

at least on two occasions the Applicant's restoration to the United Nations was considered by the Office of Personnel. Since no specific method of review appears to have been contemplated at the time that these arrangements were concluded, the Tribunal considers that the examinations mentioned by Mr. Schoellkopf in his letter dated 10 November 1961, and by Mr. Michelmore in his letter dated 18 July 1963 would appear to meet the obligation resting with the Respondent.

It also appears to the Tribunal that acceptance by the Applicant of the transfer of his service on 1 January 1961 to the Technical Assistance Board constitutes a change in the original arrangements and should therefore be deemed to conclude his rights, if any, for a review for the purpose of his restoration of service to the United Nations.

V. The Applicant contends that by reason of the extraordinary delay before the Joint Appeals Board, he was greatly prejudiced as his separation became a "fait accompli" in the meantime, and proper consideration could not be given to his case. The Tribunal regrets the delay in disposal of the case by the Joint Appeals Board and repeats its view that, unless arrangements are made for expeditious disposal of appeals, justice may be denied by delays. However, in this case, the Tribunal in the light of the conclusions reached above notes that the Applicant had suffered no prejudice on account of the delay.

For the foregoing reasons, the Tribunal rejects the application.

*(Signatures)*

Suzanne BASTID

*President*

R. VENKATARAMAN

*Vice-President*

H. GROS ESPIELL

*Member*

N. TESLENKO

*Executive Secretary*

*New York, 29 September 1965.*

## Judgement No. 96

*(Original : French)*

**Case No. 96 :**  
**Camargo**

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

*Withdrawal of an offer of appointment before it was accepted by the Applicant. Motion to declare the application non-receivable on the ground that the Applicant never became a staff member of the United Nations.—Provisions of article 2.2. of the Statute of the Tribunal must be interpreted in the light of their context.—Letter written by the Director of Personnel under an appointment procedure laid down by the Staff Regulations and Rules.—Motion rejected.*

*Request for a ruling by the Tribunal that there was a contract of employment between the Applicant and the Respondent.—Applicant's contention that he did not receive the cable withdrawing the offer of appointment rejected.—Visit to a doctor for the prescribed medical examination or verbal statement to an official having no competence*

*in the matter insufficient to create a contract of employment, since the letter containing the offer expressly called for a reply in writing.—Stages in the procedure for appointing staff members.—Authorization from the United Nations administration to begin official travel, which was not given in the Applicant's case, required for the appointment of an internationally recruited person to take effect.—Need for confirmation of the offer of employment, which the Applicant never received.—Request rejected.  
Application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. R. Venkataraman, Vice-President ; Mr. Héctor Gros Espiell ; Mr. Louis Ignacio-Pinto, Alternate Member ;

Whereas, on 1 June 1965, Pedro Pablo Camargo filed an application in which he requested the Tribunal :

1. *As preliminary measures :*

- (a) To declare itself competent under article 2 of its Statute ;
- (b) To declare the application receivable ;
- (c) To order the United Nations Medical Service to transmit to it, as soon as possible, the results of the medical examination which the Applicant underwent on 4 June 1964 in accordance with the terms of his letter of appointment dated 29 May 1964 ;

2. *As to the merits of the case :*

- (a) To order the rescinding of the decision by which the Respondent terminated the Applicant's appointment ;
- (b) To order the Respondent to carry out forthwith each and every one of the obligations arising from the contract of employment, as set out in the letter of appointment ;
- (c) Should the Secretary-General, in virtue of the authority vested in him by article 9.1 of the Statute, decide to pay compensation for the prejudice suffered, to order the payment to the Applicant of a sum equivalent to two years' net base salary : i.e., \$13,375 ;

Whereas the Respondent filed his answer on 31 August 1965 ;

Whereas the Respondent requested the Tribunal, *inter alia*, to take a decision, as a preliminary measure, on its competence under article 2.3 of its Statute ;

Whereas the Applicant filed written observations on 10 September 1965 ;

