

Applicant took full responsibility for the circulation of the papers. As noted earlier, he maintained, in a statement taken down verbatim at his request, that it was his duty "to communicate the facts of an eight-year pattern of the alleged violation to the Organization's Governing Body who can deal with the situation appropriately or bring it finally to the attention of the Secretary-General."

In view of the gross misbehaviour of the Applicant and his admission of responsibility for the action initiated by him and the timing of the action when the General Assembly was in session, deliberately to prejudice the delegations against the Administration, the Tribunal is unable to disagree with the summary dismissal of the Applicant under Staff Regulation 10.2 ordered by the Respondent.

X. For the foregoing reasons, the Tribunal rejects the Application.

*(Signatures)*

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

R. VENKATARAMAN  
*Vice-President*

L. IGNACIO-PINTO  
*Alternate Member*

N. TESLENKO  
*Executive Secretary*

Geneva, 14 April 1967.

## Judgement No. 105

*(Original : English)*

**Case No. 104 :**  
**Francis**

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

*Request for rescission of a decision of the Joint Appeals Board ruling that an appeal was not receivable.*

*Decision of the Board ruling that an appeal by a locally recruited staff member of a TAB field office was not receivable as it was not presented within the time-limits prescribed by Staff Rule 111.3.—Agreement between the Applicant and the Respondent requesting the Board to consider the appeal on its merits.—New decision of the Board reaffirming its earlier decision.*

*Question of the validity of the Board's decision.—Applicability to the Applicant of Staff Rules 101.1 to 112.8.—Scope of Staff Rule 111.3 relating to the time-limits for submitting appeals to the Board.—Its inapplicability to staff members working in offices away from Headquarters.—Lacuna in the Rules as to the time-limits for appeal procedures to be followed by these staff members.—Contested decision unacceptable.*

*Agreement between the Applicant and the Respondent.—Its force and validity.—Tribunal competent to hear the application on the substance.—Interpretation of the reservations made by the parties to that agreement.*

*Claim for award of compensation to the Applicant under article 9.2 of the Statute of the Tribunal.—Claim rejected.*

*Tribunal unable to proceed to final judgement in the case.—Applicant may file with the Tribunal an explanatory memorandum and pleas dealing both with the merits and with the question of time-limits.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. R. Venkataraman, Vice-President; Mr. Louis Ignacio-Pinto, alternate member;

Whereas, on 10 August 1966, Dorothy Eleanor Francis, a former staff member of the United Nations, filed an application contesting a decision by the Joint Appeals Board not to entertain the appeal which she had lodged on 28 February 1966 against the termination of her appointment with the United Nations;

Whereas the Applicant amended her application on 24 October 1966, 12 January and 10 February 1967;

Whereas the pleas of the application as amended read:

(a) "The Applicant requests the Tribunal to order the rescinding of the decision contested pursuant to paragraph 1 of article 9 of the Statute of the Administrative Tribunal.

(b) "The Applicant is invoking the obligation of the Secretary-General to accord her due process in connexion with her appeal against the administrative decision to terminate her contract of employment.

(c) "The failure of the Joint Appeals Board to entertain the appeal is a disregard of the procedures prescribed in the Staff Rules and Regulations. In the event that the Tribunal determines that the case should be remanded to the Joint Appeals Board for a determination on the merits, article 9 (2) of the Statute of the Administrative Tribunal is applicable; the Applicant therefore claims compensation of three months' net base salary for the losses caused by the procedural delay."

Whereas, on 10 November 1966, the Applicant informed the Tribunal that she was withdrawing her application, without prejudice, in pursuance of the following agreement concluded by the parties on that day:

*"Stipulation for withdrawal of application pending further consideration and report by the Joint Appeals Board"*

"The Respondent and the Applicant have agreed as follows:

"(1) Respondent will request the Joint Appeals Board to consider the Applicant's appeal (dated 28 February 1966) on its merits without regard to timeliness but without prejudice to the Joint Appeals Board's decision, already communicated, on the preliminary issue.

