

*(Signatures)*

R. VENKATARAMAN

*President*

Suzanne BASTID

*Vice-President*

Francis T. P. PLIMPTON

*Vice-President*

*Geneva, 26 April 1976*

Francisco A. FORTEZA

*Alternate member*

Jean HARDY

*Executive Secretary*

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## Judgement No. 211

*(Original: English)*

**Case No. 206:**

**Hamo**

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

*Request for the reopening of a case by the Advisory Board on Compensation Claims.*

*Request that the Applicant be given access to all background documents relating to the case and that the Advisory Board be requested to produce the terms of reference of the Medical Board constituted to examine the Applicant's case.—Request rejected, since it does not relate to specific additional information and the need for production of the terms of reference, if any, of the Medical Board has not been established.*

*Principal request.—Discretion of the Secretary-General to reopen cases relating to compensation and amend the award with respect to future payments.—Obligation of the Secretary-General not to exercise such discretion unreasonably or arbitrarily.—Consideration of the question whether the decision of the Secretary-General approving the recommendation of the Advisory Board that the request for reopening of the case be rejected is arbitrary or unreasonable.—Observation by the Advisory Board that the request for the reopening of the case contained no new element of substance which had not been taken into account by the Medical Board.—Report of the Medical Board.—Not being competent to make an assessment of the medical opinion, the Tribunal will confine its examination to the question whether the conclusions reached were vitiated by lack of due process.—Contention of the Applicant that the terms of reference of the Medical Board did not give the latter the necessary freedom to conduct an inquiry.—Contention rejected in the absence of any complaint from the medical expert selected by the Applicant.—Contention of the Applicant that the criterion of "attributability" was replaced by the concept of "the direct and the essential cause" in the terms of reference of the Medical Board.—Contention rejected, since the Board should be presumed to have considered the question in all its aspects.—Contention of the Applicant based on the unanimous view of the Medical Board concerning his current state of health.—Observation by the Tribunal that the Applicant has been awarded a disability benefit and rejection of the contention.*

*Alternative request that the Applicant be compensated under article 1 (b) of appendix D to the Staff Rules.—Irrelevance of that provision to the case.*

*Observation by the Tribunal that in any event no new material or evidence has been submitted by the Applicant.*

*Conclusion of the Tribunal that the recommendation of the Advisory Board is not vitiated by any irregularity of procedure and that the Secretary-General's decision approving that recommendation was within his discretionary authority.*

*Application rejected.*

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## THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza; Sir Roger Stevens, alternate member;

Whereas at the request of Yizchak Hamo, a former local staff member of the Office of the United Nations Development Programme, hereinafter called UNDP, at Jerusalem, Israel, the President of the Tribunal, with the agreement of the Respondent, extended successively to 15 and 23 July 1976 the time-limit for the filing of an application to the Tribunal;

Whereas, on 23 July 1976, the Applicant filed an application the pleas of which read as follows:

"1. The Tribunal is requested to order the following preliminary measures:

"(a) That the Applicant be given access to *all* background documents relating to the case, including all medical reports and evidence, correspondence related thereto, which are in the possession of the Advisory Board on Compensation Claims and the United Nations Medical Service.

"(b) That the Advisory Board on Compensation Claims be requested:

"(i) to reproduce the *terms of reference* of the Medical Board constituted in 1973 for the examination of Mr. Hamo's illness;

"(ii) to answer whether the Board requested any further information from that Medical Board.

"2. Mr. Hamo's present illness is attributable to the performance of official duties in accordance with Article 2 of Appendix D, and that his case should be reconsidered in the light of his present physical condition as a whole and existing medical evidence.

"3. He is entitled to compensation for his present illness under Article 11 of Appendix D to the Staff Rules, or alternatively, under Article 1 (b) of the same Appendix."

