

Nations in view of his lengthy service with the Organization at the D-1 level, the acknowledged quality of his services—which was attested to in a memorandum dated 17 January 1972 from the Director of Personnel to the Director of the Division of Recruitment—and the number of posts corresponding to his aptitudes. Moreover, his age and the orientation of his career undoubtedly made it difficult for him to find a comparable position. Consequently, the Tribunal recognizes that the Applicant has sustained material injury. Moreover, the Respondent's behaviour towards him in the months preceding his separation from service, the conditions in which his assignment in Bangui was terminated and in which he was sent to Abidjan and then to Port-au-Prince caused him moral damage.

For these reasons, the Tribunal decides to grant the Applicant compensation in the amount of \$26,000.

XII. On the basis of the statements of expenses submitted by the Applicant, the Tribunal decides to grant him 3,300 French francs for costs.

(Signatures)

Suzanne BASTID
Vice-President, presiding

F. A. FORTEZA
Member

Geneva, 25 April 1974

MUTUALE TSHIKANKIE
Member

Jean HARDY
Executive Secretary

Judgement No. 186

(Original: English)

Case No. 183:
Smith

**Against: The United Nations Joint
Staff Pension Board**

Request by a former staff member of WHO that a child's benefit payable to his daughter be paid not to her but to him.

Request for production of a full report of the proceedings of the Standing Committee of the Joint Staff Pension Board and all communications of the latter with third parties.—Principle, accepted by the Tribunal, of the confidentiality of such documents.—Request rejected, since no case has been made out by the Applicant to depart from that principle.

Principal request.—Article 37 (a) of the Pension Fund Regulations and Administrative Rule J.2 (e).—Applicant's argument that the Pension Board has not proved the existence of exceptional circumstances in the sense of Administrative Rule J.2 (e).—Applicant's argument based on a strict reading of article 37 (a).—Absurdity and contradiction to which this reading would lead.—Interpretation of the two applicable texts by the Tribunal.—Criticism by the Tribunal of the fact that the Standing Committee did not give any reasons for its decision and merely referred to the relevant provisions of the Regulations and Administrative Rules of the Pension Fund.—Respondent's argument based on the fact that at the time when payment of the benefit was claimed the child had attained majority and the competence to give a valid receipt.—Need to determine not whether the child had attained the age of 21 and was competent to give a valid receipt but whether the circumstances were normal or exceptional.—Possibility envisaged by the Tribunal of remanding the case to the Pension Board for a statement of reasons in

support of the view that there were exceptional circumstances.—The Standing Committee had received full information from the two parties claiming the child's benefit before reaching its conclusion.—The Standing Committee's reference to Administrative Rule J.2 (e) in the contested decision recognizes implicitly the existence of exceptional circumstances.—Applicability of the exception contained in Administrative Rule J.2 (e).—Request rejected.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francisco A. Forteza; Mr. Mutuale Tshikankie, alternate member;

Whereas, on 26 November 1973, at the request of Horace A. Smith, a former staff member of the World Health Organization, hereinafter called WHO, the President of the Tribunal, with the agreement of the Respondent, extended to 1 February 1974 the time-limit for the submission of an application to the Tribunal;

Whereas, on 13 February 1974, the Applicant filed an application the pleas of which read:

- “(a) I, . . . request the Tribunal to order the respondent . . . to produce . . .
- “(i) A full report of the proceedings, debate and findings relative to the subject-matter of this present application of the 136th meeting of the Standing Committee of the United Nations Joint Staff Pension Board held on 13 and 14 July 1973, as well as of any other similar meeting, debate, discussion, etc., appertaining thereto;
- “(ii) All communications which, in respect of or touching on in any way the subject-matter of this present application, have passed between the United Nations Joint Staff Pension Board and . . .
- * Miss Penelope Tula SMITH, my daughter, particularly in reference to ‘claims’ made by her, according to a letter written to myself, the applicant, by Mr. Arthur C. LIVERAN, Secretary of the BOARD, on 14 November 1972 . . . ;
 - ** The World Health Organization and The World Meteorological Organization (representatives of);
 - *** Any material whatsoever which might assist the Tribunal before proceeding to consider the merits of this application;
 - **** Evidence as to whether or not the said Penelope Tula Smith remained unmarried from 1.4.1970–20.5.1972 (see Article 37 (a) of the Regulations and Rules of the United Nations Joint Staff Pension Fund);
 - ***** Evidence as to who prepared the case appertaining to the subject-matter of this present application as it was presented to the Standing Committee of the United Nations Joint Staff Pension Board on 13/14 July 1973 (see above) and, further, what representative(s) of the BOARD so presented the said case to the Standing Committee and/or was/were present at the aforesaid meeting of the Standing Committee on 13/14 July 1973.

