

the conditions prevailing during her probationary period and the conduct of her supervisors were considered with the greatest care by the Joint Appeals Board. The Board's report contains detailed and unanimous findings which, while not excluding the possibility of giving the Applicant another chance within the framework of the Organization, nevertheless did not recommend her reinstatement. The Tribunal notes that the Board's findings with regard to the conditions prevailing during the Applicant's probationary service were known to the Secretary-General when he decided to maintain the disputed decision.

Accordingly, the Tribunal considers that the termination of the Applicant's appointment does not exceed the Secretary-General's powers under Staff Regulation 9.1 (c).

V. Consequently, the application is rejected.

(Signatures)

Suzanne BASTID
President

James W. BARCO
Member

New York, 9 October 1963.

LOUIS IGNACIO-PINTO
Member

N. TESLENKO
Secretary

Judgement No. 91

(Original : English)

Case No. 82 :
Miss Y

Against : **The Secretary-General
of the United Nations**

Termination of the permanent appointment of a staff member for health reasons.

Panel of doctors formed to implement Judgement No. 83 ordering the remand of the case for correction of procedure.—Classification of the answers of the doctors to the questions put by the Medical Director and by counsel for the Applicant.

Consideration of whether the Respondent could have terminated legally the appointment of the Applicant for reasons of health, had the Respondent possessed the medical reports on the date of the issue of the notice of termination.—Staff Regulation 9.1. (a).—The view of the third doctor that the Applicant was not incapacitated for further service has to be read with the answers of all the doctors to all the questions.—Held that the Respondent's decision, on a review of the medical opinions, to maintain the termination was a matter for his judgement and was not without any basis.—No prejudice or improper motivation.—Request for rescission of the contested decision rejected.

The question of the other ground for the termination invoked by the Respondent, namely, unsatisfactory services, does not arise for determination by the Tribunal.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; Mr. R. Venkataraman, Vice-President ;

Whereas, on 29 September 1961, Miss Y, a former staff member of the United Nations Secretariat, filed an application requesting that the Tribunal :

(a) Rescind the decision of the Secretary-General under which her permanent appointment was terminated for health reasons ;

(b) Order her reinstatement in the United Nations Secretariat in an appropriate post ;

(c) Order, in the event that the Respondent exercises the option given under article 9.1 of the Statute of the Administrative Tribunal, the payment of compensation in an amount equal to two years' net base salary of the Applicant, in addition to the other monetary benefits already received by the Applicant ;

Whereas, by Judgement No. 83, dated 8 December 1961, the Tribunal, without deciding the merits of the case, ordered that :

(a) The case be remanded for correction of the procedure used by the Respondent in arriving at the decision that the Applicant is incapacitated for further service for reasons of health under Staff Regulation 9.1 (a) ; and

(b) The Applicant be paid as compensation an amount equal to two months' net base salary for the loss caused by the procedural delay ;

Whereas, by a letter dated 23 December 1963, the Applicant informed the President of the Tribunal that she had been examined by three doctors, the first chosen by the Respondent, the second by the Applicant and the third by the other two doctors ;

Whereas, by the same letter, the Applicant transmitted to the President the written conclusions of the three doctors and requested the Tribunal to consider the case on its merits as soon as possible ;

Whereas, on 4 March 1964, the Applicant filed an explanatory statement and pleas ;

Whereas the pleas were amended on 9 April 1964 ;

Whereas the pleas, as amended, request the Tribunal to :

(a) Rescind the decision of the Secretary-General under which her permanent appointment was terminated for reasons of health ;

(b) Order her reinstatement, in an appropriate post, in the United Nations Secretariat ;

(c) In the event that the Respondent exercises the option given under article 9.1 of the Statute of the Tribunal :

(i) order the payment of compensation in an amount equal to two years' net base salary ;

