

FAO regulations and rules applicable to him, it would appear from article XI of the Staff Regulations of FAO that the International Labour Organisation Administrative Tribunal would be the competent jurisdiction.

The Tribunal observes that while it is the Staff Pension Committee of the organization which is responsible for transmitting every month notifications of new enrolments to the Secretariat of the Joint Staff Pension Fund, it is the Personnel Branch of the organization which, according to the FAO Manual, is responsible for determining who is entitled to participate in the Fund.

In the present case, the Applicant has availed himself of an application within the competence of the United Nations Administrative Tribunal to add certain contentions which, if they could be accepted, would in practice lead to the same result as the application.

However, those contentions—which in any event have not been the subject of prior administrative procedures—do not come within the competence of the United Nations Administrative Tribunal for the reasons indicated above.

VII. The Applicant contends that the FAO Administration was negligent in its responsibilities and failed to explain to him his rights regarding participation in the Pension Fund.

The Tribunal observes that the nature of the Applicant's functions as a technical assistance expert, as well as the fact that he was stationed away from Headquarters at the critical time, made it particularly difficult for him to establish his rights. However, those considerations cannot affect the conclusions which the Tribunal reaches on the basis of the applicable texts.

VIII. For these reasons, the Tribunal rejects the pleas of the application relating to the decision of the Standing Committee of the Joint Staff Pension Board notified to the Applicant on 24 October 1967 and decides that it is not competent to take cognizance of the contentions relating to the right of participation which might have been conferred upon the Applicant prior to 1957.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

Z. ROSSIDES
Member

L. IGNACIO-PINTO
Alternate Member

Jean HARDY
Executive Secretary

New York, 25 October 1968.

Judgement No. 120

(Original: English)

Case No. 117:
Khederian

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

Request for rescission of a decision taken by the Secretary-General on the recommendation of the Advisory Board on Compensation Claims, on the grounds that the procedure did not meet the requirements of due process.

Statement informing the Tribunal that it was not possible to effect corrections of the procedure which the Tribunal found in Judgement No. 114 to have been defective.—Rescinding of the contested decision and obligation of the Respondent to reconsider the Applicant's claim in accordance with the provisions of article 17 of Appendix D to the Staff Rules.—Should the Respondent choose to pay compensation, the injury sustained has to be evaluated taking into account the benefits of which the Applicant might be deprived.—Under article 11.5 of Appendix D, the Secretary-General may, if the staff member agrees, decide to make a lump-sum payment which is the actuarial equivalent of annual compensation awarded.—Award to the Applicant, in the event the Respondent decides to pay compensation as provided for under article 9, paragraph 1, of the Statute of the Tribunal, of a sum equivalent to two years of her net base salary.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. Héctor Gros Espiell; Mr. Zenon Rossides, alternate member;

Whereas, on 22 September 1967, Adrienne Khederian, a former staff member of the United Nations, filed an application the pleas of which read:

*“Pleas Addressed to the President under Article 10
of the Rules of the Tribunal*

“The Applicant requests the President to call upon the Respondent:

“A. To produce the file opened on her case by the Advisory Board on Compensation Claims (hereinafter called the Advisory Board);

“B. To produce all the correspondence between the Medical Director and Dr. Pisani relating to her case, and in particular the Medical Director's letter requesting the submission of Dr. Pisani's supplementary report of 1 June 1966;

“C. To produce all memoranda passing between the Medical Director and the Advisory Board relating to her case.

*“Pleas Addressed to the Tribunal under Article 9.2
of the Statute of the Tribunal*

“The Applicant requests the Tribunal:

“A. To order the case remanded to the Advisory Board for correction of the procedure by which it arrived at its recommendation concerning the report of the Medical Board established under article 17 (b) of Appendix D to the Staff Rules;

“B. To order the payment of compensation equivalent to three months' net base salary to the Applicant for such loss as may have been caused by procedural delay;

“C. To order the Respondent to pay a sum of \$5,000 to the Applicant for the prejudice suffered by her as a consequence of the abnormal delays imputable to the Respondent.

*“Pleas Addressed to the Tribunal under Article 9.1
of the Statute of the Tribunal*

“The Applicant requests the Tribunal:

“A. To order the rescinding of the Respondent’s decision of 14 February 1967 approving the Advisory Board’s recommendation of 31 January 1967;

“B. 1. To rule that the Advisory Board exceeded its competence when it recommended that the findings of a majority of the Medical Board established under article 17 (b) of Appendix D to the Staff Rules on the medical aspects of the appeal brought by the Applicant under article 17 (a) of Appendix D should be disregarded;

“2. To remand the case to the Advisory Board with instructions to respect and apply the findings of the majority of the Medical Board on the medical aspects of the appeal;

or, in the alternative,

“3. To rule that the reasons which the Advisory Board gave in support of its recommendation of 31 January 1967 were completely unfounded;

“4. To remand the case to the Advisory Board with instructions to draw valid conclusions from the Medical Board’s report of 1 December 1966;

or, in the alternative,

“5. To rule that the Respondent’s original decision of 22 June 1966 approving the Advisory Board’s recommendation of 13 June 1966 was invalid because that recommendation was arrived at by an unauthorized delegation of power in violation of the provisions of Appendix D to the Staff Rules;

“6. To remand the case to the Advisory Board with instructions to make a fresh recommendation based on all the relevant evidence;

or, in the alternative

“7. To rule that the Advisory Board failed to draw the proper legal conclusions from the report which it adopted as the only valid medical opinion and the views subsequently expressed by the author of that report;

“8. To remand the case to the Advisory Board with instructions to draw the appropriate conclusions from the views expressed by Dr. Pisani;

