

Judgement No. 243*(Original: French)***Case No. 197:
Jiménez Carrillo****Against: The Secretary-General
of the United Nations**

Request for rescission of a decision taken by the Secretary-General on the recommendation of the Advisory Board on Compensation Claims.

Request of the Applicant, the widow of a technical assistance expert, that the Tribunal declare that the expert's illness and subsequent death were the direct consequence of the performance of official duties on behalf of the United Nations.—The Tribunal is not competent to pass judgement on medical opinions.—The Tribunal will confine itself to considering whether the proceedings were in accordance with due process.—State of health of the expert when the medical examination was carried out at the time of his recruitment.—Circumstances in which the expert's service was terminated.—Failure to comply with staff Rule 204.6 requiring a medical examination on separation from service.—Expert's claim for compensation.—Its denial by the Secretary-General in accordance with the recommendation of the Advisory Board on Compensation Claims.—Expert's request that the case be reopened under article 9 of appendix D to the Staff Rules.—Request rejected.—Convening of a medical board under article 17 of appendix D.—The Tribunal notes that the Respondent applied the procedure as laid down in appendix D and that his final decision was based on the opinion of the majority of the medical board.—Validity of that decision.—Administrative negligence entailing the responsibility of the Respondent.—Award of \$5,000 to the Applicant as compensation.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Sir Roger Stevens;

Whereas at the request of Mrs. Jiménez Carrillo, the Applicant herein and the widow of Mr. Jesús Jiménez Carrillo, a former technical assistance expert of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 16 December 1974, 16 March 1975 and 16 May 1975 the time-limit for the filing of an application to the Tribunal;

Whereas, on 16 May 1975, the Applicant filed an application in which she requested the Tribunal:

“(a) to declare that Mr. Jiménez Carrillo's illness, as well as his resulting total incapacitation and subsequent death, were entirely attributable to the performance of official duties on behalf of the United Nations;

“(b) to grant the Applicant the compensation provided for in Appendix D to the United Nations Staff Rules, namely:

- (i) the compensation provided for under article 11.1 (b) (ii) for the period from 15 November 1967, the date on which the expert suffered a thrombosis, to 3 February 1970, the date on which his contract expired;
- (ii) the compensation provided for in article 11.1 (c), for the period from 3 February 1970 to 8 March 1974, the date of the expert's death;

- (iii) the compensation provided for in article 11.1 (a) with regard to expenses incurred during the period from 15 November 1967 to 8 March 1974;
- (iv) the compensation provided for in article 10.2, from 8 March 1974;
- (v) the compensation provided for in article 10.1 (a);
- (vi) the compensation provided for in article 10.1 (c).

For the purposes of determining the amount of such compensation, the Applicant states that the annual salary earned by the expert was \$US 16,480, to which should be added, as appropriate, the amount of \$US 400 per year covering the allowance for a dependent spouse. The Tribunal is also requested to bear in mind that, during the time which has elapsed since the events that have given rise to this claim, various economic factors, among them world-wide inflation and the devaluation of the United States dollar, have affected the purchasing power of the amounts referred to above and, therefore, that of any compensation based upon those amounts alone. Therefore, the Tribunal is requested to bear these factors in mind when determining the compensation requested and to make such adjustments as it deems appropriate, as well as any other adjustment which it believes to be relevant, including interest on the amounts in question.

For the purposes of article 9, paragraph 1, of the Statute of the Tribunal, the Applicant states that the equivalent of two years' net base salary for Mr. Jiménez Carrillo amounts to \$US 32,960."

Whereas, on 18 July 1975, the Respondent requested an extension of the time-limit for filing his answer in view of the necessity of conducting negotiations with the Applicant for the clarification of matters pertaining to the substance of the complaint;

Whereas, on 1 October 1975, the Respondent requested another extension in a memorandum reading in part:

"The negotiations appear to have led to the acceptance by the Applicant of a proposal by the Respondent that a medical board be set up under article 17 of Appendix D to the Staff Rules.

"Since resort to this procedure will lead to a decision by the Secretary-General distinct from and superseding the one contested by the application now before the Tribunal, the application is bound to lapse if the procedure of article 17 of Appendix D is instituted.";

Whereas, on 7 January 1976, the Respondent, in requesting a further extension, stated *inter alia*:

"The way is not yet clear, however, for the institution of this procedure. For an obstacle has arisen in connexion with the medical fees involved.

