

The Tribunal notes that, although it falls within the context of the contract accepted on 30 April 1971, the education grant for the scholastic year 1974-1975 is not the subject of any request by the Applicant.

IX. The Tribunal notes lastly that the Applicant was kept informed of the amendment which the Secretary-General intended to make to the Staff Rules and that he expressed his agreement in writing. The Tribunal does not consider that that agreement was necessary for an amendment to the Staff Rules, since it considers that the question of the Applicant's acquired rights did not arise. While admitting that it was a reasonable administrative practice to obtain the agreement of high-level officials before taking the initiative of amending the Staff Rules, the Tribunal can draw no legal inferences from that agreement, which was not necessary in order for the Secretary-General to exercise the powers accorded him by the Staff Regulations.

X. In conclusion, the Tribunal decides that, in changing the bases for the computation of the education grant, the Secretary-General exercised the powers accorded him by the Staff Regulations and that any reductions in the grant payable to the Applicant entail no liability on the part of the Organization.

XI. For these reasons, the Tribunal decides:

- (1) The applications for intervention are admissible;
- (2) The application and the applications for intervention are rejected.

(Signatures)

S. BASTID
Vice-President, presiding

Z. ROSSIDES
Member

MUTUALE TSHIKANKIE
Member

New York, 3 October 1975

F. A. FORTEZA
Alternate Member
Jean HARDY
Executive Secretary

Judgement No. 203

(Original: English)

Case No. 198:
Sehgal

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

Non-renewal of a fixed-term appointment.

Question whether due consideration was given to the Applicant's case with a view to his continued employment as contemplated.—The fact that the Applicant's case was given consideration at each stage did not absolve the Respondent from all obligation when the decision not to renew the contract was taken.

Question whether the requisite procedures were applied to deal with the Applicant's rebuttal of the criticisms contained in his periodic report.—Conflict of views as to what procedures were appropriate.—It is unnecessary for the Tribunal to pronounce upon that difference of views, the key issue being whether the action taken was appropriate to the particular circumstances of the case.—Link between the question of the investigation of the Applicant's rebuttal and the need for due consideration of the renewal of his

contract.—Need for the Tribunal to consider whether the actions of the Respondent were appropriate to an investigation of the Applicant's rebuttal on the one hand and to due consideration being given to renewal of his contract on the other.

Requirements for an investigation of a rebuttal and for due consideration of renewal of a contract.—The Respondent's actions fell short of those requirements and were distinguished by a lack of objectivity which resulted in the Applicant being denied due process.

Request for rescission of the decision not to renew the Applicant's contract.—Request rejected.—Award to the Applicant of compensation equivalent to six months' net base salary.

The request for placing of certain findings in the Applicant's official file is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Stevens;

Whereas on 23 April 1974, at the request of Harsh Kumar Sehgal, a former local staff member of the Office of the United Nations Development Programme, hereinafter called UNDP, at New Delhi, India, the Tribunal decided, under article 7, paragraph 5 of its Statute, to fix at 1 August 1974 the time-limit for the filing of an application to the Tribunal;

Whereas the President of the Tribunal, with the agreement of the Respondent, successively extended that time-limit to 31 December 1974 and 30 June 1975;

Whereas, on 24 June 1975, the Applicant filed an application in which he requested the Tribunal:

“To declare the decision not to renew the appellant's appointment void and consequently to recommend a restitution of the contractual relationship to the *status quo ante*; in other words, to recommend that

“(a) the appellant be offered the contract he was entitled to expect effective 1 October 1969,

“(b) the appellant be granted adequate compensation for his loss of earnings resulting from the invalid decision, and

“(c) there should be placed in the appellant's official file positive findings in order to remove as much as possible the negative reflection that the contested decision has put on his record.”;

Whereas the Respondent filed his answer on 11 August 1975;

Whereas the Applicant requested on 12 August 1975 that oral proceedings be held in the case;

Whereas the President ruled on 20 August 1975 that the circumstances of the case did not justify the holding of such proceedings;

