

	<i>Dollars</i>
1. Air travel of counsel from New York to Geneva and return	500
2. Subsistence of counsel for seven days at dollars 14 per day	98
3. Terminal expenses	12
	Total 610.00

The Tribunal accepts the claim as reasonable and awards dollars six hundred and ten accordingly.

XXIII. The Tribunal therefore orders a total payment to the Applicant of dollars one thousand six hundred and ten.

(Signatures)

Suzanne BASTID
President

R. VENKATARAMAN
Vice-President

Geneva, 16 November 1964.

James W. BARCO
Member

N. TESLENKO
Executive Secretary

Judgement No. 93

(Original : English)

Case No. 92 :
Cooperman

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

Termination of the employment of a staff member holding a probationary appointment.

Allegation of lack of due process.—Complaint that the Respondent did not refer the Applicant's case to the Appointment and Promotion Board.—Need to distinguish between Staff Rules 104.12 and 104.13, concerning the end of the period of probation when a decision about the grant of a permanent or regular appointment has to be taken, and Staff Regulation 9.1 (c) empowering the Secretary-General to terminate the probationary service of a staff member at any time if, in his opinion, such action is in the interest of the United Nations.—Complaint that the Respondent did not follow the disciplinary procedure.—The Secretary-General's right not to resort to disciplinary measures while exercising the power under Staff Regulation 9.1 (c).—Complaint that the Respondent did not follow the procedure specified in the Circular concerning staff promotion, appointment and review.—Inapplicability of this procedure.

Allegation of prejudice and improper motivation—Not enough material submitted to sustain the charge.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of the Lord Crook, Vice-President, presiding ; the Honourable Mr. R. Venkataraman, Vice-President ; Mr. Héctor Gros Espiell ;

Whereas, on 9 July 1964, Jack H. Cooperman, a former staff member of the United Nations and the Applicant herein, requested the President of the Tribunal, under Administrative Instruction ST/AI/153, to designate a counsel to assist him in drawing up and submitting an application to the Tribunal ;

Whereas, on 20 July 1964, the President designated as counsel Mr. Maxime Tardu, a staff member of the United Nations ;

Whereas, at the Applicant's request, the President extended to 1 November 1964 the time-limit for the filing of an application ;

Whereas, on 30 October 1964, the Applicant filed an application, which he amended on 11 and 22 June 1965 ;

Whereas the application, as amended, requests the Tribunal :

(a) To call upon the Respondent to submit to the Tribunal, and to make available to the Applicant, all the documents in the Applicant's confidential privileged file which are in any way related to the termination of his appointment ;

(b) To hold oral proceedings for the purpose of interrogating witnesses and hearing the parties ;

(c) To rescind the decision by which the Secretary-General terminated the Applicant's probationary appointment ;

(d) To order the Applicant's reinstatement in a suitable post outside the section to which he had been initially assigned, and the extension of his probationary contract for a period of one year from the effective date of reinstatement.

(e) To order, in the event that the Respondent exercises the option given to him under article 9.1 of the Statute of the Tribunal, the payment as compensation of four months' gross salary ;

Whereas, on 18 January 1965, the Respondent filed his answer ;

Whereas, on 19 February 1965, the Applicant submitted written observations on the Respondent's answer ;

Whereas, on 11 June 1965, the Applicant reiterated his request for the submission of all the documents in the confidential privileged file which related in any way to the termination of his appointment, and expressed the wish that these documents should be made available to him at least one week before the oral proceedings ;

Whereas the Applicant's request was based on the fact that a corner had been cut off from the original of a memorandum dated 22 May 1962 in which a member of the Office of Personnel had commented on a recommendation for the termination of the Applicant's appointment and requested the Director of Departmental Services to issue instructions on the matter ;

Whereas, on 17 June 1965, the Respondent informed the President of the Tribunal that, while he considered that the disclosure of the content of the confidential privileged file was not warranted, he would seek to reply to any question and to comply with any request for particular information which the Tribunal considered relevant to the issues in the case ;