Whereas on 15 September 1965 the Respondent informed the Tribunal that the official who had been carrying out the duties of Acting Resident Representative of the United Nations in Mexico City in June 1964 was in a position to provide the Tribunal with information on the question whether the Applicant had received a cable sent to him by the Office of Personnel on 5 June 1964 ;

Whereas the Applicant informed the Tribunal on 19 September 1965 that he considered that the testimony of the official in question would be unnecessary and frivolous ;

Whereas the Tribunal heard the parties in public session on 20 September 1965 ;

Whereas the Tribunal decided in the course of that session to hear the testimony of the official who had been carrying out the duties of Acting Resident

Representative of the United Nations in Mexico City in June 1964, and whereas that official was heard on that same day ;

Whereas the facts of the case are as follows :

The Applicant is a Colombian national resident in Mexico City who applied for a post in the United Nations Secretariat on 15 August 1962 and again on 9 January 1964. On 29 May 1964, the Director of Personnel of the United Nations sent him an offer of appointment by letter reading as follows :

“ I am pleased to offer you a fixed-term appointment to the Secretariat of the United Nations for a period of two years as an Associate Human Rights Officer in the Division of Human Rights, at step IV of the Associate Officer level.

“ The salary of step IV of the Associate Officer level (P-2) is \$8,250 gross per annum which, after deduction for the United Nations Staff Assessment Plan, amounts to an approximate net base salary of \$6,687.50 per annum. In addition, at the present time, a non-pensionable post adjustment of \$1,560 net per annum is added to the salary of a staff member with a dependent wife or a dependent child.

“ On the attached annex you will find further information on conditions of employment, travel and related matters. Certain items which, on the basis of the information you have supplied, appear to apply to this appointment are marked “ Yes ” ; other items which are not applicable are marked “ No ”.

“ This offer is subject to your passing satisfactorily the prescribed medical examination and will be confirmed to you as soon as the Medical Officer of the United Nations has informed us of the results. Instructions concerning this examination are contained in the attached annex.

“ Please reply by air mail at your earliest convenience, giving the information requested in the annex. If you wish additional information, do not hesitate to write to us.

“ I hope that you will accept this offer and that we may have the pleasure of welcoming you to the Secretariat of the United Nations in the near future. ”

Attached to this letter was a document entitled :

“ Fixed-term Appointments of Less Than Five Years

“ Offer of Appointment

“ Annex ”

On 4 June 1964 the Applicant stated orally to the Deputy Director of the United Nations Information Centre in Mexico City and to a doctor approved by the United Nations that he accepted the United Nations offer of employment. On the same day he underwent the medical examination requested by the Director of Personnel. On 5 June 1964, the Office of Personnel sent the Applicant in Mexico City the following cable :

“ Regret owing new developments must withdraw offer of appointment in our letter of 29 May 1964. Letter follows. ”

On 6 June 1964 the Applicant sent the Director of Personnel a letter in which he accepted the offer of appointment made in the letter dated 29 May 1964. This letter from the Applicant contained no mention of the cable dated 5 June 1964.

On 10 June 1964 the Director of Personnel sent the Applicant the following letter :

“ I refer to our cable 154 of 5 June 1964. Since I wrote to you on 29 May 1964 offering you a two-year fixed-term appointment, it has come to my attention that your employment record is not complete, in particular certain reference checks have not yet been received.

“ In the circumstances, I am afraid that we are unable to proceed with your employment at this time. ”

On 29 July 1964, the Acting Director of Personnel, referring again to the cable dated 5 June 1964, informed the Applicant that he regretted to “ have to confirm [the] decision to withdraw [the] offer [of appointment of 29 May 1964]. ” On 14 August 1964 the Applicant protested in writing against the “ unilateral decision to withdraw the UN appointment ” and asked to be informed of “ the causes of [that] sudden decision ”. After several exchanges of letters, the Under-Secretary, Legal Counsel of the United Nations, informed the Tribunal and the Applicant, in communications dated 22 and 23 April 1965, that :

“ It is the view of the Secretary-General that no appointment was ever made in this case and no contract has at any point existed between the United Nations and Mr. Camargo, and that, therefore, no competence resides in either the Joint Appeals Board or the Administrative Tribunal to entertain Mr. Camargo’s request. However, in the light of the provisions of paragraph 3 of Article 2 of the Statute of Tribunal, which provides that ‘ in the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal ’, the Secretary-General has no objection to the submission of this matter directly to the Tribunal. ”

On 1 June 1965 the Applicant filed the application mentioned above.

