

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*

continued by tacit agreement from month to month until other arrangements were made.—Although no reason for the separation was given, no improper motive for the decision of the Respondent has been established.—Conclusion that the contentions are not well founded.

Claim for compensation for excess accrued leave accumulated by the Applicant.—Accumulation due to the exigencies of the service.—Importance of leave as part of the conditions of service.—The Respondent's action led the Applicant to accrue annual leave beyond the maximum which may be commuted into a sum of money upon separation.—The Respondent is estopped from invoking the 60-day limitation as against the Applicant.

Claim for damages for denial of due process and consequent delay.—Failure to transmit a letter from the Applicant to the Joint Appeals Board.—Serious negligence, but consideration of the case was not prejudiced.—The claim is rejected.

Claim that there should be produced further documents.—The claim is rejected.

Claim for miscellaneous compensation.—Statements of the Respondent.

Another claim, not requiring a decision by the Tribunal.

Decision by the Tribunal that at the time of separation the Applicant's appointment was an appointment for one month which was, by tacit agreement, to be continued from month to month until other arrangements were made.—Award to the Applicant of a sum of money equivalent to his salary for the whole period of leave accrued by him, less the amount already paid.—All other pleas are rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 15 August 1967, Nicolas A. Makris-Batistatos, a former staff member of the United Nations, filed an application concerning his separation from service;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, under paragraph 10 of that article, the Executive Secretary of the Tribunal returned it to the Applicant and called upon the Applicant to make the necessary corrections within a period of eighty-five days;

Whereas, at the Applicant's request and with the Respondent's agreement, the President of the Tribunal extended successively to 5 February, 8 June and 18 June 1968 the time-limit for making the necessary corrections;

Whereas the Applicant, after making the necessary corrections, again filed the application on 18 June 1968;

Whereas the pleas of the application request the Tribunal:

"I. *As to the production of documents*

"A. To call upon the Respondent to submit to the Tribunal and to make available to the Applicant all the documents in the Applicant's confidential privileged file which are in any way related to the termination of his appointment.

"B. To inform the Respondent that he agrees that the United Nations should place at the disposal of the Tribunal and of the parties all the documents included in the Applicant's confidential privileged file which are relevant

to the present dispute or to the events that gave rise thereto; and should the Respondent refuse or fail to do so, to draw from this refusal or failure the appropriate inferences, assumptions and conclusions.

“II. *As to the substance*

“A. *On the question of contract:*

“(a) To rescind part (1) of the Secretary-General’s decision of 16 May 1967 and all other decisions under which the Applicant’s one year fixed-term contract was terminated by his summary dismissal on 28 April 1965.

“(b) To direct the Respondent to either (1) *reinstate* the Applicant to his post of accountant bookkeeper (Post AI-01, Project 35-04 at P-1, Step I level), Bureau of Economic Coordination, Kinshasa, Congo, for at least a period of 8 months; or (2) *reassign* the Applicant for at least a period of 8 months to a post equivalent in rank, responsibilities, salary and allowances to the mentioned post.

“(c) To validate the payment made of one month’s salary for the month of May 1965, as indemnity in lieu of the one month’s notice of termination to which he was entitled.

“(d) To order the payment of one month’s education grant for the Applicant’s daughter, plus one month mission subsistence allowance, which were not paid him for the month of May 1965 with other payments as result of the 16 May 1967 decision.

“(e) To order, in the event that the Secretary-General decides to exercise the option given to him under article 9 paragraph 1 of the Statute of the Tribunal, the payment of compensation equivalent to one year’s salary plus allowances in respect of the breaches of contract and serious wrongs committed by the Respondent and in reparation of the harm done the Applicant’s personal and professional reputation because of the abrupt and violent manner in which termination was effected.

“(f) To order, in the event foreseen in letter (e) *supra*, also the payment contemplated in letter (d) *supra*.

“B. *On the question of leave:*

“(a) To rescind part (2) of the Secretary-General’s decision dated 16 May 1967 and all other decisions under which the Applicant’s leave entitlements were denied him.

“(b) To order the payment of salary for 28 working days at P-1 Step I level to the Applicant in lieu of the excess accrued leave he was made to accumulate due to actions imputable solely to Respondent.