"(2) The application now pending before the Administrative Tribunal will be withdrawn, without prejudice to its resubmission or the submission of a new application within the time-limits prescribed in article 7 of the Tribunal's Statute, subsequent to the Joint Appeals Board's further report.

"(3) Both Applicant and Respondent reserve their positions with respect to the timeliness of the appeal, and the decision taken by the Joint Appeals

Board on the preliminary issue and also with respect to any claim for compensation, including compensation for procedural delay, under article 9 of the Tribunal's Statute."

Whereas, on 11 November 1966, the Deputy Director of Personnel requested the Joint Appeals Board to consider the merits of the appeal lodged by the Applicant on 28 February 1966 against the termination of her appointment with the United Nations ;

Whereas, on 29 November 1966, the Chairman of the Joint Appeals Board informed the Deputy Director of Personnel that the Board had declined to enter into the merits of the appeal ;

Whereas, on 12 December 1966, the Applicant reinstated the application she had filed with the Tribunal on 10 August 1966 ;

Whereas, on 16 December 1966, the Respondent filed his answer ;

Whereas, on 3 January 1967, the Applicant filed written observations ;

Whereas, on 10 January 1967, in pursuance of Administrative Instruction ST/AI/163, the President designated Miss Lila Fenwick, a staff member of the United Nations, to replace the Applicant's counsel, who had left the Organization at the expiration of her appointment on 3 January 1967 ;

Whereas, at the request of the Tribunal, the Respondent filed additional documents on 6 and 7 April 1967 ;

Whereas the facts in the case are as follows :

The Applicant entered the service of the United Nations on 1 August 1962 as a Receptionist/Telephone Operator in the Rangoon Office of the Technical Assistance Board under a short-term appointment which was converted three months later into a fixed-term appointment for a period of one year expiring on 31 October 1963. From 23 May 1963 to 31 October 1964, she was assigned as a part-time secretary to the Office of the FAO Country Representative and worked half the day for that Office and half the day for the Technical Assistance Board. On 29 November 1963 she received an indefinite appointment as a secretary in the Rangoon Office of the Technical Assistance Board. The letters of appointment issued to the Applicant with respect to her short-term and indefinite appointments contained the following provision :

" You are hereby offered the appointment described below in the Secretariat of this office of the Technical Assistance Board, subject to the terms and conditions specified herein as amended by or otherwise provided in the United Nations Staff Regulations and Staff Rules, together with such amendments as may from time to time be made to such Staff Regulations, such Staff Rules and such directives. "

They did not specify, however, which series of Staff Rules governed the appointment and contained no indication that a copy of the Staff Regulations and Rules had been given to the Applicant. No letter of appointment appears to have been issued as regards her fixed-term appointment. On 31 May 1965, the Resident Representative in Rangoon of the Technical Assistance Board sent to the Applicant the following notice of termination :

" As you know, after Mr. Huysmans left Burma, FAO decided not to appoint another Country Representative in his place but instead designated me to act as such. For the smooth operation of the FAO office and in its best interests, it was found necessary to reorganize the office and incorporate with the TAB administration. Since all FAO matters will now be handled by TAB

under my control, it is my unpleasant duty to tell you that there will be no need to have a separate secretary for the FAO office.

“ In the circumstances, it is with regret that I have decided to terminate your services with effect from 1 June 1965. Under the terms of your contract with United Nations, a thirty-day notice of termination of service on either part is required, during which period you would have been required to carry out your normal duties in office. However, as a special case, we have decided to pay you cash in lieu of working out the notice period : 1 to 30 June 1965. In addition, you would be eligible to receive an indemnity pay for each year of service, as per Annex III of the UN Staff Regulations. Your E.O.D. [entry on duty] being 1 August 1962, you will receive an indemnity equivalent to one month's pay for the two completed years of service, plus an equivalent amount pro-rated on the basis of the period of service from 1 August 1964 to 30 June 1965. You will also receive cash payment for any accrued leave up to a maximum of sixty working days.

