

re-employment of the Applicant—that would have existed if the summary dismissal had never taken place.

That being so, an award of compensation is the only means of drawing, in this respect, the legal inferences from the obligations resulting from the rescission.

In fixing this compensation, the following considerations must be taken into account : at the time of the rescission of the decision of dismissal, the Applicant was forty-one years of age ; he had been for more than two years under the stigma of very severe disciplinary action preventing his normal re-employment ; in the years that preceded his entry into United Nations service, he earned approximately \$3,000 per year ; his base salary at the United Nations was \$3,240. To provide for the *restitutio in integrum* which is the legal consequence of the rescission of the decision of summary dismissal, the Tribunal awards to the Applicant compensation of \$5,000 (five thousand dollars).

IX. Concerning the request for the issue to the Applicant of a certification of service, the Tribunal finds that Staff Rule 109.11 is applicable to the Applicant and that no mention of the rescinded decision may be made, in any form whatsoever, in that certification.

X. The other requests for relief are rejected.

(Signatures)

Suzanne BASTID  
President

H. GROS ESPIELL  
Member

LOUIS IGNACIO-PINTO  
Member

N. TESLENKO  
Executive Secretary

New York, 4 October 1965.

## Judgement No. 98

(Original : English)

Case No. 97 :  
Gillman

Against : The Secretary-General  
of the United Nations

*Termination of the employment of a staff member holding a permanent appointment, on the ground of unsatisfactory service.*

*Determination of the decision whose validity the Tribunal has to examine.—Obligation of the Respondent, when he terminates a permanent appointment, to comply with the Staff Regulations and to carry out prior thereto a complete, fair and reasonable procedure.—Review by the Working Group of the Appointment and Promotion Board of the services of the staff member concerned represents, in principle, such a procedure.—The Working Group did not give an accurate account of the situation revealed by the reports on the Applicant.—The Working Group, when it drew up the Applicant's sick-leave record, added annual leave to sick leave and paid no regard to the circumstances of the accident which occurred while she was carrying out her supervisor's instructions.—Connexion between the Working Group's report and the contested decision.*

*Held that the Applicant was deprived of the aforesaid procedure.*

*Application of article 9.2 of the Statute of the Tribunal.—Remand of the case for correction of procedure and payment of compensation to the Applicant for the prejudice caused by the procedural delay.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; Mr. Sture Petré ;

Whereas, on 25 June 1965, Mrs. Suzanne Gillman, née Lenoir, a former staff member of the United Nations, filed an application requesting the Tribunal :

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

(b) To order the rescinding of the termination of the Applicant's permanent appointment ;

(c) To order the payment of back pay from the date of the termination of the appointment to the date of the judgement, less the sum paid as termination indemnity under annex III to the Staff Regulations ;

(d) To order the Applicant's reinstatement ;

(e) In case of non-reinstatement, to order, under article 9, paragraph 1, of the Tribunal's Statute, the payment of :

(i) \$10,000 representing two years' gross salary ;

(ii) \$25,000 as special damages for injuries to person and health resulting from accident ;

(f) To order the payment of \$190.10 in restitution of ten days' leave entitlement ;

Whereas, on 29 June 1965, the Applicant filed a statement indicating that she was maintaining before the Tribunal all the arguments she had previously advanced before the Joint Appeals Board ;

Whereas, on 30 July 1965, the Respondent delivered his answer ;

Whereas, in respect of the interrogation of witnesses, the answer requested the Tribunal to invite the Applicant to formulate questions which, if deemed relevant to the issues in the case, could be put to the witnesses, either in writing or orally, under the procedure laid down in article 10, paragraph 3, of the Rules of the Tribunal ;

Whereas, on 16 September 1965, the Applicant indicated the names of ten witnesses whom she was asking the Tribunal to hear and specified the matters on which the witnesses should be interrogated ;

Whereas the Applicant also requested the President to direct the Respondent to produce the medical record of her own examinations by the United Nations Health Service from March 1959 to March 1963 and the list of absences from 1957 to 1962 of one of her supervisors ;

Whereas the President rejected those requests ;

Whereas, on 23 September 1965, the President decided, in order to complete the documentation in the case, that the parties and six of the ten witnesses suggested by the Applicant would be heard under the procedure laid down in article 10, paragraph 3, of the Rules of the Tribunal ;

