
Judgement No. 228*(Original: French)***Case No. 216:
Rivet****Against: The United Nations
Joint Staff Pension
Board**

Calculation of the ceiling of a retirement pension under the Consumer Price Index (CPI) system.

Disagreement between the parties as to the interpretation of General Assembly resolution 3354 (XXIX), section I.—Interpretation of the Applicant based on the literal meaning of the text.—Interpretation of the Respondent founded on the basic principles of the Pension Fund Regulations.—Question of determining what the Applicant's retirement pension would have been if it had commenced on 1 January 1975.—Special nature of the Applicant's case.—Since the post of Deputy Secretary-General of WMO has always been "unclassified", the Applicant's pension would have been established on 1 January 1975 on the basis of the salary paid to his successor in that post.—Contention of the Respondent deriving from the basic principles underlying the Pension Fund Regulations.—The contention is rejected, as these basic principles do not concern the ceiling introduced by the General Assembly.—The Respondent's interpretation would lead to a result manifestly contrary to the text of the General Assembly resolution.—Contention of the Respondent based on the title of section I of the resolution.—The contention is rejected, as this title relates to the main purpose of the CPI system and fails to reflect another important, but secondary, objective.—Contested decision rescinded.—The Tribunal decides that the ceiling of the Applicant's retirement pension shall be calculated on the basis of the salary paid to his successor in the post of Deputy Secretary-General of WMO.

Request for the award of compensation because of delay in the settlement of the case.—Request rejected, as the Applicant failed to provide sufficient justification.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Mr. Endre Ustor;

Whereas, on 5 April 1977, at the request of Jean-René Rivet, a former staff member of the World Meteorological Organization, hereinafter called WMO, the Tribunal decided, in application of article 7, paragraph 5, of its Statute, to set 29 April 1977 as the time-limit for the filing of an application;

Whereas, on 20 April 1977, the Applicant filed an application the pleas of which are as follows:

"The Applicant requests the Administrative Tribunal to order that the decision of the Secretary of the United Nations Joint Staff Pension Board limiting the CPI (consumer price index) pension of the Applicant to that which would have been paid on 1 January 1975 to a Director at step IV of his grade (D-2/IV), be amended so that the amount of the CPI pension of the Applicant be limited to that of the pension which would have been paid to the Deputy Secretary-General of WMO on that date.

"The Applicant also requests the Tribunal to take into account the delays in the Pension Fund's review of its decision and in its written communications. In the light of the interest which would have accrued on the sums representing the difference between the two pensions mentioned in the preceding paragraph and in the light of the expenditure and inconvenience caused to the Applicant by the

maintenance of that decision, he requests the Tribunal to grant him token, rather than real, compensation in the amount of one thousand Swiss francs”.

Whereas the Respondent filed its answer on 25 August 1977;

Whereas the facts in the case are as follows:

On 14 December 1951 the Applicant was appointed Deputy Secretary-General of WMO for an indefinite period starting on 1 January 1952, his net salary being \$9,000 a year payable in monthly instalments. On 1 January 1954 he received a permanent appointment and on 1 January 1956 his net annual salary was increased to \$10,000. Starting on 1 January 1960, he received a net annual salary of \$12,000 and a representation allowance of \$500. Although he reached the normal retirement age on 4 December 1968, the Applicant accepted an extension of service until 31 December 1970 and actually retired on 1 February 1971.

On 18 December 1974, by its resolution 3354 (XXIX) I entitled “Adjustment of benefits in respect of cost-of-living changes”, the United Nations General Assembly decided to revise the system of adjustment of benefits in payment with effect from 1 January 1975, provided that no beneficiary who opted for the new system and whose benefit had commenced before 1 January 1975 would receive more as a result than if the benefit had commenced on 1 January 1975. On 24 December 1974, the Secretary of the United Nations Joint Staff Pension Board explained the meaning and practical effect of the General Assembly resolution to beneficiaries in a circular reading as follows:

“The United Nations General Assembly on 18 December 1974 approved, with certain modifications, a recommendation by the Board for significant changes in the method of adjusting pensions in payment. The new cost-of-living adjustment arrangements, which will come into effect on 1 January 1975, are intended to protect present and future pensions from the effects of changes in exchange rates and of inflationary movements that may be more severe in some countries than the increases reflected in the present world-wide average index.