“(c) To order the payment of moratory interests on this sum of money referred to in part B-b, *supra*, from 1 May 1965 to the date of actual payment, and at a rate to be fixed by the Tribunal in its wisdom and discretion.

“C. *On the question of denial of due process and procedural delays in bringing the Applicant’s case before the Joint Appeals Board:*

“(a) To rescind para. (3) of the Secretary-General’s decision dated 16 May 1967.

“(b) To order the payment of dollars 3,000.00 as compensation for denial of due process and consequent delay in the submission of this case to the Joint Appeals Board.”;

Whereas, on 23 August 1968, the Respondent filed his answer in which he stated *inter alia*, with reference to plea II A (d) for payment of mission subsistence allowance for the month of May 1965, that he agreed that the Secretary-General's decision taken after the Joint Appeals Board's report envisaged payment of both salary and allowances for the month and that the Applicant was therefore entitled to a further sum of \$223.33;

Whereas the Applicant filed written observations on 11 October 1968;

Whereas the Respondent submitted additional statements on 21 and 25 October 1968 in reply to questions put by the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Operation in the Congo (ONUC) on 25 January 1962 as a Finance Clerk in the ONUC/TAB [Technical Assistance Board] Finance Office at the FSL-4 level under a fixed-term appointment due to expire on 24 January 1963. The appointment was successively extended to 24 January 1964, 30 June 1964 and 31 December 1964. Before the expiry of this last extension, a new post of accountant book-keeper was established in the Counterpart Fund Secretariat of the Bureau of Economic Coordination of the Congolese Government and, by a memorandum of 18 December 1964 addressed to the United Nations Headquarters, the TAB Congo Office recommended that the Applicant be appointed for one year to that post at the P-1 level. On 28 December 1964, in reply to a cable requesting an urgent decision on the matter, the TAB Administration sent the following cable to the Resident Representative:

"In view urgency situation TARS [Technical Assistance Recruitment Services] agrees provisional appointment Makris for one month project 35-04 accountant bookkeeper (post AI-01) effective 1 January in order provide time preparation job description; approval substantive office; TARS personnel action and agreement salary level to [be?] effective 1 January. If not approved Makris to be paid for January at current salary level and while final appointment pending suggest you continue his salary this basis. This action also contingent government agreement and final approval post AI-01 in 1965 Proag [Programme Agreement] programme . . ."

On 18 January 1965 the TAB Congo Office cabled to Headquarters that:

"Candidature Makris post AI-01 formally approved by Government. In view final approval 1965 U.S. Proag programme . . . grateful early decision appointment Makris."

By a cable from Headquarters dated 11 February 1965, the TAB Congo Office was advised that:

"Makris appointment post AI-01 approved by TARS will offer level 1 step 1. Personnel action now conditional receipt Proag category I post substitution . . ."

The Applicant was informed accordingly. On 8 March 1965, the Applicant applied for home leave from 18 March to 12 May 1965, according to an internal memorandum, and the leave request was approved by the section chief whose signature was subsequently crossed out. On 15 March 1965, however, the Chief Personnel Officer informed the Applicant that this candidature for the post in question had been withdrawn and that no other employment would be offered to him. On the same day, the Applicant took issue with that decision in the following letter addressed to the Chief Personnel Officer:

“ . . .

“1. I was confirmed in my present post as per Headquarters New York Cable No. 230 of [11] February 1965 from the Technical Assistance Recruiting Service, which can only mean my candidature had been accepted by N. Y.

“2. As you may recall, on 14 December 1964 I requested from yourself and Mr. J. Brooks [TAB Deputy Resident Representative] authority to proceed on home leave, or in the case of non-extension of contract, repatriation before the Christmas Holidays.

Mr. J. Brooks had then assured me that he post I was going to occupy with effect from 1st January 1965 carried a one-year extension of contract.

“3. The same subject was on many occasions discussed with Mrs. E. Knoll, Administrative Officer of the B.E.C. [Bureau of Economic Coordination] and Mrs. A. Buccianti of your Office and during the most recent discussions I had with them on 12th March 1965, they had both confirmed that I could proceed on home-leave, on my own expenses and submit a claim upon my return, which seems to me very clearly that at no time was I considered for termination, inasmuch that the ‘Rules and Reports Section’ rules that ‘in the absence of a written confirmation verbal commitments are accepted and engage the administration in honouring its promises’.

