post adjustment at the dependency rate and as the Applicant's daughter is not a "child" according to the definition of Staff Rule 103.24 (*b*), the claim fails.

VII. The application is rejected.

(*Signatures*)

R. VENKATARAMAN
President

Roger STEVENS
Member

MUTUALE-TSHIKANTSHE
Member

Jean HARDY
Executive Secretary

New York, 9 October 1972

Judgement No. 161

(*Original: English*)

Case No. 159: Noel

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

Termination on the ground of abolition of post of a locally recruited staff member holding a permanent appointment.

Contention that the Joint Appeals Board was improperly constituted.—Objection based on alleged relation between the Applicant and a member of the Board.—Applicant's objection overruled by the Chairman of the Board, under the discretion granted to him by Staff Rule 111.2 (e).*—Contention that the fourth staff-elected Alternate had sat while the member elected by the Staff had stated he was available.—Need to take account of the practical realities of a situation in which, owing to the number of appeals, recourse has to be had to all the alternates if unnecessary delays are to be avoided.—Contention rejected.*

Contention that Staff Rule 109.1 (c) *was not complied with.—Scope of Staff Rule 109.1* (c) (*ii*) (a), *applicable to the Applicant.—Contention rejected because Applicant had been offered and had refused a post and because the Respondent had made a search for alternative posts in good faith and over a considerable period of time.*

Contention of prejudice and detrimental allegations.—Contention rejected, because of lack of evidence.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Sir Roger Stevens;

Whereas, at the request of Edwin E. Noel, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 21 April 1972 the time-limit for the filing of an application to the Tribunal;

Whereas, on 21 April 1972, the Applicant filed an application requesting the Tribunal to order:

"A. The rescission of the administrative decision of 29 September 1970, effective 1 October 1970, to terminate the Applicant under Staff Regulation 9.1 (*a*) for abolition of post, which the Applicant contests on the ground that the Respondent failed to fulfil his obligations under Staff Rule 109.1 (*c*);

"B. In the alternative event that the Secretary-General exercises his option under article 9 paragraph 1 of the Statute of the Tribunal and decides not to reinstate the Applicant, the payment to the Applicant as compensation in the amount of two years net base salary in addition to the termination indemnity received;

"C. The payment to the Applicant in the amount of two years net base salary as compensation for damages caused by detrimental allegations concerning his character that he was not given any opportunity to refute, and by the imputation of limited usefulness despite fourteen years of service to the United Nations in a variety of assignments that elicited invariably good reports by supervisory officials.";

Whereas the Respondent filed his answer on 23 June 1972;

Whereas the Applicant filed written observations on 8 September 1972;

Whereas the Applicant submitted additional information on 19 September 1972;

Whereas the facts in the case are as follows:

On 1 July 1965 the Applicant, a staff member of the United Nations since 2 August 1957 and the holder of a permanent appointment since 1 August 1959, was transferred from the Office of General Services to the Centre for Industrial Development of the Department of Economic and Social Affairs as Clerk at the G-3 level. The Centre for Industrial Development subsequently became the United Nations Industrial Development Organization (UNIDO). When UNIDO established its headquarters in Vienna late in 1967, efforts were made to reassign elsewhere in the Secretariat its General Service staff members whose services were not required in Vienna. It appears from the file that in September 1967 a clerical position in the Office of Technical Co-operation was offered to the Applicant; when he decided to accept the post, however, the post had been filled. It also appears that on 13 February 1968 the Applicant declined to accept a post offered to him in the Library, that the offer was renewed later and that he again turned it down on 29 February 1968. From 1 May 1968 to 28 February 1969 the Applicant was loaned to the Technical Assistance Recruitment Service (TARS), Office of Personnel, in order to help with the transfer of roster material to UNIDO in Vienna. On 6 March 1969 the New York Liaison Office of UNIDO informed the Office of Personnel that the headquarters in Vienna needed all possible General Service posts and that, consequently, UNIDO could not afford to keep the Applicant on their pay-roll beyond the end of the month. In the meantime, other attempts had been made, on 5 January 1968, on 10 January 1969 and on 4 March 1969, to reassign the Applicant elsewhere in the Secretariat, and further attempts were made on 10 July 1969 and on 2 and 16 July 1970, all with negative results. On 29 September 1970, the Director of Personnel informed the Applicant that the Secretary-General had decided, effective 1 October 1970, to terminate his permanent appointment under Staff Regulation 9.1 (*a*) for abolition of post. On 19 October 1970 the Applicant requested the Secretary-General to review that