“An important feature of the new arrangements is that pensioners, both new and old, will have a *choice* between the present system and a new adjustment system. The summary which follows briefly describes the new procedures, and indicates the action you must take to elect the system you prefer.

“A. *Description*

“1. As indicated above, the new procedures will provide pensioners (including other beneficiaries currently receiving periodic benefits) with a choice between:

“(a) The present adjustment system based on the Weighted Average of Post Adjustment (WAPA), adopted by the General Assembly on 11 December 1973, referred to as the ‘WAPA system’; and

“(b) A new adjustment system which is referred to as the ‘CPI system’. This system will determine adjustments according to the proved country of residence of the pensioner, *and will provide for a fixed amount expressed in the currency of the country of residence*, adjusted in proportion to Consumer Price Index (CPI) changes in that country.

“2. It is, of course, impossible for the Secretariat—or for anyone else—to predict the future economic conditions and to determine which system will assure better benefits. However, in general:

“The WAPA system will tend to be more advantageous where the country of residence has a currency that devalues in relation to the US dollar and/or where cost-of-living increases are less than the WAPA average.

“The CPI system will tend to give larger benefits where the country of

residence has a currency that appreciates against the US dollar and/or where the cost of living rises faster than the WAPA average. It will, moreover, provide complete protection against the adverse effects of future appreciations of the currency of the country of residence against the U.S. dollar.

“In the following three paragraphs, the special features of the CPI system applying to existing pensioners are outlined and these should, therefore, be of particular interest to you:

“3. Pensioners who are in receipt of periodic payments on 1 January 1975 will have a choice between remaining on the WAPA system or switching to the CPI system.

“4. If the WAPA system is chosen, the benefit will not be changed as the result of the General Assembly’s action, and future adjustments will continue to be made thereunder as before.

“5. If the CPI system is chosen, then the pension payable as from 1 January 1975 will be computed according to the special formula described below. *However, it is important to note that in order to have your benefit calculated on the basis of that special formula and in order to have the formula apply to your benefit with effect from 1 January 1975, your election of the CPI system must be received in this office by 31 December 1975.* The special formula is as follows:

“(a) The initial calculation of the benefit to which the CPI adjustment is applied will be based on the actual date of retirement and:

“(i) For pensioners whose benefit commenced during 1972 or before, the starting point will be *the benefit as adjusted* on 1 January 1973 (but without the Transitional Adjustment for 1973), plus the grading formula of 14.2%,

“(ii) For pensioners whose benefit commenced during 1973, the starting point will be *the basic benefit* on the actual date of retirement plus the grading formula of 14.2%,

“(iii) For pensioners whose benefit commenced during 1974, the starting point will be *the basic benefit* plus the actual grading formula as initially applied on the date of retirement.

“(b) Conversion into the currency of the country of residence is based on the *average exchange rate over the 12-month period* preceding either (i) 1 January 1973 or (ii) the actual date of retirement, if later.

“(c) The resulting pension is increased by the same percentage as the Consumer Price Index has increased between 1 January 1973 (or later date of separation) and 1 January 1975.

“(d) The General Assembly having introduced a ‘ceiling’ on benefits payable under the CPI system, no pensioner whose benefit commenced before 1 January 1975 can, if he opts for the CPI system, receive more as a result than if the benefit had commenced on 1 January 1975.

