

V. It is the same lack of timeliness that condemns the Applicant's request to convert nine days of annual leave in August 1971 to sick leave under Staff Rule 106.2 (b). Not until 21 May 1973, when the case had already reached the Joint Appeals Board stage, was this issue first raised. The Tribunal holds therefore that the Applicant's request was belated and that his claim consequently fails.

VI. For the foregoing reasons the application is rejected.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

Endre USTOR
Member

Geneva, 20 April 1977

Francisco A. FORTEZA
Alternate member

Jean HARDY
Executive Secretary

Judgement No. 221

(Original: English)

Case No. 209:
Bérubé

**Against: The Secretary-General of
the International Civil
Aviation Organization**

Grant of a permanent appointment at the G-5 level cancelling and superseding a permanent appointment at the G-7 level.

Request for rescission of the Secretary-General's decision accepting the opinion of the Advisory Joint Appeals Board declaring the appeal not receivable.

Request for oral proceedings.—Request rejected, as all material facts are on record.—Request that the Tribunal declare its competence in the case.—The Tribunal holds that it is competent, since the Applicant is a staff member of a specialized agency which has acceded to the jurisdiction of the Tribunal and questions relating to non-observance of pertinent staff regulations and rules arise for consideration in the case.—Request that the Tribunal declare the application receivable.—Observation by the Tribunal that the receivability of the application is not contested.

Principal request.—Contention of the Respondent that no administrative decision was taken in the case.—Contention rejected, because the very offer of a new appointment contained an administrative decision, namely to cancel and supersede the Applicant's earlier letter of appointment.—The relevant staff regulations and rules were not fully discussed with the Applicant before her acceptance of an appointment at a lower level.—Conclusion of the Advisory Joint Appeals Board that since duress had not been established the appeal was not receivable.—Reasons other than duress rendering a contract voidable.—Obligation, before any change in a staff member's conditions of service is made to his prejudice, to explain to the staff member all implications of the change.—Fact that the Board pronounced on the validity of the new contract.—Conclusions of the Tribunal that in this case the Respondent took an administrative decision which is appealable, that the Applicant cannot be barred from agitating her case on merits, that the question relating to the adverse consequences of the new contract on pension benefits accruing to the Applicant calls for a decision on merits, and that the Board was in error when it decided that the appeal was not properly receivable.

Rescission of the Secretary-General's decision accepting the opinion of the Advisory Joint Appeals Board.—Case remanded for a decision on merits.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 21 October 1976, Fleurette Bérubé, a staff member of the International Civil Aviation Organization, hereinafter called ICAO, filed an application in which she requested the Tribunal:

“1. as preliminary measures:

“(a) to declare its competence in the present case in conformity with article 2 of its Statute;

“(b) to declare the receivability of this application under the terms of article 7.3 of the Statute.

“2. to rescind the Respondent’s decision of 29 July 1976 that the appeal was not properly receivable, and

“3. to hold oral proceedings under article 15 of the Rules of the Tribunal.”;

Whereas the Respondent filed his answer on 15 December 1976;

Whereas the Applicant filed written observations on 10 March 1977;

Whereas the facts in the case are as follows:

The Applicant joined ICAO on 21 June 1949 and served under a succession of temporary, fixed-term and permanent appointments until 1 November 1965, when her permanent appointment at the G-5 level was superseded by a permanent appointment at the G-7 level as Assistant Distribution Officer, Distribution Unit, Administrative Services Branch, Bureau of Administration and Services. On 20 August 1975, in a memorandum to the Chief, Administrative Services Branch, the Distribution and Records Management Officer, who was the Applicant’s immediate superior, reported that there had been an almost total deterioration in the Applicant’s behaviour over the past several months and requested that steps be taken to remedy a situation which had become intolerable. On the same day the Chief, Administrative Services Branch transmitted that memorandum to the Chief, Personnel Branch under cover of a memorandum in which he asked that action be taken to transfer the Applicant from the Administrative Services Branch altogether or, failing this, that she be terminated. On 21 August 1975 the two memorandums were communicated to the Applicant, who submitted comments thereon on 29 August 1975. On 2 October 1975 the Secretary-General instructed Mr. R. G. Pouliot, an ICAO staff member, to conduct an investigation of the matter with a view to considering possible action under either paragraph 4, article V, part III (unsatisfactory services) or article IX, part III (disciplinary measures) of the ICAO Service Code; the Applicant was advised accordingly. In the report on his investigation, submitted on 29 October 1975, Mr. Pouliot concluded that it had become necessary in the interest of the Organization for the Applicant to leave the Distribution Unit and recommended that she be transferred to a suitable position without supervisory responsibilities or, if such a transfer proved unfeasible, that she be terminated, if possible by mutual agreement and with payment of such compensation as to allow her to leave the service of the Organization with dignity. On 10 February 1976 the Secretary-General offered the Applicant a new permanent appointment, effective on 1 March 1976, at the G-5 level as a Documentation and Reference Clerk/Typist, Language Branch, Bureau of Administration and Services; the letter of appointment specified that the new appointment was to cancel and supersede the appointment of 1 November 1965 and that by accepting it the Applicant would renounce all benefits and rights under that appointment except those resulting from length of service. The Applicant accepted the offer of appointment on 11 February 1976. On 8 March 1976 the Applicant addressed the following memorandum to the Secretary-General:

“With reference to the [new] appointment, I hereby submit that this offer made to me on 10 February 1976 (effective 1 March 1976) is unfair since I have been downgraded from G-7 to G-5. This new situation is against the rights I have acquired over some 27 years of service with ICAO.

“I have not been given the opportunity to defend myself after the enquiry made by Mr. Pouliot and I have been placed in a situation where I had to say ‘yes’ or ‘no’, that is to sign the above contract within 24 hours or to be revoked.

“In accordance with GSI [General Secretariat Instructions] 1.4.7, I therefore respectfully request that you revise this decision.”

On 9 March 1976 the Chief, Personnel Branch prepared a “chronicle of events” in which he described the circumstances of the negotiation and signature of the appointment. On 11 March 1976 the Secretary-General advised the Applicant that he was not prepared to change the terms of the agreed appointment. On 24 March 1976 the Applicant lodged an appeal with the Advisory Joint Appeals Board. The Secretary-General having raised a preliminary objection to the competence of the Board and having requested the Board to decide only on that preliminary issue, the Board submitted on 29 June 1976 the following interim report:

“1. In a letter dated 24 March 1976 Mrs. F. Bérubé appealed against an ‘administrative decision of the Secretary General’ which resulted in her being downgraded from G-7 to G-5 ‘without regard to her acquired rights after 27 years of service with ICAO’. Referring to an inquiry conducted in 1975, of which she was the subject, the Appellant alleged that she had accepted the downgrading in question after being ‘placed in a situation where I had to agree to a “package deal” within a few hours, failing which my appointment would have been summarily terminated’.

“2. The Board was requested by the Secretary General to decide, as a preliminary issue, whether it was competent to consider the Appeal, and to submit its views in an interim report (see paragraph 3 hereunder). The Board, consisting of Mr. J. Hutchinson, Chairman, and Mr. W. H. Collins and Miss H. E. Tetley, Members, held a preliminary hearing for this purpose on Thursday, 17 June 1976. The Appellant was represented by Mr. J. H. Legere, and Dr. M. Milde acted as Representative of the Secretary General.

“Written comments

“Representative of the Secretary General

“3. On 29 March 1976, the Representative of the Secretary General filed a ‘Preliminary Objection’ in which he denied that any administrative decision had been taken with respect to the Appellant that would be open to appeal. The signed letter of appointment of 10 February 1976 relating to the post of Document and Reference Clerk/Typist—G-5 was a contract of employment which had been freely entered into by the Appellant after exhaustive consultations with C/PER [Chief, Personnel Branch]. The statement that the Appellant had had to agree ‘within a few hours, failing which her appointment would have been summarily terminated’ was without foundation. Since the Appeal was directed at a contractual arrangement freely entered into, it did not comply with the terms of paragraph 3(a) of GSI 1.4.7 and was not within the competence of the Board. This being so, the Secretary General requested the Board to decide only on this preliminary question and submit an interim report under paragraph 10 of GSI 1.4.7.