Whereas on 30 September 1975, after the expiry of the time-limit prescribed for the filing of written observations, the Applicant requested an extension of such time-limit until 12 October 1975;

Whereas on 30 September 1975 the Tribunal, having taken up the case for consideration on 25 September 1975 and having reached conclusions thereon, informed the Applicant that it had proceeded to consider his case and had already reached a decision;

Whereas the facts in the case are as follows:

On 5 October 1966 the Applicant, then in the service of the Government of India, submitted to the Resident Representative of UNDP at New Delhi an application for a post of Junior Field Officer in the World Food Programme (WFP) which had been

advertised in the local press. On 9 January 1967 the Resident Representative sent him the following offer of employment:

“With reference to your application dated 5 October 1966 and subsequent interviews held in this office, I am pleased to offer you, subject to approval of your candidature by United Nations Development Programme Headquarters and medical clearance by the United Nations Medical Director, the post of a Junior Field Officer with the World Food Programme in India, initially on a trial basis for a period of three months. At the conclusion of this period if your services are found satisfactory, you will be given a contract for a fixed term of one year and thereafter your case will be duly considered for an extension of the fixed-term contract or for an indefinite appointment. You will not be entitled to Pension Fund participation during the probationary period of three months while Associate Pension Fund participation will apply during the fixed-term appointment. However, you will be entitled to full Pension Fund participation from the date you are given indefinite contract. During the trial period, if your work is not found satisfactory, your services may be terminated. During the probationary appointment, you will not be entitled to any leave or medical benefits.

“ . . . ”
 The Applicant accepted that offer on 15 January 1967 and reported for duty on 1 March 1967. His letter of appointment was issued on 3 March 1967. On 15 May 1967 and again on 31 May 1967, the date of expiry of the Applicant's contract, his supervisor, Mr. J. P. Bradford, was asked for his views on the Applicant's performance and his recommendations as to whether the Applicant's three-month appointment might be converted to a one-year fixed-term appointment. On 1 June 1967 Mr. Bradford recommended a three-month extension and on 2 June 1967 the Applicant was issued a letter of appointment for a fixed-term of four months. On 1 October 1967 the Applicant was granted a fixed-term appointment for one year. On 1 October 1968 that appointment was extended for one year. On 1 May 1969, in a report on the Applicant's performance, Mr. Bradford gave him an above-average rating on four items (industry, quality of work, punctuality and initiative), an average rating on three (competence, quantity of work and responsibility), a below-average rating on one (personal relations with others) and an over-all rating of “good”; he made the following general comments:

“Staff member has potentialities, but still lacks maturity of judgement and his relations with staff can be improved. He has been asked to work with his colleagues as part of a team, but in reply he can only quote injustices he has suffered from others. I cannot feel as hopeful of change of attitude before his current fixed-term appointment expires and have so advised him.”

On 5 May 1969 the Resident Representative signed the report and wrote:

“Nothing to add to the above comments. Mr. Sehgal was recruited after a very careful check into his background and several interviews. But so far our efforts have not been fully justified by his performance. He will continue to be watched before any further extension of his appointment.”

On 6 May 1969 the Applicant, in signing the report, noted that he had some disagreement on some points and that his observations would follow. On 31 May 1969 he submitted a rebuttal concluding with the following request:

“I think the ends of justice cannot be better met with than by instituting a thorough, objective enquiry on the basis of the facts on which the Reporting Officer has based himself while writing my performance report, followed by an examination of the facts reported by me in this note and to be supplemented in the course of enquiry. Most of the facts stated by me can be supported by the records, if, however, the records are not interfered with. Additionally, I demand that the scope of enquiry should include an analytical examination of the performance and

the performance reports of others in World Food Programme in New Delhi, international staff including, which is necessary to find out how far objectivity has been maintained in awarding the Performance Reports to the staff member and others in WFP in New Delhi. The Enquiry Officer should also be directed to take up and consider any related questions, including those which have a germ of public interest, as may be brought up by either party and prepare a verbatim record of the proceedings of the meeting. It is expected that the Enquiry Officer will conduct the Enquiry in depth with an open and clear mind, distinguish points from noise and passion, and with fairness (and appearing to be fair too), firmness and without any consideration whatsoever of the high offices held by one of the parties, while treating both the parties in the case *on equal footing*."