“ . . . ”

The Applicant having, as invited by the circular, requested an estimate of the benefit he would receive under the CPI system to compare with the benefit under the WAPA system, the Secretary of the Pension Board sent him such an estimate on 16 May 1975 and confirmed it on 12 August 1975 in a letter in which he recalled the General Assembly ceiling on benefits payable under the CPI system and explained that the current pensionable remuneration rates of the position which the Applicant had held before retirement could not be used for the purpose of calculating that ceiling, since the level of that position might have been reclassified or declassified in the interim.

On 29 August 1975 the Applicant protested against that method of calculation in a letter to the Secretary of the Pension Board, in which he stated, among other things:

"First of all, it seems contradictory that the post of Deputy Secretary-General which I occupied, and which is an ungraded post, as will be seen later, could have been reclassified!!! Above all, however, I wish to protest strongly against the abusive interpretation whereby the Fund, on the basis of the fact that the salary of the Deputy Secretary-General of WMO, at the time when I retired, was equivalent to that of a D-2, concludes that the post was classified at the D-2 level. I thought it would be useful to bring to your attention in this connexion the following considerations, although I should have preferred to explain them to you personally and to show you the supporting documents.

"The contracts and amendments to the contracts of employment between myself and WMO were all drawn up with the title of Deputy Secretary-General, without any indication of level, unlike the contracts for the posts of other staff members, which specified the nature of the post and the corresponding level and step. I never received a contract appointing me at the D-2 level.

" . . .

"I hope that the foregoing facts show clearly the nature of the post I occupied and I would request you to review the decision communicated to me concerning my CPI benefit as of 1 January 1975, so that it corresponds not to the salary which a Director D-2 would have received on that date, but to that which I would have received as Deputy Secretary-General if I had retired on 1 January 1975."

The Applicant repeated his request on 18 December 1975 and 19 March 1976. On 24 April 1976 he requested the Secretary of the Pension Board, with whom he had met on 7 April 1976, to confirm in writing the reasons why the Fund refused to accede to his request. On 20 May 1976, the Secretary of the Pension Board replied:

" . . .

"It may be recalled at the outset that the General Assembly, in providing for the CPI system, stated in its resolution 3354 (XXIX), section I, that no existing beneficiary opting for that system should receive more as a result of its application than if his benefit had commenced on 1 January 1975. It became necessary in consequence to determine what your benefit would have been had the final average remuneration of your post been that prevailing during the years 1972, 1973 and 1974, instead of the actual final average remuneration prevailing during the three years immediately preceding your retirement on 31 January 1971.

"When the computation to determine the upper limit, or ceiling, of the adjustment applicable to your pension according to the above proviso came to be carried out, however, a point of doubt arose, due to the fact that subsequent to your retirement, and with effect from 1 January 1972, the salary (and consequently the pensionable remuneration) of the post which you had held had been raised from the D-2 level to that attached to the level of the deputy executive heads of the ITU and UPU. The title and functions of the post nevertheless—that of Deputy Secretary-General of WMO—remained the same.

"It is clear, both from the terms of the resolution mentioned above and from the discussions which preceded its adoption, that the primary intention of the General Assembly in imposing the ceiling was to ensure that an existing pensioner should not have his benefit increased under the CPI system to a level higher on 1 January 1975 than that of a colleague of comparable rank and length of service who retired on that date. It is evident, therefore, that the comparison between the adjusted rate of the existing pension and the initial rate of the new, if that purpose is to be achieved, must be made on the basis of the same grade in both instances,

whatever change may subsequently have taken place in the level of the actual post held by the former participant during his service—since otherwise a reduction in grade would have the effect of lowering the ceiling while an increase in grade would cause it to rise. It became important to determine, therefore, whether a change of this kind had taken place in your case.