“4. Therefore, I now reserve my rights for a complete year’s compensation and accrued leave, plus the normal termination notice.

Please note that having been offered an appointment with B.E.C. during December 1964, and not having been informed of a possible termination at the end of the year, I had turned down attractive offers made to me, thinking that UN offer was a more secure one.

“5. Furthermore, I would like in clarifying [*sic*] the reason for my termination and I refer to the discussion held in your office this afternoon, where you have accepted the reason given confidentially to me by Mrs. E. Knoll this morning, that all personnel involved in the ‘taxi business’¹ . . . will be terminated.”

¹The Applicant refers to a business which the Joint Appeals Board has described as follows in its report on the case (p. 3, foot-note 1): “In October 1964, there was carried out in the TAB Congo Office an investigation into the activities of a group of staff members who were believed to be engaged in private taxi business in the local area. The investigation extended to a private taxi service, operated by a company of limited responsibility, known as ‘Taxileo’. The company was jointly formed by ten staff members, who subscribed to the capital of ten million Congolese francs, divided into one hundred thousand shares. The appellant was one of the shareholders under investigation. He had a holding of 5,100 shares, or 5.1% of the total number of shares issued.

“On 13 March 1965, acting on the report of the investigation, the Resident Representative recommended to Headquarters various measures to be taken in regard to the staff members involved in the taxi business. On 3 May 1965, the Secretary-General authorized written censure in the case of six of the ‘Taxileo’ shareholders, including the appellant. The letter of censure, however, was not issued to the appellant, since he had by then left the Organization. Four of the recipients of the written censure subsequently appealed to the Joint Appeals Board against the disciplinary action. In its Report of 7 January 1966, the Board found the disciplinary measure unwarranted under the circumstances of the case and recommended that the written censure be removed from the files of the staff members concerned. Following acceptance of the Board’s recommendation by the Secretary-General, the letters of censure were withdrawn.”

On 16 March 1965, the Resident Representative addressed to Headquarters the following cable:

“Regret I am obliged to drop candidature Nicolas Makris-Batistatos for post AI-01. My letter of 13 March [proposing not to renew the contracts of ‘Taxileo’ shareholders still on the staff] to Vaidyanathan [Associate Director, Joint Administrative Division, Technical Assistance Board/Special Fund] refers. As Makris has been employed in the counterpart fund of the Economic Analysis since 1 January, propose retain his services through 30 April 1965 to afford time for finding replacement. Makris has accumulated more than 60 days leave which he has been prevented from taking due exigencies of service. If possible will place him on leave before above date or will request extension to allow him take part of days in excess of 60 . . .”

On 28 April 1965, the Chief Personnel Officer informed the Applicant that his services would not be required beyond 30 April 1965 and that in the meantime he was being placed on terminal leave; the Chief Personnel Officer added that Headquarters were being requested—a request which was to be subsequently denied—to extend the assignment to 31 May 1965 in order that the Applicant could take his accrued annual leave in excess of sixty days. In a reply of 30 April 1965, the Applicant protested the action and demanded sufficient termination notice; he also demanded full payment of his leave entitlement of ninety-eight days, claiming that he had been prevented from going on leave “due to the negligence of the Administration”. On the same day, he protested the decision of the TAB Administration regarding his status in a cable addressed to the Secretary-General. This cable was followed by a letter dated 5 May 1965 in which the Applicant requested the Secretary-General to reconsider his case. On 10 May 1965 the Applicant, who had served in the new post of accountant book-keeper from 1 January 1965 to the date of his separation, signed a fixed-term contract of four months as Finance Clerk at the FSL-4 level for the period from 1 January to 30 April 1965. On 30 May 1965, the Applicant wrote another letter to the Secretary-General “for transmittal . . . to the Board of Appeal”. This letter was apparently kept on the Applicant’s file, but not transmitted to the Joint Appeals Board. On 29 April 1966, the Applicant addressed a third letter to the Secretary-General as a reminder of the previous communications; he sent a copy of that letter to the Joint Appeals Board, whereby the Board was made aware of the case. There followed an exchange of correspondence with the Secretary of the Board and, on 5 June 1966, the Applicant lodged a formal letter of appeal. Having granted a waiver of the time-limit for the filing of appeal in accordance with Staff Rule 111.3 (d), the Board considered the appeal and on 23 February 1967 submitted its report. The “conclusions and recommendations” of the report read as follows:

“In view of the foregoing considerations, the Board concludes and recommends to the Secretary-General as follows:

“(a) The appellant’s contractual status at the time of his separation from the service was in the nature of a temporary indefinite appointment. That appointment was duly terminated under Staff Regulation 9.1 (c). The Board recommends that the appellant be granted compensation in lieu of the thirty days’ notice of termination . . .

“(b) The particular circumstances as well as the record of the case warrant the authorization of an exception to Staff Rule 109.8 (a) by allowing commutation of the full amount of accrued annual leave which the

appellant was prevented from taking because of the exigencies of the service and despite his repeated requests to go on leave. The Board accordingly recommends that the appellant be granted, *ex gratia*, a payment equivalent to the value of an additional thirty-eight days of accrued leave in excess of the maximum amount of sixty days . . .

“(c) The appeal having been given its due course, the Board makes no recommendation in support of the appellant’s claim of compensation for the procedural delays.”

On 16 May 1967, the Acting Director of Personnel informed the Applicant that the Secretary-General had reached the following decisions concerning the appeal:

“(1) Regarding your contractual status, the Secretary-General has decided that the appointment was not in the nature of a temporary indefinite appointment, but rather a month to month fixed-term appointment at the FSL-4 level. However, the Secretary-General has considered that the advice given to you on 28 April 1965 that your services would not be required beyond 30 April 1965 was inequitable, and that you should have been given one month’s advance notice of non-extension. The Secretary-General has therefore decided to extend your appointment for one month until 31 May 1965. Since you had not actually served during the month of May 1965, you will be placed on special leave with pay for one month covering the period 1 May to 31 May 1965.

“(2) The Secretary-General did not consider that an exception to Staff Rule 109.8 (a) was warranted in your case so as to allow you a commutation of the full amount of accrued annual leave. The Secretary-General has therefore decided to maintain his decision to allow you 60 working days as of 1 January 1965, plus 10 additional days accrued during the four months of service, 1 January to 30 April 1965.

“(3) The Secretary-General has taken note of the Board’s decision not to make any recommendation in support of your claim of compensation for the procedural delays in your appeal, and has decided to allow no relief in this connexion.”

On 15 August 1967, the Applicant filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. On the question of contract:

(a) Although no letter of appointment was issued to the Applicant throughout the period January-April 1965, the conduct of the parties and different acts of communication between them, oral and written, established that there existed a contract of service for the employment of the Applicant as accountant book-keeper at P-1 level in the newly created post for one year as from 1 January 1965. The existence of this contract was confirmed by numerous acts of implementation and execution;

(b) The form of contract signed *ex post facto* by the Applicant on 10 May 1965 was void *ab initio*. The Applicant’s signature was obtained under circumstances amounting to duress since he signed the form in order to expedite recovery of moneys due to him;

(c) The purported termination was invalid. Because the Applicant was employed under a fixed-term contract, the only course properly open to the Respondent pursuant to Staff Regulation 9.1 (a) and (b) was to terminate the Applicant’s appointment on the ground that his conduct did not meet the highest

standards of integrity required by the Charter, and that action could not have been taken until the matter had been considered and reported upon pursuant to Staff Regulation 9.1 (a). The action, further, was taken without observance of the guarantees of due process foreseen in chapter X of the Staff Regulations;

(d) The decision of termination was taken on the basis of the Applicant's participation in Taxileo. It should be annulled as discriminatory and unreasonable under the circumstances and as a discretionary measure taken without observance of due process.