(ii) order the payment of the Applicant's full salary from 8 November 1960 to the date of reinstatement or refusal to reinstate, less the amount paid in lieu of notice and the amount paid as termination indemnity ; such salary to include all the entitlements provided for in the Staff Regulations and Rules, *inter alia*, the contributions payable by the Organization to the Pension Fund ; thereby restoring the Applicant to her position as a staff member with a permanent contract ;

(iii) order the reimbursement to the Applicant of all the expenses entailed by the medical procedure instituted pursuant to Judgement No. 83 and

consequently the fees paid by her to the doctor she had selected as member of the panel ;

- (iv) reserve the Applicant's right to obtain, at the Respondent's disadvantage, the annulment or rescission of the irregular decision whereby the United Nations Joint Staff Pension Fund allocated to the Applicant a disability benefit and thus, to have the entitlements she holds under the Regulations of the United Nations Joint Staff Pension Fund determined as of the date of reinstatement or refusal to reinstate, irrespective of article VI.7 of said Regulations ; so as to enable her to exercise the options open to her under article X.3 of these Regulations as if she had not been terminated on 8 November 1960 and had not received a disability benefit ;

Whereas, in accordance with article 21 of the Rules of the Tribunal, the Applicant's explanatory statement and pleas were transmitted to the Secretary of the United Nations Joint Staff Pension Fund on 12 March 1964 and the pleas as amended were likewise transmitted on 9 April 1964 ;

Whereas, on 17 March 1964, the Applicant filed an addendum to her explanatory statement and pleas specifying that in the passage of the pleas referring to the United Nations Joint Staff Pension Fund she had not intended to request the Tribunal to adjudicate in the course of the present proceedings her rights vis-à-vis the Fund ;

Whereas, on the same day, the addendum to the explanatory statement and pleas was transmitted to the Secretary of the United Nations Joint Staff Pension Fund in accordance with article 21 of the Rules of the Tribunal ;

Whereas, on 3 April 1964, the Respondent filed his reply to the Applicant's explanatory statement and pleas :

Whereas, on 10 April 1964, the Applicant filed written observations on the Respondent's reply ;

Whereas, on 17 April 1964, the President of the Tribunal put a question to the Respondent who replied on 22 April 1964 ;

Whereas the facts in the case, subsequent to Judgement No. 83, are as follows :

On 19 January 1962 the Office of Personnel addressed a letter to the Applicant proposing, in pursuance of Judgement No. 83, that she should be examined by a practitioner specialized in mental medicine. The letter suggested the name of the Director of the Psychiatric Service of a New York Hospital and requested the Applicant to indicate her acceptance or to communicate the name of a doctor of her choice. The Applicant replied on 7 February 1962 stating that she could make no decision as regards the choice of the doctor who would examine her so long as she did not know in advance whether the Respondent would abide by the findings of the doctor chosen and would reinstate her if these findings were in her favour. After a further exchange of correspondence, the Office of Personnel informed the Applicant in writing, on 4 April 1962, that the Administration declined to anticipate in any way the result of the medical examination and was of the opinion that no further steps could be taken to correct the procedures without the Applicant's co-operation in regard to this examination. On 4 December 1962, after further correspondence, the Director of Personnel drew the Applicant's attention to the procedure for a medical examination suggested in the letter of the Office of Personnel dated 19 January 1962 and stated :

“ I would suggest that you agree to this procedure so that the Tribunal’s judgement can be implemented. Otherwise, I regretfully would have to consider that you have no further claim on the Organization. ”

On 22 January 1963, the Applicant, who was receiving at the time an annual disability benefit from the United Nations Joint Staff Pension Fund, informed the Director of Personnel in writing that she was “ undergoing the medical examinations for the... Fund ”. She added that : “ When or if it proves necessary to proceed with the medical examination ordered by the Tribunal, I can assure you that I shall select my psychiatrist in due time. ” On 13 and 14 February 1963, the Applicant was examined for the purposes of the Pension Fund by an internist— Doctor A—and a psychiatrist— Doctor B. On 1 March 1963, the Medical Director of the United Nations Health Service addressed a memorandum to the Secretary of the Pension Fund setting forth as follows the conclusions of Doctors A and B :

