

## Judgement No. 223

*(Original: English)*

Case No. 215:  
Ibañez

Against: The Secretary-General  
of the United Nations

*Request for rescission of a decision to make no change in a contested periodic report and for removal of such report from the Applicant's official status file.*

*Examination of the contested periodic report and of the report of the panel set up to consider the Applicant's case.—The unfavourable comments in the periodic report do not adequately reflect the over-all competence of the Applicant because they apply to his ancillary duties and not to his main functions.—Conclusion of the Tribunal that the periodic report does not present an accurate picture of the Applicant's performance and is therefore misleading.—Procedure for the review of the Applicant's rebuttal of the periodic report.—The over-all rating in the periodic report is inconsistent with the findings of the panel and with a statement by the Administration itself.—Conclusion of the Tribunal that the Secretary-General's decision to make no change in the periodic report is unsustainable and should be rescinded.—Remand of the case for further proceedings not opportune.—Decision of the Tribunal that the judgement be incorporated in the Applicant's dossier and service record.—Inapplicability to the case of the second sentence of article 9, paragraph 1, of the Statute of the Tribunal.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas at the request of Lenine Mariano Ibañez, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 10 and 14 January 1977 the time-limit for the filing of an application to the Tribunal;

Whereas, on 17 January 1977, the Applicant filed an application the pleas of which read as follows:

“The actions and decisions which the Applicant is contesting are as follows:

“(a) the Applicant's periodic report covering the period 1 July 1971 to 1 October 1973 (see annex 12);

“(b) the appraisal of the Applicant's rebuttal to the periodic report conducted by an *ad hoc* panel convened by the Assistant Secretary-General for General Services (see memorandum from Mr. Virgil A. De Angelis to Mr. R. J. Ryan dated 8 February 1974, submitted to the Joint Appeals Board under cover of a note dated 15 March 1976, annex 14);

“(c) the decision of the Assistant Secretary-General for General Services, in the light of the report of the *ad hoc* panel, that no change in the report was required (see annex 15).

“The Applicant respectfully requests the Administrative Tribunal to confirm the findings of the Joint Appeals Board on the contested actions and decisions (see annex 21) and to order that the contested periodic report, together with the Respondent's rebuttal, the report of the *ad hoc* panel and the report of the Assistant Secretary-General for General Services, appraising the rebuttal, be removed from the Applicant's official status file and that no further reference be made to

those documents in any statement issued by the Respondent concerning the Applicant's performance during his service with the United Nations.”;

Whereas the Respondent filed his answer on 28 February 1977;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 1 October 1969 under a fixed-term appointment for three months as a Refrigeration Operator in the Maintenance and Operations Section, Buildings Management Service, Office of General Services. This appointment was subsequently renewed twice. On 1 July 1970 he received a probationary appointment which was converted to a permanent appointment on 1 October 1971.

In a first periodic report, covering the period from 1 October 1969 to 1 July 1971, the Applicant was rated as “a staff member who maintains a good standard of efficiency”. A second periodic report, which related to the period from 1 July 1971 to 1 October 1973, was prepared on 4 December 1973. In section I B of that report, the General Foreman of the Air Conditioning, Heating and Ventilation Unit, as first reporting officer, rated the Applicant average on four items (technical competence, judgement, reliability, and personal relations with others), above average on one (punctuality) and below average on four (industry, quantity of work accomplished, quality of work accomplished, and initiative), and he added the following comments in section I F:

“During the period of this report Mr. Ibañez's performance has decreased as compared to the past.

“The work assigned has frequently become the matter of discussion; sometimes postponed or when finally done, it is not completed satisfactorily in accordance with standards maintained by other personnel working in the Compressor Room.

“With regard to Mr. Ibañez's operation of the equipment, his standards of operations are comparable to the other operators. The rating in No. 6 [on reliability] of this report reflects this factor.

“The other ratings reflect his performance as compared to others involved in activities related to maintaining equipment and to the general duties in the Compressor Room.

“During the period of this report I have discussed the items with Mr. Ibañez alone; and at other times with him and Mr. Cardamone [Foreman of the Refrigeration Sub-Unit] and with Mr. Hunter [Chief of the Maintenance and Operations Section] and Mr. Ibañez.”

The Chief of the Maintenance and Operations Section, as second reporting officer, in section II A described the Applicant as “a staff member who maintains only a minimum standard” and in section II B commented:

“Over the last year I have had several conversations with Mr. Ibañez in relation to his overall attitude regarding his work in the Compressor Room that he should take his share of the workload. He constantly maintained that he was being issued and doing more than his share. He felt that we were partial to the other men in the Compressor Room. I stated that this was not true; all the men are treated equally.”