2. On the question of leave:

(a) Actions to prevent a staff member from taking his annual leave are not permitted by the Staff Rules and Regulations. Much to the contrary, the relevant rules and regulations seek to provide staff members with a real and effective opportunity to take their accrued annual leave;

(b) The Administration cannot aspire to enforce the maximum foreseen in Staff Rules 105.1 (c) and 109.8 (a) in this case, because it did not allow the Applicant to take any leave whatsoever in spite of his repeated requests in this regard;

(c) The Applicant is entitled to be compensated for the deprivation of his earned rest and to recover a sum of money which the United Nations has retained at his expense. He is also entitled to moratory interests on this latter amount.

3. On the question of denial of due process and procedural delays: The delay of more than a year in the submission of the appeal to the Joint Appeals Board occurred notwithstanding the fact that the Applicant had complied with all the requirements of the relevant Staff Rules and Regulations, and solely because of actions taken by the Administration in violation of the most elementary rules of due process.

Whereas the Respondent's principal contentions are:

1. The contested decision relating to the Applicant's separation from service was consistent with the terms and conditions of his employment:

(a) The Applicant did not hold a one-year fixed-term appointment as a technical assistance expert. He relies entirely on communications exchanged between United Nations officials concerning progress made toward his recruitment. Regardless of how promptly and fully informed he may have been about their contents, these communications did not constitute or have the effect of offers of appointment. Moreover, just as those communications indicated favourable consideration of the Applicant's candidature, so did they indicate the assumption that the Applicant was serving under monthly extensions of the terms of his previous appointment pending action on his proposed new appointment. Neither did the Applicant's assignment to work as accountant book-keeper have the effect of a one-year's fixed-term appointment;

(b) The Applicant's contractual status and entitlements were governed by a month-to-month continuation of his prior appointment. Failure to provide the Applicant with letters of appointment during his service from January to April 1965 and to give a month's written notice of the date of separation having been corrected by the Secretary-General's decision to pay an additional month's salary, there is no basis for imputing to the Respondent any contractual obligations to compensate further;

(c) The Applicant has not established any improper motive invalidating the decision against his further employment. In particular, even if his involve-

ment in the Taxileo enterprise were the reason for that decision, this would not constitute an abuse of power.

2. The Applicant has no entitlement to payment of accrued annual leave beyond the maximum amount provided in Staff Rule 109.8. Neither the mere fact that he was refused the opportunity to take leave on the particular dates which he requested nor recommendations by administrative officers that he be paid for excess leave gave rise to any obligation on the Secretary-General's part to make an exception to the Staff Rules, and the question of whether an *ex gratia* payment would be justifiable is not before the Tribunal.

3. The nearly one year's delay in the Joint Appeals Board's consideration of the case caused by misrouting of the Applicant's letter addressed to the Secretary-General was regrettable but did not in fact prejudice the Applicant's rights.

The Tribunal, having deliberated from 15 to 25 October 1968, now pronounces the following judgement:

I. The Tribunal notes that the contractual position of the Applicant was unusual. He had held four fixed-term appointments as Finance Clerk from 25 January 1962 until 31 December 1964. Prior to the expiry of the final of these four fixed-term appointments, a new post of accountant book-keeper was established in the Counterpart Fund Secretariat of the Bureau of Economic Coordination of the Congolese Government, which post he hoped he would fill. Indeed, it was within his knowledge that, by memorandum of 18 December 1964, the United Nations Headquarters had recommended that he be appointed to that post for one year.

It is clear that urgent steps were taken, as the year 1964 was ending, to secure the retention of the Applicant's services, and on 28 December 1964 the TAB Administration informed the Resident Representative that TARS agreed to the Applicant's provisional appointment for one month as accountant book-keeper pending completion of the necessary formalities. In the event that the new appointment was not approved, it was agreed that he be paid for January at his current salary level.

He remained employed in this way during January and February 1965, during which months it was within his knowledge that the Congolese Government had approved in January of his being offered the appointment and that TARS, in February, had approved preparation of the necessary personnel action, subject to receipt of agreement to the "post substitution"; furthermore, the Applicant had been so informed.

In the belief that he was to receive the appointment, the Applicant applied for home leave on 8 March 1965. But on 15 March 1965 he was informed by the Chief Personnel Officer as follows:

"I regret to inform you that your candidature for post AI-01 has been withdrawn and that we have no other employment to offer.