“ In regard to the withdrawal of contribution made by you to the UNJSPF [United Nations Joint Staff Pension Fund], this amount will be worked out by Headquarters and you will receive a cheque direct from them in due course.

“ We are all sorry to lose you but in view of the circumstances explained above, I hope you will understand the position. ”

On 2 and 15 June 1965, the Applicant wrote two letters protesting against the decision to terminate her contract. The first was addressed to the Resident Representative in Rangoon, the second to the Administrative Officer, Technical Assistance Board, New York. No reply to either letter appears to have been sent. On 7 June 1965, the Resident Representative informed the United Nations Headquarters of the termination of the Applicant's appointment by the following letter addressed to the Administrative Officer, Joint Administration Division, Technical Assistance Board :

“ As you are aware, within the TAB Office in Burma, there had been a separate office of FAO, completely and directly under the control of its Country Representative. TAB had agreed to provide a secretary for the office who worked full time for the Country Representative until the departure of Dr. R. B. Griffiths in April 1963 and later, half day when Mr. A. A. C. Huysmans (Rice Processing) handled FAO matters. When the latter left on completion of his assignment in late November 1964, it was decided by FAO not to appoint a new Country Representative but, instead, designated the Resident Representative, TAB, to act as such. TAB had no jurisdiction over FAO until Mr. Cummings took over, which was only for a short while.

“ As far as I was given to understand, FAO office at that time was regarded as a separate entity and TAB had hardly anything to do with it. When I took over from Mr. Cummings, I found to my dismay that the FAO office was thoroughly disorganized. Files were not maintained properly since 1962 and practically no filing system existed, while most letters on which instant action should have been taken were completely ignored. Mrs. Dorothy Francis, the secretary appointed for this job, has been found to be incompetent and appears to take no interest in her work. Some of the letters requiring immediate attention were never brought to notice. In view of this distressing

circumstance, it has been found necessary to completely reorganize the FAO office and bring it directly under TAB control.

“After due consideration, it has been decided to terminate the services of Mrs. Francis as of 30 June 1965—1st to 30th June being the notice period required. Separation Personnel Form No. 184 is enclosed herewith, in triplicate, for record and necessary action.”

A Personnel Action form—No. 184—recording the termination of the Applicant's service was attached to the letter of the Resident Representative. By an interoffice memorandum of 11 June 1965 addressed to the Resident Representative, the Administrative Officer of the Joint Administration Division approved the Personnel Action form. The memorandum stated however :

“In the future please note in accordance with the TAB/SF Field Manual, Section : IV-C, paragraph 12 (a), page 19, ‘Termination actions must receive the approval of Headquarters prior to implementation’.

“In accordance with the TAB/SF Field Manual, page 23, please submit the data requested for Pension Fund withdrawal benefit purposes.

“Mrs. Francis should receive a letter stating the purpose of termination is ‘unsatisfactory service’ with a copy forwarded to Headquarters for our file.”

On 25 June 1965, the Resident Representative wrote again to the Administrative Officer of the Joint Administration Division. His letter read :

“I would refer to your interoffice memorandum of 11 June 1965 concerning termination of the appointment of Mrs. Dorothy Francis. Your instructions have been noted duly and will be complied with in future.

“As requested, I am attaching herewith for your files, a copy of termination notice to Mrs. Francis dated 31 May 1965. I would here mention that in actual fact, I had decided to terminate her services on grounds of complete lack of interest in her work and inefficiency. However, considering that dismissal on these grounds would be prejudicial to her seeking a post elsewhere, I have toned down the letter so that she could leave the TAB with good grace, and without any blemish on record.

“In the letter of termination, therefore, no mention was made of her ‘unsatisfactory’ service. Instead, it was stated that her services were terminated due to the abolition of the post of secretary for the FAO office. My statement to this effect is further substantiated by the fact that I have no intention of recruiting a secretary for the FAO office. Instead, I am looking out for a young University graduate who could be trained to become a good office assistant, capable of preparing simple routine correspondence, thus relieving me of the day-to-day minutia.

