

B. On the pleas relating to the arbitrary enforcement of a legally ineffective decision:

(1) That the assignment of duties pursuant to the decision of 8 May 1969 was justified on the merits and was within the competence of the Director of the Social Development Division under Staff Regulation 1.2;

(2) That the claims for compensation fail;

(3) That the request for reinstatement in the post of Chief of the Social Defence Section be rejected;

(4) That the administrative decision of 8 May 1969, confirmed on 29 July 1971, is legal and valid;

(5) That in view of the decision on the merits, the question of irregularity of procedure before the Joint Appeals Board does not arise; and

(6) That the request for costs be rejected.

XXVII. The application is therefore rejected.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

New York, 20 October 1972

Judgement No. 166

(Original: English)

Case No. 161:
Kahale (Request for remand
of case)

Against: The Secretary-General
of the United Nations

Request to remand a case to the Joint Appeals Board for correction of procedure.

Scope of the application.—Article 9, paragraphs 1 and 2, of the Statute of the Tribunal.—Article 18, paragraph 2 of the Rules of the Tribunal.—An application to the Tribunal must be such as to enable the Tribunal to proceed to a determination of the merits of the case.—Application not receivable, since the Applicant merely requests a remand of the case to the Joint Appeals Board for correction of procedure.

The Applicant contests the regularity of the procedure followed by the Joint Appeals Board.—Complaint that the Applicant was not informed in advance of the composition of the Board.—Complaint rejected, because the Applicant was orally informed of the Board's composition.—Contention of failure to notify the Applicant in writing.—Contention rejected in the absence of prejudice to the Applicant and since he raised no objection.—Charge regarding the selection of members of the Board.—Wide discretion of the Chairman responsible for the distribution of cases.—Charge rejected.—Contention that the same Joint Appeals Board was selected to consider two

appeals by the Applicant.—Regularity of this procedure.—Contention rejected.—Complaint that the Board did not afford the Applicant the protection of representation by counsel.—Complaint rejected on the ground that he must be presumed to have relied on himself for the presentation of his case.—Complaint that the Board notified its decision directly to the Applicant.—In view of the fact that the appeal was declared non-receivable, such notification was in order.—Complaint rejected.—Complaint regarding delay in the disposal of his case by the Board.—Staff Rule 111.3 (k).—Complaint rejected.—Complaint that the Applicant was not afforded a proper opportunity to present his case before the Board at the hearing.—Complaint rejected, since the Applicant did not avail himself of the opportunity afforded to him to meet the Respondent's objection regarding the receivability of the appeal.—The Tribunal concludes that the proceedings before the Board were neither vitiated by errors of procedure nor by lack of due process, nor by undue delay.

The Applicant contests the validity of the decision of the Board declaring the appeal non-receivable.—Principle of *res judicata*.—This principle was not applicable to this case.—Staff Regulation 11.1.—Since the appeal was not receivable under this Regulation, the conclusion reached by the Board that the appeal was non-receivable is valid.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Vice-President;

Whereas, on 16 June 1972, Georges Kahale, a staff member of the United Nations, filed an application the pleas of which read as follows:

“Applicant respectfully requests the Tribunal:

“To declare that the JAB [Joint Appeals Board] proceedings were vitiated by fundamental errors of procedure causing a failure of justice;

“To rule that the JAB exceeded its competence and acted *ultra vires* in declaring the appeal non-receivable on the ground of *res judicata*;

“To rule that the JAB's decision not to entertain the appeal was null and void, for it was based on errors of fact and errors of law;

“To rule that Respondent failed to meet his obligation to afford Applicant the guarantees and safeguards embodied in the Staff Rules with reference to the appeals machinery;

“To order the case remanded to the JAB for institution or correction of the required procedure and for a determination on the merits;

“To order the payment to Applicant of a compensation equivalent of three months' net base salary for the prejudice caused by the procedural delay.

“It is Applicant's earnest hope that the Tribunal will accede to his request for oral proceedings.”;

Whereas on 21 July 1972 the Respondent filed his answer, which contained the following pleas:

“A. *As to procedure*

“1. Respondent respectfully requests the Administrative Tribunal to consider this application together with the application in case No. 153 brought by the same Applicant, to which it is closely related, and if possible together

with any other applications the Applicant may file in respect of related matters as to which he has already instituted proceedings before the Joint Appeals Board (JAB).