"We will, of course, arrange for the payment of salaries and allowances due to you for the period you have rendered your services to the above section."

II. It appears from the file that during the preceding months there had been awaited a report of an investigation into the activities of a group of staff members who were believed to be engaged in a private taxi business in the local area, operated by a company known as "Taxileo" jointly formed by ten staff members, of whom the Applicant was one.

On 13 March 1965, the Resident Representative had recommended Headquarters as to the action to be taken with regard to renewal of contracts of members of the staff who were considered to be particularly concerned. The recommendation was not to renew the contracts of six persons, shareholders in "Taxileo", who still remained on the staff, who were named and whose date of expiry of contracts was indicated. Three of these staff members were noted as having contracts expiring on 30 June 1965, two as having contracts expiring on 31 December 1965, and the sixth was noted as "N. Makris (Awaiting renewal)".

In a letter of 23 March 1965 the Deputy Resident Representative wrote to Headquarters further to the letter of 13 March 1965 mentioned above. He stated that "the formal offer" of the post had not yet been made to Mr. Makris and that he had "therefore advised Mr. Makris that the offer of the post will not be made to him, and that since we have no other employment for him, he will be free to leave at the end of April 1965". The letter concluded: "Mr. Makris' last contract came to an end on 31 December 1964, and he has been working on a month-to-month basis since that time in the post in the Bureau of Economic Coordination which he was to have been offered."

The Tribunal notes, in passing, that on 10 May 1965, the Applicant signed a fixed-term contract of four months as Finance Clerk for the period 1 January 1965 to 30 April 1965, apparently to regularize the position as to remuneration.

The relationships between the Applicant and the Respondent were certainly not those under a fixed-term one-year appointment since no final agreement had been given by the Respondent and no letter of appointment had been issued.

There was an agreement for an appointment of one month which was tacitly agreed to be continued from month to month until other arrangements were made.

III. As to the method of separation from service, the Tribunal notes that the Acting Director of Personnel informed the Applicant by letter of 16 May 1967 as follows:

" . . . the Secretary-General has considered that the advice given to you on 28 April 1965 that your services would not be required beyond 30 April 1965 was inequitable, and that you should have been given one month's advance notice of non-extension. The Secretary-General has therefore decided to extend your appointment for one month until 31 May 1965. Since you had not actually served during the month of May 1965, you will be placed on special leave with pay for one month covering the period 1 May to 31 May 1965."

While it is true that no reason for the separation was given, no improper motive for the decision of the Respondent has been established. By inference, at least, his involvement in the "Taxileo" enterprise was likely to have been in mind when the decision was reached but, even if this was so, it would not have constituted an abuse of power by the Secretary-General. Accordingly the contentions on separation are not well founded.

IV. On the subject of leave the Tribunal notes the recommendation of the Joint Appeals Board that the Applicant "should, in equity, be granted, over and above the commutation of sixty days of accrued leave already allowed him, a sum of money equivalent to the value of thirty-eight days of leave".

This recommendation was justified, in the report of the Board, in view of the substantial evidence on record which tended to support the Applicant's assertion that he had been prevented from taking leave because of the exigencies of the service.

The Tribunal has examined in the file numerous documents confirming that the accumulation of leave did not occur as a result of any desire of the Applicant, by his failing to apply for leave due to him.

The Tribunal notes that in a memorandum of 20 July 1965 addressed by an Administrative Officer of the Technical Assistance Board to the Deputy Resident Representative in the Congo, it is stated that:

“Taking into consideration the fact that it would appear that Mr. Makris-Batistatos was not authorized to take annual leave prior to the expiration of his contract for reasons of ‘exigencies of service’, . . . it is the consensus in JAD [Joint Administrative Division] that he might be entitled to full payment of 98 days of annual leave accrued by him as at 30 April 1965, i.e., the date of the expiration of his contract.”

The Tribunal also observes that on 20 August 1965, the Acting Chief Personnel Officer informed the Deputy Resident Representative that “it appears entirely justified to pay Mr. Makris for his unused accrued leave, as there is no doubt that he was prevented from using it in time because of the exigencies of the service”.

