

## Judgement No. 226

*(Original: French)*

Case No. 208:  
Aouad

Against: The United Nations  
Joint Staff Pension  
Board

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

*Influence on the contested decision of the opinion of the Secretary of the Pension Board concerning the date on which the incapacity must be established.*

*Consideration of two preliminary questions.—Question of the exhaustion of leave entitlement prior to the award of a disability benefit.—Differences of opinion between the Secretary of the Pension Board and WHO.—These differences of opinion should in no way be prejudicial to the Applicant.—Question of the exit medical examination.—Consequence of the fact that the exit medical report was not brought to the attention of the Standing Committee of the Pension Board.*

*Examination of the circumstances in which the Standing Committee took the contested decision.—Article 4 (c) of the Pension Fund Regulations.—Administrative Rules H.1, I.3 and H.2.—Conclusion of the Tribunal that the Standing Committee took the contested decision without having at its disposal all the documents necessary for a complete and equitable examination of the Applicant's situation.*

*Consideration of the legal grounds for the opinion of the Standing Committee that the conditions set forth in article 34 of the Pension Fund Regulations were not fulfilled.—The Tribunal observes that the circumstances of the case do not make it possible to conclude that the Applicant was not incapacitated on the date of separation.—Circumstances in which the WHO Staff Pension Committee unanimously decided to award the Applicant a disability benefit.—Conclusion of the Tribunal that the determination by the WHO Staff Pension Committee that the requirements of article 34 of the Pension Fund Regulations had been fulfilled was well founded in law.*

*Rescission of the contested decision of the Standing Committee.—The Respondent is ordered to give effect to the determination by the WHO Staff Pension Committee regarding the Applicant's incapacity.—Article II of the special agreement between the United Nations and WHO extending the jurisdiction of the Tribunal to WHO with regard to applications alleging non-observance of the Pension Fund Regulations.—Obligation of the Pension Fund and WHO to make within three months the necessary arrangements for the implementation of the Tribunal's decision.*

*Submission of the report on the Applicant's exit medical examination to the Tribunal after its Judgement had been drawn up.—The Tribunal observes that the report does not affect the conclusions it has reached in the Judgement.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 12 October 1976, René Aouad, a former staff member of the World Health Organization, hereinafter called WHO, filed with the Tribunal an application contesting the Respondent's decision to deny him entitlement to a disability benefit;

Whereas by Judgement No. 224, dated 28 April 1977, the Tribunal decided to defer its consideration of the case pending a judgement by the ILO Administrative Tribunal on a complaint by the Applicant claiming reinstatement in the service of WHO;

Whereas by its Judgement No. 309, dated 6 June 1977, the ILO Administrative Tribunal dismissed the Applicant's complaint;

Whereas, on 8 July 1977, the Applicant submitted observations on the additional information filed by the Respondent on 19 April 1977;

Whereas, on 3 August 1977, the Tribunal requested the Respondent to provide, among other things, the texts of cables exchanged on 13, 14 and 15 April 1977 between the Secretary of the Joint Staff Pension Board and the Secretary of the WHO Staff Pension Committee, the summary record of the January 1976 session of the WHO Staff Pension Committee, and information as to whether the Applicant had been subjected to an exit medical examination;

Whereas, on 26 August 1977, the Respondent provided the texts of the aforementioned cables, refused to provide the aforementioned summary record on the ground that it was confidential, and informed the Tribunal that the Applicant, whose resignation had taken effect on 31 March 1975, had been subjected to an exit medical examination on 19 March 1975;

Whereas the Applicant filed observations on those documents and that information on 16 September 1977;

Whereas, on 27 September 1977, the Tribunal requested the Respondent to provide:

(1) The medical reports relating to the Applicant which had been before the WHO Staff Pension Committee or which had been referred to in the course of its deliberations;

(2) The report on the exit medical examination;

(3) His comments on a statement by the Applicant dated 26 September 1977 concerning the way in which the exit medical examination had been conducted;