Whereas the Respondent filed his answer on 23 August 1976;

Whereas the Applicant filed written observations on 30 September 1976;

Whereas the facts in the case are as follows:

The Applicant was employed by the Office of the Technical Assistance Board (which became the UNDP Office) at Jerusalem, Israel, as a locally recruited Driver under a succession of temporary or fixed-term appointments from 4 December 1960 to 31 August 1964. On 1 September 1964 he received an indefinite appointment. On 18 May 1965, while driving an official car, he experienced an accident which he later described as follows:

"1. On 18 May 1965 at 0815 hours, 45 minutes after I commenced work, on returning to the office, after various tasks in town, the right hand door of the car opened and I was forced to close it whilst driving, in order to avoid a disastrous road accident by stopping suddenly.

"2. The moment I realized that the right hand door was open, I stretched my right hand and bent my whole body over to the right in order to reach the handle of the door to close it. Immediately the door was closed and while continuing to drive to the office, I felt sharp and unbearable pains in the right hand side of my chest. Being close to the office, I continued driving to the office parking space in a state of complete collapse and shortness of breath.

"3. Mr. Avener Arazi, who was then Administrative Assistant in the office of the Resident Representative saw me leaning on the steering wheel of the car, from which I was unable to get out—came up to me, tried to talk to me and I was

unable to answer him. He immediately took me to the nearest doctor, i.e. Dr. Sherer.

“4. Dr. Sherer examined me, treated me and gave me first aid. After I rested in Dr. Sherer’s clinic for about an hour, Dr. Sherer asked Mr. Arazi to take me home and ordered me complete rest at home, where I stayed until 23 May 1965, under the care and treatment of my family doctor, Dr. Moshe Alkalay.

“5. On 23 May 1965, when my medical condition became worse, Dr. Alkalay ordered immediate hospitalization at Hadassah Hospital in Jerusalem, where I was hospitalized until 27 May 1965. During my stay in Hadassah Hospital it was diagnosed that because of my closing of the car door, my right lung had been damaged—‘Spontan. pneumothorax’.

“6. On 27 May 1965 I was released from hospital and sent home. The doctors ordered me specifically complete rest at home. I was in bed until 20 July 1965 under the continual care and direct treatment of my family doctor, Dr. Moshe Alkalay. . . . During all this period I had numerous chest X-rays.

“7. On 21 July 1965 I returned to my job with the doctor’s approval. . . .”  
On 9 August 1965 Dr. Sze, Medical Director of the United Nations, wrote to the Administrative Officer of the Technical Assistance Board that on the basis of medical reports submitted to the Health Service he believed that the Applicant’s “present condition may be attributed to his accident, and therefore he can submit a claim for service-incurred illness”. It appears that the Applicant did not submit such a claim at that time because his medical expenses were covered under the Israel National Sick Fund Scheme and no lasting or permanent disablement was apparent. In the course of the following years, however, the Applicant suffered in April 1968 and July 1971 respectively two further accidents which he related to the first and, his general condition having deteriorated seriously, he was assigned non-driving duties in September 1971. On 29 November 1971 the Chief of the Personnel Division of UNDP requested that the Applicant’s case be reviewed for possible award of a disability benefit under the terms of article 34 of the Pension Fund Regulations, on the ground that the Applicant was no longer able to perform in his regular driving functions due to certified ill health; the Chief of the Personnel Division added that it might become necessary for the Applicant to be terminated in the interests of the Organization based on the fact that, for reasons of ill health, he was incapacitated from further service as a driver. On 13 December 1971, in a recommendation to the United Nations Staff Pension Committee, the Secretary of the Committee expressed doubt as to whether the Applicant would properly qualify for the award of disability benefit since he appeared to be capable of functioning without difficulty in non-driving work and since the provisions of article 34 of the Pension Fund Regulations did not envisage an award where a participant was still able to service in a function reasonably compatible with his abilities. On 28 January 1972 the Applicant submitted a claim for compensation under article 11 of Appendix D to the Staff Rules. His claim was supported by a letter dated 19 January 1972 from Dr. Eli Davis, a United Nations designated physician, to the Medical Director of the United Nations in which Dr. Davis summarized the Applicant’s medical history as follows:

“Mr. Y. Hamo was admitted to the U.N. Staff, medically fit. He sustained a pneumothorax, certified to be a work accident, 3 and a half years later. After another 3 years, he developed an acute coronary attack and was found to have polycythemia. We cannot rule out a connection between the pneumothorax and the polycythemia, which is presumably secondary. Since then he had numerous attacks of chest pains in all kinds of circumstances, including driving. If the recent attacks are due to spasm or to true coronary narrowing, or are triggered off by an emotional overlay, these factors do not alter the fact that he is liable to an acute

coronary event at any time, including at work. In addition he has a resistant polycythemia which can give rise to a whole series of complications. Mr. Hamo is therefore not fit to do any driving at all and he is not a good risk even in office employment."