"2. Although the Applicant has requested oral proceedings (Application, para. 6), Respondent respectfully suggests that the Tribunal may not find these necessary in relation to this case.

"B. As to competence

"3. Respondent respectfully requests the Administrative Tribunal to make a preliminary decision, pursuant to article 2, paragraph 3, of its Statute, that this application is not within its competence, as it does not allege the non-observance of the contract of employment of the Applicant, as required by paragraph 1 of the said article, but in substance relates solely to the appointment of another staff member (Mr. William Clifford).

"C. As to substance

"4. If the Tribunal holds itself competent on the substance, Respondent respectfully requests that the Tribunal decline to remand the case to the JAB on any of the grounds advanced in the application (para. 6) since the proceedings of the Board were not vitiated by fundamental errors of procedure, the Board did not exceed its competence in declaring the appeal non-receivable, the decision of the Board not to entertain the appeal was not based on any fundamental error of fact or law, and the Respondent did not fail to meet his obligation to afford the Applicant the guarantees and safeguards in relation to the appeals machinery.

"5. Furthermore, Respondent requests the Tribunal to confirm that the JAB was not competent, under Staff Regulation 11.1, to consider the appeal presented to it since the complaint did not relate to any administrative decision affecting in any way Applicant's terms of appointment.

"6. Finally, the Tribunal is alternatively requested to hold that Applicant's complaint must be rejected on the merits, since the appointment of Mr. Clifford to a post encompassing responsibilities once assigned to the Applicant in no way violated any contractual or statutory right of the latter.

"D. As to compensation

"7. Finally, Respondent requests that the Tribunal reject Applicant's request for compensation equivalent to three months' net base salary for the alleged prejudice caused by procedural delay, on the ground that Applicant has not and cannot demonstrate either any undue delay attributable to the Respondent, or any prejudice due to the delay that has taken place, and because the conditions for such payment specified in article 9, paragraph 2, of the Tribunal's Statute have not been met.";

Whereas, on 23 August 1972, the Applicant filed written observations containing the following motions for preliminary measures:

"A. Motion to strike from the pleading Respondent's request regarding the joint consideration of all Applicant's cases.

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"B. Motion to strike Respondent's pleas from the pleading:

"(1) Respondent's plea regarding the competence of the JAB to consider the appeal concerning Clifford's appointment;

"(2) Respondent's plea regarding the competence of the Tribunal to consider an appeal concerning Clifford's appointment;

“(3) Respondent’s plea regarding the validity of the Secretary-General’s decision concerning Clifford’s appointment.

“C. Motion to strike from the pleading the Statement of Facts included in Respondent’s Answer.”;

Whereas the Tribunal heard the parties at a public session held on 29 September 1972;

Whereas the facts in the case are those set forth in Judgement No. 165, with the addition of the following:

While his appeal of 12 February 1971 was pending before the Joint Appeals Board, the Applicant submitted to the Board on 23 June 1971 a statement purporting to revise his original pleas “so as to cover the new situation arising from Mr. Clifford’s appointment” as Chief of the Social Defence Programmes. In his statement the Applicant added, however, that should there be any objection to that procedure, he would be grateful if the representative of the Respondent would transmit the Applicant’s statement to the Secretary-General for a review of the decision regarding Mr. Clifford’s appointment. On 25 June 1971 the Convening Chairman of the Board informed the Applicant that he had referred the statement to the Director of Personnel who would treat it as a request for review of an administrative decision under the terms of Staff Rule 111.3 (a). On 8 July 1971, the Director for Policy Co-ordination in charge of the Office of Personnel advised the Applicant that, since there was no basis for any allegation that the appointment of Mr. Clifford constituted a non-observance of the Applicant’s terms of appointment or a violation of his entitlements under any Staff Regulation or Rule, the Secretary-General had decided to maintain the administrative decision to appoint Mr. William Clifford. On 7 August 1971 the Applicant requested the Board to proceed with the consideration of the case on the basis of the statement submitted on 23 June 1971. On 26 November 1971 the Joint Appeals Board submitted its report on the Applicant’s appeal of 23 June 1971. The concluding section of the report read as follows:

“*Considerations*

“15. The Board observed that its functions are those of an advisory rather than a judiciary body and that the principle of *res judicata* finds its proper application in a court of law. At the same time, there would be little purpose or justification in formulating recommendations in a matter on which another Board pronounced itself. The avoidance of repetitious proceedings is enough justification for not entertaining a matter which has already been considered and reported on by a Joint Appeals Board.

