

nor did he make any search for a suitable post, before 8 July 1968. Furthermore, the Respondent has not given any indication that attempts have been made to find a post for the Applicant after that date. If the difficulties to reassign the Applicant to another post were as insuperable as the Respondent asserts, the Tribunal is unable to understand why the Respondent agreed to consider the Applicant for another post. Consequently, the contested decisions must be considered as irregular in so far as they disregard the Respondent's obligations.

XII. The Tribunal decides that the Respondent is called upon to execute the commitments undertaken by him, in the form of a *bona fide* search for a suitable post.

XIII. 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 Tribunal must fix the amount of compensation to be paid to the Applicant. According to normal practice, the Applicant could anticipate the granting of a one-year contract. In the absence of the effective performance of duties, the situation may be assimilated to the case of a one-year fixed-term contract which is terminated 12 months before its date of expiration. In such a case the Applicant would have been entitled to a termination indemnity of one week's salary for each month of uncompleted service. Taking into account the Applicant's net base salary at Zaria, the Tribunal fixes at 3,000 dollars the compensation to be paid to the Applicant.

XIV. The Applicant requests the Tribunal "to order the release of all relevant documents to the Nigerian authorities so that the Applicant can receive an unqualified clearance from these authorities".

The Applicant's request lacks legal basis as it is not related to the applicable terms of employment. It is therefore rejected.

XV. The Tribunal rejects the other pleas of the application.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Member

Louis IGNACIO-PINTO
Member

New York, 10 October 1969

Zenon ROSSIDES
Alternate Member

Jean HARDY
Executive Secretary

Judgement No. 133

(Original: English)

Case No. 133:
Frias

Against: The Secretary-General
of the United Nations

*Request for the rescission of a decision refusing to grant a special post allowance.
Request for oral proceedings.—The request is declined as the determination of the case rested on the interpretation of Staff Rules and Administrative Circulars.*

Principal request.—Staff Rule 103.11.—Discretionary powers of the Secretary-General.—In the absence of prejudice, the exercise of this discretion cannot be disputed.—Information Circulars ST/ADM/SER.A/849 and 1159.—Non-applicability of these circulars to the case of the Applicant.—The Tribunal cannot decide on the reliefs granted by the Secretary-General to the Applicant.—The Tribunal finds that there is no violation of the relevant Staff Regulations and Rules and that the Applicant does not fall within the purview of the administrative circulars quoted above.

The request is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Francis T. P. Plimpton; Mr. Zenon Rossides, alternate member;

Whereas, on 6 August 1969, Eduardo Manuel Frias, a staff member of the United Nations, filed an application the pleas of which read:

“1. Pursuant to article 7 of the Statute of the Administrative Tribunal, the Applicant hereby requests the rescission of the decision taken by the Respondent on recommendations made to him by the Joint Appeals Board on 1 May 1969 and transmitted to the Applicant by memorandum dated 14 May 1969, attached to which was a copy of the report made by the Joint Appeals Board.

“2. The Applicant wishes to request that full satisfaction and due compensation for work performed by him as the programmer of the Joint Staff Pension Fund since the beginning of September 1966, be awarded to him. This request is based mainly on the non-observance of the terms and conditions of Information Circular ST/ADM/SER.A/849 and 1159 and of all other relevant Staff Rules and Regulations.

“3. The Applicant further requests that in accordance with article 15 of its Rules, the Administrative Tribunal conduct oral proceedings so that he may be afforded the opportunity to present before the Tribunal, witnesses and other documentary evidence which will establish the fact that since September 1966, he was the sole programmer of the Pension Fund, discharging the responsibilities attached to that position with the full knowledge of the International Computer Center.”;

Whereas the Respondent filed his answer on 19 September 1969;

Whereas the Applicant filed written observations on 24 September 1969;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 13 February 1961 as an Accounting Clerk in the Joint Staff Pension Fund at the G-3 level under a short-term appointment for three months. On 13 May 1961 he received a probationary appointment which was converted into a permanent appointment on 1 February 1963. He was promoted to the G-4 level on 1 June 1963 and to the G-5 level on 1 July 1965. In the course of 1966 the Applicant assumed new duties as computer programmer for the Pension Fund. In the periodic report covering the Applicant's performance from 1 January 1965 to 31 December 1966, his functional title was given as “Programmer” and the section entitled “duties and assignments” referred to a job description (attached to the report) which read in part:

“Under the Accountant’s supervision, the incumbent is responsible for the computer programming of the Fund’s data processing system and assists in the control of the processing of the data by the International Computing Center.”