On 4 February 1972 the Chief of the Personnel Division of UNDP was advised that the United Nations Staff Pension Committee had decided that the Applicant was not eligible for disability benefit under the terms of article 34 of the Staff Pension Regulations. The Applicant was informed accordingly. On 28 March 1972 Dr. Irwin, who had succeeded Dr. Sze as Medical Director of the United Nations, advised the Advisory Board on Compensation Claims (ABCC) that personally he thought that it was somewhat unlikely a spontaneous pneumothorax could occur as a result of forcibly closing a car door and that, even if evidence was produced later that the Applicant had polycythemia, there was no reference in the medical literature which he could find that stated this condition could be a complication of a spontaneous pneumothorax. On 7 April 1972 the ABCC requested from the Resident Representative of UNDP in Jerusalem a definite statement as to whether the Applicant was or was not capable of performing any job function. By a cable dated 11 April 1972 the Resident Representative, in agreement with Dr. Davis, stated that the Applicant was "now virtually incapable of performing any job function" and was "fit only for lightest sedentary duties for which he has no qualification" and recommended his termination on medical grounds as of the end of April; the Resident Representative also urged that the Applicant's case be reopened before the Staff Pension Committee with simultaneous consideration by the ABCC. On 17 April 1972 the ABCC adopted the following recommendation in the Applicant's case:

*"The Advisory Board on Compensation Claims,*

*"Having considered, at its 202nd meeting on 17th April 1972, the claim for compensation entered by Mr. Yitzhak Hamo, driver, UNDP, Jerusalem;*

*"Noting that the claimant alleges total disability due to a heart condition and polycythemia, following a spontaneous pneumothorax which occurred while driving an official car in May 1965, when he reached across the car to close the offside door opened in traffic, allegedly in order to avoid a traffic accident;*

*"Further noting a medical report in 1968 from the claimant's physician stating that the pneumothorax was 'healed' and that as regards the polycythemia and heart condition, which was at that time becoming apparent, the cause was unknown;*

*"Also noting the statement of the Medical Director that from the medical point of view no connection could be established between polycythemia and a healed pneumothorax;*

*"Considers therefore that a causal connection between the claimant's present medical condition and the incident of May 1965 has not been established and*

*"Recommends to the Secretary-General that the claim for total disability benefits under Appendix D to the Staff Rules submitted by Mr. Yitzhak Hamo be denied."*

On 10 August 1972 the Secretary of the ABCC informed the Applicant that the Secretary-General had, on 8 August 1972, taken a decision to deny his claim on the ground that no causal connexion had been established to link his present medical condition with the performance of his official duties and specifically the incident of May 1965. On 4 December 1972 the Medical Director recommended to the Staff Pension Committee that the Applicant be considered for a disability benefit. On 8 December 1972 the Division of Personnel of UNDP asked the Staff Pension Committee to take up the Applicant's case for consideration of such a benefit since UNDP was planning

to terminate his appointment for health reasons upon the expiration of his sick leave entitlements on 24 April 1973. On 13 February 1973 the Applicant was advised that the Staff Pension Committee had decided to grant him a disability benefit of approximately \$870.00 per annum, plus children's benefits of \$315.00 per annum each for his two children while they were under the age of 21 and unmarried, beginning on the date following that on which he would cease to be entitled to salary and emoluments from the United Nations. On 24 April 1973 the Applicant's appointment was terminated for medical reasons. The Applicant having requested reconsideration of the decision taken by the Secretary-General upon the recommendation of the ABCC, a medical board was convened under article 17 (b) of Appendix D to the Staff Rules and issued the following report on 17 August 1973:

"The Appeal Medical Board met in Jerusalem on the 17th of August 1973, concerning the case of Mr. Itzhak Hamo. This Medical Board consisted of Professor Henry N. Neufeld of the Tel HaShomer Medical Center and the Tel Aviv University Medical School, representing Mr. Hamo; Professor J. F. Dulac, Medical Director of the Joint Medical Service of the World Health Organization in Geneva, representing the United Nations in New York; and Professor M. Rachmilewitz of the Hebrew University Hadassah Medical School, Jerusalem, chosen by the two parties.