Whereas, on 21 June 1965, the President of the Tribunal requested the Respondent to indicate whether the instructions sought by the member of the Office of Personnel in his memorandum of 22 May 1962 had ever been issued ;

Whereas, on 24 June 1965, the Respondent informed the President that the official in question had been instructed orally to proceed with the Applicant's termination under Staff Regulation 9.1 (c) and that the Director of Personnel had confirmed these instructions in writing ;

Whereas, on 26 July 1965, the President decided, in view of the particular circumstances of the case, to grant the Applicant's request for the submission to the Tribunal of documents in the confidential privileged file ;

Whereas, on 26 August 1965, the Respondent submitted to the Tribunal a file containing the documents in question which were examined by the Applicant in the office of the Executive Secretary ;

Whereas, on 31 August 1965, the Applicant requested the Tribunal to ask the Respondent to produce, in addition to the documents contained in the file submitted by him on 26 August 1965, a written record of the views of Mr. Caballero-Marsal who was Personnel Officer of the Applicant's department in the first part of 1962, or, if no such record existed, to ascertain what had been Mr. Caballero-Marsal's opinion about the case ;

Whereas, on 1 September 1965, the Respondent informed the Tribunal that the Applicant's confidential privileged file contained nothing written by Mr. Caballero-Marsal subsequent to the Applicant's appointment and expressed the view that Mr. Caballero-Marsal's opinion would not be relevant to the issues before the Tribunal ;

Whereas, on 2 September 1965, the Applicant submitted a list of questions which he requested the Tribunal to put to Mr. Caballero-Marsal either in writing or under the procedure laid down in article 10, paragraph 3, of the Rules of the Tribunal ;

Whereas, on the same day, the Applicant submitted comments on the documents in the file produced by the Respondent on 26 August 1965 and the Respondent restated his objection to ascertaining Mr. Caballero-Marsal's opinion ;

Whereas, on 3 September 1965, the Applicant filed a statement signed by a United Nations staff member and, on 7 September 1965, requested the Tribunal to hear the staff member as a witness ;

Whereas, on 7 September 1965, the Tribunal rejected the Applicant's request concerning the interrogation of Mr. Caballero-Marsal ;

Whereas, on the same day, the Respondent submitted additional documents ;

Whereas, at two public sessions held on 8 September 1965, the Tribunal heard the parties and the witness proposed by the Applicant ;

Whereas, in the course of the public sessions, the parties submitted additional documents ;

Whereas the facts in the case are as follows :

The Applicant entered the service of the United Nations on 12 December 1960 as a draftsman at the G-4 step 1 level on a temporary short-term appointment. On 10 March 1961, the Chief of the Applicant's Unit in the Secretariat submitted to the Office of Personnel, through the Chief of Service, a " Report on Short-Term Staff " in which the Applicant's proficiency was rated as " Fair " and an affirmative answer was given to the question : " If the staff member were to apply for re-employment, would you consider having him or her under your supervision ? " On 3 April 1961, the Applicant's temporary short-term appointment was changed to a probationary appointment with effect from 1 March 1961. On 1 December 1961, he was granted a salary increment from step 1 to step 2 at the G-4 level. A periodic report dated 4 January 1962 was issued on the Applicant's performance from 12 December 1960 to 1 December 1961. Section I of the Report, signed by the Chief of Unit, contained ratings under nine specific headings. The ratings under

heading 7 : “ Initiative ” and heading 9 : “ Personal Relations with Others ” were unfavourable to the Applicant. They read, respectively : “ Tends to wait for direction ” and “ Tends to have difficulties in dealing with people ”. Section II of the report, signed by the Chief of Section, rated the Applicant as “ a staff member who maintains only a minimum standard ”. On 15 January 1962, the Applicant’s Chief of Section addressed to the Chief of Service a memorandum stating that the Applicant had “ failed to meet the standard required. . . and it is therefore recommended that he be terminated ”. On 23 January 1962, the Applicant signed the periodic report on his work. On 22 February 1962, he addressed to the Acting Executive Officer of the Office of General Services a memorandum in rebuttal of the criticisms contained in the report. This was answered by the Chief of Section in a memorandum which he addressed on 13 March 1962 to the Acting Executive Officer. On 3 May 1962, after an exchange of correspondence with the Office of Personnel, the Acting Executive Officer requested the Applicant’s Chief of Section to submit “ a comprehensive evaluation of [the Applicant’s] services while with the Organization. . . [and] a review of [his] rebuttal to his periodic report. . . ”. On 8 May 1962, the Chief of Section submitted the requested document and confirmed the earlier recommendation for a termination of the Applicant’s appointment. The matter was then reviewed in a memorandum dated 22 May 1962 addressed by Mr. Salameh, a member of the Office of Personnel, to Mr. Kobushko, Director of Departmental Services. The memorandum read :