“C. To order the Respondent to pay a sum of \$5,000 to the Applicant for the prejudice suffered by her as a consequence of the abnormal delays imputable to the Respondent;

“D. To order the Respondent to pay \$1,231.18 as costs to the Applicant;

“E. In the event that the Respondent exercises his option under article 9.1 of the Statute of the Tribunal, to fix compensation at an amount equivalent to the benefits which the Applicant would have received under articles 11.2 and 11.3 of Appendix D to the Staff Rules if the findings of the Medical Board’s report of 1 December 1966 had been applied.”;

Whereas, by Judgement No. 114, dated 23 April 1968, the Tribunal, without deciding the merits of the case, ordered that:

(a) The case be remanded for correction of the procedure in accordance with article 9, paragraph 2, of the Statute of the Tribunal; and

(b) The Applicant be paid as compensation a sum equivalent to three months of her net base salary for the loss caused to her by the procedural delay;

Whereas, on 26 September 1968, the Director of the General Legal Division, Office of Legal Affairs, transmitted to the President of the Tribunal the following statement:

"1. At its last session, the Tribunal refrained from determining the merits of Case No. 117, pending results of a remand for correction of defects found in the required procedures. The Tribunal had informed the Respondent, prior to any written judgement in respect of the Application, that it had found procedural defects in the case and had asked whether Respondent wished to request the Tribunal to order a remand for correction prior to determination of the merits as provided in Article 9, paragraph 2, of the Tribunal's Statute. Then, upon Respondent's request, the Tribunal ordered (in Judgement No. 114) that the case be remanded; and at the same time, although not deciding the merits, the Tribunal indicated that the Advisory Board on Compensation Claims had in the report of the Medical Board all information necessary to make recommendations to the Secretary-General.

"2. Subsequent to the Judgement and in accordance therewith, the Applicant was paid compensation in the amount of three months' salary, and the matter was referred to the Advisory Board on Compensation Claims.

"3. The Advisory Board on Compensation Claims noted the views of the Tribunal on the procedures to be followed in regard to the findings of the Medical Board and informed the Secretary-General that, as regards recommendations to be based on the Medical Report, the Advisory Board 'still finds itself unable to make any recommendations because of the same difficulties it has in understanding its substance which it encountered previously in considering all the views expressed therein, including those of the majority of the Medical Board'.

"4. Thus, regrettably, it has not been possible to effect corrections of the procedure which the Tribunal found (in Judgement No. 114) to have been defective; and Case No. 117 is, therefore, before the Tribunal for final disposition on the merits."

The Tribunal, having deliberated from 18 to 25 October 1968, now pronounces the following judgement:

I. Having ruled that the procedure provided for in Appendix D to the Staff Rules had not been followed in the present case, the Tribunal, in its Judgement No. 114, ordered under article 9, paragraph 2, of its Statute that the case be remanded for correction of the procedure.

By a statement dated 26 September 1968, the Director of the General Legal Division, Office of Legal Affairs, informed the President of the Tribunal that it had not been possible to effect corrections of the procedure which the Tribunal found in Judgement No. 114 to have been defective and that the case was therefore before the Tribunal for final disposition on the merits.

II. The Tribunal has found in its Judgement No. 114 that the Respondent's contested decision accepting the Advisory Board's erroneous grounds and recommendations made under misapprehension of the functioning of the Medical Board and of the purport of article 17 (b) in providing for the appointment of a third medical practitioner selected by agreement between the medical practitioners

appointed by the parties, was arrived at by irregular procedure, depriving the Applicant of the guarantees provided by Appendix D to the Staff Rules.

III. Consequently, the Tribunal orders the rescinding of the contested decision and rules that the Applicant's claim dated 22 July 1966, appealing against the Respondent's decision notified to the Applicant on 23 June 1966, must be reconsidered in accordance with the provisions of article 17 of Appendix D to the Staff Rules.

IV. Should the Respondent decide under article 9, paragraph 1, of the Statute of the Tribunal, in the interest of the Organization, to compensate the Applicant for the injury sustained, the Applicant requests that compensation be fixed "at an amount equivalent to the benefits which the Applicant would have received under articles 11.2 and 11.3 of Appendix D to the Staff Rules if the findings of the Medical Board's report of 1 December 1966 had been applied".

The Tribunal recognizes that the injury sustained has to be evaluated taking into account the benefits of which the Applicant might be deprived if the Respondent takes the decision in question.

The Tribunal notes that under article 11.5 of Appendix D to the Staff Rules, where annual compensation has been awarded under article 11.2 of Appendix D, the Secretary-General may, if the staff member agrees, decide to make a lump-sum payment which is the actuarial equivalent of such award.

Taking into consideration the terms of Judgement No. 114 and the ruling made above on the main claim, as well as the provisions of article 9, paragraph 1, of the Statute of the Tribunal relating to the award of compensation, the Tribunal rules that, if the Respondent decides under article 9, paragraph 1, of the Statute to compensate the Applicant for the injury sustained, the Respondent must pay to the Applicant a sum equivalent to two years of her net base salary.

The other claims of the application are rejected.

(Signatures)

Suzanne BASTID

President

CROOK

Vice-President

H. GROS ESPIELL

Member

New York, 25 October 1968.

Z. ROSSIDES

Alternate Member

Jean HARDY

Executive Secretary

Judgement No. 121

(Original: English)

Case No. 125:

Makris-Batistatos

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

*Non-renewal of a one-month appointment tacitly renewed from month to month.
Claims relating to the separation of the Applicant.—Unusual contractual position
of the Applicant.—Agreement for an appointment of one month which was to be*