"The Board had an extensive exchange of views on the medical reports available, including the reports from the Hadassah University Hospital where Mr. Hamo was treated on several occasions. After a lengthy discussion on the facts available, the Board came to the following conclusions.

"(1) Can the right pneumothorax, treated in 1965, be considered the direct and the essential cause of the polycythemia treated later, as mentioned, in 1968?

"Dr. Dulac and Dr. Rachmilewitz reached the conclusion that the pneumothorax which developed acutely in 1965, precipitated by a trauma, can certainly not be considered as the cause of the polycythemia which was first established in 1968, considering also the fact that the hemoglobin estimated on the first examination in 1962, when Mr. Hamo entered the United Nations Service, already showed values in the upper limit of normal (15.9.).

"Dr. Neufeld feels that since we are dealing with a so-called 'stress' or 'spurious' polycythemia (as was accepted by all members of the board,) it has to be certainly considered as directly and essentially worsened by the traumatic event. Mr. Hamo was under continuous treatment after 1968 at the hematology department of the Hadassah Hospital, having a blood-letting on fortnightly intervals. Although his polycythemia is objectively not of a severe degree, the psychological results of the traumatic event (pneumothorax) have caused the patient a tremendous amount of worry, and consequently, disability. His polycythemia was one of the causes of his discharge from the Army, (the coronary heart disease being the other cause.) Although, objectively I\* agree that his polycythemia is not severe, the whole sequence of events has a direct connection with the pneumothorax.

"(2) Can the same pneumothorax be considered as the direct and essential cause of the coronary affection uncovered later?

"The chest pain from which Mr. Hamo has been suffering since 1968 may be due to coronary heart disease and possibly not, since there is no objective evidence

\*Dr. Neufeld.

at the present time of coronary artery disease. Even if it is assumed that the coronary condition exists, then pneumothorax cannot be considered a direct and essential cause of it, according to Dr. Rachmilewitz and Dr. Dulac.

“All the members of the board agreed that there is no evidence that in the time period between 1965–68 there were any subjective or objective evidences of coronary artery disease in Mr. Hamo. On the contrary, the statement by the United Nations office in Jerusalem states that in 1967, during the Six-Day War, Mr. Hamo was engaged in heavy work which he carried out very conscientiously and devotedly.

“Dr. H. Neufeld feels, however, that there was evidence compatible with coronary event in 1968. According to the medical reports, he had during the period of his hospitalization in Jerusalem, in 1968, negative or flat T waves in the following leads: leads 1, 2, 3, AVL, AVF, V<sub>1</sub>, and V<sub>4</sub>. These changes may be compatible with coronary arteriosclerosis in the circumflex coronary artery, resulting in ischemis. Mr. Hamo was suffering from chest pains during all these years, and was receiving medical treatment shortly after the pneumothorax; although there is no objective evidence today for active coronary heart disease, one cannot in certainty state that his chest pain is not due to a coronary condition. Dr. Neufeld therefore feels that Mr. Hamo’s complaints of chest pain, which were already treated by different doctors in 1965, and have been considered by most of them since 1968 as coronary pain, have to be considered as caused directly and essentially by the pneumothorax.

“(3) In the affirmative, what is the degree of invalidity to be attributed to each pathological condition?”

“The three members of the board agree that Mr. Hamo is seriously disabled at the present time, suffering from a variety of complaints which may be due to his emotional response to the traumatic experience in 1965, from which he did not recover. The pessimistic appraisal of his condition by the treating physicians may also have contributed to his anxiety and disability.”