(4) Full information as to whether the medical reports referred to in (1) and (2) above had been placed before the Standing Committee of the Pension Board;

(5) The text of the communication whereby the WHO Staff Pension Committee had informed the Secretary of the Pension Board of the decision taken at its January 1976 session; and

(6) The text of an exchange of communications between the Secretary of the Pension Board and WHO concerning the possibility of putting back the Applicant's date of resignation through a retroactive grant of sick leave;

Whereas, on 30 September 1977, the Respondent provided:

(1) Seven communications of a medical character, namely:

(a) A report by the Director of the WHO Medical Service for the WHO Staff Pension Committee dated November 1975;

(b) Four reports by doctors who examined the Applicant, dated 30 December 1975, 12 November 1975, 5 November 1975 and 2 November 1974 respectively;

(c) A letter dated 29 January 1976 from the Director of the WHO Medical Service to the Director of the United Nations Medical Service transmitting the report mentioned in (a) above; and

(d) A letter dated 14 April 1977 from the Director of the WHO Medical Service to the Director of the United Nations Medical Service transmitting the reports mentioned in (b) above;

(2) A statement to the effect that he was not in possession of the exit medical report;

(3) Comments on the Applicant's statement of 26 September 1977 which ended thus:

“Finally, in clarification of its position, the Respondent would comment that if, contrary to the medical evidence and opinion adduced by WHO, coupled with the refusal by its authorities on the basis thereof to recognize that the Applicant, had he not resigned, would have been entitled to sick leave, the Tribunal or WHO were to determine, or re-determine, that the medical condition of the Applicant was in fact such as to have incapacitated him *on the date of his separation* from further service, the conditions of entitlement to a disability benefit would be fulfilled—subject only to the obligation of WHO, in that event, to reinstate the Applicant in employment in such manner as to enable him to take advantage of the sick and annual leave credit available to him under its Staff Regulations and Rules.”;

(4) A statement to the effect that in July 1976 the Standing Committee had had before it the report of the Director of the WHO Medical Service dated November 1975 addressed to the WHO Staff Pension Committee and the summary record of the January 1976 session of that Committee;

(5) A letter dated 4 February 1976 from the Secretary of the WHO Staff Pension Committee to the Secretary of the Pension Board informing him of the decision taken by the Pension Committee at its January 1976 session; and,

(6) With regard to the possibility of putting back the Applicant's date of resignation,

(a) A letter from the Deputy Secretary of the Pension Board to the Secretary of the WHO Staff Pension Committee dated 29 March 1976;

(b) A letter dated 28 April 1976 from the Secretary of the WHO Staff Pension Committee to the Deputy Secretary of the Pension Board transmitting copies of a memorandum from the Chief of Personnel, WHO, to the Secretary of the WHO Staff Pension Committee dated 14 April 1976 and of a memorandum from the Director of the WHO Medical Service to the WHO Insurance Service dated 8 April 1976; and

(c) A letter from the Secretary of the Pension Board to the Secretary of the WHO Staff Pension Committee dated 7 May 1976;

Whereas, on 3 October 1977, the Respondent, at the request of the Tribunal, provided clarification as to the meaning and scope of the last part of his comments of 30 September 1977 reproduced above (from the words “subject only . . .” onwards) and information regarding the reinstatement procedure referred to therein;

The Tribunal, having deliberated from 27 September to 12 October 1977, now pronounces the following judgement:

I. Essentially, the Tribunal has before it an application for the rescission of the decision by which the Standing Committee of the Joint Staff Pension Board, at its July 1976 session, refused to award a disability benefit payable from the Applicant's separation from service with WHO on 31 March 1975 following his resignation.

The Applicant contests the legality of this decision on the ground that the WHO Staff Pension Committee, acting on the basis of Administrative Rule H.1 of the Pension Fund, had decided at its January 1976 session to accept his request for a disability benefit. He argues that the power to certify vested in the Secretary of the Pension Board by Administrative Rule I.3 relates only to supervision of the procedure followed by the staff pension committee of the organization concerned and that the Secretary is not qualified to judge the situation from the medical standpoint. That being so, the refusal of the Secretary of the Pension Board to certify and the decision of the Standing Committee taken on referral from the Secretary should be considered unfounded.