Whereas the procedure under article 10, paragraph 3, of the Rules was con-

ducted on that day by the President assisted by the Lord Crook, Mr. Gros Espiell and Mr. Ignacio-Pinto ;

Whereas one of the six witnesses designated by the President failed to appear or to submit a written deposition ;

Whereas, in the course of the procedure under article 10, paragraph 3, of the Rules, the Respondent filed additional documents ;

Whereas the President informed the parties that no oral proceedings under article 15 of the Rules would be held in the case ;

Whereas, at the President's request, the Respondent filed additional statements and documents on 29 and 30 September, 1 October and 24 November 1965 ;

Whereas, on 5 October 1965, the Applicant filed an additional statement at the President's request ;

Whereas, on that day, the President requested the Applicant to file two further written statements and an additional document ;

Whereas the Applicant failed to comply with those requests ;

Whereas the Tribunal, having convened in Geneva on 24 February 1966, informed the parties on 1 March 1966 that it had found the case should be remanded in order that the required procedure might be instituted or corrected under article 9, paragraph 2, of the Statute ;

Whereas, on the same day, the Respondent requested a remand pursuant to article 9, paragraph 2 ;

Whereas the Applicant was informed by cable of that request ;

Whereas the facts in the case are as follows :

The Applicant entered the service of the United Nations on 19 March 1952 as a clerk-stenographer at the G-3 level and was assigned to the French typing pool of the Department of Conference and General Services. She was given a one-year fixed-term appointment, which was converted into a temporary-indefinite appointment on 19 March 1953 and into a permanent appointment on 1 March 1955. A periodic report issued on 27 September 1957 with respect to the Applicant's performance from 11 January 1955 to 15 April 1957 rated her as " a staff member who maintains a good standard of efficiency " and noted that she had qualified in the English language allowance examination. On 10 March 1959 the Applicant was instructed by one of her supervisors to accompany home a colleague who had been taken ill while at work. On the way, the taxi-cab carrying the two staff members was involved in an accident. The Applicant suffered several injuries and was unable to resume her duties until 9 May 1959. On 13 August 1959 a periodic report was issued on the Applicant's performance for the period 16 April 1957 to 22 July 1959. The report, which was examined and signed by the Applicant, rated her as " a staff member who maintains only a minimum standard ". It noted that, during the period covered, the Applicant had taken fifteen uncertified and seventy-one and one half certified days of sick leave and expressed the following view on her performance :

" Mrs. Gillman sometimes displays listlessness—perhaps because of the state of her health—with the result that her speed, her output and the quality of her work have declined. However, she may, when supervised and encouraged, be relied upon for the production of a document. "

The report issued on 13 August 1959 and the subsequent reports on the Applicant's performance contained no reference to the accident of 10 March 1959 and

did not indicate whether the Applicant's state of health and the sick leave taken by her were in part attributable to service-incurred injuries. On 3 March 1960, the Chief of the Stenographic Service wrote to the Office of Personnel that she had informed the Applicant that "her work performance being still unsatisfactory, I had to recommend that her within-grade increase be withheld". In a memorandum to the Chief of the Stenographic Service dated 6 April 1960, the Applicant protested against the withholding of her within-grade increase and confirmed an earlier request for a transfer to another section. On 16 August 1960, the Office of Personnel addressed a memorandum to the Applicant as follows :

" 1. This is to inform you that the Appointment and Promotion Committee will shortly review your permanent appointment after five years of service. The Executive Officer of your Department will inform you in due course in case the Board wishes to interview you.

" 2. Upon your written request to the Chief of Registry (Room 2070), he will arrange for you to see your official status file. "

No review, however, of the Applicant's appointment was made until October 1962. On 31 March 1961, a periodic report was issued on the Applicant's work from 23 July 1959 to 19 March 1961. The report, which was examined and signed by the Applicant, rated her as "a staff member who maintains only a minimum standard" and noted that she had taken eleven and one half uncertified and forty-six certified days of sick leave during the period covered. In January 1961 the Applicant's medical classification was changed to 1-b, and in September 1961 to 2. On 8 November 1961, the Applicant addressed a memorandum to the Chief of the Stenographic Service as follows :

" I have the honour to renew the request for transfer which I made two years ago after my automobile accident.

" As I have said to you on several occasions, I suffer from frequent headaches aggravated by present working conditions in the Pool.