“Enquiry from WMO revealed that the post of Deputy Secretary-General of that organization had always been, and indeed remains, an ‘unclassified’ post. It was not, however, despite its unclassified nature, a post which was entirely *sui generis*, in the sense that the salary and emoluments attached to it were unique to it alone. On the contrary, at least for the period 1968–1971, the post had been specifically equated in salary and most other emoluments with a post at the D-2 level, and presumably in terms of *rank* was considered to be at that level. The enquiry showed further that at its VIth session in 1971 the WMO Congress had decided that for the financial period 1972–1975 its salary and emoluments should be equated with those of the posts of the deputy executive heads of comparable specialized agencies, that is to say the ITU and UPU. These are posts carrying a defined salary level higher than that of D-2, and it can only be presumed that the WMO Congress, by its action, expressed the belief that its Deputy Secretary-General should be raised in both rank and salary to a level no lower than that of his colleagues in other organizations. It follows from the above that the essential nature of the post, in terms of grade if not of function, had in spite of its continuing unclassified character, changed from a lower to a higher level, and that a comparison with final average remuneration at such higher level would not be a comparison between the pensions of officials of the same rank retiring at different times.

“The adjustment of your pension was accordingly made on the basis of a comparison between the pensionable remuneration at D-2, step IV from 1 February 1968 to 31 January 1971—the date of your retirement—and the pensionable remuneration at D-2, step IV from 1 January 1972 to 31 December 1972.

“ . . . ”

On 10 June 1976, the Applicant sought to refute those arguments in a letter which stated, among other things:

“ . . . ”

“I shall not dwell on the contradiction inherent in the application of the D-2 ceiling to a post which was not classified at the D-2 level. I shall confine myself to stressing the sophistical nature of the reasoning whereby, on the basis of the fact that the salary of the Deputy Secretary-General of WMO was at one time the same as that of a D-2 post, it is concluded from that fortuitous coincidence that the post was of the same character as a D-2 post and consequences are drawn therefrom regarding the future, when the coincidence had ceased to exist. The real problem is the following: the salary of the Deputy Secretary-General, although equivalent to that of a D-2 post, was *the salary of the Deputy Secretary-General* at that time, and not the salary of a D-2 post, for (1) the Deputy Secretary-General occupied an ungraded post and (2) there was no D-2 post in the WMO Secretariat.

“I request that, as required by General Assembly resolution 3354 (XXIX), the ceiling for my pension as Deputy Secretary-General of WMO be based on the evolution in the pensionable remuneration of the Deputy Secretary-General of WMO, so that I may not receive more by reason of having opted for the CPI system than if my pension as Deputy Secretary-General had commenced on 1 January 1975. However, I cannot agree that I should receive less than this minimum, for even with this ceiling my pension would still be smaller (in terms of purchasing power) than it was in 1971. The crucial question in my case is therefore

to determine whether the post of Deputy Secretary-General was classified at the D-2 level or not. There is no doubt that the reply of WMO to that question is negative, and the letter from the Pension Fund secretariat acknowledges that the post was 'ungraded'.

"The posts of Deputy Secretary-General of ITU, UPU, IMCO [Intergovernmental Maritime Consultative Organization] and WMO, despite occasional differences in salary, have always been considered as posts at the same level. Persons occupying those posts have always been given the same rank in the order of seniority of the organizations, at official ceremonies, meetings or assemblies . . . without any regard for any differences which might exist in the salaries attached to the posts, which at one time ranged from a salary close to that of an Assistant Secretary-General of the United Nations in the case of ITU and UPU to that of a D-2 in the case of WMO and of a D-1, step IV, in the case of IMCO. This shows clearly that no legitimate conclusion concerning the nature or rank of any of these posts can be drawn from the salary attached to it.

"It was for reasons of pure administrative convenience that the salary of the Deputy Secretary-General of WMO, which until 1964 had always been a specific amount, was changed to an amount which fluctuated in time. Because of the 1962 increase in the salaries of staff in the P and D categories, the WMO Executive Committee was obliged to take urgent steps to modify the salary of the Deputy Secretary-General of the Organization, whose salary had been almost equalled by those of some of his subordinates. The following Congress, in 1964, endorsing the steps taken by the Executive Committee and with a view to preventing such difficulties from recurring, decided that the salary of the Deputy Secretary-General would no longer be fixed but would become mobile, and that the amount would be the same as that of a staff member at the D-2 level for the financial period, so as to maintain a sufficient margin between the salary of the Deputy Secretary-General and those of the staff members at the highest levels, irrespective of any future salary increases and the step advances of those staff members within their level.