“ Doctor A concluded that, ‘ judged solely on physical aspects, Miss Y is physically fit ; however emotional conflicts are prominent and appear to be disabling at present ’. Doctor B concluded that ‘ she falls into the category of character disorders as a schizoid personality with hypochondriacal and paranoid trends ; she is not overtly psychotic. The overall prognosis is not encouraging ; she is likely to continue in her present pattern of adjustment. There is, however, a possibility that under the guidance of a supportive and reassuring general practitioner or internist, she might gradually be gotten back to work ’. ”

By a letter dated 18 March 1963, the Applicant informed the Director of Personnel that she had selected a psychiatrist, Doctor C, “ for the purpose of the procedure of medical examination prescribed in Judgement No. 83 ”. The Applicant added that :

“ It is my understanding that should the two doctors be unable to reach an agreed opinion, they could nominate a third doctor . . . ”

“ On the basis of their findings, the Medical Board will have to give their opinion as to what extent the state of my health incapacitated me on or about 8 November 1960 for any further service. ”

On 8 April 1963, the Applicant learnt through Doctor C that the Respondent had selected Doctor B, the psychiatrist who had already examined the Applicant for the Pension Fund. Further correspondence resulted in the submission to Doctors B and C of questions framed by the Medical Director and by Mr. Harpignies, counsel for the Applicant. On 4 June 1963, Doctor C sent his replies which, he indicated, were “ based on a careful psychiatric examination performed on February 6, 1963, as well as carefully evaluated projective psychological tests ”. On 11 June 1963, the Applicant informed the Respondent that she supposed that Dr. B would “ maintain the point of view reflected in the [Medical Director’s] memorandum dated 1 March 1963 ”. The Applicant added :

“ As there is a sharp divergency of diagnosis between Doctor B and Doctor C, it is now incumbent on Respondent to decide whether he accepts Doctor C’s diagnosis or he intends to request the two doctors to nominate jointly a third psychiatrist. ”

On 14 June 1963, Doctor B sent his replies which, he indicated, were “ based upon careful psychiatric examinations performed on February 13th and 14th, 1963 ”. On 7 August 1963, the Medical Director informed the Deputy Director of Person-

nel that "the two doctors on the medical panel [Doctors B and C] have now agreed on a third doctor". On 29 August 1963, the Applicant wrote to the Medical Director that she wanted a different doctor as the third doctor and failed to keep an appointment that had been made for her. Finally, Doctors B and C recommended the appointment of Doctor D, a psychiatrist, as third member of the panel. On 4 December 1963, Doctor D, following his examination of the Applicant, sent his replies to the questions. On 23 December 1963, the Applicant addressed to the President of the Tribunal the letter referred to earlier. On 19 February 1964, after further correspondence between the Applicant and the Office of Personnel, the Director of Personnel informed the Applicant in writing of the Secretary-General's intention to maintain the decision terminating her permanent appointment. On 4 March 1964, the Applicant filed the explanatory statement and pleas referred to earlier.

Whereas the Applicant's principal contentions are :

1. The legal situation as it existed in 1964 at the time when the Respondent decided to maintain the termination of the Applicant's permanent appointment has a retroactive effect upon the situation which existed in 1960 at the time of the termination of the appointment. The rights of both parties are to be determined as if the Respondent had known in 1960 what he knew in 1964.

2. In 1964 the Respondent knew, or should have known, that the termination of the Applicant's appointment for reasons of mental health lacked medical grounds since two of the three members of the panel of psychiatrists who examined the Applicant found that she was not incapacitated for further service while the conclusions of the third member were contradicted by the earlier conclusions which he had submitted for the purposes of the United Nations Joint Staff Pension Fund.

3. The Respondent's challenge of the findings of the majority of the panel of psychiatrists is inadmissible as it is solely based on his own opinion.