On 16 June 1969 the Applicant asked the Resident Representative to forward the performance report (and the rebuttal) without further delay to UNDP Headquarters "for their immediate action". On 18 June 1969 the Resident Representative replied as follows:

" . . .

"In view of the various observations you make about Mr. Bradford, our World Food Programme, Programme Officer, I have waited for his return before writing to you.

"I would also have liked to await the return of my Administrative Officer, Mr. Y. Y. Kim, who has a general responsibility of revising reports on all Junior Officers working for me.

"In view of your obvious impatience, however, I am now giving you my view in the matter.

"I am sending copies of both of your letters [dated 31 May 1969 and 16 June 1969 respectively] to Mr. John Birt, Chief, Personnel Division, UNDP. They will be filed along with your Periodic Report both here in New Delhi and in UNDP Headquarters.

"It is with some sadness that I comment on the substance of your letters. No doubt you are right on some points; we should have given you a first official Periodic Report much earlier than this one, which does in fact cover the full period of your service since your entry on duty in March 1967. Your present step in level ND-5 has been corrected to read Step IV which you received in March 1969, whereas the form was first prepared before that date and thus indicated Step III. To insinuate that this was a sinister plot to evade showing that you had received two increments is of course just childish.

"In general, your two letters in my view indicate more clearly than anything else your egotism, your scorn for the contribution of virtually all your colleagues, your immaturity, and the reasons why we have found your relationships with others to be unsatisfactory.

"I do not accept your demand for an inquiry but Headquarters can comment on this as they wish."

On 30 June 1969 the Applicant wrote to the Chief of the Personnel Division of UNDP that on 19 June 1969 he had talked to the Resident Representative "to explore the possibility of our arriving at a complete understanding and agreement among ourselves on my Performance Report" and that at the suggestion of the Resident Representative a further discussion would be held in the presence of Mr. Bradford; the Applicant concluded by requesting the Chief of the Personnel Division to suspend any further consideration of the matter until he received the Applicant's observations on the Resident Representative's letter of 18 June 1969. On 3 July 1969 the Resident Representative held a further discussion with the Applicant in the presence of Mr. Bradford

and of Mr. Kim, the Assistant Resident Representative, and on 8 July 1969 he sent the Applicant the following letter:

“You will recall that I had a long chat with you on 19 June in which I gave you the opportunity to explain your views about the Periodic Report we gave you, your comments thereon dated 16 June 1969, and my letter to you dated 18 June. As I told you then, I wanted you to have a chance to explain your views in the presence of Mr. Bradford and Mr. Kim, both of whom were involved in the preparation of your Periodic Report. The four of us met again on 3 July for nearly one hour and a half, at which time you again expressed your views in this matter. Specifically you requested me to alter your Periodic Report in several respects. I told you I would give you a decision on this matter within a few days.

“This note is to tell you that after our two conversations and a review of the matter with Mr. Bradford and Mr. Kim, I must now confirm that I do not plan to alter the Periodic Report we gave you.

“ . . . ”

On 10 July 1969, in a letter addressed to the Chief of the Personnel Division, the Applicant, after asserting that at the meeting of 3 July 1969 Mr. Bradford had not questioned the substance or the conclusions of the Applicant's rebuttal, expressed his gratitude to the Resident Representative and Mr. Bradford for accepting his point of view on the facts of his performance, “with the firm and fond hope that this minor controversy will be buried deep without any trail of displeasure or prejudice and without any ritual of revising the Performance Report”. On 15 July 1969 the Resident Representative, to whom the Applicant had sent a copy of his letter, denied that he had accepted the Applicant's point of view on the facts of his performance. In a letter of 18 July 1969 the Applicant informed the Chief of the Personnel Division that his efforts to arrive at an amicable settlement in New Delhi on the question of his performance report had failed and asked UNDP Headquarters to institute an inquiry along the lines suggested in his rebuttal of 31 May 1969. On 25 July 1969 the Resident Representative commented on that letter in a communication to the Applicant concluding as follows:

“We are not at all dealing with facts, but rather with your exalted opinion of your own performance and ability to get along amicably with your colleagues on the one hand, and the considered judgement of Mr. Bradford and Mr. Kim and myself on the other.”