". . . If I had left the post of Deputy Secretary-General of the World Meteorological Organization on 1 January 1975, there is no doubt that I should have benefited in the same conditions as my successor from the decision of the Congress; that is to say, it would have been applied automatically to me as it was to the holder of the post without any administrative formalities (reopening for recruitment, Promotion Board, . . .) or any other measure that would indicate that the post had undergone any change other than that in the salary attaching to it. There was no interruption in that regard.

"As to the reasons why the Congress changed the salary, they are obvious if one refers to paragraph 3.6.3 of the Report of the Congress . . . Since the Congress had decided that the WMO Secretariat should include a D-2 post—which did not exist before 1972—it had become essential that the Deputy Secretary-General should receive a higher salary than that which he had received previously, which was the same as that of a D-2.

"For all these reasons, it seems to me simply fair that my CPI pension ceiling, in accordance with the decision of the United Nations General Assembly, should be the pension which I would have received on 1 January 1975 if at that time I had been occupying the post of Deputy Secretary-General of WMO, the only official title ever conferred upon me by WMO . . ."

On 31 July 1976, the Standing Committee of the Joint Staff Pension Board reviewed the case of the Applicant and confirmed the decision of the Secretary of the Board with respect to the manner in which the Applicant's pension had been computed with effect

from 1 January 1975. On 5 November 1976 the Applicant was formally notified of that decision and on 20 April 1977 he filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant never officially received an appointment at the D-2 level.
2. The post of Deputy Secretary-General, for which the salary was, during a specific period (1968–1970) only, the same as that of a staff member at the D-2, step IV level, was an ungraded post.
3. The assertion of the Pension Fund that the Applicant's post, although ungraded, was not by its nature a post of that category, is shown to be invalid by the duties attached to the post.

Whereas the Respondent's principal contentions are:

1. It is the Applicant's pensionable remuneration and not his title or post which determined his pension contribution and his 1971 retirement benefits; and it is to the subsequent movement of this pensionable remuneration during the period 1 January 1972–31 December 1974 that the ceiling on his adjusted benefits must be related.
2. The salary for the post of Deputy Secretary-General was changed after the Applicant's retirement in a manner and for reasons undistinguishable, as concerns its significance for retirement benefit adjustments, from a reclassification.

The Tribunal, having deliberated from 3 to 13 October 1977, now pronounces the following judgement:

I. The parties agree in recognizing that according to section I of resolution 3354 (XXIX), adopted by the United Nations General Assembly on 18 December 1974, the Applicant was entitled to choose the CPI (consumer price index) system for the calculation of his retirement benefit and that, having exercised his right in that regard, he must receive the sums due to him in application of that system.

The calculation proper of the amount due to the Applicant according to the CPI system is likewise not in dispute. Both parties acknowledge that under the CPI system the Applicant is entitled to the same benefit as that paid to a beneficiary having the same degree of seniority and whose salary, like that of the Applicant, was equal to that of a staff member occupying a "graded post" of Director (D-2 level, step IV).

II. The disagreement between the parties bears solely on the method of calculating the "ceiling" provided for in annex IV to the Pension Fund Regulations incorporating by reference General Assembly resolution 3354 (XXIX).

With reference to the calculation of the ceiling, section I of that resolution states:

"... no beneficiary who opts for the consumer price index system and whose benefit commenced before 1 January 1975 shall receive more as a result than if the benefit had commenced on 1 January 1975."