"Out of sympathy for the Applicant, the Secretary-General has agreed to bear in full, regardless of the outcome of the procedure, all the medical fees and incidental expenses to which the medical board may give rise. The Secretary-General's decision to make this offer was taken on an *ex gratia* basis, since, as you are aware, under article 17 (d) of Appendix D the United Nations is required to bear these expenses in full only if the Secretary-General alters his original decision in favour of the Applicant.

"However, far from facilitating the institution of the procedure in question, the

Secretary-General's offer has resulted in a difficulty that is impeding progress towards the setting up of a medical board. For the medical practitioner selected by the Applicant as a member of the medical board, as called for in article 17 (b) of Appendix D, has asked for a fee that, in the opinion of the Secretary-General, is exorbitant and therefore unacceptable.'';

Whereas, on 9 April 1976, the Respondent informed the Tribunal that, in an effort to break out of that deadlock, the maximum amount of the fee that the Secretary-General was prepared to pay the physician in question had been communicated to the Applicant;

Whereas, on 23 June 1976, in a joint memorandum the Respondent and the Applicant informed the Tribunal that the negotiations for the establishment of a medical board under Appendix D to the Staff Rules had not yet been concluded and proposed that the Tribunal suspend the time-limit for filing the Respondent's answer until such time as the Tribunal grants a request by the Applicant that the procedure resume its normal course;

Whereas, on 1 July 1976, the Respondent and the Applicant were advised that the President of the Tribunal had no objection to the procedure outlined in their joint memorandum;

Whereas the medical board, consisting of a medical practitioner selected by the Applicant, a medical practitioner selected by the Medical Director of the United Nations and a third medical practitioner selected by the first two, met in Geneva and issued its report on 27 May 1977;

Whereas the majority of the medical board came to the conclusion that no causal relation could be established between the illness and the service;

Whereas, on 2 January 1978, the Applicant informed the Tribunal that she would be prepared to withdraw her claim if the United Nations paid her 6,500 dollars to enable her to reimburse the debts incurred as a result of her husband's illness;

Whereas, on 13 September 1978, the Applicant requested that the procedure resume its normal course;

Whereas the Tribunal granted the Applicant's request on 22 September 1978;

Whereas, on 23 October 1978, the Under-Secretary-General for Administration and Management informed the Applicant that, on the basis of the report of the medical board, the Secretary-General had decided to maintain his decision to deny the claim for compensation;

Whereas the Respondent filed his answer on 8 November 1978;

Whereas, on 22 January 1979, the Applicant filed written observations in which she requested the Tribunal:

“1. To reject the Respondent's arguments and accept the pleas submitted by counsel for the Applicant on 16 May 1975;

“2. Simultaneously or alternatively, to compensate the Applicant for the moral and material injury and damage resulting from the unjustified delay on the part of the competent organs of the Administration in taking a decision, as demonstrated by the dates cited by the Respondent himself and the facts set forth in particular in paragraphs 3, 4 and 5 of these written observations. The amount of compensation claimed is 7,000.00 United States dollars.”

Whereas, on 12 May 1979, the Respondent submitted additional information and produced an additional document at the request of the Tribunal;

Whereas the facts in the case are as follows:

Mr. Jiménez Carrillo entered the service of the United Nations on 4 February 1967 as a Business Accounting Expert under an appointment for one year and was assigned to a Special Fund project in Bujumbura, Burundi. Prior to his recruitment he was instructed to undergo a medical examination in Madrid and, on the basis of this examination, he was classified 2a and declared eligible for the Burundi mission by the Medical Director of the United Nations. On 12 October 1967 he was offered an extension of his appointment for two years as from 4 February 1968 subject to a new medical examination. He accepted that offer on 8 November 1967 after undergoing a new medical examination at Bujumbura on the basis of which the Medical Director stated on 20 November 1967 that there did not seem to be any medical contra-indication to extending the appointment. On 15 November 1967, however, Mr. Jiménez Carrillo had suffered a phlebothrombosis and had been hospitalized. He left the hospital on 9 December 1967 and a medical report dated 15 December 1967 stated that he would not be able to resume his work before 15 January 1968. On 20 December 1967 his condition worsened and, in a report dated 26 December 1967, his physicians ordered his repatriation to Spain for treatment for an estimated period of three months. On 1 January 1968 he was evacuated from Bujumbura to Madrid accompanied by his wife. In a letter of 9 January 1968 to the Resident Representative of UNDP (United Nations Development Programme) at Bujumbura the Office of Technical Co-operation, noting that there had been no prior notification, before a cable of 26 December 1967, that the expert had been ill, requested that in all future cases the Office be immediately advised by cable of serious or prolonged illness, accident or hospitalization of any United Nations expert. In a memorandum of the same date to the Medical Director requesting his advice, the Office of Technical Co-operation expressed the opinion that Mr. Jiménez Carrillo's illness might be related to a condition which existed prior to his appointment with the Organization. In a further memorandum dated 12 February 1968 the Office of Technical Co-operation requested the Medical Director's comments as to the expert's medical suitability in connexion with the possible extension of his services in Burundi through 3 February 1970. On 12 January 1968 Mr. Jiménez Carrillo was informed that the extension of his mission would be contingent on the evaluation and recommendations of the Medical Director. By a memorandum dated 19 January 1968 the Medical Director advised the Office of Technical Co-operation that on the basis of medical certificates submitted to the Health Service, Mr. Jiménez Carrillo was medically ineligible for an extension of his appointment in Burundi. On 26 January 1968 the Technical Assistance Recruitment Service (TARS) advised the Office of Technical Co-operation that in the light of the decision of the Health Service, it would obviously be impossible to proceed with the extension of the expert in Burundi, but that it was not clear from the memorandum of the Health Service whether the nature of the expert's illness would not allow the consideration of his candidature for another technical assistance post after his recovery. On 20 February 1968, after receiving a report from the expert's physician in Spain, the Medical Director informed the Office of Technical Co-operation that the expert would require a period of treatment until at least the end of March 1968 and that he was being treated for two conditions, one of which was related to a pre-existing lesion. On 23 February 1968 the expert was advised that since his evacuation to Spain was a result of a pre-existing condition, the United Nations was unable to cover

the additional fares for travel by stretcher, first class, or the extra fare for his wife. On 1 April 1968 the Medical Director informed the Office of Technical Co-operation that he had received a medical certificate from the expert's physician in Spain stating that the expert had recovered and was able to resume normal duties. On 10 April 1968 the appointment of Mr. Jiménez Carrillo was retroactively extended from 4 February to 31 March 1968 for sick leave purposes; he was subsequently placed on sick leave at half pay from 19 February to 31 March 1968. As he had expressed an interest in being reassigned elsewhere following his recuperation, efforts were made to find him a post in South America. On 17 April 1968 he inquired of the Office of Technical Co-operation about his next assignment, pointing out that, prior to the illness which had forced his repatriation, he had been offered, and had accepted, a two-year extension of appointment and that he had been, at the time, medically cleared for that extension. On 4 June 1968 the Medical Director advised TARS that he would consider Mr. Jiménez Carrillo eligible for a mission where his duties did not require strenuous travel and where the available medical facilities were good. The efforts to find another suitable assignment for Mr. Jiménez Carrillo having so far proved fruitless, further efforts were made, unsuccessfully, within the Department of Economic and Social Affairs. In letters dated 17 September, 30 October and 26 November 1968 Mr. Jiménez Carrillo claimed that the illness he had suffered in Burundi was service-incurred since it was attributable to excessive work in the performance of his official duties. On 28 November 1968 the Chief of TARS informed him that, since the Health Service objected to his return to Burundi and since efforts to find him another post had proved fruitless, he would receive compensation in accordance with the Staff Regulations and Rules. Mr. Jiménez Carrillo was accordingly paid compensation equivalent to salary and termination indemnities as if he had been given a two-year extension of appointment from 4 February 1968 to 3 February 1970 which had to be terminated with effect from 30 November 1968, in addition to one month's salary equivalent to payment in lieu of notice. On 19 December 1968 the Medical Director addressed the following memorandum to the Office of Technical Co-operation:

"Mr. Jiménez Carrillo has written to me protesting our recommendation against payment of travel costs Burundi to Spain where he was evacuated for medical reasons for a pre-existing condition, and for allowing only one half of his medical costs in Spain. This latter recommendation was based on the fact he developed a second condition in Spain which was not pre-existing, and although his treatment was primarily for the pre-existing condition, we were of the opinion that one-half of the costs was a fair reimbursement for the new condition.