“16. The Board noted that the appellant’s previous [first] appeal (Case No. 187) was directed against a decision of 8 May 1969 by the Director of the Social Development Division to relieve him of his duties as Chief of the Social Defence Section and to give him a new assignment within the Division, that of Senior Officer for Special Assignments.

“17. The Board felt that the decision appealed against in Case No. 187 can be considered as having two related parts, the first concerns the transfer of the appellant out of the post of Chief of the Social Defence Section and the second his assignment to the post of Senior Officer for Special Assignments. That decision, in both its aspects, was found valid by a previous Board and can at present be challenged only before the Administrative Tribunal.

"18. The Board observed that it seems to have been clear to the appellant himself that challenging the appointment of Mr. William Clifford was closely related to his first appeal. In fact in paragraph 19 of his statement in the present appeal he states that 'Mr. Clifford's appointment cannot be considered independently from Appellant's transfer from the Social Defence Section'. It should also be recalled that when his first appeal (Case No. 187) was being considered the appellant sought to obtain from the Convening Chairman an injunction against the appointment of a successor to his former post in the interest of a possible restoration of the *status quo ante*. In view of the Board's conclusions in Case No. 187, accepted by the Secretary-General, this restoration is no longer possible unless the Administrative Tribunal were to decide otherwise. The present appeal, which aims precisely at such a restoration, cannot therefore be entertained under the present circumstances. In fact a favourable recommendation in the present appeal would, if accepted, lead to the reinstatement of the appellant in the post of Chief of Section, a matter which is at present *sub judice* before the Tribunal.

"19. The Board thus reached the conclusion that the appeal concerning the appointment of Mr. William Clifford as Chief of the Social Defence Programmes should be considered not receivable because the appellant's transfer out of that post was already reported on by a previous Board and the administrative decision concerning the said transfer has become definitive and cannot be modified or rescinded unless and until the Administrative Tribunal reverses the findings of the previous Board. The Board therefore decides not to entertain the present appeal."

On 22 December 1971, the Director of Personnel informed the Applicant that the Secretary-General had taken note of the report of the Joint Appeals Board. On 16 June 1972 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The proceedings of the Joint Appeals Board were vitiated by fundamental errors of procedure. The Board failed to observe the procedure prescribed in the Staff Rules with regard to the Applicant's notification of the composition of the Board, the selection of its members, the delay in the consideration of the case, the Applicant's representation in the proceedings and his notification of the final decision in the matter. The Board also failed to meet the requirements of due process in relation to the Applicant's right to be properly heard during the proceedings as well as to the Board's obligation to observe the rules of equity and justice.

2. The declaratory decision of the Joint Appeals Board was vitiated by errors of fact and errors of law. By declaring the appeal non-receivable on the ground of *res judicata*, the Board not only acted *ultra vires* but also erred in the application of the *res judicata* doctrine. The Board also erred in splitting up the single indivisible decision of the Applicant's transfer and in attributing an estoppel effect to each of its integral elements taken independently.

3. The nature of the injury sustained by the Applicant as a result of the procedural delay, along with the Respondent's responsibility for the delay, are such as to warrant the maximum compensation envisaged in the Tribunal's Statute.

Whereas the Respondent's principal contentions are:

1. The appeal, which in substance relates solely to the appointment of a staff member other than the Applicant, is not within the competence of the Tribunal since it does not relate to the contract of employment of the Applicant.

2. The procedures of the Joint Appeals Board allowed the Applicant a fair opportunity to present his arguments on the question of the receivability of his complaint, the only issue considered and decided by the Board.

3. The Board was correct in its unanimous holding that it was incompetent to hear the appeal as it did not relate to an administrative decision that violated the terms of the Applicant's appointment; even if the Applicant had been able to assert an interest in the post to which Mr. Clifford was appointed on the ground that it included the functions of a post from which the Applicant had previously been transferred, the Board had already held and the Secretary-General had confirmed that that transfer had been entirely proper and valid.