“(b) . . . The decision which I am contesting, . . . and whose rescission I am requesting, . . . is the following:

“The decision of the Standing Committee of the United Nations Joint Staff Pension board, made at its 136th meeting on 13 and 14 July 1973, that payment

of a child's benefit which I had claimed from the Board under Article 37 (a) of the Regulations of The United Nations Joint Staff Pension Fund and Administrative Rule J.2 (e) of the aforesaid Fund, should be paid to my daughter, Penelope Tula Smith, and therefore not to myself.

"(c) . . . The obligations which I am invoking, . . . and whose specific performance I am requesting, . . . are as follows:

"That, in the event of the rescission by the Tribunal of the decision of the Standing Committee of The United Nations Joint Staff Pension Board, as requested by the applicant under '(b)' . . .

"(i) The United Nations Joint Staff Pension Board, in proper fulfilment of its legal and moral obligations towards me as outlined in this application, *be ordered by the Tribunal* to recover from Penelope Tula Smith, under Article 44 of the Regulations of the United Nations Joint Staff Pension Fund (*'Recovery of indebtedness to the Fund'*) any sum or sums of money paid to the said Penelope Tula Smith and, specifically, following the above-mentioned decision of the Standing Committee (at its 136th meeting on 13 and 14 July 1973) whereby The United Nations Joint Staff Pension Board paid to the said Penelope Tula Smith a child's benefit (see '(b)' . . .) amounting to a total sum of (or about) 1,293.81 US dollars.

"(ii) The United Nations Joint Staff Pension Board *be ordered by the Tribunal* to remit to the applicant the total sum of the child's benefit referred to in the preceding paragraph, '(i)', as well as any other sums which may be due to him: and that this should be done by the Board forthwith without its waiting until it has recovered the amount due to be paid back to it by Penelope Tula Smith and as mentioned in the same paragraph, '(i)'.

"(iii) The United Nations Joint Staff Pension Board *be ordered by the Tribunal*, furthermore, to remit to the applicant *appropriate interest* on the total amount remitted to him as mentioned in the preceding paragraph, '(ii)', as well as *an appropriate allowance* to cover the loss of value of the US dollar and the depreciation of the purchasing-power of money, generally, throughout the world, including the United Kingdom, since the applicant first claimed the child's benefit in August, 1972 . . . : *that is, unless* the Tribunal should decide that any such interest, allowance, etc., may be deemed to have been included in any Compensation which it has ordered The United Nations Joint Staff Pension Board to pay to the applicant—*see* '(d)' . . .

"(d) . . . The amount of compensation I am claiming, . . . in the event that the Secretary-General decides, in the interest of the United Nations, to pay compensation for the injury sustained in accordance with the option given to him under article 9, paragraph 1, of the Statute, is as follows:

"1,000.00 (one thousand) US dollars.

"This sum represents only a nominal compensation for the grave, the terrible and irreparable injury which I, as well as my 16-year-old son, have sustained in this matter: but I am willing to accept it as a full and total settlement of all my claims for compensation/damages in this matter against The United Nations Joint Staff Pension Board and/or any individual(s) associated with the Board.

" . . .

"I am, of course, claiming the compensation of 1,000.00 U.S. dollars in addition to the total child's benefit due, 1,293.81 U.S. dollars, on the rescission I

have requested of the Standing Committee's decision of 13 and 14 July 1973, communicated to me 11 September 1973.";

Whereas the Respondent filed his answer on 18 March 1974;

Whereas the Applicant filed written observations on 16 April 1974;

Whereas the facts in the case are as follows:

On 10 August 1972 the Deputy Secretary of the Joint Staff Pension Board informed the Applicant that the Standing Committee of the Board, taking a favourable decision on his appeal, had awarded him a disability benefit effective 31 March 1970, the day following his separation from WHO, and that the benefit carried with it an entitlement in favour of his son to a child's benefit of about 580 dollars per annum until he reached the age of 21. In a reply dated 14 August 1972, the Applicant also claimed a child's benefit in respect of his daughter for the period from 31 March 1970 to 21 May 1972, the date on which she had reached the age of twenty-one. On 26 September 1972 the Deputy Secretary advised the Applicant as follows:

