



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1065

Case No. 1087: MASSI
1088: MASSI
1142: MASSI

Against: Secretary-General of the
United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Omer Bireedo; Ms. Brigitte Stern;

Whereas, on 10 February 1999, Primo Massi, a former staff member of the United Nations, filed an application in the “first case” that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 June 1999, the Applicant, after making the necessary corrections, again filed an application in the “first case” containing pleas which read as follows:

“MAY IT PLEASE THE TRIBUNAL

...

1. To dismiss all of the Joint Appeals Board (JAB) conclusions;
2. To find the Director of the Medical Service guilty of gross incompetence and of making an incorrect diagnosis and to find him responsible for the delay which led to the aggravation of the [Applicant's] health and for poor management of the case;
3. To find the Chief of Security guilty of discrimination and harassment and of endangering the [Applicant's] life;
4. To find [another staff member] guilty of discrimination and harassment of [the Applicant];

5. To order the administration to compensate the [Applicant].

...

Above all:

To order the United Nations to pay the [Applicant], as compensation, an amount of \$1.45 million plus 5 per cent interest as from 28 March 1995 [plus] ... costs.”

Whereas, on 7 July 1999, the Applicant filed an Application in the “second case” containing pleas which read as follows:

“PLEAS

The [Applicant] requests that recommendations made by the Advisory Board on Compensation Claims at its 389th, 376th and 378th meetings concerning Case No. 4404 accepted on behalf of the Secretary-General be reconsidered ...

In view of the above claims, the [Applicant] therefore requests that the situation be reviewed and that he be granted an amount of US\$ 2,574,713 compensation with ... 3 per cent interest as from 29 March 1995, for the injuries sustained.”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent’s answer in the “first case” and in the “second case” until 31 December 1999 and periodically thereafter until 18 June 2001;

Whereas, on 5 March 2000, the Applicant filed an application in the “third case” that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 1 June 2000, the Applicant, after making the necessary corrections, again filed an application in the “third case” containing pleas which read as follows:

“... the [Applicant] respectfully requests the Tribunal ...:

1. [To quash] *the second part only* of the new decision made by the Advisory Board on Compensation Claims at its 395th meeting ...
2. [To] adjudge and order the United Nations to award compensation under article 11.2 (d) with a compounded interest rate of 10 per cent from 1 May 1999.
3. To order the United Nations to refund [the Applicant’s] salaries withheld as well as outstanding medical bills and special transportation costs.

...

7. To order the United Nations to pay [to the Applicant]:

...

8. Should the Administrative Tribunal nonetheless decide that the amount of US\$ 52,854.08 is refundable, the said amount could be deducted from the amount of the final settlement that the Administration owes to the [Applicant].

9. Other relief which the Tribunal feels is justified.”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent’s answer in the “third case” until 30 November 2000 and periodically thereafter until 18 June 2001;

Whereas the Respondent filed an answer in all three cases on 14 June 2001;

Whereas the Applicant filed written observations in all three cases on 15 January 2002;

Whereas the Respondent filed an additional communication in all three cases on 10 June 2002;

Whereas the facts common to all three cases are as follows:

The Applicant entered the service of the United Nations Office at Geneva (UNOG) on 14 May 1990. At the time the events occurred, the Applicant occupied a security officer post at the G-3 level in the Security and Safety Section.

On 28 March 1995, the Applicant was injured during an operation to remove demonstrators from the grounds of the Palais des Nations. He went on sick leave on 29 March. On 4 April 1996, the Chief, Security and Safety Section, informed the Medical Service that the Applicant could be assigned to “sedentary posts”. After the Medical Service confirmed that the Applicant was fit to return to work, the Applicant was assigned to the reception desk. He stopped work two days later. On 10 June 1996, the Medical Service advised that the Applicant was unable to perform the functions of a security officer and recommended that he be transferred.

On 29 July 1996, the Applicant resumed duty on a part-time basis in the key management office. After three days, he again stopped work. On 23 August, the Medical Director informed the Applicant that he had not approved full-time sick leave from 1 August, as the Applicant was fit to continue carrying out duties on a part-time basis. On 25 September, the Medical Service informed the Applicant that

he was not entitled to a disability benefit in accordance with the provisions of article 33 (a) of the Regulations and Rules of the United Nations Joint Staff Pension Fund.

On 30 October 1996, at its 376th meeting, the Advisory Board on Compensation Claims (ABCC) recommended that the sick leave the Applicant had taken between 28 March 1995 and 30 June 1996 be considered special leave with full pay. The Secretary-General accepted this recommendation on 12 November.