Whereas the Applicant’s principal contentions are :

1. The letter sent to the Applicant on 29 May 1964 by the Director of Personnel constitutes a letter of appointment to a two-year fixed-term appointment. It states the terms of the appointment and is in full conformity with the conditions laid down in Regulation 4.1 and annex II of the Staff Regulations.

2. The sole condition attached to the appointment offered in the letter referred to was that the Applicant should undergo a medical examination and that the results of that examination should be satisfactory.

3. On 4 June 1964, the Applicant underwent the medical examination required of him, thereby carrying out a first act in execution of his contract of employment. On the same day, he also expressly stated to the doctor approved by the United Nations and to the Deputy Director of the United Nations Information Centre in Mexico City that he accepted the appointment offered to him. That statement constitutes a valid acceptance of the contract of employment, no condition of form or of time having been attached to such acceptance under the letter of appointment dated 29 May 1964.

4. This first act of execution and this acceptance caused the Applicant’s contract of employment to enter into force on 4 June 1964 and conferred upon him the status of a staff member of the United Nations Secretariat. His application therefore falls within the competence of the Tribunal under the terms of both paragraph 2 (a) and paragraph 2 (b) of article 2 of the Statute of the Tribunal.

5. The cable dated 5 June 1964 withdrawing the offer contained in the letter

dated 29 May 1964 is devoid of legal effect, since it never reached the Applicant. Moreover, a cable cannot void a written communication, particularly when, as in the present case, it does not come from the author of that communication.

6. On 6 June 1964, the Applicant sent the Director of Personnel, in writing, the information requested in the document annexed to the letter of appointment, and once again expressed his agreement with the provisions of that letter. He thereby confirmed his acceptance of the contract of employment and carried out a second act in execution thereof.

7. The Director of Personnel's decision of 10 June 1964 to suspend the effect of the contract of employment on the ground that he had not yet received replies to certain reference checks constitutes a breach of the contract, as the receipt of those replies was not one of the conditions laid down in the letter dated 29 May 1964.

8. The subsequent rescission by the Respondent of the Applicant's letter of appointment constitutes a violation of the provisions of Staff Regulation 9.1 which governs the termination of the appointments of staff members holding fixed-term appointments.

9. The prejudice suffered by the Applicant was aggravated by the fact that when he accepted the contract offered to him in the letter of appointment he resigned from the post which he then occupied, and that his sole present employment is an honorary one for which the monthly remuneration is twenty dollars.

Whereas the Respondent's principal contentions are :

1. The application is not receivable under the terms of article 2.2 of the Statute of the Tribunal, for even if the Applicant had concluded a contract of employment with the Respondent or had received an irrevocable promise of contract, he still would not have acquired the status of a staff member of the United Nations Secretariat, since he never received a letter of appointment within the meaning of Staff Regulation 4.1. The letter dated 29 May 1964 from the Director of Personnel cannot be regarded as constituting a letter of appointment, for the following reasons :

(a) It does not satisfy all the conditions laid down in Regulation 4.1 and annex II of the Staff Regulations ;

(b) It was accompanied by an annex which made it clear that a letter of appointment would be prepared only after the Applicant's arrival at his duty station ;

(c) This annex further provided that the Applicant's appointment would become effective only on the date on which he began his journey to his duty station.

2. In fact, the Applicant did not conclude any contract of employment with the Respondent and did not receive any irrevocable promise of a contract. The facts are that :

(a) The annex to the communication of 29 May 1964 stressed the provisional and revocable nature of the offer made to the Applicant ;

(b) The communication itself stipulated that the acceptance of the offer should be signified by reply in writing ;

(c) The oral statements made by the Applicant to the doctor approved by the United Nations and to the Deputy Director of the Information Centre in Mexico City are therefore valueless. Moreover, neither the doctor nor the Deputy Director

is authorized to appoint United Nations staff members or to receive acceptances of offers of appointment ;

(d) The Applicant did not send the Director of Personnel a reply in writing accepting the offer of employment until after he had received from the Office of Personnel a cable withdrawing that offer.