V. It is clear to the Tribunal that leave is as much a part of the conditions of service of a staff member as is his remuneration, or other benefits. While he cannot be allowed to accumulate leave solely to suit his own convenience, it is equally true that he should not be denied it, *in toto*, by the Administration, notwithstanding it can be withheld at given times by the Administration by reason of the exigencies of the service.

In general the rules as to accruing and carrying over leave should and usually do prove effective. But in this case, to deny compensation for the loss of leave in question must be held, in all the circumstances disclosed, to be the withholding of an entitlement.

As stated earlier, the Respondent does not deny that, due to the conditions prevailing in the Congo and the exigencies of service, the Applicant was not authorized by his superiors, since the beginning of his functions, to take the annual leave to which he was entitled under the Staff Rules.

It is therefore the Respondent’s action, justified as it may have been by exceptional circumstances, which led the Applicant to accrue annual leave beyond the maximum which under Rule 109.8 (a) may be commuted into a sum of money upon separation.

Accordingly, the Tribunal rules that the Respondent is estopped from invoking the 60-day limitation as against the Applicant, who is entitled to a sum of money equivalent to his salary for the whole period of leave accrued by him on account of the Respondent’s action.

VI. The Tribunal has considered carefully the Applicant’s claim on the question of denial of due process.

Without doubt the failure to transmit the Applicant’s letter of 30 May 1965 to the Joint Appeals Board was a serious negligence which might have prejudiced the consideration of the case. But this prejudice was avoided, for when the question was brought directly to the attention of the Board by the Applicant’s letter of 5 June 1966—more than one year later—the Board by its decision of 27 June 1966 agreed to waive the time-limit for the filing of the appeal.

From this followed proceedings in which counsel for the Applicant submitted a written statement on 23 August 1966, a supplementary statement on 1 Novem-

ber 1966, and on 5 January 1967 a request for determination of the case in the absence of any written rebuttal by the Administration. On 10 January 1967 a written answer was filed on behalf of the Respondent. The Board convened to consider the merits of the case on 17 January 1967, heard the parties on 1 February 1967, on 2 February 1967 received three additional statements in support of the Applicant's case, heard the parties further on 3 February 1967, concluded its deliberations on 6 February 1967 and approved its report on 20 February 1967. In the course of this report there was no recommendation in support of the claim for compensation for the procedural delays.

Nothing adduced to the Tribunal in the course of the proceedings has caused the Tribunal to reach any different conclusions.

The Tribunal accordingly rejects the claim for damages for denial of due process and consequent delay.

VII. As to the claim that there should be produced further documents, the Tribunal is satisfied that counsel for the Applicant has submitted a lengthy well-reasoned case supported by adequate documentation, and is unable to see what further material could have been placed at the disposal of the Applicant, and accordingly makes no order.

VIII. As to the claims for one month's education grant for the Applicant's daughter, plus one month's mission subsistence allowance, the Tribunal notes that the Respondent has stated that he agrees "that the Secretary-General's decision, taken after the Joint Appeals Board's report, envisaged payment of both salary and allowances for the month, and Applicant is, therefore, entitled to a further sum of \$223.33". The Tribunal has also been informed by the Respondent "that the Secretary-General's decision to pay Mr. Makris-Batistatos up to 31 May 1965 authorizes the payment of education grant in respect of the month of May 1965, if the requirements of Staff Rule 103.20, Education Grant, are otherwise fulfilled".

IX. As to the claim "to validate the payment made of one month's salary for the month of May 1965, as indemnity in lieu of the one month's notice of termination to which he was entitled", in the light of the above there is no reason for the Tribunal to rule on that plea.

Accordingly the Tribunal decides as follows:

(a) At the time of separation the Applicant's appointment was an appointment for one month which had been tacitly agreed to be continued from month to month until other arrangements were made;

(b) As to leave, the Applicant is entitled to a sum of money equivalent to his salary for the whole period of leave accrued by him, less the amount already paid;

(c) All other pleas are rejected.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

L. IGNACIO-PINTO
Member

Z. ROSSIDES
Alternate Member
Jean HARDY
Executive Secretary

New York, 25 October 1968.