On 28 July 1969 the Applicant reiterated his request for an inquiry to the Chief of the Personnel Division. On 29 July 1969 the Resident Representative sent the Applicant a detailed reply to the rebuttal of 31 May 1969 and copied his letter to Headquarters under cover of a letter recommending non-renewal of the Applicant's appointment. On 30 July 1969 the Applicant commented briefly on that reply in a letter to the Resident Representative, adding that he would discuss the various points mentioned by the Resident Representative when an inquiry was instituted by UN Headquarters. On 12 August 1969 the Resident Representative informed the Applicant that, following consultation with and agreement of the Personnel Division of UNDP, he had decided not to offer him an extension of his fixed-term appointment beyond 30 September 1969; the Resident Representative added:

“It is now perfectly clear to me that you cannot work harmoniously and effectively in this office, and I do not believe it would be in the interest of either UNDP or yourself for you to continue in our service.

“The Personnel Division of UNDP has asked me to inform you that they do not agree to hold the ‘enquiry’ you have requested.”

On 10 September 1969 the Applicant requested the Administrator of UNDP to review

the decision not to extend his appointment. On 24 September 1969 the Applicant's request was denied and on 13 October 1969 he lodged an appeal with the Joint Appeals Board, which submitted its report on 4 December 1973. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations"

"40. The Board find that there was no investigation of the appellant's rebuttal to the periodic report of May 1969 on his performance and that the appellant consequently was denied due process. The Board find further that, contrary to the commitment made to the appellant by the Organization in the letter of 9 January 1967, due consideration was not given to his case for an extension of his fixed-term appointment or for its conversion to an indefinite appointment before the decision was taken on 12 August 1969 not to renew his appointment.

"41. The Board recommends that the respondent pay to the appellant 3 months of base salary as compensation for the injury caused to the appellant." The Chairman of the Joint Appeals Board appended to the Board's report a dissenting opinion in which he concluded that

"... the requirements for an impartial investigation of the matters raised by the appellant's rebuttal have been met. The demand of the appellant for a revision of the report, which remained unsatisfied, had no mandatory power or legal basis." and that

"The respondent exercised his discretion properly in deciding not to extend the appellant's fixed-term appointment after its expiration date, that the appellant's charge of improper motivation of this decision by prejudice or extraneous factors has not been proved, and that there are no grounds for making any recommendations in favour of the appeal."

On 4 February 1974 the Assistant Secretary-General for Personnel Services communicated the decisions of the Secretary-General to the Applicant in the following letter:

"...
"The Secretary-General has carefully reviewed your complaint in the light of the Board's Report. The Secretary-General did not agree with the conclusions of the majority that there existed a legitimate expectancy for a further extension of appointment beyond those which had already been granted nor that there was a failure to give due consideration to the question of the further extension of your employment prior to the decision which was taken on 12 August 1969 not to extend your appointment any further.

"On the question of the periodic report, the Secretary-General decided that the majority of the Joint Appeals Board was in error in presuming to apply the procedures in Administrative Instruction ST/AI/115 on periodic reports to the circumstances under which this case was reviewed. The Secretary-General was satisfied that the procedures set out in UNDP's Field Manual (including paragraph 36) were those which were properly applicable in this case and that these last mentioned procedures were substantially complied with.

"In view of the aforesaid, the Secretary-General has decided to reject the recommendation of the majority of the Board that you be granted compensation equivalent to three months' base salary and to maintain the decision not to extend your fixed-term appointment beyond 30 September 1969."