“ 1. Mr. Jack Cooperman now holds a probationary appointment with the Maintenance and Engineering Section of Building Management Services. His probationary appointment will expire on 11 December 1962, and the review of appointment will have to come up before the Appointment and Promotion Panel sometime in September or October.

“ 2. As you will see from the enclosed memorandum from Mr. Van Name, Chief of Maintenance and Engineering Section, dated 15 January 1962, the Department is now recommending an immediate termination of Mr. Cooperman. In a memorandum from me to the Executive Officer on 2 May 1962, I have asked for a comprehensive evaluation of the case. This will be found in a memorandum dated 8 May 1962 from Mr. Van Name to the Executive Officer.

“ 3. I find it difficult to support the recommendation for termination at this stage. You will see from Mr. Van Name’s memorandum of 8 May that Mr. Cooperman is technically competent, but that he has not been performing up to the standard required in his office. I have had an interview with Mr. Cooperman and I was quite unfavourably impressed by him, and I do not think that he has either the mentality or the attitude for being an international civil servant. The difficulty, however, arises from the fact that termination, under rule 104.12 of the staff rules, has to await review of the probationary appointment by the Appointment and Promotion Panel. At first, it seemed to me that paragraph (a) of rule 104.12 allowed a reduction, in exceptional circumstances, of the probationary appointment for the purpose of termination and not only for the purpose of granting a permanent appointment. It seems, however, that this is not the view held by the Office of Personnel. The action, therefore, will have to be a direct termination under regulation 9.1 (c), but my understanding is that termination under this regulation is normally resorted to in exceptional circumstances.

" 4. In the present case, while I am in full sympathy with the Department in their decision to terminate and replace M. Cooperman, I find it difficult to go along with their decision of effecting an immediate termination.

" 5. I would, however, appreciate your instructions. "

Mr. Salameh's memorandum was examined by several members of the Office of Personnel and by the Director who recorded their views in notes placed in the Applicant's confidential privileged file. On 7 June 1962, the Applicant's Chief of Unit addressed to the Chief of Section a memorandum relating to an incident which had occurred earlier in the day and had led him to doubt the Applicant's veracity. The incident involved a request by the Applicant to be allowed to leave the office earlier than usual in order to visit a University and his former school, The Glory of Israel Hebrew Institute. The next day the memorandum of the Chief of the Unit was transmitted to Mr. Salameh by the Acting Executive Officer of the Office of General Services, with the following comment : " This incident only confirms that the Department's recommendation was justified, and I must now request that Mr. Cooperman's termination be effected immediately. " On 12 June 1962, the Applicant submitted in writing his version of the incident of 7 June and disputed the inferences drawn by his Chief of Unit. By a letter dated 9 July 1962, the Director of Personnel informed the Applicant in writing that the Secretary-General had decided to terminate his probationary appointment " in accordance with the provisions of Staff Regulation 9.1 (c) ". On 14 July 1962, the Applicant requested the Secretary-General to reconsider the decision to terminate his appointment. That request having been refused, the Applicant took his case to the Joint Appeals Board. On 27 April 1964, the Joint Appeals Board submitted to the Secretary-General its report on the case. Paragraph 19 of the report set forth the Board's recommendation as follows :

" In view of the above, the Joint Appeals Board unanimously recommends :

" (a) That for the reasons given in paragraphs 15 and 16 [of the report] above, the request to rescind the termination or to extend the probation not be granted ;