4. Since the Respondent has failed to show that the Applicant was mentally incapacitated for further service, the contested decision is arbitrary and constitutes a misuse of power and a violation of Staff Regulation 9.1 (a).

5. The rule that administrative decisions must be presumed to be legally valid until the contrary is shown does not apply to the termination of the Applicant's permanent appointment in 1960 since the Tribunal subsequently found that the Applicant had been denied due process. Nor does the rule apply to the decision by which the Respondent maintained in 1964 the termination of the appointment since at the time of that decision the Respondent knew or should have known that the Applicant was not mentally incapacitated for further service.

6. The Tribunal found in Judgement No. 83 that the Respondent rested his case on the psychiatric factor as the decisive factor. The Respondent is therefore debarred by the legal position he took in 1960 and by Judgement No. 83 from attempting to justify the termination of the Applicant's permanent appointment on grounds of physical health. Moreover, none of the medical practitioners who examined the Applicant found that she was incapacitated for further service on such grounds. The fact that the Applicant exhausted her sick leave entitlement would not have constituted a cause for termination under the Staff Regulations even if she had not been compelled by the Administration—as indeed she was compelled—to take part of this leave against her will at a time when she was ready to resume her work.

7. The Respondent is also debarred from attempting to justify the termination of the Applicant's permanent appointment on the grounds of unsatisfactory services. Besides, the Applicant's periodic reports show that her performance was satisfactory from 1946 to 1955. The reports covering the period 1956 to 1960 must be rejected because they were submitted after considerable delay, by officers lacking due competence or objectivity and are vitiated by contradictions and irregular procedure. Moreover, these reports cover a period during which the Applicant was called upon to perform the duties of a bilingual secretary for which she was not qualified under the terms of her appointment.

8. The delays in procedure which might have occurred since 1961 were due to circumstances outside the Applicant's control.

9. The Applicant is therefore entitled to full salary from the date of the termination of her permanent appointment to the date of reinstatement or refusal to reinstate.

Whereas the Respondent's principal contentions are :

1. The question whether a staff member is incapacitated for further service is closely related to the Secretary-General's responsibility for the efficiency of the Service. In either case, a decision must be able to withstand challenges either that the decision was improperly motivated, or that it was based on patently incorrect or mistaken information or advice, or that it was reached in violation of due process or that it was arbitrary. It is not, however, properly to be contested on the ground that there may be reasonable disagreement as to the Secretary-General's conclusions.

2. The contested decision was not improperly motivated. The Applicant's allegation of misuse of power implies that the Respondent knew that the Applicant was not incapacitated for reasons of health. The record refutes such an allegation. The Respondent was aware that the less than satisfactory performance and conduct of the Applicant might be attributable to reasons of health. The choice between a termination on the ground of unsatisfactory services and a termination on the ground of reasons of health was approached with particular regard to the medical aspects and the administrative and financial consequences attaching to each ground.

3. The contested decision was not made on the basis of mistaken information. It was taken on the advice of the Medical Director of the United Nations Health Service which does not deviate substantially from the results of the medical examination performed in 1963 for the purposes of the Pension Fund.

4. The corrective procedures instituted after Judgement No. 83 were unobjectionable.

5. The ground of incapacity for further service is adequately supported in the light of the medical advice subsequent to Judgement No. 83. All the reports of the medical experts who examined the Applicant concur in finding a psychiatric disorder. They disagree on the effect of the Applicant's psychiatric condition on her capacity for further service. The issue, however, is not solely a medical question. Evaluation of incapacity for reasons of health is an administrative function which, like the weighing of the relative efficiency of a staff member's services, must be reserved to the administrative judgement of the Secretary-General.

6. The decision to terminate the Applicant's permanent appointment was also valid on the ground of unsatisfactory services. The evaluation of the Applicant's services was not arbitrary or the result of prejudice and was supported by adverse

periodic reports. The Applicant, moreover, received notice of this evaluation and had ample opportunity to contest it.