administrative decision. In a reply dated 2 November 1970 the Director of Personnel denied the Applicant's request. On 13 November 1970 the Applicant lodged an appeal with the Joint Appeals Board, which overruled objections to its composition raised by the Applicant and submitted its report on 15 December 1971. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations

"25. The Board finds that the respondent duly fulfilled his obligation under Staff Rule 109.1 (*c*) by actually offering the appellant at least one other post that he refused to accept, and that in these circumstances the respondent cannot be said to have violated the letter or the spirit of the Staff Rule in question.

"26. The Board therefore makes no recommendation in support of the appeal."

The Secretary-General having decided on 13 January 1972 to maintain his decision, the Applicant filed on 21 April 1972 the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Joint Appeals Board was improperly constituted as the Alternate elected by the Staff had worked for the Centre for Industrial Development; furthermore, the Member elected by the Staff should have sat in the case rather than the fourth staff-elected Alternate.

2. In terminating the Applicant's permanent appointment for abolition of post, the Respondent did not fulfil his obligations under Staff Rule 109.1 (*c*) since he has been unable to show, as required by the Tribunal in its Judgement No. 85, that the Applicant was in fact considered for available posts and was genuinely found not suitable for any of them. The available documentation concerning the Applicant does not record any data that might constitute assessments at relevant dates of the requirements of available posts against the qualifications of the Applicant; it records instead the fact that the Applicant was systematically named against posts that were unavailable in any case. Furthermore, two prominent officials involved in the placement of the Applicant were actively opposed to him and prevented *bona fide* placement. In fact, the sequence of events reveals a campaign of termination for reasons that do not appear on record.

3. The Respondent's reference to Staff Rule 109.1 (*c*) (ii) (*a*) may not be constructed to detract from the relevance of Rule 109.1 (*c*) (i), with which it must be read, or to limit in any way the nature of the obligations of the Administration under Rule 109.1 (*c*) (i).

Whereas the Respondent's principal contentions are:

1. The composition of the Joint Appeals Board did not invalidate the Board's proceedings and the Tribunal is properly seized of the merits of the case. The rulings of the Board and its chairman on the Applicant's objections were valid and reasonable.

2. The termination of the Applicant's appointment for abolition of post is fully valid. The Applicant was a locally recruited staff member and the Organization, in contrast with the limited scope of its obligation under Staff Rule 109.1 (*c*) (ii) (*a*), not only made long efforts to find a vacancy against which the Applicant's suitability could be considered, but offered him at least one post, on two different occasions, which the Applicant turned down. Whether or not the posts offered to him met his personal expectations is a matter which

he freely decided with full awareness of the possible consequences. The simple fact that the Applicant was retained in service for approximately three years after his post became redundant with the move of UNIDO to Vienna evidences the reflexion and genuine efforts of the Organization to find a suitable place to the Applicant. In these circumstances, the inference of bad faith or improper motivation is clearly groundless.

The Tribunal, having deliberated from 2 to 10 October 1972, now pronounces the following judgement:

I. As regards the Applicant's first contention, relating to the composition of the Joint Appeals Board, the Tribunal has considered the terms of Staff Rule 111.2, has taken into account its practical application, and has reached the conclusion that the Board was properly constituted for the following reasons:

(*a*) The Applicant's objection to the inclusion on the Board of the fourth staff-elected Alternate was duly considered by the Chairman of the Board, and was overruled by him under the discretion granted to him by Staff Rule 111.2 (*e*), which enabled the Chairman to refuse the request for disqualification if in his view the relation of the Alternate in question to the Applicant was not such as to warrant the former's disqualification from service on the Board;

(*b*) The Applicant's contention that the Member elected by the Staff should have sat in the case rather than the fourth staff-elected Alternate is based on a restrictive interpretation of Staff Rule 111.2 (*b*) and ignores the practical realities of a situation in which, owing to the number of appeals, recourse has to be had to all the alternates if unnecessary delays in hearings are to be avoided. The Tribunal notes that at the time in question there were a large number of cases before the Board and that, in the words of a memorandum of the Convening Chairman dated 16 July 1971,

> "the Board adopted a crash programme to dispose of its backlog and to consider new cases and report on them within the shortest possible time. Accordingly the members of the panel of Chairmen held a meeting on 1 July 1971 in the course of which they distributed all the cases pending before the Board among themselves and among the members and alternates."