" (b) That on the basis of the within-grade increase granted to the Appellant, a statement be put on the record of the Appellant that he had performed satisfactory service ;

" (c) That the certification of service given to the Appellant be revised to state that he has performed satisfactory service during his employment with the United Nations ;

" (d) That the Secretary-General consider the possibility of granting an *ex gratia* monetary compensation in the amount to be determined by the Secretary-General and not exceeding the difference between the salary for a two-year period (normal probationary period according to Staff Rule 104.2) and the salary actually received by the Appellant from the time of the beginning of the probationary appointment to the time of his termination. "

On 25 May 1964, after an exchange of notes between members of his Office, the Director of Personnel addressed to the Secretary-General, through the Legal Counsel, a memorandum on the Board's report. These notes and the memorandum of the Director of Personnel, together with a record of the Secretary-General's decision on the matter, were placed in the Applicant's confidential privileged file.

By a letter dated 4 June 1964, the Director of Personnel transmitted a copy of the report to the Applicant and informed him that :

“ . . . the Secretary-General has accepted the following modified recommendations as contained in paragraph 19 of the report :

“(a) That Appellant’s request to rescind the termination or to extend the probation not be granted.

“(b) That on the basis of the within-grade increase granted to Appellant, a statement be put on his record that he was technically competent as a draftsman.

“(c) That the certification of service given to Appellant be revised to state that Appellant’s technical skill as a draftsman was satisfactory during his employment with the United Nations.

“The Secretary-General has decided not to pursue the recommendation contained in sub-paragraph 19 (d) of the report.”

In October 1964, counsel designated by the Tribunal examined the Applicant’s Official Status File and noticed that an area of approximately three square inches had been cut off from the lower left corner of the original of Mr. Salameh’s memorandum of 22 May 1962 referred to above. The matter was brought to the attention of Mr. Salameh, who expressed the following views in a memorandum to the Chief of Personnel Records Unit :

“ It is very difficult to trace the cutting at this stage as the document was in the official status file and not in the confidential file. Several staff members would have access to the official status file. At any rate, it is equally difficult to guess the reasons for cutting that portion of the memorandum. There may have been a note by someone who later changed his mind and cut it out instead of amending it. It is also possible that ink had dropped on that portion and left an ugly smudge. In either case, the method of cutting, which is fortunately uncommon, is unacceptable and cannot be condoned. In this case, however, the cutting should not be given any cynical construction by the appellant, since the memorandum itself was favourable to him and any note in the margin could either support or dissent from the views expressed in the memorandum. In either case, it could not add to the value of the document from his point of view. ”

On 30 October 1964, the Applicant filed the application referred to above.

Whereas the Applicant’s principal contentions are :

1. There is a fundamental contradiction between, on the one hand, the unfavourable ratings given to the Applicant in his periodic report and, on the other, the conversion of his short-term appointment into a probationary appointment, and the decision to grant him a salary increment one month before the issuance of the periodic report.

2. The decision to terminate the Applicant’s appointment under Staff Regulation 9.1 (c) was based on certain allegations contained in the Applicant’s periodic report and in several memoranda written by his supervisors and by members of the Office of Personnel. All those allegations were unfounded and inconsistent with the true facts in the case, which were never brought to the Secretary-General’s attention.

3. Some of the allegations made against the Applicant charged him with

behaviour amounting to misconduct and therefore should have been dealt with under the disciplinary procedure laid down in Staff Rule 110.3. Others referred expressly to the Applicant's "mentality", in violation of Article 101 of the Charter of the United Nations, of Staff Regulations 1.4 and 4.2, of Staff Rules 103.8 (a), 104.13 (a) (i) and 112.6 and of various administrative instructions relating to the factors to be taken into consideration in evaluating the conduct and performance of staff members.

4. The attitude towards the Applicant taken by his immediate supervisor was motivated by personal animosity, as is evidenced by the supervisor's derogatory remarks concerning the Applicant's religious practices and by several instances of harassment and discrimination. In particular, the Applicant was requested more often than other staff members to remain in the office during lunch hours in order to answer telephones. This personal animosity on the part of the immediate supervisor and the resentment of the Chief of Unit and the Chief of Section at what they regarded as undue criticism by the Applicant of their administration, were the real motives for the recommendation to terminate the Applicant's appointment.