“The Appellant

“4. Replying to the Preliminary Objection of the Secretary General, the Representative of the Appellant indicated that the Appeal was based on the ICAO Service Code, Part III, Article X, paragraph 1.3 which spoke of ‘any administra-

tive decision which it is alleged constitutes . . . non-observance of established administrative practices in such a way as adversely to affect the individual'. The Appellant, who on 10 February 1976 still held a valid contract as Distribution Supervisor, G-7, was reluctantly persuaded to sign a new contract as Documentation and Reference Clerk/Typist, G-5, on 11 February 1976 after discussions initiated by senior officials of the Organization who told her that refusal to sign the new contract would probably result in her dismissal. Since this action did not fall within the types of disciplinary action listed in the Service Code, Part III, Article IX, it could only be characterized as an administrative action, and as such was subject to appeal and review by the AJAB. The claim that the consultations and contract had been 'freely entered into' by the Appellant was denied.

"5. In a further letter written on 14 June 1976, in response to the Board's request for a 'chronicle of events' leading up to the Appeal, the Representative of the Appellant indicated that the Appellant had had a number of consultations with C/PER in January and February 1976, mostly in the presence of a witness, concerning alleged shortcomings and was led to believe that she was in serious danger of summary dismissal. In view of this and her distressed circumstances at the time the Appellant felt she had no other practical alternative but to sign the new contract, as she badly needed income from her work. The events leading up to the consultations, the investigation into the matter, the personal situation of the Appellant during this period of time, etc., were matters requiring careful and exhaustive study and preparation, and the Appellant was not in a position to present that case to the Board at this time.

"C/PER

"6. In a corresponding 'chronicle of events' supplied at the Board's request, C/PER indicated that he had approached the Appellant in the second half of January on the question of termination by mutual agreement, and that she had seemed agreeable to the idea. She had, in fact, made calculations with that in view but was unable to locate her calculations at the time of conversation. On 5 February, C/PER, with the consent of the Secretary General, and in an effort to resolve the deteriorating work situation concerning the Appellant in a manner that would satisfy the interests of both the Appellant and the Organization, discussed the situation with the Appellant, who had returned from sick leave the day before, at a meeting attended as a witness by Mr. F. Cordier, President of the ICAO Staff Association. In the conversation, C/PER offered, as a purely personal initiative, to propose one of two alternatives to the Secretary General—termination by mutual agreement with an indemnity equal to 9 months' service, or re-assignment to a post, of which he outlined the duties, at the top of the G-5 scale. C/PER explained that he would only make such an approach if he were sure of the Appellant's 'full and complete agreement' with the suggestion; otherwise he would let matters take their course, since he had no mandate to negotiate with the Appellant. In this case, however, he could not be sure what action the Secretary General might take on the report of the inquiry submitted to him, 'not excluding the possibility of dismissal'. It was explained to the Appellant that if she accepted the new appointment, her prospects of promotion would not be jeopardized if her services and conduct were satisfactory. During the conversation the Appellant had discussed the amount of the indemnity and the salary level of the new post and asked for time to think it over. This was accorded, and on the morning of 9 February she had telephoned C/PER to say that everyone she had consulted had advised acceptance of his second alternative, to which she accordingly agreed. After the Secretary General accepted this suggestion a contract was prepared and was submitted to her by C/SA [Chief, Staff Administration Section], Mr. R. W.

Penney, on 10 February which, if accepted, she was to sign and return within 24 hours.

"The hearing"

"7. At the preliminary hearing on 17 June the Representative of the Secretary General expressed the wish to question the Appellant briefly and asked that she be sent for. This request was opposed by the Appellant's Representative on the grounds that the Appellant, being duly represented, was under no obligation to attend in person and had not been cited as a witness. In the interests of helping the Board, however, he did not press the objection, and the Appellant was persuaded by him to appear and answer questions. Approximately an hour and a half later she left for a doctor's appointment.