“(Signatures)”

“Henry N. NEUFELD                      M. RACHMILEWITZ                      J.F. DULAC”

On 24 October 1973 the ABCC, having studied the report of the Medical Board, recommended that the Secretary-General’s decision of 8 August 1972 be maintained. This recommendation was approved on behalf of the Secretary-General on 15 November 1973 and the Applicant was informed accordingly on the following day. On 17 April 1975 the Applicant requested that his case be reopened under article 9 of Appendix D to the Staff Rules. On 19 June 1975 Dr. Gatenby, the new Medical Director of the United Nations, advised the ABCC at its request that having read all the documents in the file, he had no hesitation in stating, without any doubt in his mind, that the conclusions of the Medical Board were correct. On 8 July 1975 the ABCC adopted the following recommendation:

“*The Advisory Board on Compensation Claims*

“*Having considered* at its 231st meeting on 4 June 1975 and at its 232nd meeting on 8 July 1975, Mr. Y. Hamo’s request dated 17 April 1975 to reopen his case under article 9 of Appendix D of the Staff Rules

“*Having examined* the memorandum of 17 April 1975 submitted by Mr. Hamo in support of that request

“*Noting that* it does not contain any new element of substance which was not taken into account by the Medical Board which submitted its report on 17 August 1973

“Concludes that there are no circumstances which warrant the reopening of the case under article 9 of Appendix D

“Recommends to the Secretary-General that Mr. Y. Hamo’s request that his case be reopened should be denied.”

That recommendation was approved on behalf of the Secretary-General on 4 September 1975 and, on 15 September 1975, the Applicant was advised accordingly. On 9 February 1976 the Applicant requested the Secretary-General to agree to the case being brought directly to the Tribunal under article 7, paragraph 1 of its Statute. The Secretary-General gave his agreement on 10 March 1976 and, on 23 July 1976, the Applicant filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. In its consideration of the case in April 1972 the ABCC used only one periodical report (of May 1968) as the sole basis for its decision. This report contained wrong information about the healing of his pneumothorax which could have been corrected if the ABCC had asked Dr. Davis for clarification. The ABCC’s decision was also very much influenced by the view that no connexion could be established between polycythemia and a healed pneumothorax expressed by Dr. Irwin, who seems to have modified his opinion later in December 1972.

2. The Medical Board did find the existence of a link between the Applicant’s complaints and his traumatic experience in 1965. In its view, the Applicant’s complaints may be due to his emotional response. The ABCC should have taken this factor into account. Even on this ground alone, the Applicant should be entitled to some compensation.

3. The present medical condition of the Applicant shows that he is suffering from various complaints, including polycythemia. It is therefore wrong to limit the enquiry to the question of causation. The criterion provided for in Appendix D is whether the injury is *attributable*. That is much broader than the question of causation. The Applicant’s case should accordingly be viewed in the light of his present medical condition as a whole in order to establish the degree of attribution. The review should not be limited exclusively to the causation between the right spontaneous pneumothorax which occurred in 1965 and the polycythemia subsequently developed.

4. On the basis of medical opinions expressed, the Applicant’s polycythemia could be the result of his spontaneous pneumothorax. It is true that not all physicians who had examined the Applicant’s case were in agreement on the *causation* between pneumothorax and polycythemia. But, on the other hand, none of the physicians established that they were completely unrelated. This relationship entitles the Applicant to compensation.

Whereas the Respondent’s principal contentions are:

1. Article 9 of Appendix D to the Staff Rules establishes no substantive or procedural rights as to the reopening of a case. On the contrary, it allows to the Secretary-General very broad discretion, and the Secretary-General’s decision not to reopen the case was a proper use of such discretion. Far from constituting an abuse of discretion, the decision not to reopen was necessitated by the lack of substantial new evidence. Nor does the Applicant establish that his regrettably worsened condition is any more the result of a service-incurred accident than was his previous condition.

2. The Secretary-General’s final decision notified to the Applicant on 16 November 1973 is not the subject of the present appeal. Even if this appeal were directed against that decision the Tribunal would not decide the merits of the medical issue since it could not substitute its judgement for that of the Medical Board and the ABCC on the medical questions raised in the application. In so far as applicable procedures for determining disputed medical issues were fully observed—since the Secretary-General

based his final decision on the recommendation of the proper body, namely, the ABCC, which in turn based its recommendation on its evaluation of the Medical Board's opinions—such an appeal would fail. As to the Applicant's contention that the Medical Board should not have limited its review to the question of causation, a causal link is essential since under Appendix D compensation is provided only for service-incurred injuries or illnesses.