4. The Secretary-General was under no obligation to change the previous decisions appointing Mr. Clifford and later confirming that appointment.

The Tribunal, having deliberated from 26 September to 20 October 1972, now pronounces the following judgement:

I. The Applicant defined the scope of his application as follows:

"This application is intended to remand the case to the JAB for correction of procedure . . . Applicant has excluded from the scope of the application any factual evidence pertaining to the substance of his appeal, since the JAB has not made a determination on the merits and the Tribunal is not called upon to do so".

In the course of the oral proceedings, the Applicant reiterated his position as follows:

"The point at issue is, therefore, whether the case should be remanded to the Joint Appeals Board so that the Joint Appeals Board may decide on the case, and advise the Secretary-General, or consider the case outside its competence in accordance with Staff Rule 111.1."

The Tribunal observes that under article 9, paragraph 1 of its Statute, the Tribunal must, if it finds the application well founded, order the rescinding of the decision contested or the specific performance of the obligation invoked. Under paragraph 2 of the same article, if the Tribunal finds that the procedure prescribed in the Staff Regulations or Rules has not been observed, it may, at the request of the Secretary-General and "prior to the determination of the merits", order the case remanded for institution or correction of the required procedure. Again under article 18, paragraph 2 of its Rules, the Tribunal is to "decide on the substance of the case" if, on the expiry of a certain time-limit, no request for a remand has been made by the Secretary-General.

There follows from the foregoing provisions that an application to the Tribunal must be such as to enable the Tribunal to proceed to a determination of the merits of the case if it does not deem it necessary to order the case remanded for institution or correction of the required procedure or if, the Tribunal having found that the case should be remanded, no request for a remand has been made by the Secretary-General within the prescribed time-limit. An application which does not comply with that requirement but merely requests a remand of the case for institution or correction of the required procedure is not contemplated under the Statute of the Tribunal.

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Since the Applicant merely requests a remand of the case to the Joint Appeals Board for institution or correction of the required procedure, his application does not come within the scope of the Statute of the Tribunal and is therefore not receivable.

II. The Tribunal observes, however, that the appeal before the Joint Appeals Board was directed against the Secretary-General's decision of 8 July 1971 rejecting the Applicant's claim against the appointment of Mr. Clifford.

After the decision of the Joint Appeals Board on 26 November 1971 deciding not to entertain the appeal, the Director of Personnel informed the Applicant on 22 December 1971 that the Secretary-General had "taken note of the report of the Joint Appeals Board on the appeal filed by you against the administrative decision whereby Mr. William Clifford was appointed Chief of the Social Defence Programmes". The Secretary-General thus did not alter his prior decision of 8 July 1971 after receiving the report of the Joint Appeals Board.

The Tribunal must therefore consider whether the Secretary-General took his final decision after the Joint Appeals Board had followed a regular procedure and had taken a valid decision that the appeal was not receivable.

III. The Applicant complains that he was not "notified" of the composition of the Joint Appeals Board "before" the Board undertook consideration of his appeal as required by Staff Rule 111.3 (e) and that, though the hearing took place on 29 October 1971, he did not receive the memorandum from the Alternate Secretary of the Board notifying the composition of the Board until the following day. The Respondent states that, although the written notification may have been dispatched after the hearing, the Alternate Secretary was constantly in touch with the Applicant and had orally informed him of the Board's composition several days before the hearing. The Tribunal observes that in a memorandum dated 13 September 1971 the Alternate Secretary notified the Applicant of the composition of the Board to consider his appeal of 12 February 1971. On 19 October 1971, in a memorandum on the subject "Your appeals filed on 12 February 1971 and on 23 June 1971", the Alternate Secretary requested the Applicant to inform the Board of his choice of counsel, and it may be noted that the appeal of 23 June 1971 is additionally mentioned in the memorandum. The Applicant further admits that he had telephone conversations with the Alternate Secretary on 20 and 22 October 1971 regarding the appointment of a counsel, and it seems most unlikely that during these conversations the Applicant did not seek information regarding the composition of the Board for hearing his appeal or that the Alternate Secretary did not inform him on this and other related matters. The Tribunal therefore accepts the Respondent's statement that the Applicant was informed in advance of the composition of the Board.