7. The Respondent did not exclude the unsatisfactory services of the Applicant as a ground for the termination of her permanent appointment. He gave precedence to reasons of health as a matter of correct administrative co-ordination and for the protection of the Applicant's pension rights. Moreover, the Tribunal's determination in Judgement No. 83 that corrective procedures necessarily preceded consideration of the case on its merits precludes the Judgement from constituting *res adjudicata* on the merits of any ground for the contested decision. There is therefore no legal impediment to consider whether the contested decision is supported on the ground of unsatisfactory services.

8. The Respondent is willing to reimburse the fees actually paid by the Applicant for the examination by the doctor chosen by her. The Respondent has paid the fees of the other doctors.

The Tribunal, having deliberated from 27 April to 8 May 1964, now pronounces the following judgement :

I. In its Judgement No. 83, the Tribunal, without deciding the merits of the case, ordered that the case be remanded for correction of the procedure used by the Respondent in arriving at the decision that the Applicant was incapacitated for further service for reasons of health.

II. After prolonged discussions between the Applicant and the Respondent, a satisfactory procedure was evolved whereby the Respondent nominated a doctor, hereinafter called Doctor B, and the Applicant nominated a doctor, hereinafter called Doctor C. These two doctors in turn appointed a third doctor, hereinafter referred to as Doctor D, to form the panel of doctors. The Medical Director of the United Nations Health Service formulated five questions for answer by the doctors and counsel for the Applicant put a supplementary question.

III. The Tribunal classifies the answers of the doctors to the questions put by the Medical Director as hereunder.

Question No. 1 : " Does she [the Applicant] suffer at present from any emotional disorder ? If so, what is the diagnosis ? "

Answer :

Doctor B : " Miss Y falls into the category of Character disorders as a schizoid personality with hypochondriacal and paranoid trends. In the official nomenclature of the American Psychiatric Association, this is classed as a mental disorder characterized by defects in the personality structure, manifested by a lifelong path of actional behaviour rather than by mental or emotional symptoms. "

Doctor C : " Miss Y does not suffer from any emotional disorder in the nature of a psychoneurosis or psychosis. She does have a character disorder. "

Doctor D : " Miss Y has a Personality Disorder. She does not have a psychosis or a psychoneurosis. "

Question No. 2 : " If so, are the effects of this disorder such as to contraindicate her working effectively as a secretary in an office at present ? "

Answer :

Doctor B : " Miss Y's symptomatology takes the form of avoidance of close relations with others and inability to express direct hostility. This

hostility is handled by projecting it on to the environment. This results in an exquisite sensitivity in inter-personal relations, suspiciousness, envy, extreme jealousy and stubbornness. These traits are clearly seen in her complaints of being cheated, her sensing animosity at the United Nations, etc. In addition, she tends to put the blame for her difficulties upon her illnesses. Although there is no question that these contribute to her difficulties, she appears to have utilized them to alleviate her anxieties. ”

Doctor C : “ No. ”

Doctor D : “ In general, the effects of Personality Disorder do not interfere with the patient’s ability to work. In fact, in terms of her particular problem it is conceivable that, in a rather protected environment with an authority figure to whom she could relate, she could work more effectively than many without such a problem. ”

Question No. 3 : “ Would it be reasonable to think that, in November 1960 when she left the employ of the United Nations, she was suffering from the same emotional disorder, with the same manifestations ? ”

Answer :

Doctor B : “ Based upon history and general psychiatric knowledge concerning character disorders, it is most likely that these features of her personality have been characteristics of her adult life. ”

Doctor C : “ Her character disorder has been a part of the patient ever since she was a child. ”

Doctor D : “ Miss Y’s personality disorder has been present throughout her life. ”

Question No. 4 : “ What is the prognosis ? ”

Answer :

Doctor B : “ It is unlikely that there will be any change in her basic character disturbance. ”

Doctor C : “ There will be no alteration of her character structure at any time. ”