"8. Responding to questions from the Representative of the Secretary General, the Appellant confirmed that the signature on the letter of appointment dated 11 February 1976 was her own and that the date was likewise in her own handwriting. Asked whether anybody else had been present at the time of signing, she replied 'Mr. Cordier and Mr. Penney'. The Appellant denied that any negotiations had taken place between 20 January and 11 February 1976, since 'there was no offer of anything whatsoever', but insisted that C/PER used the expression 'summary dismissal' and that it was implied that this action would be adopted.

"9. The representative of the Secretary General expressed doubts as to the correctness of this reply and as to whether the Appellant had properly understood the difference between termination by mutual agreement and summary dismissal. It was clear in his opinion that the Appellant had had ample time in the 2-3 weeks of discussions to consider the situation in every aspect, and her allegation that she was forced to agree in a few hours was preposterous.

"10. In reply to questions from her own representative, the Appellant claimed that prior to the week-end after which the contract was offered the only subject discussed was the question of dismissal, and that neither the effect of the downgrading on her pension rights nor the resulting salary loss were explained to her. In response to questions from the Board the Appellant expressed these, and other reservations, concerning some of the statements contained in C/PER's 'chronicle of events'. In particular, her agreement to the new contract was conditioned by the statement that if things followed their normal course the Secretary-General might take action 'not excluding the possibility of dismissal'.

"11. In his oral presentation the Representative of the Appellant said that on the basis of ICAO practice and the common use of the term 'administrative' as defined by the Concise Oxford Dictionary, it could only be concluded that the officials who discussed the repeal of a G-7 contract and its replacement with a G-5 contract were engaged in administrative actions leading to an administrative decision. He would show at future hearings that administrative practices which had never been 'established' had been used to induce the Appellant to sign a new and unfavourable contract at a time when her judgement was clouded. It was not to be expected that the Appellant would appreciate fine legal distinctions between 'dismissal' and 'summary dismissal' when she was in a state of acute mental stress, like the pilot of a hijacked aircraft with a pistol pointed at his head. The Board was the only body in ICAO that could make a calm and unprejudiced study of the facts and should not be prevented from doing so by legal technicalities.

"12. The Representative of the Secretary General stressed that there was no appeal against an administrative decision, but only a grievance against a freely accepted contract of employment. Obviously, an administrative decision *could*

have been taken, but the Administration had preferred to offer the Appellant a dignified negotiated contract. The word 'Administration' was to be read in the legal, and not the common dictionary sense. There had been no unilateral decision by the Administration acting from power, but a negotiated settlement against which one of the parties was trying to renege.

"13. After these statements the Board addressed questions to C/PER, who explained that the Appellant was a highly nervous and emotional subject, and that it was precisely concern for her condition that had prompted him to approach the Secretary General for permission to arrange a mutually agreed solution. Despite her condition C/PER was satisfied from their conversations that she was well informed of the conditions of the new post, including loss of salary, and was quite aware of what she was doing on the day of signature. Pension questions were not, however, specifically discussed. After these conversations the demand that she decide within 24 hours was dictated by the urgent need to move her out of the Distribution Unit. If terminated, the Appellant could not have taken out her pension and this was why C/PER had advised both her and the Secretary-General against cessation of employment. On the other hand, there was no other post in the Organization at the level of G-7 to which she could be assigned, and considerations of equivalence made it impossible to grade the new post higher than G-5. Both he and Mr. Cordier* denied that the word 'summary' had been used in conjunction with 'dismissal' during the discussions.

"14. Oral evidence was provided to the Board that during the events considered the Appellant was suffering from physical and medical problems, aggravated by the death of her husband and ensuing legal and financial difficulties.