III. According to the Respondent, the ceiling imposed by that provision must be calculated on the basis of the pensionable remuneration of a staff member at the D-2, step IV level during the period 1 January 1972–31 December 1974. Taking into account the ceiling calculated in that manner, the monthly retirement benefit to be paid to the Applicant would have been 3,231.73 Swiss francs on 1 January 1975. According to the Applicant, the ceiling should be calculated on the basis of the pensionable remuneration paid to his successor during the period 1 January 1972–31 December 1974. However, from 1 January 1972 onwards the salary of the Deputy Secretary-General of WMO was, by a decision of the WMO Congress, brought into line with the salaries of the Deputy Secretaries-General of UPU and ITU. That being so, the Applicant argues that, according to the information given to him by WMO, his monthly retirement benefit on 1 January 1975 should have been 3,687.65 Swiss francs.

IV. Thus the parties disagree on the interpretation of the text of a General Assembly resolution supplementing the Pension Fund Regulations.

The Applicant, basing his argument on the literal meaning of the text, states:

“... If I had left the post of Deputy Secretary-General of the World Meteorological Organization on 1 January 1975, there is no doubt that I should have benefited in the same conditions as my successor from the decision of the Congress ...”

The Respondent, for its part, considers that the interpretation must take the context into account, and must be based on the “basic principles underlying the Pension Fund Regulations”. The Respondent states: “Under the UN Pension Regulations, it is on pensionable remuneration only that contributions are calculated and paid during a participant’s service, and retirement benefits are based on final average pensionable remuneration and years of service . . . Consequently, the calculation required by . . . resolution 3354 (‘if the benefit had commenced on 1 January 1975’) must consistently be done by extrapolating from actual final average pensionable remuneration.”

V. The Applicant contends that, in calculating the ceiling set by General Assembly resolution 3354 (XXIX), it is necessary to take into account the substantial increase in the pensionable remuneration of the Deputy Secretary-General of WMO which occurred after his retirement but before 1 January 1975.

According to the Respondent, “it must . . . be inferred that the General Assembly intended to require the minimum of speculation on the effect which post-retirement events might have had if, contrary to fact, the pensioner had still been in service”. Moreover, “the salary level of the post was thus changed after the Applicant’s retirement in a manner and for reasons undistinguishable, as concerns its significance for retirement benefit adjustments, from a reclassification”.

The Applicant argues that it is by definition impossible to reclassify an ungraded post.

VI. The question at issue is therefore that of determining what the Applicant’s retirement benefit would have been if it had commenced on 1 January 1975.

The Tribunal observes that the Applicant’s case is a very special one. The Tribunal has no doubt that if the Applicant had held a “graded post” at the time of his retirement, the ceiling set in the applicable provision (resolution 3354) could only have been calculated on the basis of the pensionable remuneration of a staff member having occupied a post of the same grade during the period 1 January 1972–31 December 1974.

But on the basis of information submitted by the Applicant and uncontested by the Respondent, the Tribunal notes that the Applicant’s post was ungraded throughout the relevant period and remains ungraded. The post of Deputy Secretary-General of WMO has always been “unclassified” and the salary for the post has been fixed at various times by the WMO Congress. The fact that during a certain period (1964–1971) the salary of the Deputy Secretary-General was the same as that of a staff member at the D-2 level does not change this situation.

That being so, if the Applicant’s benefit had commenced on 1 January 1975, it would have been established on the basis of the salary paid from 1 January 1972 to 31 December 1974 to his successor as Deputy Secretary-General. The ceiling applicable in the Applicant’s case must therefore be determined in that manner.

VII. With regard to the basic principles underlying the Pension Fund Regulations, to which the Respondent refers, the Tribunal observes that it is evident that it is on pensionable remuneration only that contributions are calculated and that retirement benefits are based on final average pensionable remuneration and years of service. The CPI system brought a new factor into play by adjusting benefits on the basis of the cost

of living. The ceiling was introduced by the General Assembly on the basis of a very different idea. The Respondent has rightly observed that the intention was "to achieve correspondence as between the adjustment of pension benefits already in payment prior to 1 January 1975 and the levels of new pensions coming into payment on that date for staff of comparable grade and length of service, thus avoiding what was considered by the General Assembly to be the anomaly of an earlier pensioner receiving a higher pension than a later one". It follows that the aforementioned "basic principles" do not concern the ceiling.