II. The Tribunal notes that in his letter of 24 September 1976 informing the Applicant of the decision of the Standing Committee, the Secretary of the Pension

Board records his view that the award of a disability benefit would not be in conformity with the Regulations of the Pension Fund and states:

“The decision of that Committee was that you were not in fact incapacitated for further service within the meaning of article 34 and that you are therefore not entitled to a disability benefit.”

This letter refers to the opinion expressed previously by the Secretary of the Pension Board. In a letter of 1 June 1976 addressed to the Applicant after the latter, concerned about the delay in settling his case, had taken a number of steps, the Secretary of the Pension Board had written to him as follows: “. . . the Secretary, on the basis of the information he received subsequent to the action of the WHO Pension Committee, did not consider that the conditions [for payment of the benefit] had been met. One of the elements on which he had to seek clarification was whether on your last day of service, i.e., on the date of your separation from service the requirements for the award of a disability benefit were met. This is necessary under the Administrative Rules and especially under Rule H.4.” The Secretary of the Pension Board added that he was bound under the Administrative Rules to refer the case to the Standing Committee for decision “unless the causes for his inability to certify were removed prior thereto”. “In order to determine whether or not this was possible, he asked for clarification from the WHO Pension Committee. However, in view of the fact that a meeting of that Committee is not to be held before January 1977, the Secretary of the Board will now submit the case to the Standing Committee at its next meeting in July under Rule I.2, in order to avoid such a lengthy delay.”

Thus it is the opinion of the Secretary of the Pension Board concerning the date on which the disability must be established which determined his conduct and led to the contested decision.

III. The Applicant contests the validity of the decision of the Standing Committee with regard both to the competence of the Standing Committee to take a decision regarding the incapacity and to the Committee's evaluation of the incapacity and of the applicability to the case of article 34 of the Pension Fund Regulations.

Before considering those complaints, the Tribunal must examine two questions discussed by the parties, namely the question of the exhaustion of leave entitlement prior to the award of a disability benefit and the question of the exit medical examination.

IV. With regard to the first question, the Tribunal notes that the documents produced in the course of the proceedings at the Tribunal's request make it possible to understand the circumstances in which the Secretary of the Pension Board found it necessary to refuse certification.

The letter dated 29 March 1976 addressed to the Secretary of the WHO Staff Pension Committee by the Deputy Secretary of the Pension Board indicates clearly three essential points:

(1) Doubts are expressed concerning the existence of incapacity on the effective date of the Applicant's resignation;

(2) It is acknowledged that after that date the Applicant's condition deteriorated to a degree which would have justified the award of a disability benefit “had he remained in service”;

(3) Lastly, it would in any event be necessary to adjust the date of separation to give effect to the principle of allowing a participant to exhaust the paid leave available to him before a disability benefit became payable, so that a possibility of “resolving the difficulty” offered itself in the form of postponing acceptance of the resignation to a date coinciding with the exhaustion of the Applicant's leave.

This letter shows that the Deputy Secretary of the Pension Board saw no legal

obstacle to the ultimate payment of the disability benefit if the leave available had been completely exhausted.

That suggestion was not accepted by WHO. The Chief of Personnel of WHO stated, in a memorandum dated 14 April 1976 addressed to the Secretary of the WHO Staff Pension Committee, that he found no "justification administratively", in the absence of medical support, to consider the Applicant as being on sick leave immediately after his termination by resignation. In a memorandum dated 8 April 1976 addressed to the WHO Insurance Service, the Director of the WHO Medical Service, to whom the matter had likewise been referred, recalled his position concerning the Applicant's condition and added: "If, strictly from the administrative angle, Mr. Aouad needs to be placed on sick leave, I can see no reason against this."