"Findings of the Board

"15. In its analysis of the Appeal the Board considered the following factors. The Secretary General's letter of 10 February 1976 was an offer of a new appointment; in itself it was not a contract or a decision. The staff member was free to accept it or reject it. The Appellant's acceptance and signature of the offer on 11 February 1976 completed the conclusion of a contract. The offer in itself was not appealable. The acceptance of the offer and the resulting contract would be appealable only if the acceptance was the result of duress, as implied or claimed by the Appellant. It would not be acceptable for the Board to review the terms of a contract freely entered into; thus, the Appellant's allegation of unfairness in the terms of the contract concluded by her acceptance would be receivable only if the acceptance were the result of duress. For these reasons the Board concluded that the case hinged on the question as to whether the Appellant's acceptance of the offer had been given under duress.

"16. The Board inevitably noted, in the course of its lengthy questioning of witnesses, that the signing of the new contract was the culmination of a long sequence of events extending over several years, in the course of which frequent questions had been raised concerning the Appellant's suitability for the post she occupied; that efforts had been made by the Administration to find a solution which would entail the least hardship for the Appellant while safeguarding the interests of the Organization; and that in her discussions with C/PER the Appellant had been encouraged to obtain the support of a witness and to take several days before deciding on the alternatives suggested. The Board found, after questioning all concerned, that the chronicle of events by C/PER, dated 9 March 1976, was accurate in all of its essentials.

* Who was present as a witness at the hearing.

"17. The Board concluded that the evidence presented did not support the view that duress had occurred, although it had been clearly brought out that the Appellant was at the time, and apparently for several reasons, under considerable distress. It was essential in this connection to distinguish clearly between duress, signifying the application of undue pressure by the Administration, and mental and emotional pressures resulting from an appellant's personal problems. The Appellant, after she had had time to consult other persons, had the possibility of opting for either of the alternatives suggested or of rejecting both of them. The alternative she agreed to (transfer to another post at a lower grade) had then been presented in writing and she had been given 24 hours to sign it if accepted.

"18. The Board felt that ample time had been given to consider and discuss these questions. It also understood why the Appellant, in her prevailing state of mind, found the 24-hour limit in the last stage peremptory. Nevertheless, the Board unanimously agrees, in view of the long preceding history of the case and the time—amounting to several days—spent in consultations regarding a solution, that duress has not been established. Neither does the 24-hour limit for signature of the contract for a new post, to which the Appellant had agreed in principle, constitute, in its view, duress. Accordingly, the Board unanimously considers that the Appeal is not properly receivable and that the Board need take no further action in the matter."

On 29 July 1976 the Secretary-General agreed with the unanimous findings of the Board and on 21 October 1976 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The procedure followed at the hearing of the Advisory Joint Appeals Board was highly unusual and in violation of elementary precepts of justice.

2. In reaching its decision the Board drew conclusions regarding the performance and capability of the Applicant, and these conclusions could only have been reached unilaterally, since there was no discussion of the substance of the case at the hearing. Therefore, there appears to have been an "a priori" judgement on the part of the Board, without full investigation.

3. It was very clear in the Applicant's mind that summary dismissal was not only a possibility but a definite probability and, by referring to the possibility of suspension of pension rights, the Board has acknowledged in its report that the very clear threat which she felt at the time was definitely made.

4. The terms of the Applicant's new contract of employment were forced upon her by the Administration. The Applicant's state of mind and health and financial circumstances at the time were such that she was desperate, and was unable to fight the proposals being presented to her by the Administration.

Whereas the Respondent's principal contentions are:

1. There was a situation when the Secretary-General could have taken an administrative decision to solve the flagrant difficulties caused by the Applicant, not excluding termination of her services. However, he preferred to offer the Applicant a dignified negotiated settlement which would entail the least embarrassment and hardship for her. She freely accepted the offer. Since the Secretary-General did not take any administrative decision, the Applicant's appeal to the Advisory Joint Appeals Board was not within the jurisdiction of the Board.