On 4 January 1974 the Applicant submitted to the Assistant Secretary-General for General Services a rebuttal to his periodic report in which he expressed his disagreement with the comments made by the two reporting officers, complained of discriminatory treatment in workload assignment and requested an impartial investigation of the matter. On 17 January 1974 the Assistant Secretary-General for General Services

instructed a panel of three officers of the Office of General Services, presided over by the Chief of the Commercial Management Service, to study the Applicant's case. On 8 February 1974 the panel submitted to the Assistant Secretary-General for General Services the following report:

"The panel of officials to review the rebuttal of the periodic report on Mr. Lenine Ibañez was convened on 7 February 1974. The panel consisted of Messrs. D. Casey and J. Compte with myself as Chairman.

"The panel interviewed Mr. Ibañez, Mr. Di Biase, General Foreman, Air Conditioning, Heating and Ventilating Unit, and Mr. Hunter, Chief, Maintenance and Operations Section.

"The panel was unanimous in its opinion that the periodic report represents a fair appraisal of the performance of Mr. Ibañez.

"The panel invites your attention to the fact that Mr. Ibañez received the lowest rating on industry, quantity of work, quality of work and initiative. We were informed by Messrs. Hunter and Di Biase that these low ratings refer to the non-technical aspects of Mr. Ibañez's duties, such as painting, scraping, cleaning floors, etc. His performance on the technical side of his duties is considered good."

On 22 February 1974 the Assistant Secretary-General for General Services filed a "Note for the record" reading as follows:

"1. I have studied carefully the contents of the memorandum dated 4 January 1974 submitted by Mr. Lenine Ibañez in connection with [his] periodic report.

"2. In connection with my review, arrangements were made for the establishment of a panel of three officers from Services of the Office of General Services other than in which Mr. Ibañez is employed. This panel, composed of Messrs. V. de Angelis, D. Casey and J. Compte, interviewed Mr. Ibañez, Mr. A. Di Biase, General Foreman, Air Conditioning, Heating and Ventilating Unit, where Mr. Ibañez is working, as well as Mr. D. Hunter, Chief, Maintenance and Operations Section.

"3. In his memorandum Mr. Ibañez has stated that (a) the statement in the periodic report that the work assigned to him is sometimes postponed or when finally done is not completed satisfactorily, is not factually correct; (b) the statement that the General Foreman had discussions with Mr. Ibañez is not correct as it was Mr. Ibañez who had prompted the discussions with both Mr. Di Biase and Mr. Hunter; (c) discriminatory treatment has been meted out to him by virtue of the fact that he has been singled out to do the heaviest work.

"4. As a result of my study of the case and based on the advice received from the panel, I have come to the conclusion that the ratings under Industry, Quantity of Work Accomplished, Quality of Work Accomplished, and Initiative, relate to the non-technical aspects of Mr. Ibañez' functions and not to the technical part of his duties which he is reported to have performed satisfactorily. Since this position has been brought out under 'F' [comments of the first reporting officer] of the periodic report, no change in the report is required."

On 2 March 1974 the Applicant asked the Secretary-General to review the decision to make no change in his periodic report. On 22 April 1974 the Applicant lodged an appeal with the Joint Appeals Board. In a third periodic report, covering the period from 1 October 1973 to 1 October 1975, the Applicant was rated as "a staff member who maintains a good standard of efficiency". The Joint Appeals Board submitted its report on 23 June 1976. The conclusions and recommendations of the Board read as follows:

*"Conclusions and recommendations*

"42. The Board concludes that the disputed entries in the periodic report in

question relate only to ancillary maintenance duties assigned to the appellant and not to his main functions as operator of mechanical equipment. The report, therefore, presents an unbalanced view of the appellant's overall job performance.

"43. The Board also finds that the appraisal of the appellant's rebuttal to the periodic report was not properly conducted and that the appellant was therefore denied due process.

"44. Accordingly, the Board recommends that the contested periodic report together with the appellant's rebuttal, the report of the *ad hoc* panel and the report of the Assistant Secretary-General for General Services appraising the rebuttal, should be removed from the appellant's official status file and that no reference should be made to these documents in any statement issued by the respondent concerning the appellant's performance during his service with the United Nations."

On 6 August 1976 the Officer-in-Charge of Personnel Services advised the Applicant that the Secretary-General had taken note of the Board's report and had decided to take no action on its recommendation set forth in paragraph 44 of its report and to maintain the decision to make no change in the appraisal of the Applicant's periodic report in question. On 10 September 1976 the Assistant Secretary-General for Personnel Services sent to the Applicant the following clarification:

"The Secretary-General has taken note of the Board's conclusions. However, it is his conclusion that procedurally, the investigation and appraisal of the rebuttal which you have submitted has been properly carried out in accordance with Administrative Instruction ST/AI/115 and in substantial compliance with the requirements of due process. With regard to the substantive question concerning the disputed ratings he considers the appraisal to be fully justified by its emphasis on the remarks contained in Section 1 F [comments of the first reporting officer] of the periodic report which gave an adequate explanation of the basis of the ratings."

