been officially reprimanded for an outside activity, again engaged in an outside activity "of a nature similar", without having "discussed his undertaking with the Administration". In so doing, the Review Board did not express a legal opinion; therefore, the legal relationship between the Applicant and a partner or a person to whom he gave advice is not in issue. Finally, the Review Board observed that the whole history of the Applicant's business activities was "marked by claims, debts and litigation. Both the legal and financial complications have led to embarrassment of the United Nations, and may continue to do so for some time". It is possible for an international civil servant, however honest his intentions, to be placed in a position either by poor judgement or bad luck, where his usefulness may be sufficiently impaired to justify termination of his service. The Applicant's situation is a case in point.

4. The Tribunal therefore reaches the conclusion that it was not established that the observations on which the recommendation was based rest on a legal error or other facts the nature of which would violate the procedure before the Review Board, and that the record before the Tribunal, taken in its entirety, warranted the action of the Secretary-General in terminating Applicant's service. Under these circumstances, the decision to terminate the probationary appointment was properly taken by the Respondent in accordance with the terms of Staff Rule 104.12 and Staff Regulation 9.1 (c).

The Tribunal, accordingly, dismisses the claim.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Harold RIEGELMAN
Member

Mani SANASEN
Executive Secretary

New York, 3 December 1958.

Judgement No. 72

(Original: English)

Case No. 72: Radspieler *Against:* **The Secretary-General of the United Nations**

Request for the rescission of the Secretary-General's decision regarding the place of entitlement of the Applicant, a United States citizen, for home leave.—Request for place of entitlement to be designated in accordance with Staff Rule 105.3.

Purpose of home leave.—Reference to personal and professional ties and associations identifying a staff member with a particular community.—Period to be taken into consideration.

Decision to designate Santa Monica (California) as Applicant's place of entitlement for home leave, in lieu of Grand Haven (Michigan).—Payment to Applicant, in respect of home leave already taken in 1957, of the difference between the amount already paid to him by the Administration and the amount which he would have received if the Secretary-General had designated Santa Monica as his place of entitlement for home leave.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. Harold Riegelman;

Whereas Tony Radspieler, staff member of the Vienna Branch Office of the Office of the United Nations High Commissioner for Refugees, filed an application with the Tribunal on 27 December 1957, requesting the Tribunal to order:

(*a*) the rescission of the decision taken by the Administration in October 1955 to designate Grand Haven, Michigan, as Applicant's place of entitlement for purposes of travel and transportation in connexion with home leave;

(*b*) the designation of Santa Monica, California, as such place of entitlement;

(*c*) the reimbursement for the additional travel and subsistence expenses incurred by Applicant and his family during his home leave taken in August-September 1957 as a result of the Administration's refusal to recognize Santa Monica, California, as his permanent residence;

Whereas the Respondent filed his answer to the application on 29 January 1958;

Whereas under article 9.3 of the Tribunal's Rules, the President and a Vice-President, Lord Crook, conducted preliminary proceedings at Geneva on 20 May 1958 during which both parties and a witness for the Applicant were heard in public;

Whereas the Respondent on 27 June 1958 submitted an answer to the statement made by the Applicant's witness;

Whereas the Tribunal met at New York on 19 November 1958 to consider the case on the basis of the documents submitted;

Whereas the facts as to the case are as follows:

The Applicant entered the service of the United Nations on 10 October 1955 as assistant in the Nuremberg Branch Office of the United Nations High Commissioner for Refugees, on a fixed-term appointment. In October 1957, the Applicant was transferred to the Vienna Branch Office. In his employment application dated 1 August 1955, the Applicant, a United States citizen then residing in Germany, gave his permanent residence in the United States as Grand Haven, Michigan. In an exchange of letters which took place in October 1955 between the Chief of the Personnel Division of the European Office and the Applicant, the latter raised the question of residence for future purposes of home leave or repatriation and asked for it to be changed from Grand Haven, Michigan, to Santa Monica, California. The Chief of the Personnel Division, however, replied that on the basis of the facts submitted by the Applicant concerning his birthplace, schooling and relatives, he had come to the conclusion that Grand Haven was the place where the Applicant had the closest residential ties. In January 1957, when preparing for his home leave which was due in 1957, the Applicant raised the subject again, through the Representative of the United Nations High Commissioner for Refugees in Germany. On 1 April 1957, the Chief of the Personnel Division, though maintaining his position, asked the Applicant to answer certain questions with a view to a reconsideration of the matter. On the basis of the answers made by the Applicant on 6 April 1957, the Chief of the Personnel Division stated, in a letter dated 16 April 1957, that it was not possible to authorize a change in the place of home leave. On