5. The recommendation to terminate the Applicant's appointment was made by his Chief of Section on 15 January 1962. The Applicant was allowed to examine his Official Status File only on 19 July 1962, ten days after he had been notified of the termination of his appointment. Moreover, this examination did not apprise the Applicant of the criticisms contained in the comprehensive evaluation submitted by the Applicant's Chief of Section on 8 May 1962, since that document was placed in the file only in October 1962. The failure to inform the Applicant in advance of the adverse comments made with respect to his conduct and attitude, violated the rules of due process and the provisions of Information Circular ST/ADM/SER.A/437 and of Administrative Instructions ST/AI/108 and 115.

6. The Applicant's probationary appointment was terminated without prior reference to the Appointment and Promotion Board, in violation of the provisions of Staff Rule 104.13 (c) (iii).

7. The Joint Appeals Board, when it examined the case, did not have before it all the relevant documents. Furthermore, it failed to consider some of the Applicant's contentions. Thus, even after receiving the Board's report, the Secretary-General did not possess all the relevant facts. His confirmation of the termination of the Applicant's appointment was therefore based on a one-sided account of the case.

8. Because of the considerable delays in the proceedings before the Joint Appeals Board, more than three years have elapsed since the contested decision was taken by the Respondent. This caused serious prejudice to the Applicant's rights since it was not possible to trace most of the witnesses who could have given evidence in support of his contentions.

Whereas the Respondent's principal contentions are :

1. The termination of the Applicant's probationary appointment was effected under Staff Regulation 9.1 (c) and was a consequence of the low standard of performance of his duties, a matter within the responsibility and discretion of the Secretary-General. There was no inconsistency between the unsatisfactory ratings given to the Applicant in his periodic report and the satisfactory ratings which led to the granting of a probationary appointment. The periodic report covered the first year of the Applicant's employment, whereas the satisfactory rat-

ings related only to the initial three months of employment. Neither was there an inconsistency between the views expressed in the periodic report and the granting of a salary increment, since the latter cannot be taken as evidence of satisfactory performance.

2. The negative evaluation of the Applicant's work and conduct as set out in his periodic report and in several memoranda was supported by evidence which was fully investigated and which provided a sufficient basis for finding that his performance was less than satisfactory.

3. The disciplinary procedure laid down in Staff Rule 110.3 was not applicable to the instant case, which was one of termination in the interest of the United Nations because of unsatisfactory service.

4. The Applicant's allegations of improper motive were unfounded. His immediate supervisor did not act out of prejudice or personal animosity. He did not harass the Applicant and he categorically denied that he ever made disparaging remarks about the Applicant's religious practices. Furthermore, the negative evaluation of the Applicant's performance which led to the termination of his appointment was made, not by the immediate supervisor, but by the Chief of Unit and the Chief of Section.

5. Due process does not require that a staff member be given the opportunity to contest a proposed administrative decision before it is actually made. The Applicant was given the reasons for his termination and he took full advantage of his opportunity to dispute these reasons as well as the adverse allegations and comments which were considered in connexion with that decision. He was not, therefore, denied due process.

6. A review by the Appointment and Promotion Board is not a condition on which the validity of the termination of a probationary appointment depends.

7. The question whether or not the Joint Appeals Board failed to give adequate consideration to each of the contentions made by the Applicant is not at issue before the Tribunal.

8. The basic delay in the proceedings before the Joint Appeals Board was attributable to difficulties of the Applicant himself. The delay, moreover, did not prejudice the Applicant's rights since, even if, as he claimed, it prevented him from tracing several witnesses, the matters on which he intended the witnesses to testify were irrelevant to the issues before the Tribunal.

The Tribunal, having deliberated from 7 to 23 September 1965, now pronounces the following judgement :

I. The Applicant seeks to rescind the order of termination of his probationary appointment on two grounds : first, that the contested decision was vitiated by lack of due process and second that it was vitiated by prejudice and improper motives of his supervisors.