The Tribunal, having deliberated from 30 September to 5 October 1976, now pronounces the following judgement:

I. The Applicant requests as preliminary measures that he be given access to "all background documents relating to the case, including all medical reports and evidence, and correspondence related thereto, which are in the possession of the Advisory Board on Compensation Claims and the United Nations Medical Service" and that the ABCC be requested to produce "the *terms of reference* of the Medical Board constituted in 1973 for the examination of Mr. Hamo's illness".

The Tribunal observes that the relevant medical reports and correspondence relating to the case have been made available to the parties. In the absence of a request for specific additional information, the Tribunal is unable to rule on its relevance or to ask for production of "all background documents relating to the case". The Tribunal also notes that the summary report of the Medical Board formulates the points for decision by the Board and answers them clearly. The need for production of the terms of reference, if any, to the Medical Board is therefore not established.

The Tribunal accordingly rejects the preliminary request.

II. The Applicant requests the reopening of his case by the Secretary-General and payment of compensation under article 11 of Appendix D to the Staff Rules on the plea that the inquiry and reasoning of the ABCC in 1972 were inadequate and unfair to the Applicant, that the Medical Board's terms of reference were prejudiced and contrary to the purpose and intent of Appendix D, and that the ABCC in 1973 ignored the unanimous conclusions of the Medical Board regarding his health condition.

The Tribunal observes that under article 9 of Appendix D to the Staff Rules, it is within the discretion of the Secretary-General to reopen cases relating to compensation and amend the award with respect to future payments. The Tribunal has always held that such a discretion must not be exercised unreasonably or arbitrarily.

The Tribunal must therefore consider whether the decision of the Secretary-General dated 4 September 1975 approving the ABCC's recommendation of 8 July 1975 is arbitrary or unreasonable.

III. In its recommendation dated 8 July 1975 the ABCC observed that the Applicant's request to reopen his case under article 9 of Appendix D to the Staff Rules did not contain any new element of substance which had not been taken into account by the Medical Board which submitted its report on 17 August 1973, and concluded that there was no warrant for reopening the case.

The Tribunal notes that the Applicant appealed against the decision of the Secretary-General denying the Applicant's claim for compensation under Appendix D to the Staff Rules and that a Medical Board was constituted consisting of a medical expert selected by the Applicant, a medical expert selected by the Respondent and a third selected by the first two. The Medical Board submitted its opinion which has been set out *in extenso* earlier in the judgement. Two of the experts came to the conclusion that the "pneumothorax which developed acutely in 1965, precipitated by a trauma, can certainly not be considered as the cause of the polycythemia which was first established in 1968, considering also the fact that the hemoglobin estimated on the first examination in 1962, when Mr. Hamo entered the United Nations service, already showed values in the upper limit of normal (15.9)". The medical expert selected by the



Applicant, however, gave the opinion that "although, objectively I agree that his polycythemia is not severe, the whole sequence of events has a direct connection with the pneumothorax". On the question whether the pneumothorax could be considered as the direct and essential cause of the coronary affection uncovered later, the majority of the Medical Board came to the conclusion that the "pneumothorax cannot be considered a direct and essential cause of it". The medical expert selected by the Applicant stated that the Applicant's "complaints of chest pain, which were already treated by different doctors in 1965, and have been considered by most of them since 1968 as coronary pain, have to be considered as caused directly and essentially by the pneumothorax". All the three members of the Medical Board, however, agreed that the Applicant was "seriously disabled at the present time, suffering from a variety of complaints which may be due to his emotional response to the traumatic experience in 1965".

There is some slight discrepancy with regard to the date on which the Applicant developed polycythemia. In letters dated 10 December 1971 and 4 December 1972 from Dr. Irwin, Medical Director of the United Nations, to the Staff Pension Committee, the Medical Director stated that the Applicant had first shown signs of polycythemia in 1966. According to the majority of the Medical Board, however, the polycythemia "was first established in 1968". The Tribunal has repeatedly held that it is not within its competence to make an assessment of the medical opinion in such matters. The Tribunal will therefore confine its examination to the question whether the conclusions reached were vitiated by lack of due process.