2. The procedure followed by the Board at its hearing was in all respects proper.

3. The Board did not consider any aspect relating to the merits of the case.

4. The adverse reports on the Applicant and all subsequent negotiations dealt only

with the question of unsatisfactory performance of supervisory duties by the Applicant and at no stage was any possibility of "summary dismissal" ever mentioned. The terms of the Applicant's new contract were not forced upon her but were offered to her as a dignified way of solving the outstanding problems. She freely accepted this offer, after she had had time to consult numerous other persons.

The Tribunal, having deliberated from 5 to 21 April 1977, now pronounces the following judgement:

I. The Tribunal decides not to hold oral proceedings in the case as all material facts are on record.

II. The Tribunal notes that the Applicant is a staff member of ICAO, a specialized agency which has acceded to the jurisdiction of the Tribunal under article 14 of its Statute, and that questions relating to non-observance of pertinent staff regulations and rules arise for consideration in the case. The Tribunal holds therefore that it is competent to pass judgement upon the application under article 2, paragraph 1 of its Statute. As regards the Applicant's plea 1 (b), the Tribunal notes that the receivability of the application "confined only to the question whether [the Advisory Joint Appeals] Board had jurisdiction to consider the Applicant's appeal" is not contested.

III. The Respondent invited the Advisory Joint Appeals Board to rule as a preliminary issue that the Applicant's appeal was not receivable on the ground that "no administrative decision whatsoever had been taken in respect of Mrs. Bérubé which would be open to an appeal" under paragraph 3(a) of GSI 1.4.7. The Board in its Opinion No. 58 upheld the plea and found that the appeal was "not properly receivable". The Respondent has stated that the merits of the case were not considered by the Board and that the only point that arises for consideration by the Tribunal is whether the Board had jurisdiction to consider the appeal.

IV. In support of his plea that the Board had no jurisdiction to consider the appeal, the Respondent argues that under paragraph 3 (a) of GSI 1.4.7 a staff member may appeal against "any administrative decision . . ." and that, in the present case, there was no administrative decision but only a freely negotiated contract between the Applicant and the Respondent.

V. The Board found that "the Secretary General's letter of 10 February 1976 was an offer of a new appointment; in itself it was not a contract or a decision", that the Applicant accepted the Respondent's offer of a new post voluntarily and that the resulting contract was not concluded under duress. The Board accordingly ruled that the appeal was "not properly receivable".

VI. The Tribunal recognizes that an offer of employment made to a person not already in the service of the Organization cannot be called an administrative decision or a contract. But the Tribunal notes that the situation in the present case is different. The Applicant was a staff member holding a permanent appointment at the G-7 level on the date when the offer of a new post at the G-5 level was made. The Respondent, for reasons which are not under the Tribunal's scrutiny, decided to offer the Applicant a post at a lower level. The very offer of a post at a lower level to the Applicant, who was already in service at a higher level, implied either that the Applicant was demoted as a disciplinary measure or that her appointment was terminated and a fresh one offered to her. That the Respondent followed the latter course is obvious from his offer dated 10 February 1976 which states that "this appointment cancels and supersedes the appointment contained in my predecessor's letter of 17 November 1965". Before the Respondent could appoint the Applicant to a post at a lower level, it was necessary that the earlier appointment should be cancelled and superseded. The Tribunal therefore considers that the very offer of a new appointment contained an administrative

decision, namely to cancel and supersede the Applicant's earlier letter of appointment (at the G-7 level) dated 17 November 1965.

VII. The Tribunal accordingly finds that the decision, contained in the Respondent's offer dated 10 February 1976, to cancel and supersede the earlier letter of appointment is an administrative decision and that the Respondent's plea that there has been no administrative decision whatsoever in the case is not well founded.

VIII. Moreover, it does not appear from the record that the relevant staff regulations and rules, "including the staff pension regulations", were fully discussed with the Applicant before her acceptance of an appointment at a lower level.