“During the thirty-day notice of termination period, a staff member would normally be required to carry out his/her normal duties. But considering that Mrs. Francis, in the circumstances, would naturally have very little or no interest in her work, besides causing her and the staff not [sic] a good deal of embarrassment, it was decided to pay her cash in lieu of working out her notice period.

“Regarding the data required for Pension Fund withdrawal benefit, we have already written to Mrs. Francis and her reply will be forwarded to you as soon as it is received here.”

On 9 July 1965, the Administrative Officer replied as follows to the letter of 7 June 1965 from the Resident Representative :

“ Further to your confidential letter No. 829 of 7 June about Mrs. Francis’ termination, we enclose for your information copies of correspondence sent to us by her.

“ We have noticed from the letter of termination that the purpose seems to be ‘abolition of post’ rather than unsatisfactory performance as we had assumed from your earlier correspondence. In either case her entitlements would be the same. However, Mr. Vaidyanathan [Associate Director, Joint Administration Division, Technical Assistance Board] did want me to bring to your attention that if the purpose of termination is ‘abolition of post’ then we assume you do not intend to fill the former FAO/TAB job.

“ This is a clear indication why when termination action is contemplated the procedure shown in the TAB/SF Field Manual, page 19, paragraph 12, should be applied. This should also include a written indication of the staff member’s shortcomings with a copy to Headquarters.

“ We do not at this stage intend to reply to Mrs. Francis but your comments would be appreciated. ”

The Resident Representative subsequently appointed in his office an Administrative Assistant. In reply to a confidential cable No. 73 from the Associate Director of the Joint Administration Division of the Technical Assistance Board, he described the functions of the Administrative Assistant in a letter of 16 August 1965, addressed to the Associate Director, which read in part as follows :

“ . . . The main object of appointing U Kyaw Lwin Hla as Administrative Assistant in the TAB office is not one of trying to replace Mrs. Francis. His functions are not ‘slightly altered’ from the functions carried out by Mrs. Francis. The duties assigned to this new staff member have no relation whatsoever to those handled by Mrs. Francis. In the first place, U Kyaw Lwin Hla was not appointed as secretary/typist.

“ . . . ”

“ You will, therefore, see that in actual fact, the FAO’s secretary’s post is abolished and I have no intention whatsoever to fill this post as it has become redundant in the light of the explanation given above. Moreover, the functions of the FAO secretary and the administrative assistant now appointed do not bear any relationship to each other.

“ . . . ”

On 28 February 1966 the Applicant addressed to the Joint Appeals Board in New York an appeal against the termination of appointment. The Board decided, at a meeting on 25 March 1966, to examine as a preliminary issue the question of the receivability of the appeal. On 13 May 1966 a written statement for the Applicant was submitted in support of the request that the Board exercise its discretion to receive the appeal. A written answer to this statement was submitted on behalf of the Secretary-General on 25 May 1966. The Board deliberated on the preliminary issue and adopted the following decision on 9 June 1966 :

“ 1. The notice of termination was communicated to the appellant in a letter from TAB Resident Representative in Burma dated 31 May 1965 and took effect on 30 June 1965. Upon receipt of the notice, the appellant wrote, on 2 June 1965, to the Resident Representative and, on 15 June 1965, to the

Administrative Officer, Technical Assistance Board, Headquarters, in protest of the termination action. She took no further action to pursue the matter until she filed the present appeal dated 28 February 1966.

"2. The Board notes that under the appeals procedure laid down in the Staff Rules 100 Series, which is applicable, *mutatis mutandis*, to TAB local staff, an appeal against an administrative decision must be filed within a time limit of not more than four weeks of the date on which the staff member concerned addressed to the Secretary-General a written request for a review of the decision in contest (Rule 111.3 (a) and (b)). The Board further notes that Staff Rule 111.3 (d) provides that: 'An appeal shall not be receivable by the Joint Appeals Board unless the above time limits have been met, provided that the Board may waive the time limits in exceptional circumstances.'