On 22 November 1996, the Applicant was informed that his fixed-term contract, which was due to expire on 30 November, would not be renewed. On 26 November, the Applicant requested an administrative review of this decision. The Applicant's contract was subsequently renewed for several periods.

On 19 December 1996, the Applicant contested the decision of the Medical Service of 23 August and requested that a medical board be convened under staff rule 106.2.

From 23 December 1996 to 26 January 1997, the Applicant worked part-time in the key management office. At its 378th meeting, the ABCC recommended that the sick leave taken by the Applicant between 29 July 1996 and 24 January 1997 be considered special leave on a part-time basis. The Secretary-General accepted this recommendation on 11 April 1997.

On 25 February 1997, the Applicant lodged an appeal in the "first case" against the decision not to extend his contract beyond his sick leave entitlement with the Joint Appeals Board (JAB).

On 3 April and 12 May, the Applicant lodged an additional 10 appeals in the "first case" with the JAB. The JAB adopted its report in the "first case" on 20 November 1998. Its conclusions and recommendations and its final observation read in part as follows:

"Conclusions and recommendations"

76. The Panel **concludes** that 'Appeals Nos. 2-11' ... are not receivable.

77. The Panel also **concludes** that the [Applicant] is in no way entitled and has no reason to expect the renewal of his fixed-term contract after the exhaustion of his sick leave credit and that the administration's decision on the subject was not tainted by any irregularity or prejudice.

78. Therefore, the Panel **makes no recommendation** in respect of this appeal.

Final observation

79. The Panel draws the Secretary-General's attention to the fact that the [Applicant] has been on sick leave with full pay almost uninterruptedly for three and a half years.

80. This situation is attributable, inter alia, to the apparently erroneous application on the part of the Advisory Board on Compensation Claims of rule 18 (a) of Appendix D to the Staff Rules. The purpose of rule 18 (a) is clearly not to leave a case permanently pending ...”

On 6 April 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report in the “first case” to the Applicant and informed him that the Secretary-General agreed with the Board's conclusions and recommendations and had decided to accept its unanimous recommendation and to take no further action on his appeal. On 17 June 1999, the Applicant filed the above-referenced application in the “first case” with the Tribunal.

On 28 January 1999, at its 389th meeting, the ABCC recommended that the Applicant be granted retroactively additional sick leave credit for the period to 26 July 1996, but that additional sick leave credit not be granted from 25 January 1997 on. The Board also recommended that the Applicant be paid, as compensation, “US\$ 224,726.08, equivalent to a seventy-two (72) per cent permanent loss of function of the whole person, under article 11.3 of Appendix D to the Staff Rules”. The Secretary-General accepted these recommendations on 21 February 1999. On 26 March 1999, the Applicant wrote to the Secretary-General asking him to reconsider this decision. Subsequently, on 7 July 1999, the Applicant filed with the Tribunal the above-referenced application in the “second case”, contesting the Secretary-General's decisions of 12 November 1996, 11 April 1997 and 21 February 1999.

On 14 April 1999, the UNJSPF wrote to the Applicant advising him that pursuant to the provisions of article 33 of the Regulations and Rules of the Pension Fund, he had been granted a disability benefit, subject to periodic medical examinations. On 22 April 1999, the Personnel Administration Section informed the Applicant that his appointment would be terminated pursuant to staff regulation 9.1 (a) with effect from 30 April 1999. He was also advised that he would receive a disability benefit but that his indemnity would be reduced correspondingly, in accordance with the provisions of Annex III of the Staff Regulations and Rules.

On 5 July 1999, the Chief of the Personnel Service wrote to the Applicant requesting that he return an overpayment in the amount of \$52,854.08 which he had received due to an error made by the ABCC in calculating his compensation. On 10 December 1999, at its 395th meeting, the ABCC recommended that the Applicant be awarded compensation pursuant to article 11.2 (d) of Appendix D to the Staff Rules from 1 May 1999 until the end of April 2001, but that the overpayment the Applicant had received should be deducted from the award. The Secretary-General accepted the recommendation on 13 January 2000. On 1 June 2000, the Applicant filed with the Tribunal the above-referenced application in the “third case”, contesting the Secretary-General’s decision of 13 January 2000.

On 26 April 2002, at its 408th meeting, the ABCC recommended that the compensation awarded to the Applicant pursuant to article 11.2 (d) of Appendix D of the Staff Rules be extended until May 2004, while reiterating that the overpayment the Applicant had received should be deducted from the award until fully refunded. The Secretary-General accepted this recommendation on 30 May 2002.