For instance, the Board states in its report that "in the conversation, C/PER offered, as a purely personal initiative, to propose one of two alternatives to the Secretary General—*termination by mutual agreement with an indemnity equal to 9 months' service [emphasis added]*, or re-assignment to a post . . . at the top of the G-5 scale." Article V, paragraph 10.1 of part III of the ICAO Service Code provides that a staff member holding a permanent appointment with nine years or more of service shall, on termination, receive an indemnity equal to nine months' salary. Thus what the Chief of the Personnel Branch offered to the Applicant, who had more than twenty-six years of service, was the normal indemnity payable in case of termination. Article V, paragraph 12 of part III of the ICAO Service Code, however, provides as follows:

"In case of termination, by mutual agreement between the Secretary General and the staff member concerned, of the service of a staff member holding a permanent appointment the Secretary General may at his discretion pay an indemnity up to 50% higher than that provided for in paragraph 10.1."

In this case the Chief of the Personnel Branch though clearly suggesting "termination by mutual agreement", was offering only normal indemnity, ignoring special provision for possible enhanced indemnity in the case of termination by mutual agreement. Thus it appears that the Applicant's entitlement under the staff rule quoted above was neither brought to her attention nor discussed with her prior to the offer of a post at a lower level on 10 February 1976.

Again the Applicant stated before the Board that "neither the effect of the downgrading on her pension rights nor the resulting salary loss were explained to her." The Chief of the Personnel Branch admitted before the Board that "pension questions were not, however, specifically discussed." It appears that, while the Applicant had made contributions to the Pension Fund at 7% of her salary as a staff member at the G-7 level, she would draw pension at the lower rate of salary applicable to the G-5 level. The Tribunal notes that even this aspect was not specifically discussed between the parties before the signing of the new contract.

IX. The Board held that it could not review the terms of a contract freely entered into and that the Applicant's allegations of unfairness in the terms of the contract would be receivable only if her acceptance were the result of duress. The Board reached the conclusion that duress had not been established and that therefore the appeal was not receivable.

X. The Tribunal observes that a contract is voidable not only for duress but also for reasons such as mistake arising from non-disclosure of information relevant for entering into a contract, misrepresentation, fraud or undue influence. The Tribunal is of the view that the Respondent failed to explain to the Applicant all her entitlements under the staff rules and the financial implications of the proposed action before she signed the new contract. The Tribunal considers that before any change in a staff member's conditions of service is made to his prejudice, appropriate procedures should be followed and all implications of the change fully explained to the staff member.

XI. The Tribunal further observes that, when the Board unanimously agreed, “in view of the long preceding history of the case and the time—amounting to several days—spent in consultations regarding a solution, that duress [had] not been established” and “accordingly . . . unanimously [considered] that the Appeal [was] not properly receivable”, the Board in effect was not ruling on the receivability of the appeal but on the validity of the new contract. It is obvious that if the appeal was not receivable, the Board could not pronounce on the validity of the acceptance of the new contract by the Applicant. The Tribunal therefore holds that the Board was in error when it decided that the appeal was not properly receivable.

XII. The Tribunal therefore finds:

(a) That the cancellation and supersession of the Applicant’s appointment dated 17 November 1965, mentioned in the Respondent’s offer dated 10 February 1976, is an administrative decision which is appealable under paragraph 3 (a) of GSI 1.4.7;

(b) that the Respondent failed to explain fully to the Applicant all the financial implications of the new contract before her acceptance of such contract and that the Applicant cannot be barred from agitating her case on merits;

(c) that the question relating to the adverse consequences of the new contract on pension benefits accruing to the Applicant calls for a decision on merits; and

(d) that the Board was in error when it decided that the appeal was not properly receivable.

XIII. For the foregoing reasons the Tribunal orders:

(1) That the Secretary-General’s decision on 29 July 1976 accepting Opinion No. 58 of the Advisory Joint Appeals Board be rescinded; and

(2) that the case be remanded for a decision on merits, it being understood that the parties may, if they so wish, agree to direct submission of the case to the Tribunal under article 7, paragraph 1 of its Statute.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Francisco A. FORTEZA
Member

Geneva, 21 April 1977

T. MUTUALE
Alternate Member
Jean HARDY
Executive Secretary