3. The Tribunal has already ruled that Staff Regulation 9.1 is not applicable in the absence of an appointment.

4. The annex to the letter dated 29 May 1964 invited the Applicant to leave the post which he then occupied only after receipt of confirmation of the offer of employment from the United Nations. The Applicant therefore resigned from that post on 4 June 1964 at his own risk.

The Tribunal, having deliberated until 29 September 1965, now pronounces the following judgement :

I. The Respondent asks the Tribunal to declare the application non-receivable on the ground that the Applicant is not a person to whom the Tribunal is open under article 2.2 of its Statute.

The paragraph in question provides that :

“ The tribunal shall be open :

“ (a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death ;

“ (b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied. ”

The Respondent also notes that annex I to the Rules of the Tribunal implies that only staff members, former staff members, or persons entitled to rely on the rights of staff members may bring a case before the Tribunal. The Applicant, according to the Respondent, does not come within any of these categories.

II. The Tribunal observes that these provisions must be interpreted in the light of their context. Article 2.1 of the Statute of the Tribunal lays down that : “ The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. ” It goes on to specify that “ The words ‘ contracts ’ and ‘ terms of appointment ’ include all pertinent regulations and rules in force at the time of alleged non-observance. ”

The Tribunal notes that the Applicant bases his request on a letter dated 29 May 1964 from the Director of Personnel of the United Nations, which he received on 4 June 1964 and which contained an offer of a fixed-term contract. The letter refers to an annex which gives certain instructions regarding the action to be taken by the recipient of the offer. This annex, while referring to the Staff Regulations and Staff Rules, also contains what is described in the letter from the Director of Personnel as “ further information on conditions of employment, travel and related matters ”.

The Applicant is therefore asking the Tribunal to resolve a legal situation arising out of a letter written by the Director of Personnel of the United Nations under an appointment procedure laid down by the Staff Regulations and Staff Rules.

It is not open to dispute, therefore, that the issue is one which must be resolved essentially on the basis of rules of law which it is the responsibility of the United Nations Administrative Tribunal to apply. The question whether or not the Applicant must be regarded as the holder of a contract of employment with the United Nations can therefore be decided only after a substantive consideration of the case, which it is incumbent on the Tribunal to carry out.

III. Consequently, the Respondent's preliminary contention that the Tribunal should find the application non-receivable on the ground of the Applicant's lack of *locus standi* must be rejected.

IV. The Applicant asks the Tribunal to rule that his acceptance of the offer of contract contained in the letter from the Director of Personnel dated 29 May 1964 had the effect of realizing the consensus of intent required to bring into being a contract of employment between him and the United Nations.

According to the Applicant, such acceptance is implied by his behaviour on and after 4 June 1964, on which date he claims that he already visited the physician selected by the United Nations in order to undergo the medical examination called for in the letter from the Director of Personnel. In addition, he claims that on the same date he verbally informed the Deputy Director of the United Nations Information Centre in Mexico City of his acceptance. Finally, he claims that he confirmed his acceptance in a letter dated 6 June 1964 sent by him to the Director of Personnel.

The Respondent has asserted that on 5 June 1964 he sent a cable withdrawing his offer and that he confirmed the withdrawal of the offer in letters dated 10 June and 29 July 1964 which, furthermore, referred explicitly to the cable in question. That being so, the Applicant's acceptance of an offer which had already been withdrawn could have no legal effect.

V. The parties have argued the question whether the cable sent from New York on 5 June 1964 reached its addressee. The Tribunal heard the evidence of the official who was at that time serving as Acting Resident Representative in Mexico City. This official personally received a cable informing his office of the dispatch of the cable addressed to the Applicant. He testified that he contacted the Applicant on the morning of 6 June 1964 and satisfied himself that the Applicant had received the cable on the previous day.