II. Staff Regulation 9.1 (c) empowers the Secretary-General to terminate a probationary appointment at any time if, in his opinion, such action would be in the interest of the United Nations.

III. The Tribunal in earlier decisions held that such discretionary powers should be exercised without prejudice or improper motivation and that any misuse of power would call for the rescinding of the contested decision.

IV. The Applicant has raised in this case a question of importance to the staff members under probationary service. The Applicant contends that Staff

Regulation 9.1 (c) merely defines the authority of the Secretary-General and does not prescribe the procedure to be followed in the case of termination of a probationary appointment while Staff Rule 104.13 (c) (iii) prescribes the conditions for reference to the Appointment and Promotion Board. According to the Applicant, no probationary appointment could be terminated either at the end of the period of probation, or even earlier, without a referral of the case to the Appointment and Promotion Board. A memorandum dated 22 May 1962 by a member of the Office of Personnel lends some support to the above plea.

V. The Respondent contends that, since the termination was made pursuant to Staff Regulation 9.1 (c), the Secretary-General had a broad discretion to terminate a probationary appointment at any time before the end of the period of probation and that reference to the Appointment and Promotion Board arises only in cases of those who have completed a satisfactory probationary period.

VI. The question that arises for decision is whether a reference to the Appointment and Promotion Board is a prior condition to the termination of a probationary appointment. Staff Rule 104.12 prescribes that the period of probationary service shall normally be two years. It also provides that "at the end of the probationary service the holder of a Probationary Appointment shall be granted either a Permanent or a Regular Appointment, or be separated from the service". Staff Rule 104.13 (c) (i) states that recommendations proposing the grant of a permanent or regular appointment on the ground of satisfactory performance of the probationary service may be made to the Secretary-General, and Staff Rule 104.13 (c) (iii) provides for reference to the Appointment and Promotion Board in the absence of an agreed favourable recommendation for grant of a permanent or regular appointment. Looking at the tenor of Staff Rules 104.12 and 104.13, it appears that they deal with a situation arising at the end of the period of probation when a decision about the grant of a permanent or regular appointment has to be taken. The Tribunal is fortified in the view it takes of these Staff Rules by the report submitted thereon in 1953 by the Secretary-General to the Fifth Committee of the General Assembly (document A/2533) where in paragraph 102 it is stated that "the functions of the Board* will be to conduct the review of staff members who become eligible for permanent or regular appointment; . . .". Again in paragraph 103 it is stated that the "Board may start at an early date the normal and continuing review of staff members in probationary status appointed after 1 January 1951, as soon as they become eligible for consideration for permanent or regular appointments". It is common knowledge that a probationer becomes eligible for consideration for permanent appointment after the successful completion of the probationary period. Staff Regulation 9.1 (c) deals with a different situation, in which the Secretary-General is empowered to terminate the probationary service of a staff member at any time if, in his opinion, such action is in the interest of the United Nations. It follows that during the period of probation the Secretary-General has a broad authority to terminate the appointment without reference to the Appointment and Promotion Board. The Applicant's contention that prior to termination of the probationary appointment the reference to the Appointment and Promotion Board is obligatory in all cases, is neither

* Designated in the Secretary-General's report as "Personnel Selection and Review Board".

sustained on a fair reading of the Staff Rules nor is it consistent with Staff Regulation 9.1 (c). It has been held in earlier decisions of this Tribunal that the Secretary-General is the sole judge of the situation and that his conception of the interest of the United Nations is not subject to review by this Tribunal. The Tribunal therefore rejects the contention that Staff Rule 104.13 (c) (iii) obligates the Secretary-General to refer to the Appointment and Promotion Board all cases of termination of probationary appointments. The provisions of Staff Regulation 9.1 (c) are not limited or restricted by Staff Rule 104.13.