Doctor D : “ The prognosis is good, in that it is doubtful she will develop a psychosis or a psychoneurosis, but it is poor in terms of her ever overcoming those parts of her personality structure which lead her into difficulties. ”

Question No. 5 : “ Any other point which you wish to raise relating to the question whether she is incapacitated for service. ”

Answer :

Doctor B : “ In my opinion Miss Y suffered from this mental disorder prior to her termination and this incapacitated her for further service. ”

“ The etiology of this particular kind of disease is usually felt to be related to childhood development. There is no question but that the serious surgical operations coupled with the death of her mother created additional stress and made it more difficult for her to maintain her previous adjustment. I do not feel that treatment at that time would have permitted her to return to work at the United Nations. ”

Doctor C : “ She is not mentally incapacitated for service. ”

Doctor D : " The patient is not mentally incapacitated for service. "

The Tribunal classifies the answers of the doctors to the supplementary question put by counsel for the Applicant as hereunder.

Applicant's question :

- " (1) Did Applicant suffer immediately prior to her termination (i.e. 8 November 1960) from any emotional disorder which incapacitated her for further service ?
- " (2) If the answer to question (1) is affirmative
 - " (a) Can the etiology of such disorder be traced to the serious surgical operations Applicant had undergone prior to her termination, together with the death of her mother and the knowledge of her imminent termination ?
 - " (b) If Applicant's disabilities contraindicated her working effectively as a secretary-typist, at the time of her termination, could she not after having received proper treatment have been gotten back to perform some work within a reasonable period of time ?
 - " (c) What was the prognosis on 8 November 1960, had Applicant received proper treatment ?
- " (3) Any other point which you wish to raise relating to the question whether she was incapacitated for further service on 8 November 1960. "

Answer :

Doctor B : [refer to second paragraph of Doctor B's answer to question No. 5]

Doctor C : " There was no incapacitating mental or emotional disorder. Whatever emotional reaction she had at the time was a reaction to serious physical illnesses of a prolonged nature which threatened her financial, social and job security. At the same time she was mourning the death of her mother, since the patient was markedly attached and devoted to her. "

Doctor D : " In reply to Mr. Harpignies' question, there was no evidence of any severe mental or emotional disorder just prior to her termination. It would appear that the emotional reactions she had were consistent with those of any person with her personality structure suffering from a severe physical illness. It should also be noted that, at approximately the same time, she was reacting to the death of her mother. "

IV. The Applicant had also been examined on 13 and 14 February 1963 by Dr. A, an internist, on behalf of the United Nations Joint Staff Pension Fund and he stated as follows : " judged solely on physical aspects, Miss Y is physically fit ; however emotional conflicts are prominent and appear to be disabling at present. "

V. After completing the medical procedure, the Director of Personnel informed the Applicant in writing on 19 February 1964 of the Secretary-General's intention to maintain the decision terminating her permanent appointment, specifying that :

" This intention to maintain the termination has been formed in the light of all of the basic information contained in the medical opinions rendered subsequent to Judgement No. 83 and of Miss Y's record of service and after taking into account representations by Miss Y herself and by Counsel on her behalf.

“The Secretary-General has further concluded that the ground for termination in this case, that is to say, incapacity for reasons of health, should be maintained as the primary ground inasmuch as Miss Y’s unsatisfactory performance of her work for some time prior to her termination appears to have been attributable to health reasons which still pertain.”

VI. The point for determination by the Tribunal may therefore be formulated as follows :

Could the Respondent have terminated legally the appointment of the Applicant for reasons of health, had the Respondent possessed such medical reports on the date of the issue of the notice of termination, namely 8 November 1960 ?

VII. The Tribunal has held in its earlier judgements that permanent appointments cannot be terminated except under staff regulations which enumerate precisely the reasons for and the conditions governing the termination of service. According to Staff Regulation 9.1 (a), applicable to this case, the Secretary-General may terminate the appointment “of a staff member who holds a permanent appointment . . . if he is, for reasons of health, incapacitated for further service”.