On 28 April 1976, the Secretary of the WHO Staff Pension Committee addressed the following reply to the Deputy Secretary of the Pension Board:

"... one could conclude that there is no justification in placing Mr. Aouad on sick leave immediately after his termination by resignation. At that time he was fit for work, although apparently his psychological state was already poor."

In a letter dated 7 May 1976 addressed to the Secretary of the WHO Staff Pension Committee the Secretary of the Pension Board concluded that "the disability award to Mr. René Aouad was not, after all, warranted by his medical condition at the date of resignation", and he did not refer the question to the WHO Staff Pension Committee for further discussion of the Applicant's state of health at that time.

It was in those circumstances that the matter was referred to the Standing Committee pursuant to Administrative Rule I.3.

The Tribunal notes that in the communication he addressed to the Tribunal on 30 September 1977 the Secretary of the Pension Board stated that if the Applicant was recognized to have been incapacitated on the date of his separation from service he would be entitled to a disability benefit "subject only to the obligation of WHO, in that event, to re-instate the Applicant in employment in such manner as to enable him to take advantage of the sick and annual leave credit available to him under its Staff Regulations and Rules".

V. The Tribunal notes that, according to the Respondent's answer, the Applicant, on the date of his separation, had an unused accrual of 140.5 days of sick leave and 60 days of annual leave during which he would have been paid by WHO, the disability benefit being payable only after that period had expired.

It appears that the question of the prior exhaustion of leave entitlement, which seems to have been envisaged differently by WHO and by the Secretary of the Pension Board, finally led the Secretary of the WHO Staff Pension Committee apparently to contradict the unanimous position of that Committee concerning the application of article 34 of the Pension Fund Regulations to the Applicant.

The Tribunal is not required to express an opinion on the practical consequences of the position taken by the Secretary of the Pension Board regarding his relations with WHO. The Tribunal notes, however, that the differences of opinion which might exist in that regard should in no way be prejudicial to the Applicant, who was not warned, at the time when his resignation was accepted and after he had submitted his request for a disability benefit, of the problem of the prior exhaustion of his leave entitlement.

VI. With regard to the exit medical examination, the Tribunal notes that the letters exchanged in 1976 between the Secretariat of the Pension Board and the Secretary of the WHO Staff Pension Committee, produced by the Respondent on 30 September 1977 at the request of the Tribunal, do not mention the exit medical examination to which the Applicant was subjected on 19 March 1975.

On the other hand, in the exchange of cables prompted by the questions posed by the Tribunal in April 1977, the Secretary of the Pension Board, in a cable to the Secretary of the WHO Staff Pension Committee, stated that the latter had observed that the Applicant could not be placed on sick leave because the "terminal medical examination showed he was able to fulfil his normal duties". The Secretary of the WHO Staff Pension Committee replied:

"At the time of the terminal medical examination of 19 March 1975 following submission of resignation effective 31 March 1975 there was a partial incapacity which was nevertheless compatible with continued professional activity."

The Secretary of the Pension Board, questioned on that point by the Tribunal, acknowledged in his communication of 30 September 1977 that at that time he did not have the exit medical report, which was, moreover, not mentioned in any document relating directly to the evaluation of the Applicant's incapacity by the WHO Staff Pension Committee.

The Tribunal concludes that that medical report was not brought to the attention of the Standing Committee, as the Secretary of the Pension Board seems to acknowledge in his aforementioned communication. That being so, the Tribunal is not required to rule on the Respondent's contention that the exit medical examination cannot prevail over the unanimous opinion of the WHO Staff Pension Committee acting within its competence with regard to article 34 of the Pension Fund Regulations.

VII. The Tribunal must now examine the validity of the contested decision and first of all the circumstances in which the Standing Committee took that decision.

The Tribunal notes that the Respondent stated in his answer that the award of a disability benefit required "a prior and specific judgement by or on behalf of the Pension Board".