IV. The Applicant complains that the terms of reference to the Medical Board did not give the Board the necessary freedom to conduct an inquiry. The Tribunal observes that the questions were fully examined by all the three medical experts and that the Applicant's expert did not raise any objection either to the terms of reference or to the formulation of the questions in the Medical Board's report. In the absence of any complaint from the medical expert selected by the Applicant, the Tribunal concludes that the questions framed were unobjectionable.

The Applicant further argues that for the purpose of payment of compensation under article 2 of Appendix D to the Staff Rules the criterion is whether the illness of the staff member is "attributable" to the performance of official duties on behalf of the United Nations, whereas the Medical Board was asked to say whether the pneumothorax which the Applicant suffered in 1965 was "the direct and the essential cause" of the polycythemia from which the Applicant suffered since 1968. In the Applicant's view, the scope of the medical examination was therefore greatly reduced. The Tribunal considers that the distinction is very thin and that in any event the medical experts, who knew what they were called upon to decide in this case, had not regarded it as a matter of substance. Since the Medical Board was constituted for the specific purpose of ascertaining whether the later illness of the Applicant was the result of or was in any way attributable to the pneumothorax from which he suffered in 1965, the Board should be presumed to have considered the question in all its aspects.

V. The Applicant also relies on the unanimous view of the Medical Board that the Applicant was "seriously disabled at the present time, suffering from a variety of complaints which may be due to his emotional response to the traumatic experience in 1965, from which he did not recover" to reinforce his claim for compensation. The Tribunal notes that the Applicant has been awarded a disability benefit under the Pension Fund Regulations and that only his claim that his illness was service-incurred has been denied.

VI. The Applicant claims, alternatively, that he is entitled to compensation under article 1 (b) of Appendix D to the Staff Rules. Article 1 (b) reads as follows:

“The Secretary-General may, in appropriate cases, arrange for the coverage of staff members who are locally recruited under an applicable national social security scheme, in which case the provisions of these rules shall not apply to such staff members.”

It appears from the above text that the Secretary-General has the option to arrange for coverage of locally recruited staff members under applicable national social security schemes and exclude such staff members from the application of Appendix D to the Staff Rules. It is clear from the proceedings that Appendix D to the Staff Rules has been applied to the Applicant and that no alternative arrangement under a national social security scheme has been made. The Tribunal therefore considers that the provision quoted above has no relevance to the case.

VII. The Tribunal observes that in any event no new material or evidence has been submitted by the Applicant which had not been taken into account by the Medical Board in August 1973.

VIII. For the foregoing reasons, the Tribunal concludes that the recommendation of the Advisory Board on Compensation Claims dated 8 July 1975 is not vitiated by any irregularity of procedure and that the Secretary-General's decision dated 4 September 1975 approving that recommendation was within his discretionary authority.

IX. The application is therefore rejected.

*(Signatures)*

R. VENKATARAMAN  
*President*

Francis T. P. PLIMPTON  
*Vice-President*

Francisco A. FORTEZA  
*Member*

*New York, 5 October 1976*

Roger STEVENS  
*Alternate Member*  
Jean HARDY  
*Executive Secretary*

## Judgement No. 212

*(Original: French)*

**Case No. 207:**  
**Ayah**

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

*Request for rescission of a decision refusing to award a UNITAR fellowship.*

*Objection based on irreceivability.—The Respondent is in fact contesting the competence of the Tribunal by invoking article 2, paragraphs 1 and 2, of the Statute of the Tribunal.—Information Note of the UNITAR Attachment Programme.—Steps taken by the Applicant to submit his candidature.—Letter from the Applicant showing that he did not consider that a promise binding on UNITAR had been made to him orally by one of its officials.—The Applicant could not reasonably think that the Respondent was legally bound by information given orally by one of his officials.—Conclusion of the Tribunal that the application does not fulfil the requirements of article 2, paragraphs 1 and 2, of its Statute.—Allegations of the Applicant that he had been the victim of racial bias.—Refutation of those allegations*