“First case”

Whereas the Applicant’s principal contentions are:

1. Appeals Nos. 2 to 11 to the JAB were receivable.
2. The Applicant was entitled to a renewal of his fixed-term contract after the exhaustion of his sick leave credit.
3. The JAB erred in failing to provide him with all relevant documentation and in not holding oral proceedings.

Whereas the Respondent’s principal contentions are:

1. The JAB correctly established that the Applicant’s “Appeals Nos. 2 to 11” were not receivable.
2. The Applicant had no legal expectancy of renewal of his fixed-term appointment and the contested decision was not implemented.
3. There were no procedural flaws in the JAB process and the Applicant received all the documentation in respect of his JAB case.

“Second case”

Whereas the Applicant’s principal contentions are:

1. A medical board was never convened to consider the Applicant’s case and the ABCC failed to observe staff rule 106.2 (j) and (k).
2. The ABCC erred in not recommending additional special sick leave on a full-time basis.
3. The compensation recommended by the ABCC was insufficient in the light of the injury suffered and the impact it had on the Applicant’s work and home life.

Whereas the Respondent’s principal contentions are:

1. The Applicant’s loss of function in respect of his service-incurred injury was assessed in accordance with the American Medical Association’s guidelines.
2. The Tribunal does not have the discretion to assess additional damages for non-physical pain and suffering.
3. The Applicant was not entitled to additional sick leave credit.
4. All other claims are not receivable.

“Third case”

Whereas the Applicant’s principal contentions are:

1. The Applicant should not have to refund the sum in question.
2. The Applicant is entitled to 10 per cent interest per annum from 29 July 1996 on the compensation recommended by the ABCC on 10 December 1999 as the delay was attributable to the ABCC.

Whereas the Respondent’s principal contentions are:

1. The overpayment is recoverable by the Organization and may be deducted from the annual payments made to the Applicant under article 11.2 (d) of Appendix D.
2. Annual compensation payable to the Applicant pursuant to article 11.2 (d) of Appendix D was awarded at the correct date and the Applicant therefore is not entitled to interest.

3. All the other claims are not receivable.

The Tribunal, having deliberated from 25 June to 26 July 2002 now pronounces the following Judgement:

I. The Tribunal, having considered the three applications filed by the Applicant, has already decided that it would be desirable to consolidate them, since they all deal with the same sequence of events. The Tribunal is convinced that by proceeding in this way it will obtain a better overview of the issues and that this will not prejudice the Applicant's rights or interests in any way.

II. The Tribunal notes there is no dispute that the Applicant was seriously injured during an operation to remove demonstrators from the grounds of the Organization and that he remains disabled for life. As stated in the Respondent's answer of 14 June 2001, "[t]he facts of all three cases are essentially interrelated and they stem from a service-incurred injury which the Applicant sustained on 28 March 1995". The questions raised all concern the consequences of his new physical condition.

III. On 30 October 1996 the Advisory Board on Compensation Claims (ABCC) acknowledged that the Applicant's accident was attributable to the performance of his official duties and recommended that he be granted special leave with full pay from 28 March 1995 to 30 June 1996. That recommendation was accepted by the Secretary-General. In April 1999, moreover, the Pension Committee granted him a disability benefit pursuant to article 33 of the Regulations and Rules and the Pension Adjustment System of the United Nations Joint Staff Pension Fund (hereinafter the Pension Fund). The Applicant's fixed-term contract was renewed a great many times; however, after further unauthorized absences, the administration informed him that his contract would be terminated on 30 April 1999 and that he would receive a disability benefit pursuant to Annex III, paragraph (b), of the Staff Rules, which states:

"A staff member whose appointment is terminated for reasons of health shall receive an indemnity equal to the indemnity provided under paragraph (a) of the present annex reduced by the amount of any disability benefit that the staff member may receive under the Regulations of the United Nations Joint Staff Pension Fund for the number of months to which the indemnity rate corresponds."

IV. In other words, while he is employed by the Organization (i.e., prior to the end of his contract), a staff member who suffers an illness or accident in the performance of his official duties has certain leave entitlements. Furthermore, if the

contract is terminated, the staff member at the end of the contract receives a termination indemnity which must take into account any disability benefit he may receive from the Pension Fund. Lastly, if the contract is terminated, the staff member may, after the end of the contract, receive an annual indemnity awarded by the ABCC in addition to a disability benefit from the Pension Fund.