10 May 1957, the Applicant presented his appeal to the Joint Appeals Board at Geneva. In its report dated 19 August 1957, the Board recommended (with its Chairman dissenting) that Santa Monica be designated as the Applicant's place of home leave for the purpose of travel and transportation entitlements under Staff Rule 105.3. By letter dated 30 September 1957, the Director of the European Office informed the Applicant that the Secretary-General had approved the findings contained in the dissenting opinion of the Chairman of the Appeals Board and maintained the decision to regard Grand Haven as the place of his entitlement for purposes of travel and transportation in connexion with home leave. On 27 December 1957, the Applicant instituted proceedings before the Administrative Tribunal.

Whereas the Applicant's principal contentions are:

(*a*) In his application for service in 1955, the Applicant had completed the two entries as to "Present Address" and "Permanent Residence" as, respectively, the address at which he was then residing and the address of his brother in Grand Haven. The Applicant's sole reason for giving that Grand Haven address was that his brother had agreed that he use it as his United States mailing address since his departure from the United States in 1950.

(*b*) In a previous (but unsuccessful) attempt to secure employment with the United Nations, he had completed, on 20 October 1953, the then existing application form in which the two questions asked for "Mailing address" and "Present residence". In response to each question he had provided an address in Zurich, Switzerland.

(*c*) Had he been appointed in 1953 it would have been incorrect to regard Switzerland as his home country. The Zurich address was no more permanent than the Grand Haven, Michigan address, which was provided in order to meet the United Nations requirement of a permanent address in the home country.

(*d*) Moreover, the request for such addresses alike in the form in 1953 and 1955, made no reference to the address being required for the formal considerations of Rule 105.3 under Regulation 5.3.

(*e*) Santa Monica, California, should be designated as the Applicant's home station because, during the period 1943 till 1950, he lived there for one year and returned as often as he could while on leave from his military service and on vacation from his studies at Michigan State University. The Applicant further points out that, when be joined the United Nations, the repatriation grant from the American Friends Service Committee in Germany (his former employers), which he then relinquished, was to Santa Monica, California. Moreover, the Applicant has professional and family ties in Santa Monica and, should he leave the service of the United Nations, would re-establish himself and his family there.

(*f*) The Applicant submits that, under the terms of Staff Rule 105.3 (d) (i), Santa Monica, California, should be considered his place of residence because that is where he had the closest residential ties during the period of his most recent residence in his home country preceding his appointment to the United Nations, as evidenced by the fact that from 1947 to 1950, while he was studying at Michigan State University, he returned to California as often as he could.

(*g*) Basing himself on the "Report of the Committee of Experts on Salary, Allowance and Leave Systems", the Applicant contends that he would be far

better able to serve the interests of the United Nations by maintaining his professional and official ties in Santa Monica, California, since he has none whatever in Grand Haven, Michigan.

Whereas the Respondent's principal contentions are:

(*a*) The Applicant's place of home leave within his home country was designated in accordance with Staff Rule 105.3 (d) (i). In reviewing the Applicant's history from 1943 to 1950, there seems to be no basis for determining that he acquired closer residential ties in any other place than Grand Haven, Michigan. There is no indication during this period of a change of residence to Santa Monica, California, or of personal or professional contacts established there, nor is there any objective evidence of his interest before 1950 to make his future home in Santa Monica, California.

(*b*) The physical presence of the Applicant in Michigan for most of his life is, although not determinative, relevant to a determination of his residence and, at the time the Applicant left the United States, his residential ties in Michigan, whether strong or weak, were the closest he had with any one place in his home country.