In other sections of the periodic report it was stated that:

“Since May 1966 after a successful completion of an IBM Basic Computer System course and a Cobol course, Mr. Frias’ duties have been those of a Programmer Trainee. In this professional job he has shown the most promising ability to carry out the full work load of the Fund’s Programmer.”

and that

“Mr. Frias has an excellent record of accomplishment with the Fund, where his versatility and languages have proved invaluable. The experience and detailed knowledge of the Fund’s operations which he gained as a result singled him out in May 1966 for a new post of computer programmer in which, after basic IBM training, he has applied himself unsparingly and with promising results. I [the Deputy-Secretary of the Pension Board] expect to evaluate his performance after a further period, with a view to his promotion to the Professional level.”

On 29 November 1967, the Secretary of the Pension Board addressed the following memorandum to the Chief of Staff Services, Office of Personnel, concerning “the grant of a special post allowance to Mr. Frias and his ultimate promotion to the P-2 level”:

“... ”

“The brief history of the case is that, as the result of a decision by the Controller’s Office in May 1966 to withdraw at short notice the computer programming services which had previously been provided to the Fund, it became necessary—in order to remain operational—for the Fund to detach Mr. Frias on an emergency basis from his regular duties as a senior accounting clerk (G-5) and have him undergo immediate training as a programmer. It was considered preferable to do this—and thus to utilize Mr. Frias’ familiarity with the Fund’s methods and his own readiness to undertake the new assignment—rather than seek outside assistance, which in view of the general shortage of programming skills appeared likely to entail delays capable of causing considerable prejudice to the working of the Fund. The reassignment was duly reported to the Joint Staff Pension Board, which provided in the 1968 Budget for a new P-2 post as computer programmer, on the assumption that Mr. Frias would by then have completed his training and acquired the necessary expertise to warrant promotion to that level.

“It is my intention, in view of the success which Mr. Frias has had as a programmer and my satisfaction that he is now fully qualified therein by both experience and training, to recommend his promotion as part of the current 1967/1968 exercise. I believe, however, that the service which he is currently rendering to the Fund is such as to warrant recognition by way of a special post allowance at a somewhat earlier date than the promotion would normally be effective, and I am fortified in this by the arrangements outlined in Information Circular [ST/ADM/SER.A/] 1159 of 29 [28?] March 1967 under which current programmer trainees who successfully complete their initial assignments become eligible for the allowance after six months.

I understand that the Office of Personnel, for its part, would wish to satisfy itself of Mr. Frias' competence by inviting him to submit to an examination along the lines of that required for admission to the status of trainee—as indicated in the Circular mentioned above—and I am pleased to confirm that no objection exists on my part or on that of Mr. Frias to such a course. I should appreciate, therefore, the necessary arrangements being put in train so that the allowance may take effect at an early date.”

The Applicant passed the Programmers' test in December 1967 and was granted a special post allowance to the P-2 level effective 1 January 1968. On 13 May 1968, in a memorandum addressed to the Secretary of the Pension Board, he requested a review of the effective date of his special post allowance. His memorandum was transmitted by the Secretary of the Pension Board to the Deputy Chief of Staff Services, Office of Personnel, under a covering memorandum of 14 May 1968 supporting the request. On 1 July 1968 the Applicant was promoted to the P-2 level. On 10 October 1968, the Deputy Chief of Staff Services replied to the Secretary of the Pension Board that there was no case for amendment of the effective date of the Applicant's special post allowance. In a memorandum of 29 October 1968, the Applicant asked the Deputy Chief of Staff Services to reconsider his decision or, if he was unable to do so, to transmit the memorandum to the Secretary-General as a request for the review of an administrative decision under Staff Rule 111.3 (a). On 27 November 1968, the Under-Secretary-General for Administration and Management informed the Applicant, on behalf of the Secretary-General, that there was no case for a reversal of the decision to make the Applicant's special post allowance effective on 1 January 1968. The Applicant having filed an appeal with the Joint Appeals Board, the Board submitted its report on 1 May 1969. The concluding section of the report read as follows:

“Conclusions and Recommendations

“38. While acknowledging that the decision to grant special post allowance was within the discretion of the Secretary-General, the Board considers that, in view of the practice established by the Information Circulars pertaining to a special group of staff members called upon to perform similar duties as programmer trainees, the appellant should be given treatment no better and no worse than the treatment given to those staff members. In that connexion, the Board notes that, although the appellant was granted a special post allowance to the P-2 level as of 1 January 1968, he received his promotion to the P-2 level on 1 July 1968. The Board notes further that under the Information Circulars in question staff members holding special post allowance during the trainee assignment are normally to be proposed for promotion to the P-2 level one year after they received the special post allowance, which implies that the special post allowance may not be granted earlier than one year before promotion. Accordingly, the Board considers it to be an equitable solution to recommend that the appellant's special post allowance to the P-2 level should be made effective as of 1 July 1967 or, in other words, one year before his promotion to the post at the P-2 level took effect. Payments made to the appellant for overtime during the period for which the special post allowance was extended would, of course, be set off against the amount of additional allowance. The Board also understands from the testimony of the Deputy-Secretary of the Joint Staff Pension Board that budgetary provisions can be made from the Fund resources to cover this additional period of special post allowance.”

On 14 May 1969 the Director of Personnel informed the Applicant as follows:

“... ”

“2. The Secretary-General has re-examined your case on the basis of the facts involved and in the light of the report of the Joint Appeals Board. In the Secretary-General's view this was a clear case where you had received practical training on the job without fulfilling the conditions stipulated in either of the two Information Circulars ST/ADM/SER.A/849 and ST/ADM/SER.A/1159. Nevertheless, as soon as you passed the examination administered to you in December 1967 you were awarded a special post allowance as of 1 January 1968. Furthermore, whereas the regular trainees who had passed the examination were proposed for promotion one year after they had received the special post allowance, you were in fact promoted six months after the said date.

“3. In view of the aforesaid, the Secretary-General has found no basis under the Staff Rules, Information Circulars ST/ADM/SER.A/849 and ST/ADM/SER.A/1159, or in equity, for accepting the 'equitable solution' recommended by the Board, and has decided to confirm his earlier decision awarding you a special post allowance to P-2 level as of 1 January 1968, followed by a promotion to the P-2 level effective 1 July 1968.”

On 6 August 1969, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. From the time he was assigned to his new functions, the Applicant was regarded and treated as a programmer in electronic data processing. His assignment to a training period, his assumption of full responsibility for the programming needs of the Pension Fund and the uninterrupted performance of those duties were never regarded as informal arrangements.

2. If under Information Circular ST/ADM/SER.A/849 programmer trainees who were below the P-2 level were to be granted a special post allowance to that level, *a fortiori* staff members who were discharging fully and effectively the functions of programmers were entitled to the same allowance.

3. While the Secretary-General may exercise his discretion when acting under Staff Rule 103.11 (c), such discretion should not be construed as arbitrary.

4. The Secretary-General has relinquished his discretionary power and obliged himself to grant a special post allowance in the case of programmers under Information Circulars ST/ADM/SER.A/849 and 1159.

Whereas the Respondent's principal contentions are:

1. It was entirely within the Secretary-General's discretion to decide whether and, if so, when to grant a special post allowance to the Applicant. Staff Rule 103.11 does not establish such allowance as a contractual right. On the contrary, it provides that the assumption of higher duties should not normally occasion the allowance.

2. The circulars relied on by the Applicant did not affect the applicability of Staff Rule 103.11 in his case. These circulars were concerned with the United Nations training programme and with the consequences for those staff members who—unlike the Applicant—took part in the programme.

3. The Secretary-General not only granted the Applicant an early promotion but also exercised his discretion to permit the Applicant to be paid for six

months of special post allowance beginning immediately after his examination. Such exceptional treatment was not granted pursuant to any contractual entitlement and it is not for the Tribunal to determine whether an even more extensive exception could have been justified.