V. Various provisions are involved here. To begin with, of course, there are the Staff Rules; rule 106.2 deals with *sick leave* and rule 106.4 with compensation for death, injury or illness attributable to service. There is also Annex III of the Staff Regulations, which establishes the formula for calculating the *termination indemnity*. Next, there is Appendix D of the Staff Rules, which sets out the rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations, pursuant to staff rule 106.4. Appendix D governs the *annual compensation* paid to a staff member recognized as having a partial disability, as regulated in art. 11.2 (d), and the *lump-sum compensation* due to a staff member “in the case of injury or illness resulting in permanent disfigurement or permanent loss of a member or function”, as regulated in article 11.3 (c) and (d), which establishes a schedule of compensation and specific calculation formulas. Lastly, there are the Regulations and Rules of the United Nations Joint Staff Pension Fund, article 33 of which provides that “[a] *disability benefit* shall be payable” to an employee who is “incapacitated for further service ... reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration”.

VI. The apparent complexity of this case arises from the need to determine how to combine various provisions, some relating to an accident or illness not linked to service with the Organization, and others relating to an accident or illness sustained in the service of the Organization. It was deemed essential to state how these various benefits should be combined; Appendix D, article 18, entitled “Relation to other benefits under the Staff Rules”, provides as follows:

“Authorized absences occasioned by the injury or illness shall be charged to the sick leave of the staff member. Following the exhaustion of sick leave and subject to any separation, the staff member shall be placed on special leave (under Staff Rule 105.2). Any special leave granted under this paragraph covering the period when the staff member is paid compensation equivalent to salary and allowances in accordance with article 11.1 (b) or 11.2 (b), shall be

deemed special leave with pay, while any period of subsequent special leave shall be deemed special leave without pay.

In any case where hardship is subsequently occasioned by the prior use of sick leave as the result of injury or illness attributable to service, a special sick leave credit may be granted, if and as required in the individual case, equal in whole or part to the authorized sick leave previously so utilized.”

What is relevant in the Applicant’s case is article 11.2, concerning partial disability, while article 11.1 concerns total disability; however, the two should be read together, as the later article refers to the preceding one. Article 11.1 states as follows:

“(b) Without prejudice to the staff member’s entitlements under other provisions of the Staff Regulations and Rules, the salary and allowances which the staff member was receiving on the date on which he last attended at duty (but not including special post allowance under Staff Rule 103.11) shall continue to be paid to the staff member until either:

- (i) He returns to duty; or
- (ii) If by reason of his disability, he does not return to duty, then until the date of the termination of his appointment or the expiry of one calendar year from the first day of absence resulting from the injury or illness, whichever is the later, provided, however, that if the staff member dies before the expiry of such period, the payments shall cease on the date of death.”

Article 11.2, meanwhile, provides that:

“(b) The provisions of article 11.1 (b) shall apply:

- (i) During such time as the staff member is incapacitated by the injury or illness from the performance of his duties; and
- (ii) Whenever the disability of the staff member results in the termination of his appointment on the grounds that he is for reasons of health incapacitated for further service.”

The annual compensation awarded by the ABCC under article 11.2 (d) and the disability benefit paid by the Pension Fund under article 33 of its Regulations and Rules should also be combined. Article 11.2 (d) provides that:

“Where, upon the separation of a staff member from United Nations service, it is determined that he is partially disabled as a result of the injury or illness in a manner which adversely affects his earning capacity, he shall be entitled to receive such proportion of the annual compensation provided for under article 11.1 (c) as corresponds with the degree of the staff member’s disability, assessed on the basis of medical evidence and in relation to loss of earning capacity.”

VII. This relative complexity is further increased by the fact that the mechanisms for granting and disputing these various benefits differ. In the event of a refusal by the administration to grant leave, whether regular or special leave, the staff member concerned may dispute this decision in accordance with the procedure outlined in staff rule 106.2 (a) (viii):

“Further sick leave may be refused or the unused portion withdrawn, if the Secretary-General is satisfied that the staff member is able to return to duty. If the staff member disputes the decision, the matter shall be referred, at his or her request, to an independent practitioner acceptable to both the Medical Director and the staff member or to a medical board. The medical board shall consist of the following members:

- a.* A medical practitioner selected by the staff member;
- b.* The United Nations Medical Director or a medical practitioner designated by the Medical Director;
- c.* A third medical practitioner, who shall be selected by agreement between the other two members and who shall not be a medical officer of the United Nations.”