Basically, the General Assembly wished to prevent the CPI system from creating inequalities between earlier pensioners and newly retired staff members with the same administrative status. The Respondent's interpretation of the resolution would make the ceiling on the Applicant's pension lower than the pension he would have received if he had retired as Deputy Secretary-General of WMO on 1 January 1975. That seems to the Tribunal to be manifestly contrary to the text of resolution 3354 (XXIX).

VIII. The Tribunal did not fail to consider the Respondent's argument based on the title of section I of General Assembly resolution 3354 (XXIX): "Adjustment of benefits in respect of cost-of-living changes". The Tribunal does not *a priori* exclude the idea that consideration of a title may shed light on the interpretation of a text, but considers that in this instance—as is often the case—the title does not cover all the content of the text. It obviously relates to the adjustment of benefits in respect of cost-of-living changes, which is the main purpose of the CPI system. It does not reflect another important, but secondary, objective, namely the prevention of inequalities in benefits actually received that would be prejudicial to beneficiaries of equivalent rank and length of service.

IX. For these reasons, the Tribunal rescinds the decision of the Standing Committee of the Joint Staff Pension Board, acting on behalf of the Board, which was notified to the Applicant by the Secretary of the Board in his letter of 5 November 1976, decides that in calculating the Applicant's retirement benefit under the CPI system the ceiling provided for in section I of General Assembly resolution 3354 (XXIX) of 18 December 1974 shall be the amount he would have received if his benefit had commenced on 1 January 1975, calculated on the basis of the salary for the post of Deputy Secretary-General of WMO during the period 1 January 1972–31 December 1974, and orders that the Applicant be paid the amounts due to him in consequence.

X. The Applicant having failed to provide sufficient justification for his request for "token, rather than real," compensation in the amount of one thousand Swiss francs, the Tribunal rejects that request.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Endre USTOR
Member

Not being in agreement with the principal conclusion of the Judgement, I set forth my dissenting opinion below.

Francisco A. FORTEZA
Member

New York, 13 October 1977

Jean HARDY
Executive Secretary

DISSENTING OPINION OF MR. FRANCISCO A. FORTEZA

I have participated in the Tribunal's deliberations on this case but do not share the majority view expressed in paragraphs VI to IX of the Judgement, for the following reasons:

1. In section III, paragraph 2, of its resolution 3100 (XXVIII) of 11 December

1973 the General Assembly requested the Joint Staff Pension Board "to carry out an in-depth study on various selective systems designed to compensate for currency changes and inflationary movements in the countries of residence of pensioners . . .".

2. The Pension Board, in its report to the twenty-ninth session of the General Assembly, proposed the adoption, for possible selection by all pensioners, of a new pension adjustment method called the consumer price index (CPI) system. The Pension Board believed that the new system "could serve the purpose envisaged in that resolution".

3. In its report to the General Assembly, the Advisory Committee on Administrative and Budgetary Questions raised some objections to the aforementioned recommendation of the Pension Board. In particular, it noted the anomaly that would be created by the application of a system under which "an official retiring at a later date might receive substantially less than his colleague of like rank who retired some years previously".

4. With the agreement of the Pension Board, the General Assembly sought to eliminate the serious short-coming noted by the Advisory Committee. On 18 December 1974, by its resolution 3354 (XXIX), it adopted the new system recommended with the proviso (ceiling) "that no beneficiary who opts for the consumer price index system and whose benefit commenced before 1 January 1975 shall receive more as a result than if the benefit had commenced on 1 January 1975".