"To sum up his case, at the time of his recruitment, Mr. Jiménez Carrillo was a known hypertensive; the episode of cerebral thrombosis in Burundi was a symptom of the same degenerative process of cardiovascular arteriosclerosis which had been revealed by his hypertension earlier. *Medically*, hypertension and cerebral thrombosis are related parts of the same process of cardiovascular arteriosclerosis. *Psychologically*, it is difficult for non-medical persons to recognize this relationship, so that legally there is a tendency to regard them as two different processes.

"Mr. Jiménez Carrillo is contending that his illness is 'service-incurred', which is not indicated in this case. I believe the ideal solution, if it could be accepted, would be to pay the comparatively heavy medical expenses without recognizing the cerebral thrombosis as service-incurred."

On 21 January 1969, in accordance with the suggestion in the last paragraph of that

memorandum, reimbursement of the balance of Mr. Jiménez Carrillo's medical and travel expenses was approved. On 10 May 1969 Mr. Jiménez Carrillo submitted to the Advisory Board on Compensation Claims (ABCC) a claim for compensation for service-incurred illness resulting in total disability. On 15 May 1969 he was invited to produce justification as to why he considered his illness to be attributable to his work, as well as full medical particulars concerning the origin and the cause of his illness. On 8 June 1969 he accordingly submitted a statement explaining the circumstances of his attack of thrombosis, together with medical certificates from his physician in Spain and from the physicians who had treated him in Bujumbura. On 1 October 1969 ABCC adopted the following recommendation in his case:

"The Advisory Board on Compensation Claims,

"Having considered at its 164th meeting, on 1 October 1969, the claim for disability benefits under article 11 of Appendix D to the Staff Rules submitted by Mr. Jesús Jiménez Carrillo;

"Noting that the episode of cerebral thrombosis was the result of a continuing degenerative process of cardio-vascular arteriosclerosis which was pre-existing;

"Considers that no causal connection has been established to link the claimant's illness with his assignment for the United Nations in Burundi;

"Recommends to the Secretary-General that the claim for compensation submitted by Mr. Jesús Jiménez Carrillo be denied."

On 10 October 1969 the Secretary of ABCC informed Mr. Jiménez Carrillo that the Secretary-General had decided to deny his claim for compensation on the ground that on the basis of the evidence submitted it was not established that his illness was related to the performance of his official duties in Burundi. The Applicant having addressed several letters, as well as a medical certificate dated 17 December 1970 stating that her husband had become definitively incapacitated, to the Secretary-General, the Secretary of ABCC advised her on 24 March 1971 that she had produced no new element justifying a review of the case. Further communications were exchanged between the Secretary and the Applicant on 10 April, 17 May, 25 May and 10 June 1971. In a letter of 9 November 1973 Mr. Jiménez Carrillo requested the Secretary-General to reopen the case under article 9 of Appendix D to the Staff Rules, supporting his request with a medical certificate dated 11 December 1972. This letter was transmitted to the Secretary-General by the Permanent Mission of Spain to the United Nations under a note verbale dated 21 January 1974. Mr. Jiménez Carrillo died on 8 March 1974. On 29 March 1974 the Secretariat of the United Nations informed the Permanent Mission of Spain that Mr. Jiménez Carrillo's last communication did not contain any new evidence which would justify a reopening of the case and that an appeal from this decision could be filed with the Joint Appeals Board or directly with the Tribunal. On 16 May 1975 the Applicant filed with the Tribunal an application referred to earlier, which was followed by the events related at the beginning of this judgement.

Whereas the Applicant's principal contentions are:

1. Mr. Jiménez Carrillo's illness as well as his incapacitation and subsequent death were caused by sinusitis acquired while he was serving as a United Nations expert in Burundi.

2. The illness was aggravated by the extremely difficult conditions in which Mr. Jiménez Carrillo was working.

3. The expert was declared fit for the post in Burundi by the United Nations Medical Service, which based its decision on the results of a medical examination carried out by a professional selected by the Service itself. Only after his thrombosis was the expert declared unfit for work in Burundi by the United Nations Medical Service. It can only be concluded that the expert was not suffering from any illness before taking up his duties in Burundi.