"(f) The benefit due in respect of your daughter Penelope—which, after confirmation from WHO, has been able to be recognized—runs from 1 April 1970 through 31 May 1972 and amounts in total to \$1,293.81. I believe, however, that this calls for a somewhat different treatment, in the light of the provision in Article 37 (a) [of the Pension Fund Regulations] under which a child's benefit is payable directly to the child, and those of Administrative Rule J.2 (e) [of the Joint Staff Pension Fund]—in particular the reference there to exceptional circumstances, which I believe exist in this case. I propose therefore, subject to any views you may have in the matter, to pay this to Penelope herself."

On 30 September 1972 the Applicant wrote to the Deputy Secretary as follows:

"I wish to have the sum due here paid direct to myself, in accordance with Administrative Rule J.2 (e). I do not agree that there are any 'exceptional circumstances' justifying any procedure opposite to this. If, however, you should still adhere to your view that there are 'exceptional circumstances' in this case, then I should be glad to hear what you consider these are so that I can contest the matter from that basis. I hope, though, that this will not be necessary as it will mean my having to go into private family matters of an extremely distressing and painful nature. I ask you to accept from me that this money should be paid to me in accordance with the normal implementation of Administrative Rule J.2 (e): and that the amount in question, \$1,293.81, shall be therefore remitted to me as soon as possible."

On 18 October 1972 the Deputy Secretary replied:

"The exceptional circumstances justifying a departure from Administrative Rule J.2 (e) are that your daughter is now over the age of 21 and is entitled to the benefit in terms of Article 37."

In a cable sent to the Deputy Secretary on 23 October 1972, the Applicant expressed his opposition to any payment being made to his daughter on account of the child's benefit. On the same day he confirmed his opposition in a letter concluding as follows:

"I therefore rely on a threefold argument, basically, to justify my claim that payment of the benefit should be paid to myself and not to my daughter, Penelope . . . (a) The commonsense argument, within the spirit, clearly intended, of the Rules, etc. that the payment, normally, should be paid to the person who *should* be so paid for money he has outlaid, as is so in my case; (b) Admin. Rule J.2 (e) which clearly gives payment-entitlement to myself, there being no 'exceptional circumstance' in the fact that, long after my original application for my pension, etc., the child has just reached 21 years of age; and (c) Article 37 (a) which only allows, in any case, payment to a child of a person in receipt of

a disability benefit, etc. 'while the child remains unmarried and under the age of twenty-one'.

"I hope I have now written enough to convince you, finally, that I am the only person who can have the entitlement to payment of the benefit concerned and that, as I have stated, this payment should be made to me with my monthly cheque at the end of this current month of October 1972.

"I formally request that this payment to me shall now be the subject of certification by the Secretary of the Board, under Admin. Rule I.2, etc. or that, alternatively, under this same Rule, the matter be referred to the Standing Committee for decision. . . ."

On 24 October 1972 the Applicant wrote to the Deputy Secretary a further letter in support of his contention. On 14 November 1972 the Secretary of the Joint Staff Pension Board advised the Applicant as follows:

" . . .

"I wish to inform you that, in view of the conflicting claims which have been made by you and by your daughter in respect of the payment of the benefit to which these [the Applicant's] communications refer, I have no alternative but to refer for decision to the Standing Committee of the United Nations Joint Staff Pension Board under Rule I.2 of the Administrative Rules of the Fund, the question to whom such payment shall be made. . . .

"In the meantime I regret that the benefit cannot be paid."

On 24 November 1972 the Applicant replied as follows:

"Your letter gave the first intimation I have had that there have been 'claims . . . made by' my 'daughter in respect of the payment of the benefit to which these communications refer,'—i.e. an exchange of correspondence on this matter which began with Mr. Pringle [the Deputy Secretary]'s letter to me some two months ago (26.9.1972: ref. R/7677/78/79).

"In the interest of safeguarding the rights of myself and Robin [the Applicant's son] in this matter therefore I request that copies of all communications to you by my daughter, or by any person or body acting on her behalf, be forwarded to me at your earliest convenience, together with all replies emanating from the Board itself.

"I further request copies of *all* communications you have received in your office in regard to this matter, together with your replies thereto: and in this respect I particularly have in mind contacts made with the WHO as referred to under '(f)' of Mr. Pringle's letter of 26 September 1972 referred to above (' . . .—which, after confirmation from WHO, . . .').