5. In his application, "the Applicant considers that the salary he received in 1968-1971, which was equivalent to that of an official at the D-2, step IV, level, was the salary of a Deputy Secretary-General of WMO at that time and that consequently his pension on 1 January 1975 would have been calculated on the basis of the salary of the Deputy Secretary-General during the period 1972-1974". It should also be noted that in a letter addressed to the Secretary of the Pension Board on 10 June 1976 the Applicant requested that the ceiling of his pension be established on the basis of "the evolution of the *pensionable remuneration* of the Deputy Secretary-General of WMO . . . as required by General Assembly resolution 3354 (XXIX) . . ." (emphasis by the undersigned).

6. It may easily be assumed that if the Applicant had been able to remain in his post after 1 January 1972 he would have received the new and higher salary established for the post of Deputy Secretary-General by the WMO Congress. In that case, the Applicant himself and WMO would have had to pay their contributions (7 and 14 per cent respectively) to the Pension Fund on the basis of the higher salary. But such was not the case.

7. The Respondent, for his part, states in his answer:

"Under the UN Pension System, retirement benefits once established are not affected by subsequent changes in the terms of employment of staff members who are still in service."

The Respondent then argues:

"As regards the interpretation of this limit [set by resolution 3354], there is no indication that the General Assembly intended to depart from basic principles underlying the Pension Fund Regulations."

8. I consider that the Respondent reached a valid conclusion in the light of the summary records of the meetings which the Fifth Committee devoted to this item at the twenty-ninth session of the General Assembly. I therefore agree with the Respondent's contention that in determining the ceiling established by General Assembly resolution 3354 (XXIX) the calculation must be made by extrapolating "from *actual* final average pensionable remuneration" (emphasis by the undersigned). It follows that if the Applicant's remuneration during his last three years of service with WMO had

been higher than that of his successor, the Pension Board would have calculated his ceiling on the basis of the Applicant's actual remuneration and not on the basis of the lower remuneration which the Deputy Secretary-General of WMO would have received, in that case, as from 1 January 1972, for example.

9. To sum up, I consider that the Applicant cannot base his case on the literal interpretation of a General Assembly text designed, not to eliminate inequalities which might result from an increase or decrease in the pensionable remuneration of the Deputy Secretary-General of WMO, but to prevent any staff member who retired on a given date from receiving less than a staff member with the same average final remuneration who retired some years previously.

10. With regard to the inequality resulting from the level established for the salary of the Deputy Secretary-General of WMO as from 1 January 1972, I consider that it is for the WMO Congress rather than the United Nations General Assembly to decide whether that situation should be corrected.

11. For the foregoing reasons, I consider that the application should be rejected.

(Signature)

New York, 13 October 1977

Francisco A. FORTEZA

Judgement No. 229

(Original: English)

Case No. 218:

**Squadrilli (Retroactive participation
in the United Nations
Joint Staff Pension Fund
for service with UNRWA
prior to 1961)**

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

Request by a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East for pension coverage of a period of service prior to 1961.

Shifts in the basis and the nature of the Applicant's claim.—Withdrawal by the Applicant of certain pleas in the application.

Recognition of the Applicant's eligibility for coverage of his service prior to 1961. —Dispute as to the effective date of recalculation of the Applicant's pension benefits.—Competence of the Tribunal to hear and pass judgement.—Objection as to receivability based on the fact that the dispute arose after the filing of the application.—Relationship between the issue in dispute and the issue which the Respondent agreed should be submitted directly to the Tribunal.—Objection overruled.—Objection based on the fact that UNRWA is the proper Respondent to the dispute.—UNRWA arranged for its answer to the claim to be filed through the Secretary-General of the United Nations.—The Tribunal decides that UNRWA is represented in the proceedings before the Tribunal through the Secretary-General of the United Nations and that its decision is equally binding on UNRWA.—Question of the Applicant's alleged rejection of UNRWA's "offer" of coverage for his pre-1961 service.—In fact, UNRWA took a decision and did not make an "offer" subject to withdrawal.—The fact that the Applicant sought clarification cannot be regarded as rejection.—The Applicant's failure to make the requisite payments by the date prescribed by UNRWA cannot lead to forfeiture of his rights.—The Tribunal decides that UNRWA's decision must