"3. In the present case, it is granted that the appellant's letter to the TAB Administrative Officer at Headquarters may be considered as being addressed to the Secretary-General in fulfilment of the initial requirement in the appeals procedure. Even on that assumption, a delay of more than eight months has occurred in the filing of the appeal.

"4. Having reviewed all aspects of the case, the Board finds no exceptional circumstances that would warrant a waiver of the time limit in accordance with Staff Rule 111.3 (d).

"5. Accordingly, the Board decides not to entertain the appeal."

On 10 June 1966 the Secretary of the Board communicated to the parties the decision quoted above. The Secretary-General appears to have taken no action on this decision. Thereupon the Applicant filed on 10 August 1966 the application to the Tribunal referred to earlier.

During the pendency of the application before the Tribunal, the Applicant and the Respondent entered into an agreement to request the Joint Appeals Board to consider the Applicant's appeal dated 28 February 1966 on its merits. The text of the agreement has been quoted above. The Joint Appeals Board reaffirmed its earlier decision on the receivability of the appeal and declined to adjudicate on the substance. On 12 December 1966, the Applicant reinstated her original application to the Tribunal.

Whereas the Applicant's principal contentions are :

The Applicant was denied due process in relation to her right as a former staff member to bring an appeal against an administrative decision and denied her procedural rights :

1. By the failure to send any reply to or even acknowledgement of her letters of 2 and 15 June 1965 ;

2. By the failure of the Secretary-General to promulgate reasonably clear and unequivocal rules regarding the procedures to be followed by locally recruited staff members at General Service level away from Headquarters who wish to contest an administrative decision. The lack of clarity is such as to make legal redress virtually unattainable by such a staff member ;

3. By the failure of the Administration to provide the Applicant with a copy of the relevant Staff Rules and Regulations ;

4. By the failure of the Administration to inform the Applicant of her right to appeal and of the procedures to be followed when her intention to contest an

administrative decision was apparent from her letters of 2 and 15 June 1965 ;

5. By the erroneous decision of the Joint Appeals Board that the Applicant's right of appeal was governed by the time limits laid down in Staff Rule 111.3 (a), (b) and (c) ;

6. By the failure of the Joint Appeals Board to determine the reasonable time within which the Applicant should have lodged her appeal in the light of the denials of due process referred to above and in the light of the aggravation of her existing distress caused by the attitude of the Administration towards her.

Whereas the Respondent's principal contentions are :

1. At the time of her termination the Applicant held a Temporary Indefinite appointment, as a local recruit in the Office of the Technical Assistance Board Resident Representative in Burma. In pursuance of Staff Rule 104.12 (c), such appointments are governed by Staff Rules 101.1 to 112.8. Of these rules Staff Rule 111.3 prescribes the procedures for appeals to the Joint Appeals Board, including the time limits ; the Board's competence in cases of staff members at offices away from Headquarters is based in Staff Rule 111.4 (b) viz. "... the Secretary-General shall secure the advice either of the Joint Appeals Board at Headquarters or the European Office or of an appropriate ad hoc committee ". The Applicant had no valid ground to believe that her appointment was governed by Staff Rules 200.1 to 212.7 concerning Technical Assistance Project Personnel.

2. Although the Applicant's letter of appointment did not specify that she had been given a copy of the Staff Regulations and Rules, it did refer to them in terms sufficiently clear and specific to put her on notice of their existence and to prompt her to inquire into their contents, the Regulations and Rules being available in Offices of Technical Assistance Board Resident Representatives.

3. There is no support for the contention that ignorance or doubt about time limits was the reason for the long delay in the submission of the appeal.

4. The decision of the Joint Appeals Board contested by the Applicant was not the consequence of a strict application of the time limits prescribed in Staff Rule 111.3, but rather was reached after a review of all aspects of the case. Were the Tribunal to consider anew whether the Applicant filed her appeal within the proper time and whether the Board erred in weighing the circumstances, then the significance of the Board's discretion in this regard would be nullified.