" I should therefore be particularly grateful to you if you would give special attention to my request, as soon as you are able to do so.

" I thank you, in advance, very much. "

On 26 December 1961, the Applicant informed the Office of Personnel that "if for some reason recovery is not had against the parties presently being sued", she intended to submit a claim against the United Nations for the injuries sustained in the accident of 10 March 1959. This was followed by the filing with the Advisory Board on Compensation Claims of a preliminary claim in May 1962 and of a formal claim in October 1964. On 14 May 1962, the Medical Director of the United Nations Health Service informed the Office of Personnel that :

" ...there is no serious medical contra-indication to an extension of Mrs. S. Lenoir-Gillman's appointment.

" However, her chronic absenteeism due to minor illnesses is high, including sick leave taken during home leave or annual leave on two occasions. It may be helpful to draw this situation to her attention at this time. "

On 18 May 1962 a periodic report was issued on the Applicant's work from 20 March 1961 to 17 May 1962. The report rated her as "a staff member who maintains only a minimum standard" and noted that during the period covered she had taken eight uncertified and fifty-nine and one half certified days of sick leave. On 21 May 1962 the Applicant appealed in writing to the Secretary-General against the sick leave resulting from the accident of 10 March 1959 being counted

against her normal sick leave credit. She also referred to "the fact that after my accident, I asked for a transfer from the French Typing Unit to another section where it would be possible to work under less strain than in my section. I was never offered a transfer although I complained several times to Mme. Berger [Chief of the Stenographic Service] about my state of health. At the present time Mme. Berger's attitude is quite arbitrary." In a memorandum to the Secretary-General dated 29 May 1962 the Applicant renewed her request for a transfer to another assignment on medical grounds. The memorandum was accompanied by a copy of a letter dated 28 May 1962 from her doctor to the Medical Director of the United Nations Health Service as follows :

" [Mrs. Gillman] has been under my care for the past six years. About three years ago, she suffered an injury from automobile accident which was followed by pain in the neck and head. The headache pain has continued for a long time.

" Recently, the headache particularly severe as the result of the emotional tension connected with her work situation.

" I have suggested to Mrs. Gillman that she tried to change this situation to something less tense in order to relieve her headache.

" Your co-operation in this connexion will be appreciated. "

On 12 June 1962 the Medical Director wrote to the Executive Officer of the Office of Conference Services that " for medical reasons, it will be appreciated if Mrs. Gillman is excused from working a night shift for a period of one month ". On 26 November 1962 the Deputy Director of Personnel addressed to the Applicant a letter as follows :

" Working Group No. II of the Appointment and Promotion Panel, which recently reviewed your Permanent Appointment, made its recommendation to the Appointment and Promotion Board and the Appointment and Promotion Board has recommended to the Secretary-General that your Permanent Appointment should be terminated on the grounds of unsatisfactory performance and record of attendance.

" The Secretary-General, after carefully considering your case in the light of this report and of all the circumstances, has decided, with regret, to terminate your Permanent Appointment in accordance with the provisions of Staff Regulation 9.1 (a).

" This letter constitutes formal notice of the termination of your appointment, as required by Staff Rule 109.3(a), to become effective 25 February 1963. You will also be paid termination indemnity in accordance with Annex III to the Staff Regulations, as well as payment for accrued annual leave, within the limits set by the Staff Rules. "

On 28 December 1962 the Director of Personnel wrote to the Applicant that, after once again reviewing the case, the Secretary-General had not changed his decision to terminate her appointment. On the same day the Applicant took her case to the Joint Appeals Board. In a unanimous report dated 29 May 1964 the Board submitted to the Secretary-General the following conclusions and recommendations :

" 29. The Board is aware of the heavy pressures to which the Secretariat was subjected in 1960-1962. There were frequent changes of Executive Officers and Personnel Officers, and this mobility, no doubt, was, at least to some extent, responsible for the delays that occurred. On the other hand, the appeal

is not against any particular official accused of prejudice, but against the series of administrative actions which taken together could well create the impression in a staff member's mind, especially one who is suffering from the after-effects of a serious accident, that the whole combination of delays, neglect of repeated requests for transfer even when supported by medical advice, and severe disciplinary steps, such as the withholding of a within-grade increase, is somehow directed against the staff member. In turn, these suspicions may be exacerbated by the normal tensions and pressures of any typing pool operation, especially one which, like the Stenographic Service of the Office of Conference Services, is bound to work on tight production schedules, in an atmosphere which is closer to that of a factory than of an average office.