"On receiving such copies I should then like to study them and consider whether or not to 'prepare a full report in support of my case here' as I mentioned in my letter to Mr. Pringle of 23 October 1972, I having prepared my case, up till now, somewhat sketchily for the purpose of convincing the Board's secretariat of my right to this benefit, and with no other specific purpose in view.

"I request that *all this take place before this matter is referred for decision to the Standing Committee* of the United Nations Joint Staff Pension Board under Rule I.2 of the Fund's Administrative Rules, as mentioned in your last letter.

" . . ."

On 27 November 1972 the Applicant cabled to the Secretary that he had appealed to his daughter for her to "withdraw her claim". In a letter to the Secretary received on 5 December 1972 he pointed out that if his daughter withdrew any claim to the benefit in favour of himself, he would ask the Secretary to arrange for payment of the benefit

to him without any further delay. On 12 February 1973, in reply to a further letter from the Applicant dated 5 January 1973, the Secretary informed him as follows:

“The situation at present in regard to the child’s benefit involved is that, in the light of your cable dated 27 November 1972 I did not submit the case to the meeting of the Standing Committee to which I had made reference in my letter of 14 November 1972, in the hope that it might become unnecessary to do so should the appeal to your daughter, of which you informed me in your cable, prove successful. To my regret I note from your letter that until now this has not happened. Hence, I shall have no alternative, therefore, but to refer the issue to the Standing Committee. Needless to say, I share your view that it would be most unfortunate for all concerned if no agreement should be reached between you and your daughter which would obviate the necessity for my doing so. I am sure you will agree, however, that in the absence of any communication from your daughter, either to you or to me, I cannot treat her silence as an expression of her consent to my making payment to you.

“Regarding your request for documents to be made available to you, I am afraid that I am not authorized to furnish you with correspondence exchanged between me and your daughter, irrespective of the purpose for which you may require it, as all communications with the Pension Fund and its organs must be treated as private and confidential.

“May I however point out to you that the consideration by the Standing Committee of the issue which may have to be submitted to it does not involve adversary proceedings. Nor will the names of the persons involved be disclosed to the Committee. What will be before the Standing Committee is my request for a ruling on the interpretation of the applicable Regulations and Rules of the Fund in a case which will be presented to it on the basis of a comprehensive exposition of all aspects of the case, which will of course, take into account all relevant information I have received from you.”

After a further exchange of correspondence, including a letter dated 13 July 1973 in which the Applicant stated that he had received from his daughter a letter intimating that she wished to waive any claim to the benefit, the Secretary informed the Applicant, on 31 August 1973, of the decision taken in the case by the Standing Committee of the Joint Staff Pension Board, as follows:

“I wish to inform you that at its 136th meeting the Standing Committee, to which the matter was referred, decided that payment of the benefit in question is to be made to your daughter, Penelope, in accordance with the terms of Article 37 (a) of the Regulations of the Fund and Rule J.2 (e) of its Administrative Rules. I therefore regret that in the light of that decision I cannot comply with your request to make payment of that benefit to you.

“I wish to apologize for the delay in communicating the decision to you, which was caused not only by my absence from this Office but also, to some extent, by the fact that your letter dated 13 July seemed to indicate that the above decision by the Standing Committee might have been overtaken by arrangements you and your daughter had made. I trust that you have in fact reached such agreement. In any case, as stated above, it is not possible for me now to do otherwise than to make payment in accordance with the decision of the Standing Committee.

“ . . . ”

On 13 February 1974 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. According to the letter of the law, the child's benefit in question should be paid to the Applicant and should not have been paid to his daughter:

(a) Article 37 (a) of the Pension Fund Regulations is "controlled" by Administrative Rule J.2 (e), which gives entitlement to receive payment of a child's benefit to the participant "unless there are exceptional circumstances". The onus of proving that there are "exceptional circumstances" clearly rests with the party seeking to challenge the participant's right to be paid the child's benefit, and no such proof has been forthcoming from the Respondent;

(b) The final phrase of article 37 (a) makes it inadmissible on legal grounds that the Applicant's daughter, after she had reached the age of twenty-one, should be considered as having any entitlement to the child's benefit—let alone to be actually paid it. The payment of the child's benefit to the Applicant's daughter, who at the time of such payment was over twenty-two years of age, must therefore be deemed to have been unlawful;

(c) There is no basis for the contention that "the exceptional circumstances justifying a departure from Administrative Rule J.2 (e) are that [the Applicant's] daughter is now over the age of 21 and is entitled to the benefit in terms of Article 37";

(d) The benefit has accumulated during the period from 1 April 1970 to 20 May 1972. It has accumulated to the participant's credit and must therefore be payable to him, as no "exceptional circumstances" have been claimed in respect of that period. Any argument lying outside the scope of that period is irrelevant.