5. Since article 9, paragraph 2, of the Statute of the Tribunal is not applicable to the present case, the question of payment of compensation under that provision does not arise.

The Tribunal, having deliberated from 3 to 17 April 1967, now pronounces the following judgement :

I. On 9 June 1966 the Joint Appeals Board ruled that in view of the delay in presentation of the appeal to the Board by the Applicant, the appeal was not receivable. The Board held that the appeals procedure under Staff Rules 100 Series was applicable to the Technical Assistance Board local staff and that Staff Rule 113.3 (d) barred the reception of any appeal presented out of time save in exceptional circumstances. Against this decision, the Applicant presented an application to the Tribunal.

II. Had this case rested there, the Tribunal would have proceeded to examine only the receivability of the appeal by the Board, but in pursuance of an unusual agreement between the Applicant and the Respondent dated 10 November 1966 the



Respondent requested the Joint Appeals Board to consider the Applicant's appeal on its merits without regard to the timeliness but without prejudice to the Board's decision already communicated on the preliminary issue. In return, the Applicant withdrew the application pending before the Tribunal without prejudice to its resubmission or the submission of a new application subsequent to the Board's further report. Both parties reserved their position with respect to the timeliness of the appeal and the decision previously taken by the Board on the preliminary issue and also with respect to any claim for compensation, including compensation for procedural delay, under article 9 of the Tribunal's Statute.

On 29 November 1966, the Joint Appeals Board reaffirmed its earlier decision regarding the non-receivability of the appeal and declined to adjudicate on the substance of the matter. Thereupon, the Applicant reinstated her application before the Tribunal.

III. The points for determination in this case may be stated as follows :

1. Is the decision of the Joint Appeals Board regarding the receivability of the appeal valid ?

2. What is the effect of the agreement dated 10 November 1966 between the Applicant and the Respondent requesting the Joint Appeals Board to consider the Applicant's appeal on its merits and of the refusal of the Board to adjudicate on the substance of the matter ?

3. Is the Applicant entitled to compensation under article 9.2 of the Tribunal's Statute ?

IV. On the date of termination of her appointment, the Applicant held an indefinite appointment as secretary in the Rangoon Office of the Technical Assistance Board. It is clear that Staff Rule 104.12 (c) relating to indefinite appointments, applied to her case and that Staff Rules 101.1 to 112.8 governed such indefinite appointments. The Applicant's submission that Staff Rules 200 Series (which apply to Technical Assistance Project personnel) could govern her case is without foundation.

Staff Rule 111.3 relates to the procedures of the Joint Appeals Board. It prescribes the time limits within which the staff member should submit his appeal to the Board. Staff Rule 111.3 (d) prohibits the reception of an appeal by the Board unless the time limits prescribed have been met. The Board may however waive the time limits in exceptional circumstances. Applying the above staff rule, the Joint Appeals Board decided not to entertain the Applicant's appeal.

V. Staff Rule 111.3 (a) to (d) reads as follows :

“(a) A staff member *at Headquarters* [emphasis supplied] who, under the terms of Regulation 11.1, wishes to appeal an administrative decision, shall as a first step address a letter to the Secretary-General, requesting that the administrative decision be reviewed. Such a letter must be sent within one month from the time the staff member received notification of the decision in writing.

“(b) If the staff member wishes to make an appeal against the answer received from the Secretary-General he shall submit his appeal in writing to the Secretary of the Joint Appeals Board *within two weeks* [emphasis supplied] from the date of receipt of the answer. If no reply has been received from the Secretary-General within two weeks of the date the letter was sent to him, the staff member shall, *within the two following weeks* [emphasis

supplied], submit his appeal in writing to the Secretary of the Joint Appeals Board.

“(c) An appeal against the Secretary-General’s decision on disciplinary action shall be addressed to the Secretary of the Joint Appeals Board within two weeks from the time the staff member received notification of the decision in writing.