" 30. The Joint Appeals Board concluded that while there is not sufficient evidence of personal prejudice against Appellant on the part of any one official, the combination of procedural flaws in the administrative actions related to the decision to terminate are of such a character that the Secretary-General may wish to view the case in its integral aspect. The Joint Appeals Board, therefore, unanimously recommends that Appellant be given all possible assistance in pursuing as expeditiously as possible her claim with the Advisory Board on Compensation Claims in connexion with her service-incurred accident. Subsequently, the Secretary-General may wish to weigh the factor of sick leave in this termination case in the light of the decision of the Compensation Board and decide on a course of action accordingly.

" 31. The Joint Appeals Board would further recommend that attention be given to the whole question of personnel management, particularly in those areas of the Secretariat where tight production schedules, large numbers of staff, and other circumstances create working conditions approximating to those of a shop. It would appear necessary that in these areas much stricter attention should be paid to the rules governing probationary contracts, permanent appointments, five-year reviews, and other methods of ensuring that inefficiency is discovered and acted upon in due time. It would also seem essential that existing procedures be reviewed and, where necessary, new procedures be established, to make certain that staff members are fully informed regarding their entitlements, upon return from any kind of absence, in order to ensure that any accidents or illnesses which may subsequently be considered as service-incurred be promptly submitted to the Advisory Board on Compensation Claims for its decision. "

On 18 August 1964 the Acting Director of Personnel transmitted to the Applicant a copy of the Board's report and informed her that :

" The Secretary-General has decided to accept the Board's recommendation which appears in para. 30 of the report, namely that ' Appellant be given all possible assistance in pursuing as expeditiously as possible her claim with the Advisory Board on Compensation Claims in connexion with her service-incurred accident. Subsequently, the Secretary-General may wish to weigh the factor of sick leave in this termination case in the light of the decision of the Compensation Board and decide on a course of action accordingly ' . "

On 15 September 1964 the Office of Personnel informed the Applicant that :

" ...the Advisory Board on Compensation Claims has been and continues

to be available to entertain your claim for compensation for an accident alleged to be service-incurred.

“ I have checked with the Advisory Board and was informed that you had been requested in writing to produce certain documents in support of your claim but you had failed to do so. If you need any assistance or advice in this respect, please feel free to call on me at a convenient time. ”

After further correspondence, the Secretary of the Advisory Board on Compensation Claims addressed to the Applicant a letter dated 11 March 1965 as follows :

“ At its 119th meeting on 24 February 1965, the Advisory Board on Compensation Claims approved the reimbursement of medical expenses and restitution of sick leave taken as a result of injuries sustained in an accident on 10 March 1959.

“ Accordingly, arrangements have been made to effect payment in the amount of \$786.00 for medical expenses as follows :

	<i>Dollars</i>
Dr. D. Halpern . . . . .	444.00
Dr. N. A. Schiff . . . . .	240.00
Drugs . . . . .	102.00
	<u>786.00</u>

“ The Office of Personnel will notify you when appropriate action has been taken concerning the restitution of your ten-day leave entitlement totalling \$190.10. ”

In a letter dated 25 March 1965 to the Deputy Director of Personnel, the Applicant referred to the findings of the Advisory Board on Compensation Claims and added :

“ I am confident that by this time it must be apparent that any deterioration in my efficiency was temporary and was caused by the service-incurred accident and its after-effects. I am able to and anxious to return to the position from which I was severed for no good reason and without any consideration being given to the injuries sustained by me for which I have just received compensation.

“ I would appreciate your immediate attention to this matter consonant with the Findings, Conclusions and Recommendations as contained in the report of the Joint Appeals Board referred to above. ”

On 14 April 1965, the Deputy Director of Personnel addressed to the Applicant a letter as follows :

“ I thank you for your letter dated 25 March 1965 and am glad that the Advisory Board on Compensation Claims has awarded you medical expenses and annual leave entitlement in connexion with the injuries sustained by you in an accident on 10 March 1959.

“ I have carefully examined the record and am satisfied that the above-mentioned action carries out the recommendation of the Joint Appeals Board and the decision of the Secretary-General, and that the results of the reviews by the two Boards do not affect the grounds for your termination, which had been carefully considered by the Secretary-General on the recommendation of the Appointment and Promotion Board, for unsatisfactory performance and record of attendance.