4. The medical event occurred while the expert was working in particularly difficult conditions and it occurred in a locality where the facilities necessary for his prompt and effective treatment were lacking. These considerations place the case within the context of article 2 (b) (ii) of Appendix D to the Staff Rules.

Whereas the Respondent's principal contentions are:

1. The decision communicated to the Applicant on 23 October 1978 and the decision against which the application is directed are procedurally distinct. With regard to substance, however, the former decision differs from the latter only in that it was taken after the Applicant unsuccessfully availed herself of the remedy open to her under article 17 of Appendix D to the Staff Rules.

2. The application is based on no more than a restatement of the arguments advanced by the medical practitioner selected by the Applicant as a member of the medical board. These arguments are inextricably bound up with questions of a purely medical nature on which both the medical board and ABCC have made an authoritative pronouncement. The Tribunal has no competence to determine the merits of such arguments.

3. The procedure preceding the original decision as well as the final decision was not only in full conformity with the relevant rules but went beyond what was required by those rules.

The Tribunal, having deliberated from 8 to 23 May 1979, now pronounces the following judgement:

I. In her principal claim the Applicant requests the Tribunal to declare that Mr. Jiménez Carrillo's illness, as well as his resulting total incapacitation and subsequent death, were the direct consequence of the performance of official duties on behalf of the United Nations. If the Tribunal were to allow that claim, it would have to rescind:

(1) The decision, communicated to Mr. Jiménez Carrillo on 10 October 1969, in which the Secretary-General denied his claim for compensation in accordance with the recommendation adopted by the Advisory Board on Compensation Claims on 1 October 1969; and

(2) The decision, communicated to the Applicant on 23 October 1978, by which the Secretary-General, having considered the report of the medical board, maintained his original decision of 10 October 1969.

II. The Tribunal therefore would have to determine whether Mr. Jiménez Carrillo's illness could be regarded as attributable to the performance of his official duties and whether as a result the Respondent is under an obligation to compensate the Applicant. The Tribunal notes, however, as it has done on several occasions, that it is not competent to pass judgement on the opinions expressed by the medical practitioner in this kind of case. It will therefore confine itself to considering whether the Respondent's decisions were taken in accordance with due process.

III. The Tribunal notes that according to the notification of medical classification of 20 January 1967 signed by the United Nations Medical Director, Mr. Jiménez Carrillo's medical classification was 2a, but that the Medical Director considered him "eligible for Burundi mission". The memorandum from the Medical Director dated 19 December 1968 shows that Mr. Jiménez Carrillo had been given the medical classification 2a because of the arterial hypertension noted in the course of the medical examination carried out at the time of his recruitment in Spain by the physician designated by the Organization. No explanation concerning the hypertension and its significance in the case is contained in that memorandum or in the opinion of the majority of the members of the medical board which met in Geneva on 27 May 1977.

In view of the fact that on 29 March 1974 the United Nations Secretariat informed the Permanent Mission of Spain that the hypertension from which Mr. Jiménez Carrillo suffered at the time of his appointment would normally have prevented him from working for the United Nations had an exception not been made in his case, the Tribunal asked the Respondent whether Mr. Jiménez Carrillo's attention had been drawn to his state of health at the time of his recruitment. The Respondent replied on 12 May 1979 that it was to be presumed that, in accordance with normal practice, the examining physician in Spain had made Mr. Jiménez Carrillo aware of his high blood pressure in the course of his medical examination.

The Tribunal also notes that Mr. Jiménez Carrillo did not contest his medical classification and never requested reclassification.

IV. The Tribunal observes that, in a medical certificate signed in Madrid on 11 March 1968, Dr. Rianza García stated that Mr. Jiménez Carrillo was cured and able to resume normal life and to return to his post as of that date. The Medical Director, for his part, stated on 19 January 1968 that on the basis of the medical certificates submitted to him Mr. Jiménez Carrillo was medically ineligible for extension of appointment in Burundi. But on 4 June 1968 he informed the Technical Assistance Recruitment Service that he would consider Mr. Jiménez Carrillo eligible for a mission where his duties did not require strenuous travel and where the available medical facilities were good.