“(d) An appeal shall not be receivable by the Joint Appeals Board unless the above time limits have been met, provided that the Board may waive the time limits in exceptional circumstances.”

Obviously, the procedures mentioned in Rule 111.3 are applicable only to staff members at Headquarters. From the shortness of time allowed for filing the appeal before the Board and the use of the words “a staff member at Headquarters. . .” it appears to the Tribunal that this rule applies only to staff members at Headquarters and not to staff members working in places away from Headquarters, such as Rangoon in the case under consideration.

To expect a staff member working away from Headquarters to observe the time limits prescribed in Staff Rule 111.3 would be unreasonable. To suggest that the rule applies equally to staff members at Headquarters and to staff members working in far away places would do violence to the text of the rule.

Staff Rule 111.4 reads as follows :

“*Appeals in Offices Away from Headquarters*

“(a) In the European Office a Joint Appeals Board, generally comparable to that at Headquarters, shall be established to advise the Secretary-General in the case of any appeal under Regulation 11.1 by a staff member serving that office.

“(b) In the case of any appeal under Regulation 11.1 by a staff member serving in any other established office, the Secretary-General shall secure the advice either of the Joint Appeals Board at Headquarters or the European Office or of an appropriate ad hoc committee.”

While the rule quoted above provides for a machinery for appeal in offices away from Headquarters, it does not deal with the time limits to be observed in such cases nor does the rule apply the time limits prescribed in Rule 111.3 to appeals in offices away from Headquarters.

The Board has stated in its decision that the appeals procedures laid down in Staff Rule 100 Series were applicable *mutatis mutandis* to Technical Assistance Board local staff. No staff rule or other authority has been cited for this assumption and the Tribunal is not aware of any basis for such extension of Staff Rule 111.3 with regard to time limits to the Technical Assistance Board local staff. Again, the legal term *mutatis mutandis* means “with the necessary changes in points of detail” [Wharton’s Law Lexicon 14 Ed]. Can the time limits applicable to an appeal be deemed to be “points of detail”? Assuming that Staff Rule 111.3 regarding time limits can be applied to staff working away from Headquarters “with the necessary changes in points of detail”, what changes did the Board consider necessary in this case? The Tribunal considers that all these questions require a full examination and that Staff Rule 111.3 (d) regarding time limits, *per se*, cannot be applied to the case.

VI. Even though the Applicant wrote two letters on 2 June and 15 June 1965

protesting against the termination for her appointment, the Administration did not tell the Applicant to seek remedy by way of appeal under the Staff Regulations and Rules. On the contrary, in a letter dated 9 July 1965 to the Resident Representative from the Administrative Officer of the Joint Administration Division of the Technical Assistance Board, it is clearly mentioned: "We [the Administration] do not at this stage intend to reply to Mrs. Francis...". The Tribunal, in its earlier Judgement No. 100, commented on a similar attitude on the part of the Administration and observed: "The Tribunal notes that five months elapsed before the Administration informed the Applicant,—who had indicated her intention of contesting the decision of termination,—of the remedies available to her under the Staff Regulations and Rules".

In the present case the Tribunal considers that the attitude of the Administration in not replying to the Applicant's letters, nor directing the Applicant to seek a remedy by way of appeal under the Staff Regulations and Rules, coupled with the absence of clear and specific appeal procedures for staff members working away from Headquarters have contributed to this prolonged litigation.

VII. The conclusion that the Tribunal reaches on the first point for determination is that Staff Rule 111.3 regarding time limits applies only to staff members at Headquarters. The rules are silent about time limits for appeal procedures to be followed by staff members working away from Headquarters and this is a serious lacuna in the rules. The Joint Appeals Board declined to receive the appeal on the ground that having reviewed all aspects of the case, the Board found no exceptional circumstances to justify the waiver of time limits in accordance with Staff Rule 111.3 (*d*). That view is based on the conclusion that Rule 111.3 (*d*) governed the appeal by the Applicant. The Board has not considered what time limits should be allowed if Rule 111.3 (*d*) was not applicable to the case. Since the Tribunal reaches a *prima facie* conclusion that Staff Rule 111.3 (*d*) is not *per se* applicable to staff members working away from Headquarters, the Tribunal considers that the decision of the Board, to the extent it applied Staff Rule 111.3 (*d*) to the case, is unacceptable.