“ While I appreciate your interest in working again with the United Nations Secretariat I regret that I can see no possibility of reinstatement.” On 25 June 1965, the Applicant filed the application previously referred to.

Whereas the Applicant's principal contentions are :

1. The injuries which the Applicant sustained in a traffic accident on 10 March 1959 and which obliged her to take fifty-five and one half days of sick leave were service-incurred. The periodic report issued on 13 August 1959—the first to contain derogatory remarks on the Applicant's work—referred to the unsatisfactory state of her health but failed to indicate that this was due to service-incurred injuries.

2. Any difficulties which the Applicant may have experienced as regards the efficiency of her work were caused by the service-incurred injuries sustained in the accident of 10 March 1959.

3. On 16 August 1960 the Office of Personnel informed the Applicant that her permanent appointment would be reviewed in the near future by the Appointment and Promotion Committee. Having heard nothing further on the subject, she inquired of one of her supervisors, who told her that, since she had not been called by the Committee for an interview, she could assume that the results of the review had been favourable. Actually no action had been taken by the Committee and the Applicant's appointment was reviewed only two years later.

4. In June 1962 the Applicant was refused home leave on the grounds that her supervisors had recommended the termination of her permanent appointment. The Deputy Director of Personnel, in an interview with her husband and with her counsel, expressed his sympathy. She was subsequently allowed to take her home leave.

5. The Chief of the Stenographic Service caused the termination of the Applicant's permanent appointment through personal animosity and prejudice, as is evidenced by the following :

(a) The Chief of the Stenographic Service, although knowing of the sick leave resulting from the service-incurred injuries, took no action to secure that such sick leave should not be counted against the Applicant's regular sick leave credit.

(b) Since those injuries caused persistent and severe headaches, the Applicant requested a transfer from the French typing pool to a less strenuous assignment. Although she fulfilled all the conditions for such a transfer, the Chief of the Stenographic Service ignored her request.

(c) In October 1962, the Chief of the Stenographic Service caused the Applicant to arrive late for an interview with a Working Group of the Appointment and Promotion Board which was reviewing her appointment. This created a bad impression which caused her late appearance to be attributed to a careless attitude towards her responsibilities.

Whereas the Respondent's principal contentions are :

1. The decision to terminate the Applicant's permanent appointment was properly grounded, pursuant to Staff Regulation 9.1 (a), on her unsatisfactory performance.

2. Whether the Applicant's services were satisfactory is a question within the area where the Secretary-General's judgement is final. In the present case, the Applicant's periodic reports are sufficient to establish that the termination of her appointment on the ground of unsatisfactory service was neither arbitrary nor improperly motivated.



3. The periodic report issued on 13 August 1959, in which the quantity and quality of the Applicant's work received the lowest possible of three ratings, covered more than two years of service of which only two months were subsequent to her return to duty after the accident of 10 March 1959.

4. There is no medical evidence for attributing the Applicant's unsatisfactory services to any one temporary condition of health. Her sick leave record shows most absences after her return to duty in May 1959 to have been certified for reasons unrelated to the accident of 10 March 1959.

5. The delay in the review of the Applicant's permanent appointment violated no provision of the Staff Regulations or Rules and did not prejudice her rights. Moreover, no review or recommendation by any Board is a prerequisite for a termination for unsatisfactory services under Staff Regulation 9.1 (a).

6. The delay in the consideration by the Advisory Board on Compensation Claims of the Applicant's claim in respect of the injuries sustained in the accident of 10 March 1959 was caused by the Applicant herself and by her representatives. The consideration of the claim by the Board was a prerequisite to the allowance of compensation or special sick leave credit.

7. The Applicant's allegations of prejudice merely suggest the existence of personal antagonism between supervisors dissatisfied with a staff member and the staff member who has been made aware of this dissatisfaction. They are insufficient to place the validity of the Secretary-General's decision in issue. Moreover, the particular allegation that the Chief of the Stenographic Service caused the Applicant to arrive late at an interview with a Working Group of the Appointment and Promotion Board is at variance with the description of the incident set forth in the statement by the Office of Personnel before the Joint Appeals Board.

8. As regards the Applicant's plea concerning the restitution of ten days' leave entitlement, the payment of \$190.10 has already been authorized pursuant to a recommendation of the Advisory Board on Compensation Claims but is being withheld pending determination of the Applicant's possible indebtedness to the Organization.