On 17 January 1977 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's assessment of the Applicant's performance has not been properly reflected in the contested periodic report. As a result, the report misrepresents the Applicant's over-all performance as a refrigeration operator in a way that is highly prejudicial to him.

2. The validity of the contested periodic report was further vitiated by the fact that an atmosphere of ill-feeling toward the Applicant had developed during the period in question which prevented an objective preparation of the periodic report and led to its utilization for purposes other than the objective assessment of the Applicant's performance.

3. The Applicant has not been provided with an opportunity to establish the validity of his complaints. His complaints have always been dealt with at the same level by the same personnel officer. In practically every instance the same procedures of investigation were followed, the same three persons—and none of the Applicant's co-workers—interviewed, and the same inconclusive results obtained. As a result, the investigation fell considerably short of the standards set by the Tribunal to ensure that the staff member concerned is given due process.

Whereas the Respondent's principal contentions are:

1. The procedure prescribed in Administrative Instruction ST/AI/115 for the investigation of the Applicant's rebuttal of the disputed periodic report was followed. Indeed, the use of an *ad hoc* panel of three officers from outside the Applicant's Service

was an additional safeguard of the Applicant's rights, going further than the requirements of the Administrative Instruction. As to the calling of witnesses, there was no right of the Applicant to have called as witnesses the persons he wanted, but rather was it left to the Head of the Department (in this case the *ad hoc* panel appointed by him) to choose the witnesses to be heard.

2. The evaluation of efficiency is a matter within the sole responsibility of the Secretary-General, and neither the periodic report nor the conclusions following the investigation of the rebuttal constituted non-observance of the Applicant's terms of employment.

3. The allegation that the periodic report misrepresented the Applicant's work and was prejudiced has not been supported.

The Tribunal, having deliberated from 12 to 26 April 1977, now pronounces the following judgement:

I. The Applicant seeks rescission of the Secretary-General's decision dated 10 September 1976 to make no change in the appraisal of the contested periodic report and also seeks removal of such report from the Applicant's official status file.

II. While both the previous and the following periodic reports covering the periods from 1 October 1969 to 1 July 1971 and from 1 October 1973 to 1 October 1975 respectively rate the Applicant as "a staff member who maintains a good standard of efficiency", the contested periodic report describes the Applicant as "a staff member who maintains only a minimum standard".

The discrepancies in the assessments of the Applicant's performance in reports covering different periods obviously do not, by themselves, prove the inadequacy of any of the reports.

The Tribunal has therefore to examine whether the contested periodic report has been completed with reasonable care and accuracy.

III. In section I B of the contested periodic report, the following ratings have been found by the first reporting officer as the most clearly descriptive of the Applicant:

- (1) Technical competence—is adequately equipped for the work (middle rating);
- (2) Industry—tends to lack industry (lowest rating);
- (3) Quantity of work accomplished—output insufficient (lowest rating);
- (4) Quality of work accomplished—his performance is uneven or of poor quality (lowest rating);
- (5) Judgement—generally takes a sound view (middle rating);
- (6) Reliability—reasonably reliable (middle rating);
- (7) Initiative—tends to wait for direction (lowest rating);
- (8) Punctuality—exceptionally punctual (highest rating);
- (9) Personal relations with others—maintains reasonably good relations (middle rating).

IV. In section I E, the same reporting officer noted that the Applicant's attitude to the United Nations and to his work in it was "satisfactory".

V. The comments made by the first reporting officer in section I F of the report reveal that the negative ratings contained in section I B do not reflect an assessment of the Applicant's performance as a whole but only of certain of his ancillary activities "related to maintaining equipment and to the general duties in the Compressor Room".

With regard to the Applicant's "operation of the equipment", the first reporting officer writes that "his standards of operations are comparable to the other operators", adding that "the rating in No. 6 [on reliability] of this report reflects this factor". This has been approved by the second reporting officer.

VI. What the reporting officers had in mind and what they really wanted to express has been more articulately spelled out by the report of the *ad hoc* panel of three officers of the Office of General Services dated 8 February 1974. According to this report, the two reporting officers informed the members of the panel that the lowest ratings on industry, quantity and quality of work and initiative refer "to the non-technical aspects of Mr. Ibañez's duties, such as painting, scraping, cleaning floors, etc." The panel's report concluded:

*"His performance on the technical side of his duties is considered good."*  
(*Emphasis added.*)

VII. In the light of the above, it seems that the other unfavourable comments made in the contested periodic report also apply to the ancillary duties of the Applicant and not to his main functions as a Refrigeration Operator.