2. The strict wording of the law is backed up by common sense, the spirit of the law and the morality of the law:

(a) Although the participant is not required to furnish any proof that he is actually expending, or has actually expended, money in respect of a child in regard to which he claims a child's benefit, the purpose of such a benefit is to give financial help to a parent or legal guardian of a child in respect of the expenses involved in raising and generally caring for the child;

(b) When inserting the clause regarding "exceptional circumstances", the framers of the Rule had in mind a situation where, the participant being dead and there being no surviving parent or legal guardian who could be held to be supporting the child, the child himself must be entitled to draw the benefit;

(c) The Applicant requested a disability benefit long before his daughter reached the age of twenty-one. Such a benefit was eventually granted to him following his appealing to the Standing Committee of the Joint Staff Pension Board on 20 June 1972. The absurdity of the Respondent's case appears from the fact that, had the Applicant appealed to the Standing Committee only one month earlier, the only argument put forward by the Deputy Secretary of the Board would not have been possible.

Whereas the Respondent's principal contentions are:

1. It is clear from article 37 (a) of the Pension Fund Regulations that a child's benefit is payable to the child and that ownership of the benefit vests therefore in the child; if the benefit was for the parent, the Regulations would have clearly so stated.

2. The Respondent, however, would not as a rule make payment of a benefit directly to a child of tender years or which was otherwise incapable of issuing a valid receipt for the benefit. For this reason, Administrative Rule J.2 (e) provides that payment of children's benefits shall be made "on their behalf" to the participant, implying that the role of the latter is that of a conduit for the interests of the children rather than one in which his own interest is paramount. Since the Joint Staff Pension Board's power to make rules is qualified by the requirement that such rules must be consistent with the Pension Fund Regulations, the Administrative Rules must not be

interpreted in such a way as would lead to a defeat of a provision of the Regulations.

3. The “exceptional circumstances” envisaged in Administrative Rule J.2 (e) are those where a parent or legal guardian did not provide for a child’s upkeep and the child was not within the control of the parent or legal guardian, so that payments made to the parent or legal guardian on the child’s behalf would normally not be expended on the child nor for its benefit. In this case, the Applicant has made no secret of his intention not to use the allowance for the benefit of the child even though such use is the only purpose for which the allowance may legally be paid. He has presented a claim which the Respondent can respond to only by violating the duty imposed upon him by article 37 (a) of the Pension Fund Regulations.

4. Even supposing that the Respondent has not complied with Administrative Rule J.2 (e), such alleged non-compliance cannot vest any substantive right in the Applicant to the child’s benefit.

5. At the crucial dates, the Applicant was being provided for by his daughter and not vice versa.

6. The Respondent’s obligations to a child under the Pension Fund Regulations and Rules are separate and independent of any rights of the father. If, therefore, the Applicant’s daughter is indebted to him or has no use for the child’s benefit whereas the Applicant and his son have, such arguments, whilst they may tend to furnish good basis for a moral or even legal claim by the Applicant against his daughter, do not constitute legal reasons which would justify the Respondent’s failure to comply with the clearly stated requirements of the Pension Fund Regulations and Rules.

7. Since there is no legal basis for the Applicant’s claim for the child’s benefit, he cannot claim compensation for damages allegedly suffered from the denial of a right to which he was not entitled.

The Tribunal, having deliberated from 16 to 26 April 1974, now pronounces the following judgement:

I. The Applicant requests the Tribunal, as a preliminary measure, to order the Respondent to produce a full report of the proceedings of the 136th meeting of the Standing Committee of the Joint Staff Pension Board and all communications between the Board, the World Health Organization, the World Meteorological Organization, his daughter, etc. . . . as set out *in extenso* in his pleas.

Without prejudice to its right to call for relevant documents and information from the Pension Board in appropriate cases, the Tribunal has in the past accepted in principle the confidentiality of the proceedings of the Pension Board and of the correspondence between the Board and persons or bodies other than the Applicant.