IV. The Applicant argues, however, that under Staff Rule 111.3 (e) the composition of the Board must be notified in writing and that in his case a written notification was sent to him only after the hearing. The Tribunal considers that in view of the right of the parties under Staff Rule 111.2 (e) to request that any member or alternate member of the Board be disqualified from the consideration of an appeal, it is good administrative practice to notify in writing the staff member concerned of the composition of the Board before it undertakes consideration of an appeal. However, in the absence of any evidence that the Applicant has been prejudiced or adversely affected by a failure to make such notification in writing and in view of the fact that he raised no objection to the composition of the Board, either at the hearing on 29 October 1971 or before the determination of the case

by the Board, the Tribunal is unable to conclude that the failure to notify the Applicant in writing of the composition of the Board vitiated its proceedings.

V. The Applicant also alleges violation of Staff Rule 111.2 in the selection of members of the Joint Appeals Board. He complains in particular that in disregard of this Rule, members who were not readily available to serve on the Board were chosen with a view to prolong the proceedings and delay the appeal. The Applicant also alleges that the members were chosen because of their legal ideology or personal views regarding the issues involved. The Tribunal notes that these allegations have not been substantiated nor raised either at the hearing on 29 October 1971 or even subsequently prior to the determination of the case by the Board. The Tribunal considers that in view of the large number of appeals before the Board the Convening Chairman had to distribute the work among the members and alternate members according to the work-load of each of them and that, for the reasons explained by the Tribunal in its Judgement No. 161 (*Noel*), he had a wide discretion in deciding on the "availability" of such members. The Tribunal finds therefore no substance in the plea that the selection of members of the Board was in violation of Staff Rule 111.2.

VI. The Applicant further contends that the same Joint Appeals Board was selected to consider his appeal of 12 February 1971 and his appeal of 23 June 1971 with a view to prejudice an objective consideration of his case. The Tribunal, however, considers that it is not improper for the same Board to consider related matters arising out of a single set of circumstances and that the composition of the Board cannot be challenged except as provided in Staff Rule 111.2 (*e*). The Tribunal also notes that in any event the Applicant's objection was not raised at the appropriate time and that, in the absence of evidence that the Applicant has suffered any prejudice, the validity of the decisions taken in this respect cannot be questioned.

VII. The Applicant also complains that the Joint Appeals Board disposed of his case without affording him the protection of representation by counsel in the proceedings. The correspondence between the Board and the Applicant discloses that the Applicant first requested the Board to designate a counsel to "assist" him. Later on the Applicant, by a letter dated 7 August 1971, formally requested the Board to "designate" a counsel for the presentation of this case. The Tribunal notes, however, that Staff Rule 111.3 (*f*) merely provides that a staff member may arrange to have his appeal presented on his behalf by another member of the Secretariat. If the Applicant felt that he could not proceed with the case without the assistance of a counsel, he should have so stated at the hearing and asked for a delay until one was appointed. Since the Applicant did not make representation, he must be presumed to have relied on himself for the presentation of his case.

VIII. The Applicant asserts further that it was improper for the Joint Appeals Board to notify its decision directly to him. In his view, the Board should have submitted its report to the Secretary-General, who should have transmitted his decision to the Applicant together with the report. In view of the fact that the Applicant's appeal was declared non-receivable by the Board, however, the Tribunal finds it difficult to see anything wrong in such direct transmission of the Board's decision to the Applicant. As to the Secretary-General's action, it was notified to the Applicant later.

IX. The Applicant also complains of delay in the disposal of his case by the Joint Appeals Board. He states in particular that in violation of Staff Rule 111.3 (*k*) the Board did not submit its report to the Secretary-General within

three weeks after undertaking consideration of the appeal. The Tribunal notes that the Board met to hear the parties on 29 October 1971 and adopted its report on 26 November 1971. The Tribunal further observes that under Staff Rule 111.3 (k) the Board may extend the time-limit in exceptional circumstances, and that such circumstances existed in the Applicant's case in view of the heavy work before the Board.