The Tribunal has reached the conviction that the cable did reach the Applicant on the evening of 5 June. Consequently, the letter sent to the Director of Personnel on 6 June, accepting the offer made in the letter dated 29 May, cannot have the legal effect attributed to it by the Applicant. Nor were the Applicant's visit to the doctor for a medical examination or his verbal statement to an official having no competence in the matter sufficient to create a contract of employment, since the letter dated 29 May called for a reply by air mail.

VI. The Tribunal observes that, if the Applicant had not received the cable dated 5 June, it would be difficult to understand why he did not ask for any explanation on that subject when he received the letters dated 10 June and 29 July confirming the withdrawal of the offer, since they both referred explicitly to that very cable. Even if it is assumed that contract of employment with the United Nations can be concluded by a mere consensus of intent, the Applicant's view that the legal situation was conclusively established so far as the United Nations is concerned from the moment when he underwent the medical examination called for in the letter dated 29 May 1964 and made *proprio motu* a verbal statement

of acceptance is incompatible with the terms of the letter in question, which requested a reply in writing. Moreover, when the Applicant did send a reply in writing he was already aware of the withdrawal of the offer.

VII. Thus, the Applicant's claim that he is the holder of a contract of employment with the United Nations by reason of his valid acceptance of a valid offer of employment must be set aside.

VIII. The Tribunal must also point out that, in contending that the "letter of appointment" of 29 May 1964 constitutes a "real and effective fixed-term appointment" and that his acceptance of it on 4 June 1964, as signified in his actions, gave rise to a "real and effective contract of employment" between the United Nations and himself, the Applicant is mistaken both as regards the legal effect of the letter dated 29 May 1964 and as regards the provisions of the Staff Regulations and Rules relating to appointments.

In point of fact, the procedure for appointing United Nations Staff members comprises a number of stages. It is generally initiated by an act of the individual in question, who submits an application for employment containing various items of information, and it ends with the transmittal to the staff member of the letter of appointment, which must be accepted in writing by the prospective staff member in the manner prescribed by Regulation 4.1 and annex II of the Staff Regulations.

In the intervening period, the United Nations administration and the prospective staff member carry out various actions designed to define the latter's position in the Organization and to settle various material questions.

IX. It follows from the Staff Regulations and Rules that a legal relationship between the staff member and the United Nations is in fact established before the formal letter of appointment is issued: Staff Rule 104.2 lays down that "The appointment of every staff member internationally recruited shall take effect from the date on which he enters into official travel status to assume his duties".\*

It is clear, however, from the text of this provision that in the case of a person internationally recruited—as the Applicant was—a unilateral act of the United Nations administration, an authorization to begin official travel, is required for the appointment to take effect.

Such an authorization was certainly not given to the Applicant. Accordingly, in his case no appointment took effect within the meaning of Staff Rule 104.2.

The question whether the Respondent was under any obligation to give such an authorization depends on the legal force both of the letter dated 29 May 1964 in which the Applicant was offered a fixed-term contract and of the acts carried out by the Applicant in consequence of that letter.

According to the Applicant, the letter created an obligation on his part to undergo a medical examination. He also contends, however, that by his actions on 4 June and his letter of 6 June he signified an acceptance which was conclusively binding on the United Nations.

X. The Tribunal observes that the letter dated 29 May 1964 calls for a reply from the addressee, but the purpose of this reply is clear: to give the information requested in the annex to the letter. The reply therefore directly

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\* The provisions of the French text of Staff Rule 104.2, which are quoted in the original of Judgement No. 96, read: "La nomination des fonctionnaires recrutés sur le plan international prend effet le jour où ils partent, dûment autorisés, pour le lieu de leur affectation".



concerns the information which the United Nations desires to obtain. The letter of 29 May 1964 gives no other significance to the reply requested.

This is understandable, for it is clearly stated in the letter of 29 May 1964 and the annex to it that the offer of employment is not a final one. The letter explicitly states that the offer will be "confirmed" as soon as the Medical Officer of the United Nations has informed the Director of Personnel of the results of the Applicant's medical examination.