On 24 June 1975 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. There was no investigation of the Applicant's rebuttal to the periodic report of May 1969 on his performance and therefore the Applicant was denied due process.

2. Contrary to the commitment made to the Applicant by the Organization in the letter of 9 January 1967, due consideration was not given to his case for an extension of his fixed-term appointment or for its conversion to an indefinite appointment before the decision was taken on 12 August 1969 not to renew his appointment.

3. While the renewal or non-renewal of a fixed-term appointment is the prerogative of the Secretary-General, this prerogative has to be exercised in the best interest of the service, which was not done in the Applicant's case.

4. No substantive proof was shown that the Applicant could not work effectively and harmoniously in the performance of his duties for the Organization.

Whereas the Respondent's principal contentions are:

1. The Applicant was the holder of a fixed-term appointment which by its expressed terms carried no expectancy of renewal or conversion to any other type of appointment. There were no facts and circumstances surrounding the appointment carrying any expectancy of renewal or conversion. Such expectancies as were created by the letter of 9 January 1967 were satisfied by the consideration which resulted in the grant to the Applicant of his final fixed-term appointment. Moreover, towards the end of the Applicant's final fixed term contract, full consideration was given by the Respondent to the question of the Applicant's suitability. Such consideration which, unfortunately for the Applicant, found him not suitable constituted full satisfaction of any legitimate expectancy which the facts and circumstances surrounding the letter of appointment may have created.

2. The rebuttal which the Applicant made of his performance report was investigated by the Resident Representative in compliance with the applicable rules.

The Tribunal, having deliberated from 25 September to 7 October 1975, now pronounces the following judgement:

I. The Tribunal notes at the outset that there are two points on which the Applicant and the Respondent are in agreement:

- (i) that when in January 1967 the Applicant was first engaged on a trial basis for three months, he was informed that if at the conclusion of that period his services were found satisfactory he would be given a contract for a fixed-term of one year and thereafter his case would be duly considered for an extension of the fixed-term contract or for an indefinite appointment;
- (ii) that though he was granted a fixed-term appointment of one year from 1 October 1967 and that appointment was extended for one year on 1 October 1968, the first periodic report on the Applicant was made on 1 May 1969, notwithstanding that both Administrative Instruction ST/AI/115 and Section IV-C of the UNDP Field Manual in force at the time require that staff on temporary or fixed-term appointments be reported on, at the end of each year of service in the case of the former text, or annually in the case of the latter.

II. The Tribunal notes further that it was this first periodic report made on 1 May 1969, after the Applicant had been employed on successive contracts for a period of twenty-six months, which provoked a series of developments leading to the non-renewal of the Applicant's second one year fixed-term contract.

III. The issues before the Tribunal are in brief:

- (i) whether due consideration was given to the continued employment of the Applicant in accordance with the terms of the letter of 9 January 1967;
- (ii) whether the requisite procedures to deal with the rebuttal by the Applicant

of the adverse criticisms contained in the periodic report of 1 May 1969 were complied with.

IV. As to (i), the Tribunal notes the Respondent's contention that the Applicant in fact received at each stage—namely when at the end of the trial period he was given a four months extension; when he was next given a one year fixed-term appointment; and again when that appointment was renewed for a further year—the consideration contemplated in the letter of 9 January 1967. While this contention has some weight, it does not, in the Tribunal's view, mean that the Respondent was absolved from all need to give due consideration to the decision not to renew when that decision was taken in 1969. The nature of the action taken at that time is discussed in paragraph IX below.

V. With regard to (ii) in paragraph III above, the Tribunal notes that there is a conflict of view as to what procedures were appropriate in this case for dealing with the Applicant's rebuttal. It is the contention of the Applicant, and his view is endorsed by the majority opinion of the Joint Appeals Board, that Administrative Instruction ST/AI/115, which requires that the Head of the Department shall investigate the case and record his appraisal of it in writing, was applicable. The Respondent on the other hand maintains that Section IV-C of the UNDP Field Manual, which merely required that the rebuttal automatically become part of the periodic report and be copied to Headquarters, was the relevant procedure and that the same had been substantially complied with.