In accordance with article 4 (c) of the Pension Fund Regulations, Administrative Rule H.1 provides for the delegation of powers by the Pension Board to the staff pension committees of member organizations for the determination of incapacity for the purpose of disability benefits. However, according to article 4(c), such powers are delegated "subject to article 7" relating to the Secretariat of the Pension Board. The latter article provides that the Secretary performs his functions under the authority of the Board and "shall certify for payment all benefits properly payable under these Regulations".

Administrative Rule I.3 states that before certifying a benefit for payment the Secretary of the Pension Board must ensure "that the conditions for payment of the benefit have been fulfilled" and that he "shall refer to the Standing Committee for decision any case in which he has declined so to certify".

It was on the basis of that provision that the Secretary of the Pension Board referred the Applicant's case to the Standing Committee for a decision concerning his entitlement to a disability benefit under article 34 of the Pension Fund Regulations.

VIII. According to Administrative Rule H.2,

"In each case . . . in which a determination with respect to a disability benefit has been referred to the Standing Committee for decision, the medical officer of the organization shall transmit a report on the medical aspects of the case to the Medical Consultant, who shall in turn report thereon as may be required by the Secretary of the Board".

The Tribunal requested the Respondent to provide information concerning the medical reports submitted to the Standing Committee. In his communication dated 30 September 1977, the Respondent indicated that in July 1976 the Standing Committee had had before it "the report of Dr. J. F. Dulac [Director of the WHO Medical Service]

dated November 1975 together with the summary record of the January 1976 session of the WHO Staff Pension Committee. The latter contained explanations and references by Dr. Dulac to the later medical reports . . . leading to the conclusion that the Applicant's condition had worsened since his departure to the point that he might be considered disabled at the present time".

The Tribunal notes that the detailed report prepared by the Director of the WHO Medical Service in November 1975 concluded that the Applicant's request should be rejected. The letter dated 29 January 1976 addressed by Dr. Dulac to the Director of the United Nations Medical Service, drawing his attention to the Applicant's case following the session of the WHO Staff Pension Committee, was very short. It indicated, however, that he had finally recommended that the Applicant be awarded a disability benefit and that he had been led to review his position on the basis of numerous medical reports.

The Tribunal notes that the Respondent considered itself unable to comply with the Tribunal's request to produce the summary record of the January 1976 session of the WHO Staff Pension Committee on the ground that that document was confidential according to section C.8 of the Rules of Procedure of the Pension Fund.

IX. The Tribunal notes:

(1) That the medical reports on which the final recommendation of the Director of the WHO Medical Service was based were not submitted to the Standing Committee;

(2) That a report by the "medical officer of the organization . . . on the medical aspects of the case" was neither requested nor provided when the Applicant's request for a disability benefit was referred to the Standing Committee for a decision following the refusal of the Secretary of the Pension Board to certify on the ground that the conditions for payment of the benefit prescribed in article 34 of the Pension Fund Regulations had not been fulfilled;

(3) That the Secretary of the Pension Board did not deem it necessary to request a report from the Medical Consultant;

(4) That it was not until April 1977 and pursuant to questions put by the Tribunal that, at the request of the Respondent, the Director of the WHO Medical Service addressed a more complete and explicit report to the Medical Consultant—the Director of the United Nations Medical Service—and provided photocopies of the medical reports on the basis of which he had reviewed the initial position set forth in his report of November 1975, which was submitted to the Standing Committee.

X. The Tribunal reaches the conclusion that the decision of the Standing Committee concerning the Applicant's request for a disability benefit was taken without the Committee having at its disposal all the documents necessary for a complete and equitable examination of the Applicant's situation and that consequently the requirements of due process were not observed.

XI. The Tribunal must now consider whether there were any legal grounds for the opinion of the Standing Committee that the conditions set forth in article 34 of the Pension Fund Regulations were not fulfilled.

The Respondent contends that it has not been shown that the Applicant was incapacitated on the date of separation; according to the Respondent, pursuant to Administrative Rule H.4,

"A determination under article 34 (a) shall . . . be made at the request of a participant:

" . . .