V. The Tribunal notes, however, that in a memorandum dated 29 July 1968, the Public Administration Division, which had been asked to seek a post for Mr. Jiménez Carrillo, informed the Technical Assistance Recruitment Service that the main obstacle to Mr. Jiménez Carrillo's reassignment was the serious nature of his illness.

On 28 November 1968, the Chief of the Technical Assistance Recruitment Service informed Mr. Jiménez Carrillo as follows:

"... unfortunately, I must confirm that the United Nations Medical Service considers that it would not be in the best interests of the Organization or desirable from the standpoint of the maintenance of your newly recovered health for you to return to Burundi.

"We have therefore tried to find another vacant post adapted to your qualifications where the Organization could take advantage of your generous offer of service. Unfortunately, however, our efforts have proved fruitless."

Consequently, Mr. Jiménez Carrillo's service was terminated.

VI. The Tribunal notes that on several occasions Mr. Jiménez Carrillo asked to

be examined by physicians designated by the United Nations. Despite these requests, he was not given a medical examination on separation from service.

The Tribunal therefore considered it useful to ask the Respondent why Mr. Jiménez Carrillo had not been invited to undergo such an examination. On 12 May 1979, the Respondent replied that Mr. Jiménez Carrillo's suggestion "was disregarded because further medical evidence was not considered necessary".

The Tribunal observes, however, that according to rule 204.6 (b) of the Staff Rules Applicable to Technical Assistance Project Personnel:

"Project personnel may be required to undergo periodic medical examinations. They shall undergo a medical examination on separation from service, and the report on this last examination shall be submitted to the United Nations Medical Director for review."

The Tribunal notes that an express provision of the Staff Rules was ignored. The last medical examination performed on behalf of the Organization in October 1967 found Mr. Jiménez Carrillo fit to continue his mission in Burundi. A medical examination on separation from service might have made it possible to avoid a dispute which has continued for 10 years.

VII. On 10 October 1969, Mr. Jiménez Carrillo was informed that, in accordance with the recommendation of the Advisory Board on Compensation Claims, the Secretary-General had decided to deny his claim for compensation.

The Tribunal notes that, on the ground that "the episode of cerebral thrombosis was the result of a continuing degenerative process of cardiovascular arteriosclerosis which was pre-existing", the Advisory Board considered "that no causal connexion [had] been established to link the claimant's illness with his assignment . . . in Burundi".

The Tribunal notes that the Administration has always considered that Mr. Jiménez Carrillo's illness was the result of a "pre-existing" condition. Thus, as early as 9 January 1968, in a memorandum addressed to the Medical Director, the Office of Technical Co-operation indicated that it was its understanding that Mr. Jiménez Carrillo's illness could be related to a condition which had existed prior to his appointment with the Organization.

The Tribunal notes that in its recommendation the Advisory Board uses medical terminology similar to that used by the Medical Director in his memorandum of 19 December 1968 quoted in the first part of this judgement. The Tribunal concludes that the recommendation of the Advisory Board was based solely on the opinion of the Medical Director.

VIII. On 3 April 1970, the Applicant addressed herself to the Secretary-General for the first time, requesting him to have Mr. Jiménez Carrillo undergo a further medical examination. The Tribunal notes that it was only after the Applicant had addressed several letters to the Organization, as well as a new medical certificate dated 17 December 1970, that the Secretary of the Advisory Board wrote to her on 24 March 1971 to advise her that she had produced no new element justifying a review of the case.

Not until 9 November 1973 did Mr. Jiménez Carrillo request the Secretary-General to reopen the case under article 9 of Appendix D to the Staff Rules. That request, transmitted by the Permanent Mission of Spain, was accompanied by a photocopy of a new medical certificate, signed by Dr. Rianza García and dated 11 December 1972, which had apparently already been sent to New York on the latter date. This certificate is the first document in the dossier which provides another explanation for Mr. Jiménez Carrillo's

illness; it states that the latter suffered from headaches in Burundi because of maxillary sinusitis, which in turn led to the cerebral thrombo-phlebitis. However, in his reply dated 29 March 1974 addressed to the Permanent Mission of Spain, the Respondent observed that the latest statement submitted by Mr. Jiménez Carrillo contained no new information that could alter or refute the information considered by the Secretary-General in 1969 and that consequently there unfortunately seemed to be no ground for reopening the case in accordance with article 9 of Appendix D to the Staff Rules.