VIII. The second point for consideration arises out of the agreement of 10 November 1966 between the Respondent and the Applicant requesting the Joint Appeals Board to consider the appeal on its merits. Although there is no provision in the Staff Rules for remanding a case to the Board, the agreement as a contract between parties has force and validity. If in pursuance of the agreement the Board had considered the substance of the case and made a recommendation favourable to the Applicant which the Respondent did not accept, the Applicant could have approached the Tribunal for redress. Likewise, if the Joint Appeals Board had made a recommendation unfavourable to the Applicant which the Respondent accepted, the Applicant could have approached the Tribunal for redress. It follows from the above reasoning that in any event the Tribunal would be seized of the merits of the case if the Applicant so desired. The fact that the Joint Appeals Board did not consider the case on merits does not alter the legal position. The situation is analogous to one where the Secretary-General and the Applicant agree to submit an application directly to the Tribunal under article 7 of its Statute.

As a consequence of the agreement of 10 November 1966 between the Respondent and the Applicant, the Tribunal holds that it is competent to hear the application on the substance.

IX. It is observed that in paragraph 3 of the Agreement, both the Applicant and the Respondent have reserved "their positions with respect to the timeliness of the appeal, and the decision taken by the Joint Appeals Board on the preliminary issue and also with respect to any claim for compensation, including compensation for procedural delay, under article 9 of the Tribunal's Statute".

The Tribunal finds considerable difficulty in spelling out what the parties exactly reserved. One possible view is that the Respondent reserved the right to raise the issue of timeliness in other cases which may arise later. If that view is adopted, the Respondent cannot be allowed to raise the question of timeliness of the Applicant's appeal before the Tribunal in this case. Another view may be that the Respondent reserved the right to raise the issue of timeliness in subsequent proceedings of the same case before the Tribunal. If this view is correct the Respondent cannot be estopped from raising the issue before the Tribunal. One of the reasons given by the Joint Appeals Board for declining to entertain the appeal on merits was that the Board felt that "the Tribunal's ruling may help to clarify the rules and procedures governing staff appeals and thereby serve as a guide to the Board".

The Tribunal has therefore decided to give a wide interpretation to the reservations made by the Applicant and the Respondent in the case and to give the parties an opportunity to express their views as to what time limits are applicable in respect of appeals by staff members away from Headquarters.

X. As regards the third point for determination, the Applicant has claimed in her amended pleas compensation under article 9.2 of the Tribunal's Statute. Since the Tribunal does not order a remand of the case for institution or correction of the required procedure, the claim for compensation is not maintainable and is rejected.

XI. The Tribunal is unable to proceed to final judgement in the case for the following reasons :

The parties have not examined what time limits should govern appeals by staff members away from Headquarters in the light of the finding of the Tribunal that Staff Rule 111.3 is not applicable to such appeals.

For the reasons stated in paragraph VIII of the Judgement, the Tribunal has held that it has competence to hear the case on merits. But, as the parties have had no opportunity to make their submissions on the substance, the Tribunal is unable to take a final decision in the case.

Accordingly the Tribunal decides that unless the parties settle the matter, the Applicant may file with the Tribunal before 1 July 1967 an explanatory memorandum and pleas dealing both with the merits of and the time limits applicable to the case. Thereupon the procedure prescribed by the Statute and Rules of the Tribunal relating to written and oral proceedings will follow.

*(Signatures)*

Suzanne BASTID  
*President*  
CROOK  
*Vice-President*

R. VENKATARAMAN  
*Vice-President*  
L. IGNACIO-PINTO  
*Alternate Member*  
N. TESLENKO  
*Executive Secretary*

Geneva, 17 April 1967.