With regard to the lump-sum compensation, two articles in Appendix D are relevant, namely, articles 14 and 17. Article 14 provides that the Secretary-General may require the medical examination of any person claiming such compensation, subject to the loss of any right to compensation. Article 17 provides for appeals in case of illness or injury, as follows:

“(a) Reconsideration of the determination by the Secretary-General of the existence of an injury or illness attributable to the performance of official duties, or of the type and degree of disability may be requested within thirty days of notice of the decision; provided, however, that in exceptional circumstances the Secretary-General may accept for reconsideration a request made at a later date. The request for reconsideration shall be accompanied by the name of the medical practitioner chosen by the staff member to represent him on the medical board provided for under paragraph (b);

(b) A medical board shall be convened to consider and to report to the Advisory Board on Compensation Claims on the medical aspects of the appeal. The medical board shall consist of: (i) a qualified medical practitioner selected by the claimant; (ii) the Medical Director of the United Nations or a medical practitioner selected by him; (iii) a third qualified medical practitioner who shall be selected by the first two, and who shall not be a medical officer of the United Nations;

(c) The Advisory Board on Compensation Claims shall transmit its recommendations together with the report of the medical board to the Secretary-General who shall make the final determination.”

VIII. The first application concerns the Secretary-General’s decision to accept the JAB recommendation of 20 November 1998 in all its aspects. The Applicant requests that he be granted compensation of \$1.45 million plus 5 per cent interest since 28 March 1995. The Tribunal cannot but confirm the Board’s decision that “Appeals Nos. 2 to 11” are not receivable, since the questions raised were not previously submitted to the Secretary-General as they should have been pursuant to staff rule 111.2 (a), and finds no procedural flaws in the JAB process. The Tribunal also agrees with the Board’s finding that the appeal against the Secretary-General’s decision not to renew the Applicant’s short-term contract was receivable but without merit. The Tribunal reiterates what it has stated on numerous prior occasions, namely, that, barring any special circumstances, a staff member is not entitled to renewal of his contract, pursuant to staff rule 104.12 (b) (ii), which clearly states: “The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.” The Applicant’s rights were not violated merely because of non-renewal of his contract. The Applicant, moreover, does not really dispute that the Organization had the power not to renew his contract, since he requests that the decision be quashed for humanitarian reasons, “even though the opinion of the ABCC that the Applicant’s contract should be allowed to expire is in conformity with the rules” (memorandum dated 13 June 1999). Accordingly, the Tribunal cannot but find the first application to be unfounded in all its aspects.

IX. The Tribunal now turns to the second application against a number of decisions by the Secretary-General implementing various recommendations adopted by the ABCC at its 376th, 378th and 389th meetings. During these meetings, the ABCC recommended that the Applicant be granted special sick leave with full pay from 28 March 1995, the date of the accident, to 26 July 1996 and, moreover, that the sick leave granted to the Applicant between 29 July 1996 and 24 January 1997 be converted into special sick leave with half-pay. Lastly, at the last of these meetings, the ABCC awarded the Applicant compensation of \$224,726.08 for service-related injuries, pursuant to article 11.3 (c) of Appendix D of the Staff Rules, which establishes the schedule of compensation in case of permanent disfigurement or permanent loss of a member or function. In this second application,

the Applicant requests compensation of \$2,574,713 with 3 per cent interest from the date of the accident.

X. In this second application the Applicant has three main complaints. The first concerns the lump-sum compensation, which he feels was incorrectly calculated, particularly because it did not include a separate amount for non-physical pain and suffering; the second concerns his leaves; and the third has to do with his not having been examined either by the medical board provided for in article 106.2 (a) (viii) or by the medical board pursuant to article 17 (b) of Appendix D. The other claims more or less overlap with these three main requests. The Tribunal will examine these three claims in succession.

XI. With regard to the calculation of the disability benefit, the Tribunal does not find any evidence in the file that would suggest that the benefit was determined incorrectly. It further recalls that the Tribunal has previously recognized the practice of evaluating this benefit in the light of the criteria set out in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment. In particular, the Applicant contends that the Tribunal has discretion to award additional damages for non-physical pain and suffering. However, the United Nations has dealt specifically with the issue of compensation for injuries sustained in the service of the Organization. Such compensation relies on an objective evaluation of the loss of function based on medical reports submitted by the individual concerned and in accordance with the AMA Guides. Accordingly, the limitations outlined in article 11.3 are binding and not susceptible to subjective valuations of pain and suffering. The recommendation of the ABCC, approved by the Secretary-General, establishing compensation equivalent to a 72 per cent loss of function of the whole person, does not strike the Tribunal as unreasonable given the injuries sustained by the Applicant. The Respondent conformed to procedure and to the schedule of compensation set out in Appendix D of the Staff Rules. Since the Respondent applied the Staff Rules in an equitable manner and paid the amount determined in accordance with a schedule appearing in article 11.3 (c), the Tribunal will uphold his decision. (See Judgement No. 872, *Hjelmquist* (1998), para. VIII.) As the question relating to a material error of calculation in the amount of the benefit to which the Applicant was entitled was the subject of the third application, the Tribunal will deal with this question subsequently. Nevertheless, the Tribunal states that this material error cannot undermine the entire procedure or serve as a pretext for a review of that procedure.