VI. For a number of reasons the Tribunal does not find it necessary to pronounce upon the difference of view described in the preceding paragraph. Firstly, the provisions of Section IV-C of the UNDP Field Manual have now been superseded by other provisions which conform in substance to the procedures laid down in Administrative Instruction ST/AI/115. Secondly, the Respondent has conceded that the Resident Representative was obliged to investigate the Applicant's rebuttal of his performance report. Thirdly, the Tribunal recognizes that a form of investigation was undertaken, the opinions of a number of those who worked with the Applicant, namely the World Food Programme Project Officer, the two Assistant Project Officers and the Assistant Resident Representative for Administration, in addition to the Applicant's supervisors, were solicited (apparently confirming the views in the periodic report), the Applicant's rebuttal was duly filed and a full and critical answer to that rebuttal was prepared, sent to Headquarters and filed by the Resident Representative.

VII. The key issue to be determined, in the Tribunal's judgement, therefore, is not so much what particular instruction applied nor even whether what took place was or was not an investigation, as whether the action taken was appropriate to the particular circumstances of this case. In this connexion it should be noted that, beginning with the periodic report in which the Resident Representative comments: "He will continue to be watched before any further extension of his appointment", the question of the investigation of the Applicant's rebuttal on the one hand and the question of due consideration of the renewal of his contract, on the other, became intertwined. Decisions on the latter appear to have been taken, at least in part, as a result of developments arising out of the former. It is therefore necessary for the Tribunal to consider at this point whether the actions of the Respondent were appropriate to an investigation of the Applicant's rebuttal on the one hand and (for the reasons given in paragraph IV above) to due consideration being given to renewal (or non-renewal) of his contract on the other.

VIII. In the Tribunal's view, an investigation of a rebuttal by a Head of Department or his equivalent calls for a balanced regard for the conflicting views of the staff member and his supervisors, a dispassionate approach to the issues standing between them, a search for additional evidence or opinions which may throw further light on

their respective viewpoints, and a clear and reasoned determination. Due consideration of renewal of contract would appear to the Tribunal to require at least that the arguments for and against renewal should be objectively weighed and in the event of an adverse decision the reasons for such decision clearly set out.

IX. Whichever of the foregoing criteria is applied, the actions of the Respondent fell short of the requirements as set out in the preceding paragraph and moreover were, in the Tribunal's view, distinguished by a singular lack of objectivity. Thus, the first written communication, on 18 June 1969, from the Resident Representative to the Applicant after the rebuttal had been submitted charged him with egotism, scorn for the contribution of virtually all his colleagues, and immaturity, and referred to the "reasons why we (underlining supplied) have found your relationships with others to be unsatisfactory". Although the meeting between the Resident Representative, Mr. Bradford, Mr. Kim and the Applicant on 3 July 1969 was ostensibly to give the last named "another opportunity to express his views concerning his periodic report", the Resident Representative opened the meeting by saying (in his own words) that after reading the rebuttal of 31 May and having heard the Applicant on the same subject for one hour or so on 19 June, he was not inclined to change the performance report. In his letter of 25 July 1969, the Resident Representative again referred to the Applicant's "exalted opinion of [his] own performance", contrasting it with the "considered judgement of Mr. Bradford and Mr. Kim and myself" (underlining supplied) on the other. In his letter of 29 July 1969 dealing with the Applicant's rebuttal in detail, the Resident Representative resorted to the device of quoting typing errors in the rebuttal and also in a letter of 18 July 1969 addressed by the Applicant to Headquarters, in order to disprove the Applicant's claim to "competence". "If", he said, "the draft letters, reports, etc. which you submitted to Mr. Bradford and the Assistant Project Officers contained as many mistakes as these two, your claim of outstanding competence hardly holds water". The irrelevance and inappropriateness of such comments scarcely needs to be underlined by the Tribunal. It was in a letter to Headquarters covering a copy of this letter of 29 July 1969 that the Resident Representative recommended the non-renewal of the Applicant's contract.