The Tribunal observes that the information contained in the certificate of Dr. Rianza García was not examined at the time by the Respondent, who simply reaffirmed his earlier position without taking any step that might lead to a considered opinion on the validity of the new explanation proposed by the attending physician.

IX. Mr. Jiménez Carrillo died on 8 March 1974 and the Applicant filed an application with the Tribunal on 16 May 1975. Some weeks later, the Respondent informed the Tribunal that he intended to clarify certain questions concerning the application and proposed to convene a medical board under article 17 (b) of Appendix D to the Staff Rules. The medical board met in Geneva on 27 May 1977 and two opinions were expressed:

“(1) One opinion was expressed by Dr. A. Rianza García: in his view, the cerebral accident which occurred in November 1967 was caused essentially by sinusitis and the stress resulting from professional over-work, which were considered responsible for a cerebral thrombo-phlebitis (detailed conclusions in Spanish are attached to the report).

“(2) The other opinion was expressed by Professor R. Mach and Dr. J. F. Dulac: they consider that Mr. J. Jiménez Carrillo’s hemiplegia was caused by arterial thrombosis of arteriosclerotic origin. That hypothesis is substantiated by the existence of diabetes and arterial hypertension and the subsequent development of obliterating arteritis of the lower limbs.

“In the latter hypothesis, no cause-and-effect relationship can be established between the illness and the service, and attributability to the service cannot be established.”

The Tribunal observes that Dr. Rianza García does not refer, either in his opinion or in the attached conclusions, to any medical evidence dating from the time of Mr. Jiménez Carrillo’s sojourn in Burundi that would make it possible to substantiate his hypothesis concerning sinusitis and stress; neither does it appear that Mr. Jiménez Carrillo himself ever sought to obtain such evidence. Dr. Rianza García invokes the fact that Mr. Jiménez Carrillo allegedly told him that, some days before his cerebral accident, Dr. Bosson had extracted three of his teeth. But the causes and consequences of that operation—which does not seem to have been mentioned elsewhere—were not sought either by Mr. Jiménez Carrillo or by the medical practitioner who proposed the maxillary sinusitis hypothesis.

The two medical practitioners making up the majority added:

“Even if the hypotheses put forward by Dr. A. Rianza García were accepted, no proof can be provided that the etiological factors he invokes (infection and stress) constitute the determining cause of the cerebral accident”.

X. In Judgement No. 69, the Tribunal states that “it could not regard itself as a body competent to express views on the accuracy of the diagnoses or conclusions of the

medical profession''. The Tribunal therefore considers that it is not competent to examine and compare the value of the conclusions reached by the members of the medical board regarding the origin of Mr. Jiménez Carrillo's illness. The Tribunal notes that the Respondent applied the procedures laid down in Appendix D to the Staff Rules and that his final decision was based on the opinion of the majority of the medical board. The validity of that decision therefore cannot be contested.

XI. The Tribunal observes, however:

(1) That the Respondent failed to have Mr. Jiménez Carrillo undergo a medical examination on separation from service;

(2) That in his communication of 29 March 1974 he failed to take into consideration a medical certificate that might have provided new elements in the case;

(3) That there was considerable delay in convening a medical board to consider the case in accordance with article 17 of Appendix D to the Staff Rules, even if that delay could not be attributed entirely to the Respondent; and

(4) That the 17-month delay between the date of the medical board's report and the date on which the Applicant was informed of the Secretary-General's final decision is excessive.

XII. The Tribunal considers that these instances of administrative negligence entail the responsibility of the Respondent and that the Applicant is entitled to obtain pecuniary compensation therefor. Consequently the Tribunal, rejecting all other claims, decides to award the Applicant \$5,000 as compensation.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Francisco A. FORTEZA
Member

Geneva, 23 May 1979

Roger STEVENS
Member

Jean HARDY
Executive Secretary

Judgement No. 244

(Original: English)

Case No. 222:
Bernard

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

Agreed termination of a staff member holding a permanent contract.—Deductions for indebtedness to third parties made from the payments due to a staff member on termination.

Applicant's preliminary request for the production of documents.—Request rejected.