In this instance, the Tribunal finds that no case has been made out by the Applicant to depart from the principle mentioned above.

The Tribunal, therefore, rejects the Applicant’s request for production of documents and communications.

II. The Applicant requests the Tribunal to rescind the decision of the Standing Committee of the Joint Staff Pension Board, made at its 136th meeting, that payment of the child’s benefit in question be made to the Applicant’s daughter in “accordance with the terms of article 37 (a) of the Regulations of the Fund and Rule J.2 (e) of its Administrative Rules”.

Article 37 (a) of the Pension Fund Regulations reads as follows:

“A child’s benefit shall, subject to (b) and (c) below, be payable to each child of a participant who is entitled to a retirement, early retirement or disability benefit

or who has died in service, while the child remains unmarried and under the age of twenty-one.”

Administrative Rule J.2 (e) relevant for the purpose of the case reads:

“Benefits payable under the Regulations to the children of a participant shall, unless there are exceptional circumstances, be paid on their behalf to him and, upon his death, to the surviving parent or legal guardian of each child, in accordance, *mutatis mutandis*, with (a), (b), (c) and (d) above.”

III. The Applicant argues that under Administrative Rule J.2 (e) the child’s benefit is payable to the participant “unless there are exceptional circumstances”, and that the onus of proving that there are exceptional circumstances clearly rests with the Pension Board; as no such proof was forthcoming from the Respondent, the Applicant claims that he is entitled to payment of the child’s benefit in question. The Applicant further contends that on a strict reading of article 37 (a) of the Pension Fund Regulations, a child’s benefit is payable to each child of the participant . . . “while the child remains unmarried and under the age of twenty-one” and that, as his daughter was over twenty-one on the date of the decision of the Standing Committee, the payment of the child’s benefit to his daughter was “illegal and improper”.

IV. The Tribunal observes that the Pension Fund Regulations are generally framed to govern normal circumstances. In the Tribunal’s view, article 37 (a) declares that a child’s benefit is payable in respect of each child while it remains unmarried and under the age of twenty-one. The words “payable to each child” in the article relate to an entitlement to a child’s benefit on the conditions prescribed therein and do not specify the recipient of the benefit. If the said article were interpreted as contended by the Applicant, it would lead to an absurdity, namely, that regardless of age a child under twenty-one would become the recipient of the child’s benefit, and to a contradiction with Administrative Rule J.2 (e) which prescribes payment of the benefit to the participant (and not to the child) “unless there are exceptional circumstances”.

V. According to the Tribunal, the proper interpretation of these two texts is that under article 37 (a) the child’s benefit accrues to the benefit of a child unmarried and under twenty-one years of age and that under Administrative Rule J.2 (e) it is payable to the participant unless there are exceptional circumstances.

VI. The Tribunal observes that the communication dated 31 August 1973 conveying the decision of the Standing Committee merely stated that the Committee decided that payment of the benefit in question should be made to the Applicant’s daughter “in accordance with the terms of article 37 (a) of the Regulations of the Fund and Rule J.2 (e) of its Administrative Rules”. The Standing Committee did not give any reasons for the decision. The Pension Board’s plea that the consideration by the Standing Committee of an issue submitted to it does not involve adversary proceedings does not, in the opinion of the Tribunal, absolve the Standing Committee of its duty to spell out the grounds for its decisions. Considering that in the past, for instance in the case of Salvinelli (Judgement No. 126), the Standing Committee did furnish the reasons for refusing payment of children’s benefits to the natural guardian, it is somewhat surprising that in the present case the Standing Committee should have merely referred to the regulation and to the rule without substantiating with reasons its decision to pay the child’s benefit in question to the Applicant’s daughter.

VII. Although the decision of the Standing Committee merely referred to the pertinent Regulations and Rules of the Pension Fund, the Deputy Secretary of the Pension Board stated in his letter dated 18 October 1972: “The exceptional circumstances justifying a departure from Administrative Rule J.2 (e) are that your daughter is now over the age of 21 and is entitled to the benefit in terms of article 37.” According to the Respondent, a child’s benefit vests with the child under article 37 (a) of the

Pension Fund Regulations and as the child in question, having attained majority and the competence to issue a valid receipt, claimed the benefit, the benefit was legally payable to it.