"(b) Whenever a participant alleges that on the date of separation he was incapacitated within the meaning of article 34 (a)."

The Respondent does not contest that the Applicant may subsequently have become incapacitated, but contends that it has not been shown that on the date of separation the Applicant was incapacitated for further service in WHO "reasonably compatible with his abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration".

In his answer, the Respondent has invoked the documentation submitted to the WHO Staff Pension Committee, the fact that on the date of separation the Applicant still had about 140 unused days of sick leave and the fact that WHO stated that the granting of sick leave to the Applicant on the date of his resignation was not justified. In his communication of 30 September 1977 addressed to the Tribunal, the Respondent has stated that the exit medical examination of 19 March 1975 had revealed a partial incapacity for service which was nevertheless compatible with continued professional activity.

XII. The Tribunal notes that the circumstances of the case do not make it possible to conclude that the Applicant was not incapacitated "on the date of separation". In fact, the Applicant underwent the exit medical examination more than 10 days before that date and the WHO Staff Pension Committee took a decision on the matter almost one year later. Furthermore, no provision is made for evaluating the health of the person concerned on the actual day of his separation from service.

XIII. The Tribunal recognizes that certain steps taken by the Applicant seem to contradict his request that he be found incapacitated, since he quite persistently sought reinstatement. It is nevertheless true that he suffered two successive facial paralyses; the second, which occurred on 16 August 1974, required prolonged treatment and affected his vision, a condition which required treatment after he had resumed his duties. His poor psychological state was linked to an administrative situation which had existed for a long time. The ILO Administrative Tribunal, in its Judgement No. 309, remarked upon the "great propriety" with which the Applicant had always behaved despite the "regrettable behaviour" of a secretary who "ought long before to have been compulsorily transferred at least" because of her attitude and upon "the Regional Director's equally regrettable inaction". In his work as a translator and interpreter, the Applicant had, since 1970, when he suffered the first facial paralysis, experienced increasing physical difficulties affecting his speech and then his vision.

XIV. As early as 23 December 1974, before handing in his resignation, the Applicant had submitted a written request for a disability benefit. He combined that request with a claim for compensation for a service-incurred illness. It seems that no attempt was made to draw any legal conclusion from that request. On 31 December 1974, in his letter of resignation, the Applicant stressed that his "health" did not allow him to carry out his former duties in a situation unbearable to any supervisor. On 22 January and 31 March 1975, he invoked his health in communications addressed to the Director-General of WHO and, in his second communication, he expressly mentioned the settlement of his request for a disability benefit. For several months, during the exchange of correspondence reported in Judgement No. 224, the Applicant reaffirmed his desire to obtain a disability benefit, but it appears that his case was regarded as relating solely to a service-incurred illness. Not until 4 September 1975 did the Secretary of the WHO Staff Pension Committee formally acknowledge the request for a disability benefit for the purposes of the Pension Fund Regulations.

The Tribunal notes that the long delay following the first request complicated still further the process of determining the Applicant's state of health on the date of separation. The Tribunal observes, however, that the series of steps taken by the Applicant show clearly that he was in a state of health whose origin, clearly identified, antedated the separation from service and was bound to deteriorate.



XV. The circumstances in which the WHO Staff Pension Committee unanimously decided to award the Applicant a disability benefit are revealed clearly by the documents produced by the Respondent at the request of the Tribunal.

On 16 October 1975, the Director of the WHO Medical Service requested the Applicant to provide full and up-to-date medical reports. In November 1975 he prepared a report concluding that article 34 of the Pension Fund Regulations did not appear to be applicable, since the person concerned was apparently capable of performing functions compatible with his abilities. However, after studying the medical reports provided by the Applicant, he informed the Director of the United Nations Medical Service that he had reviewed his position:

“... in fact, the many reports submitted have led me to review my position. Although at the somatic level the neurological after-effects of impairment of the facial nerves do not entail total incapacity for a translator, I feel it must be acknowledged that the neurotic condition which existed prior to his resignation seems to have deteriorated considerably, so that in fact this participant, aged 58, is unemployable, and when the case was submitted I therefore finally recommended that a disability benefit be awarded”.