The Tribunal, having deliberated from 6 to 14 October 1969, now pronounces the following judgement:

I. The Applicant's request for oral proceedings was declined by the Tribunal as the determination of the case rested on the interpretation of Staff Rules and Administrative Circulars.

II. The Applicant seeks rescission of the decision dated 14 May 1969 rejecting his claim for a special post allowance from September 1966, on the ground that he is entitled to the relief under Information Circulars ST/ADM/SER.A/849 and 1159 and the relevant Staff Regulations and Rules.

III. It is clear from the pertinent Staff Rule 103.11 that staff members are expected to assume temporarily the duties and responsibilities of higher level posts as a normal part of their customary work and without extra compensation. In circumstances specified in sub-paragraphs (b) and (c) of Rule 103.11, a special post allowance may be paid at the discretion of the Secretary-General. Thus even if the Applicant falls under sub-paragraph (c) of Rule 103.11 as a member of the General Service category who performed functions which were at the P-2 level, there is no entitlement which was denied to him nor any non-observance of the pertinent staff rule. In the absence of prejudice, and none is alleged, the exercise of discretion by the Secretary-General cannot be disputed.

IV. The Applicant relies on Information Circulars ST/ADM/SER.A/849 and 1159 to sustain his claim for a special post allowance from 1966 on the plea that as required by the first of the Information Circulars he had undergone a short training course as Programmer in electronic data processing and assumed the duties of Programmer in the Pension Fund, and that according to the said circular he was entitled to a special post allowance to the P-2 level.

V. A study of Information Circulars ST/ADM/SER.A/849 and 1159 shows that they relate to a category of staff selected on the basis of a written examination and assigned to a training course for three or four weeks under the first of these circulars or for six months under the second. These trainees were again tested and eventually designated as programmers. The title of these two circulars reads: "Examination for Programmers in Electronic Data Processing", and relates to a staff training programme with the consequences for those who participated in the programme.

VI. Obviously, the Applicant does not belong to the category of staff covered by the above-mentioned Information Circulars. He was not one of those selected on the basis of a written examination and dealt with under that category. He does not therefore come under the purview of these circulars.

VII. The Tribunal notes that the Joint Appeals Board, while acknowledging that the decision to grant a special post allowance was within the discretion of the Secretary-General, considered that in as much as the Applicant was called upon to perform functions similar to those of the special group of staff members selected in accordance with the Information Circulars, the Applicant should be accorded the same treatment as was given to those staff members. The Respondent has pointed out that the Secretary-General had in recognition of the level of perform-

ance granted the Applicant appropriate reliefs and the adequacy thereof cannot be determined by the Tribunal.

VIII. The Tribunal finds that there is no violation of the relevant Staff Regulations and Rules and that the Applicant does not fall within the purview of the administrative circulars quoted above.

IX. The Tribunal therefore rejects the application.

(Signatures)

R. VENKATARAMAN
President

CROOK
Vice-President

Francis T. P. PLIMPTON
Member

ZENON ROSSIDES
Alternate Member

Jean HARDY
Executive Secretary

New York, 14 October 1969

Judgement No. 134

(Original: English)

Case No. 130:
Fürst

Against: The Secretary-General
of the United Nations

Request for the rescission of a decision refusing to grant a permanent appointment at a higher level.

The Applicant's claim for a permanent appointment can only be sustained if there is an obligation binding on the Respondent in that regard.—Argument based on a letter offering the Applicant the expectancy of a permanent appointment if the appraisal of his services was favourable.—Examination of this letter.—The Tribunal concludes that the Respondent did not assume any commitment in the said letter and that it did not constitute an offer by the Administration, accepted as such by the Applicant, to award a permanent appointment in the event of a favourable appraisal.—Argument based on the Provisional Statement of Policy Guidelines for Personnel Management in UNDP Field Office.—Impossibility of concluding that the Statement creates an expectancy in the legal sense for either a renewal of contract or for permanent appointment.

Claim that, under the "Policy governing the Use of Titles in UNDP Field Offices", the Applicant should have been automatically graded P-4.—This claim is rejected.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton; Mr. Zenon Rossides; the Lord Crook, Vice-President, alternate member;

Whereas, on 26 February 1969, Ewald Viktor Fürst, a staff member of the United Nations Development Programme, hereinafter called UNDP, filed an appli-