Thus, the Applicant was given notice by the letter dated 29 May 1964 that before the formal letter of appointment could be issued a further unilateral act by the United Nations was required.

The significance of the distinction between the provisional offer contained in the letter dated 29 May 1964 and a confirmed offer on the basis of which arrangements could be made for the Applicant's travel to Headquarters is clear from the annex to the letter dated 29 May 1964, to which the Applicant was invited to refer.

While the issue of the provisional offer indisputably entails, for the person applying for a United Nations post, obligations to do certain things (medical examination, submission of certificates, travel plans, etc.), it does not follow from that that he becomes a United Nations staff member from that very moment.

XI. The need for confirmation of the offer of employment and the importance of such confirmation in determining the Applicant's status vis à vis the United Nations is clear from the terms of the annex to the letter of 29 May 1964 and, in particular, from paragraph 5 of that annex, which provides that as soon as the provisional offer of appointment has been confirmed, the person concerned should proceed with any necessary arrangements for leaving his present employer.

This provision therefore shows that pending such confirmation the person concerned must not take any steps to change his occupational status and is in no way at the disposal of the United Nations.

In the case before the Tribunal, the Applicant never received this confirmation: on the contrary, he was informed that the "provisional offer" dated 29 May 1964 was withdrawn.

XII. That being so, the Tribunal considers that neither the Applicant's actions on and after 4 June 1964 nor the letter which he sent to the Director of Personnel on 6 June 1964 could create any rights in his favour or give rise to a binding employment contract between him and the Respondent.

XIII. For these reasons, the Tribunal decides that:

1. The contention of non-receivability is rejected;
2. The application is rejected.

*(Signatures)*

Suzanne BASTID  
*President*

R. VENKATARAMAN  
*Vice-President*

H. GROS ESPIELL  
*Member*

Louis IGNACIO-PINTO  
*Alternate Member*

N. TESLENKO  
*Executive Secretary*

*New York, 29 September 1965.*

STATEMENT BY THE HONOURABLE MR. R. VENKATARAMAN  
(Original : English)

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

New York, 29 September 1965.

(Signature)  
R. VENKATARAMAN

Judgement No. 97  
(Original : French)

Case No. 94 :  
Leak

Against : The Secretary-General  
of the United Nations

*Rescission by the Respondent of the summary dismissal for serious misconduct of a staff member holding a fixed-term appointment.*

*Request for a ruling that the Applicant should be deemed to have in fact held an indefinite contract.—Absence of circumstances peculiar to the Applicant's case which might have given rise to an expectancy that his contract would be renewed or that he would be granted a different contract.—Absence of evidence enabling the Tribunal to determine with certainty what would have been the Respondent's decision if the incident which led to the summary dismissal had not occurred.—Request rejected.*

*Request for a ruling that the Applicant should be restored to the situation in which he would have been if the summary dismissal had not occurred.—Object of the rescission of an administrative decision.—Need to make restitutio in integrum.—Delay in taking the decision of rescission.—Tribunal's competence to rule on whether the Respondent drew all the legal inferences from the rescission and restored the status quo.—Difficulty which the Applicant, as a consequence of the act later rescinded, encountered in finding employment corresponding to his abilities.—Respondent, by his manner of replying to a request for information from an employer, brought about that employer's dismissal of the Applicant.—Respondent's failure to take any steps to restore the situation that existed before the disciplinary action in respect of the Applicant's possibilities of finding other employment.—Having regard to the impossibility at the present time of restoring the status quo, award to the Applicant of compensation of \$5,000.*

*Request for the issue to the Applicant of a certification of service, in accordance with Staff Rule 109.11.—Applicability of this Rule.—Mention of the rescinded decision in that certification prohibited.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Héctor Gros Espiell ;  
Mr. Louis Ignacio-Pinto ;

Whereas Kenneth W. Leak, a former staff member of the United Nations, filed an application on 21 January 1965 and addenda on 5 February, 9 March and