In response to questions put by the Tribunal, the Director of the WHO Medical Service, in his letter dated 14 April 1977 to the Director of the United Nations Medical Service, explained the circumstances in which he had reviewed the position he had taken in November 1975:

“... you will remember that I originally considered that Mr. Aouad was not disabled to the extent to meet the requirements for the award of a disability pension. However, Mr. Aouad had from the beginning evidenced neurotic traits with psychological instability and it seemed clear to me from these later reports and also Mr. Aouad's own numerous memoranda and letters that his psychological state had progressively deteriorated and that he was now probably unemployable because of a frank neurosis. As explained in my letter to you on 29 January 1976, of which I enclose a copy, I was therefore led to review my previous position.”

It was in those circumstances that the WHO Staff Pension Committee unanimously decided that a disability benefit should be awarded.

XVI. The Tribunal reaches the conclusion that the Applicant's health was such that, on the basis of the medical reports produced, the determination by the WHO Staff Pension Committee that the requirements of article 34 of the Pension Fund Regulations had been fulfilled was well founded in law. The Secretary of the Pension Board therefore erred in stating that the Applicant was not incapacitated within the meaning of article 34 of the Regulations at the time of his separation from service.

XVII. The Tribunal therefore rescinds the contested decision of the Standing Committee. It orders the Respondent to give effect to the determination by the WHO Staff Pension Committee that the Applicant is entitled to a disability benefit on the basis of article 34 of the Pension Fund Regulations.

XVIII. In so far as the decision of the Tribunal set forth in the preceding paragraph entails administrative and financial obligations for WHO, the Tribunal notes that according to article II of the special agreement of 27 March and 8 April 1961 between the United Nations and WHO extending the jurisdiction of the Tribunal to WHO with regard to applications alleging non-observance of the Pension Fund Regulations presented by staff members of that organization:

“The judgements of the Tribunal shall be final and without appeal and the World Health Organization agrees, in so far as it is affected by any such judgement, to give full effect to its terms.”

It is for the Joint Staff Pension Fund and WHO to make within three months the necessary arrangements for the implementation of the decision set forth in paragraph XVII above.

XIX. All other pleas are rejected.

XX. On 12 October 1977, after its Judgement had been drawn up, the Tribunal received from the Respondent the report on the Applicant's exit medical examination. On studying the report, the Tribunal found that under the heading "Conclusion", where the examining physician is invited to "state his conclusions on the physical and mental abilities of the candidate", he had written:

"Defer pending decision of Dr. Dulac, Director, Joint Medical Services, Geneva, Switzerland."

The Tribunal considers that the report on the exit medical examination does not confirm the Respondent's contention that on the date of separation the Applicant was "not in fact incapacitated for further service" within the meaning of article 34 (a) of the Pension Fund Regulations.

The Tribunal therefore considers that the report on the exit medical examination does not affect the conclusions it has reached in this Judgement.

(Signatures)

R. VENKATARAMAN  
President

Francisco A. FORTEZA  
Member

Suzanne BASTID  
Vice-President

Jean HARDY  
Executive Secretary

New York, 12 October 1977

STATEMENT BY MR. R. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

New York, 12 October 1977

(Signature)  
R. VENKATARAMAN

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## Judgement No. 227

(Original: English)

Case No. 219:  
Hill

Against: The Secretary-General  
of the United Nations

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*Non-renewal of a fixed-term appointment.*

*Acceptance by the Respondent of the finding of the Joint Appeals Board that UNDP broke a promise made to the Applicant when it prematurely decided not to renew his appointment.—Dispute as to the amount of compensation due to the Applicant.—Necessity of determining this amount on the basis of the termination indemnity provisions.—Duration of the appointment which the Applicant would normally have been awarded.—Application of the aforementioned provisions, resulting in the amount already paid*