The Tribunal also notes that according to the same memorandum

> "The Staff-elected member was assigned six cases, and each alternate three or more cases, in the order in which they received votes in the election. It was considered that after having been designated to serve on a certain number of cases, the member and the alternates became unavailable, in the meaning of Staff Rule 111.2 (*b*), for serving on more cases."

It is the Tribunal's view that these dispositions represented a reasonable interpretation of Staff Rule 111.2 (*b*) and that in the circumstances the staff-elected Member's assertion that he was available is not relevant.

II. The Applicant further contends that in terminating his permanent appointment for abolition of post the Respondent did not fulfil his obligations under Staff Rule 109.1 (*c*). Since the Applicant was locally recruited, the provisions of Staff Rule 109.1 (*c*)(ii)(*a*) reading as follows:

> "The provisions of paragraph (i) above in so far as they relate to locally recruited staff members shall be deemed to have been satisfied if such locally recruited staff members have received consideration for suitable posts available at their duty stations."

applied in his case, so that the obligation of the Respondent was limited to ensuring that the Applicant receive consideration for a suitable post in New York.

It is against this background that the Tribunal has carefully reviewed the evidence. The Tribunal notes that, while there is a discrepancy between the statements of the Applicant and the Respondent as to the course of events when the Applicant was offered a post in the Office of Technical Cooperation on 12 September 1967, there is no disagreement that the Applicant was offered and refused a post in the Library on two occasions during February 1968. While his response was apparently based on the ground that the post was of a lower grade than that previously held by the Applicant, the Tribunal notes that he would have retained his grade and emoluments in the new post and therefore considers that his refusal of the post was not justified on this account. The Applicant was moreover aware at the time of his refusal that the post in which he had previously served had been moved to Vienna with the transfer there of UNIDO and that, since he was a local recruit, the Respondent was not under an obligation to offer him a post in Vienna. Furthermore the Applicant was warned, when offered the Library post for the second time in February 1968, that the alternative to acceptance might be his termination, so that his decision to refuse the post was taken in full knowledge of alternative prospects.

The Tribunal has also observed the subsequent course of the Applicant's employment. After he refused the Library post, so far from being terminated, he was assigned to a temporary post in TARS and his termination was not in the event made effective until 1 October 1970. Moreover, before termination, the Administrative Officer in the Office of Personnel gave further proof of the anxiety of the Administration not to terminate without fully complying with Staff Rule 109.1 by expressing the view that he did not believe that all resources had been exhausted in the light of the requirements of that rule. The Tribunal notes that as a result of this intervention, further efforts were made to place the Applicant, as it appears from a series of memoranda issued from the Office of Personnel on 16 July 1970. It was only after no positive reply had been received to any of these memoranda that the Administration took the decision to terminate the appointment.

In view of the fact that a post was offered and not accepted and that thereafter a search for alternative posts was made in good faith over a considerable period, the Tribunal finds that the requirements of Staff Rule 109.1 were fully complied with by the Respondent.

III. The Tribunal finds no evidence to support the Applicant's allegation that two prominent officials involved in his placement were actively opposed to him and prevented *bona fide* placement. On the contrary, the extended efforts made to place him appear to the Tribunal to provide convincing evidence in refutation of such an allegation. Nor has the Tribunal found evidence that detrimental allegations regarding the Applicant's character or qualifications were made, which he was not given any opportunity to refute.

IV. The Tribunal accordingly rejects the application.

(Signatures)

R. VENKATARAMAN
President

Roger STEVENS
Member

Suzanne BASTID
Vice-President

Jean HARDY
Executive Secretary

New York, 10 October 1972