI. Accordingly, for the foregoing reasons, the Tribunal orders that:

(a) The Applicant be paid full salary at the appropriate step in the P-2 level, with related allowances and other benefits, under his fixed-term appointment for the period from 7 July 1977 to 1 April 1978, with interest at the rate of eight per cent per annum from 23 September 1991, until the date of payment, and that his service for the period 7 July 1977 to 1 April 1978, be deemed contributory for pension purposes, in accordance with article 25(e) of the UNJSPF Regulations and Rules, with the Applicant paying his share of the contributions;

(b) All other pleas are rejected, as is the request for legal costs.

(c) In regard to the latter request, the Tribunal reiterates the view it expressed in Judgement No. 237, Powell (1979), para. XXIX.

(Signatures)

Jerome ACKERMAN  
President

Luis de POSADAS MONTERO  
Vice-President

Hubert THIERRY  
Member

New York, 18 November 1992

R. Maria VICIEN-MILBURN  
Executive Secretary



DECLARATION BY JEROME ACKERMAN

It may be useful to note that paragraph XII of the Tribunal's Judgement, insofar as it recognizes that the Respondent is not powerless with respect to waiver of staff rule 103.15, quite properly, I believe, declines to adopt the obiter dicta relating to that point in paragraph VI of Judgement No. 392. Joiner (1987).

(Signature)

Jerome ACKERMAN  
President

New York, 18 November 1992