X. In view of the facts cited in paragraph IX above, the Tribunal considers that there was a lack of objectivity on the part of the Respondent in dealing both with the Applicant's rebuttal of his periodic report and with the question of the renewal of his contract. This lack of objectivity resulted in the Applicant being denied due process.

XI. The Applicant requests the Tribunal to declare the decision not to renew his appointment void and "consequently to recommend a restitution of the contractual relationship" and other relief. The Tribunal observes that the Applicant was on a fixed-term appointment whose renewal was contingent upon several circumstances. On the evidence placed before it, the Tribunal holds that the request for the rescission of the administrative decision not to renew the Applicant's fixed-term appointment cannot be sustained. However, as the Tribunal has determined that the Applicant was not given due consideration for further employment, contrary to the undertaking given to him in the letter dated 9 January 1967, and that there was no objective investigation of the Applicant's rebuttal to his periodic report, the Tribunal decides that compensation for the injury sustained by the Applicant is the appropriate remedy in the case. Accordingly, the Tribunal orders that compensation equivalent to six months net base salary be awarded to the Applicant.

XII. The Applicant's request for placing in his official file "positive findings" in respect of his performance is rejected.

(Signatures)

R. VENKATARAMAN

President

Francis T. P. PLIMPTON

Vice-President

New York, 7 October 1975

Roger STEVENS

Member

Jean HARDY

Executive Secretary

Judgement No. 204*(Original: French)***Case No. 180:
Mila****Against: The Secretary-General
of the United Nations**

Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.

Correction of the procedure in application of Judgement No. 184.

Preliminary consideration of the Applicant's requests concerning the production of various documents.—Request for the production of the typed transcript of the tape recording made during the meetings of the Appointment and Promotion Panel.—The practice of the Tribunal when it is called upon to consider in a given case the advisory procedure which preceded the contested decision is to do so on the basis of the report of the advisory body concerned.—No ground for the Tribunal to hear the tape recording.—Request rejected.—Request for the production of the Applicant's personal history form and fact-sheet communicated by the Respondent to the specialized agencies.—Request rejected, the production of those documents not being directly related to the pleas filed with the Tribunal.—Request for production of the note communicated to the Joint Appeals Board by the Applicant's counsel concerning the Board's competence.—Request rejected because it is without purpose.

Consideration of the complaints of the Applicant concerning the procedure followed subsequent to Judgement No. 184.—Complaints concerning the composition of the Panel.—Fact that the Respondent included among the five members of the 1974 Panel four members of the 1972 Panel.—In the absence of legal provisions, the composition of an administrative body whose task is to advise the Secretary-General falls within the competence of the latter.—In this case, no general legal principle compelled the Secretary-General to exclude a given person, at least in so far as the procedural defects noted were not related to the conduct of that person.—Complaints concerning the decision of the Joint Appeals Board stating that it was not competent.—Since the Applicant does not request that the case be remanded to the Board and the Respondent has accepted direct recourse to the Tribunal, there is no need for the Tribunal to take a decision on the legality of the conduct of the Board.—Complaints concerning the proceedings before the Panel.—Consideration of the Panel's report.—Conclusion of the Tribunal that the Panel carried out a thorough, searching and balanced review of the Applicant's standards.

Consideration of the decision taken by the Respondent consequent upon the Panel's report.—The system of five-year review of permanent contracts.—Cases in which a permanent contract may be terminated.—Complexity of the Applicant's case in the light of the recommendations of the Panel.—Consideration of the legality of the decision.—It cannot be said that the decision draws clearly mistaken conclusions from the dossier.—A decision cannot be rescinded on the basis of an equivocal formula.—Contention of the Applicant that the procedure of reviewing his contract concealed a disciplinary measure so that it would be subject to less strict rules.—Distinction between "services" and "conduct".—No misuse of procedure can be imputed to the Respondent.—Lapses in procedure and administrative short-comings