X. The Applicant further complains that he was not afforded a proper opportunity to present his case before the Joint Appeals Board and that the appeal was disposed of without a proper hearing on 29 October 1971. But the Applicant himself admits that he stated at the hearing that he would "refer the dispute to the Administrative Tribunal and eventually to the International Court of Justice, should the Board decide to sustain the Respondent's motion" pleading non-receivability of the appeal on the grounds of *res judicata*. The Applicant did not submit any oral or written presentation as to that plea by the Respondent. In the view of the Tribunal, the Applicant did not avail himself of the opportunity afforded to him to meet the Respondent's preliminary objection regarding the receivability of the appeal and cannot, therefore, complain of lack of due process in the consideration of the appeal.

XI. The Tribunal comes therefore to the conclusion that the proceedings before the Joint Appeals Board were neither vitiated by errors of procedure nor by lack of due process, nor by undue delay.

XII. The Applicant finally contests the validity of the decision of the Joint Appeals Board declaring the appeal non-receivable. The Board's ruling is based on the finding:

"that the appeal concerning the appointment of Mr. William Clifford as Chief of the Social Defence Programmes should be considered not receivable because the appellant's transfer out of that post was already reported on by a previous Board and the administrative decision concerning the said transfer has become definitive and cannot be modified or rescinded unless and until the Administrative Tribunal reverses the findings of the previous Board".

The Tribunal observes that, as recognized by the Board itself, the plea of *res judicata* is more appropriately applicable to proceedings before courts than to matters before advisory bodies. The principle of avoiding a multiplicity of proceedings, however, is relevant to all bodies. As stated in Halsbury's Laws of England (Third Edition, Vol. 15, p. 185), "a plea of *res judicata* must show either an actual merger, or that the same point has been actually decided between the same parties". The Applicant's appeal of 9 June 1969 related to his transfer from the post of Chief of the Social Defence Section. In his appeal of 23 June 1971, however, the Applicant challenges the appointment of another staff member to a post at a higher level with considerably wider duties. Since the appointment of another staff member to such higher post was not directly and substantively in issue in the Applicant's appeal of 9 June 1969, the Tribunal considers that the Applicant's appeal of 23 June 1971 was not barred by the principle of *res judicata* or any principle analogous to it.

XIII. It does not necessarily follow, however, that the Joint Appeals Board should have declared the Applicant's appeal receivable.

In his letter to the Applicant dated 8 July 1971 replying to the request for review of the contested decision under Staff Rule 111.3 (a), the Director for Policy Co-ordination in charge of the Office of Personnel stated:

"I have carefully examined your complaint but regret to advise you that I can see no basis for any allegation by you that the appointment of Mr. Clifford constituted a non-observance of your terms of appointment or a violation of your entitlements under any Staff Regulation or Rule.

"For the above reasons, the Secretary-General has decided to maintain the administrative decision to appoint Mr. William Clifford."

Furthermore, it is clear from the report of the Joint Appeals Board that the Applicant was contesting the decision of the Secretary-General appointing Mr. William Clifford as Chief of the Social Defence Programmes on the ground that this appointment did not conform with Staff Regulations 4.2 and 4.4.

Staff Regulation 11.1 provides, however, that

"The Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules, or against disciplinary action."

Thus, while Staff Regulation 11.1 authorizes staff members to appeal against an administrative decision alleging the non-observance of *their* terms of appointment, the Applicant in this case alleged before the Joint Appeals Board the non-observance of "pertinent regulations and rules" with regard to another staff member.

Since the Secretary-General denied the request for review of the administrative decision concerning Mr. Clifford's appointment on the ground that the request was unrelated to the Applicant's own terms of appointment, the Joint Appeals Board was validly seized of that objection and could have declared the appeal non-receivable on that ground. Since the Applicant's appeal was not receivable by the Board under Staff Regulation 11.1, the conclusion reached by the Board that the appeal was non-receivable is valid.

XIV. The Tribunal therefore rules:

- (1) That the application to remand the case to the Joint Appeals Board is unreceivable;
- (2) That the proceedings before the Joint Appeals Board were neither vitiated by errors of procedure nor by lack of due process, nor by undue delay;
- (3) That the appeal was not receivable by the Joint Appeals Board;
- (4) That the Secretary-General's decision of 8 July 1971 cannot be challenged by the Applicant.

XV. In view of the above decisions, the Tribunal does not deem it necessary to rule on the preliminary objection raised by the Respondent.

XVI. For the foregoing reasons, the application is rejected.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

New York, 20 October 1972