9. The Applicant's plea for special damages for injuries to person and health is unreceivable under article 7 of the Statute of the Tribunal, for it is unrelated to the administrative decision which is the subject of her application and of the earlier appeal to the Joint Appeals Board. Moreover, such damages are not claimed, and could not be claimed by the Applicant under Appendix D to the Staff Rules, which governs compensation for injuries attributable to United Nations service. The plea, therefore, is unrelated to the Applicant's appointment and does not fall within the Tribunal's competence as determined by article 2 of its Statute.

The Tribunal, having deliberated from 24 February to 11 March 1966, now pronounces the following judgement :

I. The request before the Tribunal is for " the rescinding of the termination " of the Applicant's permanent appointment.

The decision contested in the application is a letter dated 14 April 1965, from the Deputy Director of Personnel. By this letter the Applicant was informed that the award of certain sums by the Advisory Board on Compensation Claims constituted compliance with the recommendation of the Joint Appeals Board and the decision of the Secretary-General thereon. The Deputy Director of Personnel added :

“ I . . . am satisfied that the above-mentioned action carries out the recommendation of the Joint Appeals Board and the decision of the Secretary-General, and that the results of the reviews by the two Boards do not affect the grounds for your termination, which had been carefully considered by the Secretary-General on the recommendation of the Appointment and Promotion Board, for unsatisfactory performance and record of attendance. ”

The President of the Tribunal requested the Respondent to explain the significance of this letter in relation to the terms of the recommendation of the Joint Appeals Board, which had been approved by the Secretary-General and communicated to the Applicant on 18 August 1964. The Deputy Director of Personnel stated that the letter of 14 April 1965 “ was not and did not purport to be a decision by the Secretary-General. . . . My reply that there was no possibility of reinstatement did not constitute a new decision but merely maintained the former position. ”

In reply to another question from the President, the Respondent later stated, with reference to the application of article 7 of the Statute of the Tribunal to the present case : “ it seems agreed between the parties and acknowledged by the Tribunal that it is the termination which is disputed and which is the subject of this appeal. ”

The Respondent thus considers that, following the recommendation of the Joint Appeals Board, in its report of 29 May 1964, the Secretary-General maintained the decision to terminate the permanent appointment of the Applicant for “ unsatisfactory performance and record of attendance ” and that this decision is based on the recommendation of the Appointment and Promotion Board of 31 October 1962.

The Tribunal thus has to examine the validity of the decision taken by the Respondent on 26 November 1962, which was not modified following the recommendation of the Joint Appeals Board.

II. The Tribunal has held in earlier judgements that a permanent appointment cannot be terminated except under Staff Regulations which enumerate precisely the reasons for the termination. In addition, having in mind the very substantial rights given by the General Assembly to those individuals who hold permanent appointments in the United Nations Secretariat, the Tribunal has considered that such permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision.

III. The Tribunal notes that the contested decision is based on Staff Regulation 9.1 (a) and that the reasons given clearly refer to the provision of the Regulation which authorizes the Secretary-General to terminate a permanent appointment if “ the services of the individual concerned prove unsatisfactory ”.

The Tribunal further notes that the Staff Regulations and Rules do not specify the precise procedure to be followed in order to terminate a permanent appointment for unsatisfactory service.

The decision of 26 November 1962 was taken on the basis of the recommendation of the Appointment and Promotion Board endorsing the recommendations of Working Group No. II, set up in pursuance of Staff Rule 104.14 (d). This recommendation was made in exercise of the function entrusted to the Board under Staff Rule 104.14 (f) (ii) (B), namely :

“ The review of appointments of staff members holding Permanent or Regular Appointment, as may be referred to it in accordance with the

provisions of Rule 104.13 (c), upon the completion of the first five years of service under such appointments, for the purpose of determining whether the staff member concerned has maintained the standards of efficiency, competence and integrity established in the Charter.”

The Applicant pointed out that under the terms of Staff Rule 104.13 (a) (ii), her permanent appointment should have been reviewed “at the end of the first five years of service under such appointment”, i.e., in 1960. The review, however, did not take place until October 1962.

This situation was considered by the Joint Appeals Board in its report of 29 May 1964. The Board included among the “extraneous factors” in the contested decision, within the meaning of Staff Rule 111.1 (b), the delay in completing the review provided for in Staff Rule 104.13 (a) (ii).