VII. The Applicant further contends that the proximate events prior to his termination were the Hebrew Institute incident and the memorandum dated 7 June 1962 from the Chief of his Unit to the Chief of Section. Since the Applicant's conduct was considered to be unbecoming of an international civil servant, action should have been taken under Staff Rule 110.3 (b). Staff Rule 110.3 (b) reads as follows: "Except in cases of summary dismissal, no staff member serving at Headquarters shall be subject to disciplinary measures until the matter has been referred for advice to the Joint Disciplinary Committee; . . .". Because the Respondent did not follow the disciplinary procedure, the Applicant contends that he has been denied the opportunity of presenting his case or his version of the incident. The Tribunal is unable to accept this contention. While it is open to the Secretary-General to resort to action under chapter X of the Staff Regulations and Rules in respect to staff members whether permanent or probationary, it is not obligatory on the Secretary-General to resort to disciplinary measures for termination of probationary appointments while exercising the power under Staff Regulation 9.1 (c).

VIII. The Applicant also urges that the adverse remarks about his work and conduct were not communicated to him and that he came to know of many of them only after his termination. The Respondent contests the statement and points out that the periodic report had been disclosed to the Applicant and that, as the case did not go before the Appointment and Promotion Board, the procedure specified in Information Circular ST/ADM/SER.A/437 did not apply to the case. Since the Tribunal has already rejected the contention that every case of termination of probationary appointment should go before the Board, non-compliance with that procedure has no relevance to the case.

IX. For the foregoing reasons, the Tribunal holds that the Applicant has not been denied due process.

X. In support of the second contention, that the contested decision was vitiated by prejudice and improper motives on the part of his supervisor, the Applicant relies on a number of circumstances. The Applicant states that his immediate supervisor was jealous of his appointment in grade G-4 at a comparatively young age of nineteen and that the Applicant was harassed in a number of ways such as assignment of telephone duties during lunch intervals, and the making of derogatory observations about his religious practices, and so forth. The Respondent has denied any such harassment of the Applicant. The Tribunal notes that the Applicant did not complain about these alleged acts of discrimination as and when they arose, and in any event not before he had information about the intention of the Administration to terminate his appointment. The Tribunal finds very little evidence of such acts.

XI. The Applicant further pleads that, because of the long delay in hearing this case, he has not been able to secure and submit evidence of acts of discrimina-

tion and prejudice as many of the possible witnesses had left the United Nations service on separation or transfer. The Tribunal regrets the long delay in disposal of the case before the Joint Appeals Board and wishes to urge on the Administration the need to organize quick disposal of cases as otherwise justice may be denied by delay. The Tribunal notes that action for expeditious disposal of appeals has been already initiated. But the Tribunal cannot infer from the mere fact of delay that the evidence of persons, if available, would have sustained the case of prejudice.

XII. The Applicant states that on 1 December 1961 he was granted a salary increment on the basis of a satisfactory report of work and conduct, and that within two months—that is, in January 1962—an unfavourable report and recommendation for termination were made. The Applicant infers therefrom that the recommendation for termination was motivated by prejudice. The Tribunal notes that the Applicant's rating in the periodic report had not been very good. In that report, dated 4 January 1962, it is stated that the Applicant maintained only a minimum standard. Similarly, in the memorandum dated 13 March 1962, adverse remarks had been made by the Chief, Maintenance and Engineering Section. On examination of the documents in the confidential file, the Tribunal cannot help reaching the conclusion that the Applicant's record was a mixed one of some favourable and some unfavourable ratings. The member of the Office of Personnel who reviewed the matter recorded his views in a memorandum dated 22 May 1962 as follows: "I have had an interview with Mr. Cooperman and I was quite unfavourably impressed by him, and I do not think that he has either the mentality or the attitude for being an international civil servant."

In the face of the assessment made by different officers, it cannot be maintained that the Applicant was a victim of prejudice on the part of his immediate supervisor.

The Tribunal has no powers to pronounce upon the ratings given by various officers from time to time. The burden of proving prejudice or improper motivation rests with the Applicant and the Tribunal does not find enough material to sustain the charge.

XIII. Accordingly the Tribunal rejects the claim.

(Signatures)

CROOK
Vice-President, presiding

R. VENKATARAMAN
Vice-President

H. GROS ESPIELL
Member

N. TESLENKO
Executive Secretary

New York, 23 September 1965.