(*c*) The family connexions and professional contacts which Applicant claims to have in Santa Monica, California, were acquired after his marriage in 1951 to a resident of that city. As for the Applicant's present intention to settle in Santa Monica when he leaves the United Nations, the Respondent submits that it would be a complete departure from the unequivocal language of Staff Rule 105.3 (d) (i) to base the determination in question on those ties only *after* the time of his most recent residence in his home country.

(*d*) It is pointed out by the Respondent that the Section of the "Report of the Committee of Experts on Salary, Allowance and Leave Systems" on which the Applicant relies in support of his claim, is concerned only with the designation of the home country for home leave purposes and is not relevant to the question of travel entitlements within the home country. In this connexion, the Respondent submits that the language of Staff Rule 105.3 (d) (i) is clear and that no resource to other documents is necessary to determine its application to the present case.

(*e*) The policy of the Administration has been to determine the place of entitlement for home leave at the time of recruitment and on the basis of objective data then available which are relevant to the staff member's last residence in his home country. Any departure from the normal application of the rule would be quite exceptional and explicable solely on the very unusual facts in a case.

Whereas the Tribunal, having deliberated until 3 December 1958, now pronounces the following judgement:

1. The Tribunal has to consider the question whether the Secretary-General has correctly interpreted the provisions of Staff Rule 105.3 (d) (i) in fixing Grand Haven, Michigan, as the place of entitlement, for purposes of home leave, of the Applicant who is an American national.

According to the provisions of that rule:

> "The place of home leave of the staff member within his home country shall be, for purposes of travel and transportation entitlements, the place with which the staff member had the closest residential ties during the

period of his most recent residence in his home country preceding appointment."

It is appropriate to note that the expression in the English text of "closest residential ties" was translated in successive French versions of the staff rules by "*liens de résidence les plus étroits*" and later by "*résidence principale*".

The phrase used denotes that the intention was not to follow a technical conception of a legal tie between an individual and a given locality but to refer to the associations and personal and professional ties, which identify a person with a local community.

This meaning must be applied in harmony with the very purpose of home leave since it is essentially, though not exclusively, to this end that the "*résidence principale*", "the closest residential ties" must be determined.

The application of Staff Rule 105.3 (d) (i) to any given case will depend upon the precise circumstances peculiar to that case, and these circumstances will be considered with a view toward accomplishing the primary objective of the rule, namely the furtherance of the interests of the United Nations.

The purposes of home leave were defined by the Committee of Experts on Salary, Allowance and Leave Systems in the following terms:

> "It was the view of the Committee that the purpose of home leave is to serve, in the first place, the interests of the Organization, i.e. to enable individual staff members to maintain their national ties and interests, and in particular their professional and official contacts, so that the 'representative' character (in terms of different cultures and experience) of the staff as a whole is kept alive; and, in the second place, to afford the individual staff member the opportunity of renewing his personal ties and contacts and thereby to provide some measure of compensation for his 'expatriated' status. Whilst the latter of the above two conditions should not be neglected, the Committee believes that in administering a home leave policy emphasis should be placed on the former.
>
> "Accordingly, it was agreed that 'home' for leave purposes should, as a general rule, be the country of nationality. The Committee believes that a rule under which ordinarily 'home' is defined as the country of nationality provided the staff member has resided there within the ten-year period before appointment, or another country provided the staff member has resided there continuously for five years immediately preceding appointment, is a reasonable application of these principles.
>
> "The Secretary-General should, however, retain discretion to make exceptions to this rule in cases where rigid application would prove a hardship and go contrary to the concept and intention of the home leave principle."

While the main concern of the foregoing paragraphs is the designation of the home country for home leave purposes, the same considerations remain applicable to the determination of the local community for home leave when that issue arises, as in this case.

2. Under the provisions of the Rules, the period to be taken into consideration for the determination of the place of home leave is that during which the staff member has resided in the country of origin preceding his appointment.

It is necessary to ascertain therefore, in the first instance, what is the staff member's "period of . . . most recent residence" in his home country. Before 1950, the year in which the Applicant went to Switzerland to study, he had not left the territory of the United States except to carry out his national service obligations or to serve in the American merchant marine. The nature of these absences is such that it cannot be considered that the "period of . . . most recent residence" in the United States was subsequent to these absences. The Respondent himself has not made such a claim.