The Tribunal recognizes that there is merit in the view advanced by the Joint Appeals Board. Nevertheless, the Tribunal notes that, under Staff Regulation 9.1 (a), the Secretary-General may initiate at any time procedure with the objective of terminating a permanent appointment. In the light of the composition of the Working Group of the Appointment and Promotion Board and of the procedure followed by it in arriving at a recommendation, the review by that Group of the services of a staff member represents, in principle, the complete, fair and reasonable procedure which must be carried out prior to the termination of a permanent appointment.

IV. However, if the Board or Working Group reached its conclusions in the light of inadequate or erroneous information and the Secretary-General subsequently relied on these conclusions in giving reasons for the termination of a permanent appointment, the review by the Board or Working Group would not secure that the Secretary-General’s decision was valid.

V. In this case, the Working Group stated that “Mme. Gillman... a staff member of the Secretariat since 19 March 1952, except for the first two or three years of her appointment, had gone steadily downhill in her performance.”

This assertion is contradicted by documents that were available to the Working Group. The report for the period 11 January 1955 to 15 April 1957 describes the Applicant as “a staff member who maintains a good standard of efficiency”. This assessment cannot be regarded as expressing the opinion that the efficiency of the Applicant’s work declined during this period. Moreover, in testifying before the Tribunal, her Chief of Service admitted that it was only during the second half of 1957 that she noticed a change, that is, five years after the Applicant’s entry into the service of the United Nations.

The Working Group thus did not give an accurate account of the situation revealed by the reports on the Applicant, a situation confirmed by the evidence received by the Tribunal.

Furthermore, the Working Group referred to the absences of the Applicant in the following terms:

“Her sick-leave record was an exceptional one which was aggravated by the accident in which she was involved during 1959. . . . In reviewing Mme. Gillman’s cumulative absences the Group was shocked to find that the staff member has been absent from duty, either on sick or annual leave, for a total of one hundred weeks from 1955 through the end of September last.”

The Tribunal points out that there is no justification for adding annual leave to sick leave in assessing a staff member’s performance, since all staff members

are entitled to annual leave under the Staff Regulations and Rules. What is even more important is that, in referring to the Applicant's accident as a factor aggravating her sick leave record, the Working Group paid no regard to the circumstances of the accident. It did not give special consideration to the leave taken as the immediate result of the accident, neither did it inquire whether other sick leave taken subsequently was connected with the after-effects of the accident, nor did it consider whether the accident and its after-effects might have affected the quality of the work done subsequently by the Applicant. The fact that the accident occurred while the Applicant was carrying out her supervisor's instructions was well known by her superior officers as is evidenced in testimony before the Tribunal.

VI. The reasons given by the Secretary-General for the termination were "unsatisfactory performance and record of attendance". The Deputy Director of Personnel intimated that the Secretary-General reached his decision on the Applicant's case "in the light of this report" of the Appointment and Promotion Board, on the basis of the Working Group's report.

The Tribunal considers that at least one of the grounds for the termination is directly attributable to statements in the report which fail to take into account all the facts in the case, and in particular the circumstances of the accident.

The Tribunal therefore concludes that the Applicant has been deprived of the complete, fair and reasonable procedure which must be carried out before the termination of a permanent appointment.

VII. The Tribunal has been requested by the Respondent, in accordance with the terms of article 9, paragraph 2, of the Statute of the Tribunal, to remand the case for correction of procedure. Without determining the merits of the case, the Tribunal decides that the case should be remanded for the institution of proper procedure.

VIII. Article 9, paragraph 2, of the Statute of the Tribunal provides that "where a case is remanded, the Tribunal may order the payment of compensation, not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay."

IX. The Tribunal considers that, apart from the question whether or not the Applicant found employment, the delay in the final settlement of the case will have caused her some prejudice.

X. The Tribunal, without deciding the merits of the case, orders that :

(a) The case be remanded for correction of procedure ; and

(b) The Applicant be paid as compensation an amount equivalent to three months' net base salary for the prejudice caused by the procedural delay.

*(Signatures)*

Suzanne BASTID

*President*

CROOK

*Vice-President*

Sture PETRÉN

*Member*

N. TESLENKO

*Executive Secretary*

Geneva, 11 March 1966.