VIII. The Applicant relies strongly on the view expressed by Doctor D—the third doctor nominated jointly by Doctors B and C—that the Applicant was not incapacitated for further service and contends that there was no legal basis for the order dated 8 November 1960.

IX. The Tribunal, however, observes that the above-noted views of Doctor D have to be read with the answers of all the doctors to all the questions. These answers may be briefly summarized as follows :

Doctor C, nominated by the Applicant, states that the Applicant “does have a character disorder” and that “there will be no alteration of her character structure at any time”.

Doctor B, nominated by the Respondent, states that the Applicant “falls into the category of Character disorders” and that “it is unlikely that there will be any change in her basic character disturbance”.

Doctor D, the third doctor, states that the Applicant has “a Personality Disorder”.

X. The Tribunal notes that :

- (a) The doctors agree that the Applicant has “a character disorder” or “personality disorder”,
- (b) This characteristic has been with the Applicant from childhood and
- (c) It will persist all through her life.

According to Doctor D, the prognosis “is poor in terms of her ever overcoming those parts of her personality structure which lead her into difficulties”. Even ignoring the views of Doctor B, who was positive that the Applicant was incapacitated for further service, there are indications that, at the relevant period, the Applicant was not in normal conditions of health for work.

XI. In the light of the above medical opinions, it cannot be said that there was no basis for the decision of the Respondent to terminate the appointment for reasons of health.

XII. Whether these opinions justify the termination of employment is a matter of judgement. As regards the evaluation of medical testimony, the Tribunal in its Judgement No. 69 stated as follows :

“ The Tribunal could not regard itself as a body competent to express views on the accuracy of the diagnoses or conclusions of the medical profession. The Tribunal therefore cannot proceed to a review on medical grounds of the Secretary-General’s decision. . . ”

XIII. If, on a review of these medical opinions, the Respondent decided to maintain the termination, the Tribunal considers that the information at his disposal was such as might cause him to reach the opinion that the services of the Applicant should be terminated on grounds of health.

XIV. The Tribunal finds that there was no prejudice or improper motivation and that the contested order dated 8 November 1960 therefore cannot be rescinded.

XV. In its Judgement No. 83, the Tribunal observed that “ the Applicant has been denied due process in that a proper medical procedure was not followed by the Respondent ”. The Tribunal notes with satisfaction that a medical procedure has now been adopted in which the Staff member and the Administration each appoints a doctor and these two doctors in turn nominate a third doctor to constitute a panel to consider cases of termination “ for reasons of health ”. Had this procedure been followed earlier and all material made available, the prolonged litigation in this case might have been avoided.

The Tribunal further notes that the Respondent intends to reimburse the fees actually paid by the Applicant for the examination and report made by the doctor chosen by her (the Respondent having already paid the fees of the other doctors).

XVI. The Respondent further contends that the termination of the appointment of the Applicant was justified on the ground of unsatisfactory services. In his letter conveying the intention to maintain the termination, the Respondent stated that the Applicant’s unsatisfactory performance was attributable to health reasons. The Applicant resisted consideration of any new ground for the termination, namely, the unsatisfactory services. In the light of the decision reached by the Tribunal that the Applicant’s health conditions were such as might lead the Respondent to the conclusion that her appointment could be terminated for reasons of health, the question of unsatisfactory services does not arise for determination in this case.

XVII. Accordingly the Tribunal rejects the application.

XVIII. In view of the circumstances of the case, the Tribunal orders, as in Judgement No. 83, that the name of the Applicant shall be omitted from the published versions of the judgement.

XIX. For similar reasons, the Tribunal likewise orders that the published versions of the judgement shall not contain the names of doctors.

(Signatures)

Suzanne BASTID

President

CROOK

Vice-President

Paris, 8 May 1964

R. VENKATARAMAN

Vice-President

N. TESLENKO

Executive Secretary