VIII. Taking into account the foregoing, it seems that both superiors of the Applicant were of the view that his performance in respect of his main functions, namely the operation of the refrigeration equipment, was generally satisfactory. Accordingly the lowest ratings in industry, quantity and quality of work and initiative do not adequately reflect the over-all competence of the Applicant.

IX. In section II A of the contested periodic report, the Applicant is rated as "a staff member who maintains only a minimum standard". This rating, however, can hardly apply to a Refrigeration Operator who, besides being exceptionally punctual, shows "on the technical side of his duties" a performance which is considered by his superiors as good, even if they were not satisfied with his performance in respect of his other "duties, such as painting, scraping, cleaning floors, etc."

X. In the circumstances outlined above, the Tribunal is of the view that the contested periodic report does not present an accurate picture of the Applicant's performance during the relevant period. It is not only that "a more fortunately executed periodic report is imaginable", as admitted by the Respondent, it is that the report in question does not faithfully reflect the over-all job performance of the Applicant as found by the reporting officers themselves; the report is therefore misleading.

XI. As to the procedure for the review of the Applicant's rebuttal, the Tribunal appreciates the manifest intention of the Administration to carry out a proper investigation by the appointment of an *ad hoc* panel of three officers of a different service for that purpose. However, the Tribunal notes that neither the members of the panel nor the investigating Assistant Secretary-General paid attention to the fact that the contested periodic report contained in its section II A a statement rating the Applicant as "a staff member who maintains only a minimum standard".

XII. The Tribunal holds that such rating is inconsistent with the finding of the *ad hoc* panel that the Applicant's "performance on the technical side of his duties is considered good" and with the Administration's own statement in the "Note for the record" that the technical part of the Applicant's duties has been "performed satisfactorily". Accordingly the Secretary-General's decision "to make no change in the appraisal of [the Applicant's] periodic report in question", confirming thereby the rating of the Applicant as "a staff member who maintains only a minimum standard", is unsustainable.

The Tribunal therefore decides that the Secretary-General's decision dated 10 September 1976 to make no change in the appraisal of the contested periodic report of the Applicant should be rescinded. As a consequence of such decision, the Tribunal could order that a fresh appraisal of the contested periodic report consistent with the findings already on record be made and could fix the compensation payable to the Applicant should the Secretary-General decide that the Applicant shall be compensated without further action being taken in his case.

However, considering the lapse of time, the tortuousness of further prolonging this litigation and the detailed examination of the contested periodic report made by the Joint Appeals Board and by the Tribunal, the Tribunal concludes that the ends of justice will be met if the Tribunal, rather than remanding the case for further proceedings, orders that this Judgement be incorporated in the Applicant's dossier and service record and be attached to, and regarded as supplementary to and corrective of, the contested periodic report.

The Tribunal accordingly so orders.

XIII. The Tribunal regards the second sentence of article 9, paragraph 1 of its Statute providing for the fixing of compensation as an alternative to specific performance as inapplicable to this case.

*(Signatures)*

R. VENKATARAMAN  
*President*

Suzanne BASTID  
*Vice-President*

Francis T. P. PLIMPTON  
*Vice-President*

*Geneva, 26 April 1977*

Endre USTOR  
*Alternate member*

Jean HARDY  
*Executive Secretary*

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## Judgement No. 224

*(Original: English)*

**Case No. 208:**  
**Aouad**

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

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*Request of a former staff member of WHO for payment of a disability benefit.*

*Limitation of the jurisdiction of the Tribunal to the allegations of non-observance of the Pension Fund Regulations.—Competence of the ILO Administrative Tribunal when the dispute relates mainly to the interpretation of the Applicant's contract and of the Staff Regulations and Rules applicable to him.*

*—Irrelevance of the Applicant's averments relating to his claim for reinstatement in WHO.—The Tribunal cannot entertain the Applicant's compensation claim against WHO for alleged service-incurred illness.*

*Article 34 (a) of the Pension Fund Regulations.—An affirmative ruling on the Applicant's claim for a disability benefit would amount to a finding that he was incapacitated for further service.—Request for reinstatement pending before the ILO Administrative Tribunal.—Need to avoid the situation which would arise if the Tribunal found the claim for a disability benefit in the Applicant's favour and the ILO Administrative Tribunal found the claim for reinstatement in the Applicant's favour.—Plea of the Applicant that the Tribunal grant him the disability benefit temporarily and immediately.—Such relief cannot be granted.—Decision of the Tribunal to defer its consideration of the case and to direct that the judgement be brought to the notice of the ILO Administrative Tribunal.*

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