XII. In his second application, the Applicant also asks that he be granted a longer period of special leave with full pay. The relevant article, 106.2 (a) (iv), states that a staff member shall be granted sick leave up to nine months on full salary and nine months on half salary in any period of four consecutive years. Moreover, article 18 of Appendix D provides that, at the discretion of the administration, a special sick leave may be granted and that special leaves may not exceed the authorized leave to which the staff member is entitled. In other words, the maximum leave that a staff member can obtain is 18 months on full salary and 18 months on half salary. Discussions were held between the administration and the Applicant as to the exact designation of one or another period of sick leave or special sick leave. In the view of the Tribunal, the important question is whether the Applicant's rights were respected by the administration, regardless of the terminology used. The Tribunal notes that the Applicant obtained innumerable leaves: leave with full pay from the date of the accident, 28 March 1995, to 30 June 1996 (15 months); leave with full pay from 1 to 26 July 1996 (1 month); leave with half-pay from 29 July 1996 to 26 January 1997, supplemented by a leave with half-pay granted by the ABCC, which means that he was on full salary during this period also (6 months); leave with full pay from 27 January 1997 to 14 October 1997 (9.5 months); regular annual leave from 15 October 1997 to 8 January 1998; leave with half-pay from 9 January 1998 to 23 July 1998 (6.5 months); leave with full pay from 24 July to 30 April 1999 (9 months). This means that he obtained more than the maximum period of authorized sick leave plus the equivalent maximum period of special sick leave. Examination of the file shows, therefore, that the Applicant received more than the number of months to which he was entitled. The JAB noted in particular in its report dated 28 November 1998 that the Tribunal cannot therefore confirm the administration's decision: "The Panel draws the Secretary-General's attention to the fact that [the Applicant] has now been on sick leave with full pay almost uninterruptedly for three and a half years."

XIII. With regard to the procedural aspects, the Tribunal is also not convinced that the Applicant's requests are receivable. The request for the convening of a medical board pursuant to staff rule 106.2 (a) (viii) was not submitted to the Secretary-General, and the JAB considered that his appeal on this point was not receivable. Nor does the request for the convening of a medical board pursuant to article 17 (a) and (b) of Appendix D of the Staff Rules seem to have been explicitly submitted. Whatever the case may be with regard to these complex procedures, the Tribunal,

taking into consideration the fact that the Applicant obtained the maximum allowable sum, does not believe that the Applicant is justified in seeking additional compensation.

XIV. The third application concerns the request for a refund from the Applicant since the disability benefit granted to him was the result of a calculation error. It also considers that the compensation should have been awarded at an earlier date. In this third application, the Applicant again requests compensation of \$1,475,713 plus 10 per cent interest from the date of the accident.

First, the Tribunal does not see on what basis the Applicant could refuse to refund this sum to which he is not entitled. The principle of unjust enrichment and the Organization's obligation vis-à-vis its Member States to ensure the sound management of its finances also militates in this direction. The Tribunal therefore confirms the administration's decision to request a refund of the sum erroneously paid to the Applicant.

Second, with regard to the date on which the lump-sum compensation for the accident sustained in 1995 was awarded (1999), the Tribunal, unlike the Applicant, does not believe that the decision to award compensation was late. Indeed, following a serious accident, it is necessary to assess the consequences as carefully as possible, which can only be done in a pertinent manner after the situation has stabilized somewhat. The Tribunal sees no reason, therefore, to grant 10 per cent interest on the compensation received by the Applicant.

XV. For the foregoing reasons, the Tribunal rejects all claims of the Applicant.

(Signatures)

Mayer **Gabay**
President

Omer Yousif **Bireedo**
Member

Brigitte **Stern**
Member

Geneva, 26 July 2002

Maritza **Struyvenberg**
Executive Secretary