In these circumstances, the question is whether the determination of the place of closest residential ties is necessarily to be made by taking into consideration all facts since Applicant's birth or by taking into consideration a more limited period of time.

The Respondent, without expressly stating his position on this point, appears to consider the Applicant's entire life. He notes the fact that, until 1943, the Applicant, then sixteen years of age, resided with his parents at Grand Haven, Michigan, and declares that there is no indication of "a change of residence" to Santa Monica, California.

The Respondent has drawn conclusions from the fact that the Applicant has spent three years in a Michigan university before his departure for Europe.

It therefore seems that the length of Applicant's presence in the State of Michigan was a decisive element for the Respondent in his determination of Applicant's place of home leave.

3. The Tribunal observes, however, that when the Applicant became of age to take employment, he left the paternal residence in order to establish himself in Santa Monica, California, and it was in California, at a recruitment centre closest to Santa Monica, that he enlisted for national service.

During his only summer vacation, when he was not enrolled in the summer at his university in Michigan, he returned to California to work there.

Thus the period of his life which he spent in the United States independent of his parents was passed in California. This is confirmed by two events prior to the date of Applicant's entrance into the service of the United Nations: first, the Director of the European Mission of the American Friends Service Committee, by whom the Applicant was employed during the period following the end of this studies at the University of Zurich until his entrance into the service of the United Nations, considered that his place of residence for purposes of repatriation was Santa Monica; second, shortly before the Applicant entered the service of the United Nations, he received an offer of employment from the University of Los Angeles, California, in close proximity to Santa Monica.

The Applicant established community ties in California after 1943, which later became even closer. The presence in Grand Haven, Michigan, or in the State of Michigan of part of the Applicant's family cannot prevail over the elements indicated above.

4. The Respondent notes the fact that the Applicant had stated in his 1955 application an address in Grand Haven as his permanent residence and has indicated that this information was one of the factors considered by the Administration in making the decision which is here under review.

The Tribunal notes that while that information furnished in the application for employment is used by the Respondent in this way, no reference is made to

the use of that information for purposes of home leave in the application form itself. The future staff member is asked to indicate his permanent address and his present address. It is understandable that the Applicant, who at that date had no home of his own, permanent or otherwise, in his home country, gave the only possible U.S. address—that of his brother in Grand Haven.

5. The Tribunal therefore reaches the conclusion that, under the provisions of article 105.3 of the Staff Rules, Applicant's place of home leave must be fixed in Santa Monica, California.

6. The Tribunal therefore decides:

(*a*) that Santa Monica, California, be designated as the place of entitlement for home leave under Regulation 5.3 and Rule 105.3 in lieu of Grand Haven, Michigan;

(*b*) that there should be paid in respect of the home leave already taken during 1957, the difference between the amount already paid to the Applicant (with Grand Haven, Michigan, regarded as his place of entitlement) and the amount properly due in respect of Santa Monica, California, as the place of entitlement, as now provided in the preceding paragraph;

(*c*) that in the nature of this case and its resultant future obligations, as well as the obligation referred to above, the Tribunal does not consider itself called upon to fix alternative compensation under article 9 of the Statute.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Harold RIEGELMAN
Member

Mani SANASEN
Executive Secretary

New York, 3 December 1958.

Judgement No. 73

(Original: English)

Case No. 69: Bulsara *Against:* **The Secretary-General of the United Nations**

Request for revision of Judgement No. 68 in which the Tribunal ordered the granting of compensation to the Applicant instead of ordering his reinstatement.—Request for revision of basis of calculation of amount of compensation.

Power of Tribunal to revise a judgement under article 12 of its Statute.—Mandatory nature of article 12 of Statute.—Difference between appeal and an application for revision.

Absence of any material error in the calculation of compensation.—Rejection of requests for revision.

Request for award of costs in respect of previous Judgement No. 68.—Absence from Judgement No. 68 of any reference to costs considered to be an implicit refusal to award such costs.—Rejection of claim for costs.

Application rejected.