VIII. The Tribunal observes that in normal circumstances a child under the age of twenty-one would be under the care of the parent or the legal guardian who bears the responsibility for its maintenance and upkeep. A child's benefit is therefore payable to the parent or the legal guardian so that it could be expended on the child and for its benefit. Instances may arise where the parent did not provide for the child or where the custody of the child is vested in some other person. In such cases, the purpose of the child's benefit would be defeated if payment were to be made to the parent. Administrative Rule J.2 (e) provides for such a situation. But it is equally possible to envisage a contrary situation where a parent, after having incurred all expenditures for the upkeep of the child, may be left without reimbursement of the amounts which he had spent on behalf of the child if the child, on attaining the age of twenty-one, claimed the benefit which had accrued but had not been paid to the parent. The test therefore, according to the Tribunal, is not whether the child had attained the age of twenty-one and was in a position to give a valid receipt but whether the circumstances were normal, in which case the parent is entitled to receive the child's benefit, or whether the circumstances were exceptional, in which case the parent is not entitled to receive the benefit on behalf of the child. The decision regarding the recipient of the benefit should depend on the circumstances rather than on whether the child has attained such age as to be able to claim the benefit and give a valid receipt.

IX. Having reached the above conclusion, the Tribunal could remand the case to the Pension Board for a statement of reasons in support of the view that there are exceptional circumstances in the case justifying non-payment of the child's benefit in question to the Applicant in accordance with Administrative Rule J.2 (e).

X. The Respondent states that he has "sufficient evidence, some of which have been provided by the Applicant himself, which raise doubts, if they do not show conclusively that during the period for which the child benefit allowance here in question was payable, the Applicant's child was not residing with him and that Applicant was not discharging his responsibilities for the upkeep of his minor child".

The Tribunal notes that the Standing Committee had received full information from the two parties claiming the child's benefit, namely, the Applicant and his daughter, before reaching its conclusion.

The Tribunal considers that the Standing Committee's reference to Administrative Rule J.2 (e) in the contested decision recognizes implicitly that there were exceptional circumstances in this case.

Sufficient material has been placed before the Standing Committee and before the Tribunal to show that the financial relationship between the Applicant and his daughter was so unusual as to make the exception contained in Administrative Rule J.2 (e) applicable to the case.

XI. The Tribunal accordingly finds that the Standing Committee had sufficient material before it to reach the conclusion that in the exceptional circumstances of the case payment of the child's benefit should not be made to the Applicant, and that the Standing Committee recognized those circumstances by its reference to Administrative Rule J.2 (e) in its decision.

The Tribunal therefore decides that the Applicant's claim to the child's benefit in question is not well founded.

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

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

F. A. FORTEZA
Member

Geneva, 26 April 1974

MUTUALE TSHIKANKIE
Alternate Member

Jean HARDY
Executive Secretary

STATEMENT BY MR. MUTUALE TSHIKANKIE

I have participated in the deliberations and the text of the judgement has been translated into French for me. I concur with the decision.

Geneva, 26 April 1974

(Signature)
MUTUALE TSHIKANKIE

Judgement No. 187

(Original: French)

Case No. 166:
Quémerais

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

Request for revision of Judgement No. 172.

Article 12 of the Statute of the Tribunal.—Award to the Applicant by Judgement No. 172 of an indemnity fixed on the basis that the European Office of UNICEF was transferred to Geneva on 1 October 1972.—The Applicant claims to have discovered that the European Office of UNICEF was not transferred on 1 October 1972 but on 31 August 1973.—Applicant's request for reinstatement or for the payment of a supplementary indemnity as compensation.—The fact that certain staff members of the Programme Development Service remained in Paris after 1 October 1972 cannot be equated with the discovery of a new fact.—Conditions on which the retention of the Applicant in one of the few posts retained in Paris would have depended.—The existence of these posts cannot be regarded as a decisive factor.—The Tribunal cannot consider that the Applicant, by learning that the transfer was carried out in stages, discovered a new fact.—Applicant's alleged discovery that certain locally recruited staff members of the European Office of UNICEF were transferred to UNESCO.—Irrelevance of this alleged discovery, since the Applicant was not entitled to consideration for posts outside UNICEF.—Request for rectification of the part of the judgement relating to the drawing up of a certificate of service.—The Tribunal notes that the request is not covered by the procedure envisaged in article 12 of the Statute.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. R. Venkataraman, President; Mr. Mutuale Tshikankie;

Whereas on 21 December 1973 the Applicant filed with the Tribunal an applica-