as instructed by his superior officer. The question of taking a direct or indirect route to work—a point which moreover is not mentioned in Appendix D to the Staff Rules—does not arise because the choice in this respect was not that of Mr. Fernández-López.

X. On the basis of the above considerations, the Tribunal rescinds the decision of the Secretary-General communicated to the Applicant by letter of 31 January 1977 and rules that the Applicant and her dependent children are entitled to compensation as provided in Staff Rule 106.4 and in Appendix D to the Staff Rules.

(Signatures)

Suzanne BASTID
President

Samar SEN
Member

Endre USTOR
Vice-President

Jean HARDY
Executive Secretary

Geneva, 23 April 1980

Judgement No. 255

(Original: French)

Case No. 214: Teixeira *Against:* **The Secretary-General of the United Nations**

Request for revision of Judgement No. 233.

Request for revision.—Article 12 of the Statute of the Tribunal.—Judgement No. 73.—The Tribunal finds that the application does not mention any newly discovered fact.—Request rejected.—Subsidiary requests.—Rejected.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Francisco A. Forteza; Mr. T. Mutuale; Mr. Francis T. P. Plimpton, Vice-President, alternate member;

Whereas, on 27 September 1979, the Applicant filed an application with the Tribunal in which he requested, *inter alia,* a revision of Judgement No. 233 rendered in his case on 13 October 1978:

Whereas the pleas in the application are as follows:

"Considering articles 11 and 12 of the Statute of the Administrative Tribunal of the United Nations and articles 17, 23, 24 and 27 of the Rules of the Tribunal, the Applicant requests the Tribunal:

"A. To revise Judgement No. 233 rendered on 13 October 1978 in Case No. 214 between Ib Teixeira and the Secretary-General of the United Nations,

" 'IN VIEW OF THE LENGTH OF THE PERIOD DURING WHICH THE APPLICANT WORKED FOR ECLA AND THE ADMINISTRATION'S RATING OF THE QUALITY OF HIS WORK, AS ARE CONTAINED IN THE DOSSIER . . . ' (para. XII of Judgement No. 233).

"B. To declare formally that the special service agreement was not an instrument that could govern the employment relationship between the parties.

"C. To investigate the actual nature of the work performed by the Applicant as regards the following basic aspects: CONTINUING CHARACTER OF THE WORK, HABITUAL CHARACTER, PROFESSIONAL CHARACTER, SUBORDINATE NATURE, LEGAL STATUS AND QUALITY OF THE WORK, and to decide whether that type of work could be governed by a special service agreement.

"D. To declare that violations of the national laws of States Members of the United Nations, i.e. 'acts which are generally recognized as offences by national criminal laws NORMALLY WILL BE VIOLATIONS ALSO OF THE INDEPENDENT STANDARDS OF INTEGRITY DEVELOPED BY, AND PROPER TO, THE UNITED NATIONS', as the Secretary-General himself suggested in his report to the General Assembly (agenda item 51, document A/2533, para. 72). In other words, the Applicant requests the Tribunal to declare that employment relationships in the United Nations should not infringe the national laws of the countries in which it operates, such as Chile and Brazil, which are part of the geographical area covered by the Economic Commission for Latin America.

"E. Lastly, to direct the Administration of the United Nations to seek a settlement whereby the grave injuries sustained by the Applicant and his family during this period may be redressed. Such a settlement should naturally comprise: a length-of-service allowance, medical and dental insurance, Pension Fund payments, dependency allowance, education grant, paid leave, special damages, termination indemnity and any other rights to which the Tribunal may deem, *in its wisdom,* that the Applicant is entitled.";

Whereas the Respondent filed his answer on 18 October 1979;

Whereas the facts in the case were set out in Judgement No. 230;

Whereas the Applicant's principal contentions are:

1. The Tribunal committed a fundamental error in failing to rule that the special service agreement could not constitute a legal instrument governing the relationship between the Applicant and ECLA.

2. The Tribunal was unaware of its own case law and that of the Administrative Tribunal of the International Labour Organisation regarding the general principles of international civil service law.

3. In considering that use of the improper procedure of resorting to successive special service agreements was favourable to the Applicant, the Tribunal showed subjectivity and committed a serious error *vis-à-vis* the Applicant.

4. The use of that procedure violated the labour law of Chile and Brazil and, consequently, the law of the United Nations.

5. The Applicant was not an independent contractor; he was employed by the United Nations on a full-time basis.

6. The Applicant was compelled by necessity to sign the special service agreements; the Tribunal failed to take account of the *de facto* inequality existing between the two parties.

7. The contractual situation imposed on the Applicant was contrary to the conventions and recommendations of the International Labour Organisation.

Whereas the Respondent's principal contentions are:

1. The only provisions on which the Applicant can now base his request are those of article 12 of the Statute.

2. However, the Applicant has failed to establish the existence of any fact unknown to him or to the Tribunal at the time when the Judgement was rendered, far less any fact of such a decisive nature as to warrant a request for revision under article 12.

The Tribunal, having deliberated from 15 to 24 April 1980, now pronounces the following judgement:

I. The principal plea of the Applicant is for the revision, on the basis of articles 11 and 12 of its Statute, of the Tribunal's Judgement No. 233 rendered on 13 October 1978.

II. The Tribunal notes that it is irrelevant to invoke article 11 of the Statute, since this article refers to a procedure which is not conducted in the Tribunal.

III. On the other hand, under article 12 of the Statute the Tribunal can revise a judgement, in certain circumstances, on the application of one of the parties.

In fact, under article 12 of its Statute, the Tribunal can revise a judgement if:

(*a*) Some fact, unknown to the Tribunal and to the party claiming revision at the time the judgement was given, is subsequently discovered;

(*b*) Such fact is a decisive factor; and

(*c*) The ignorance of such fact is not due to the negligence of the party claiming revision.

The Tribunal may also, of its own motion or on the application of any of the parties, correct clerical or arithmetical mistakes in the judgement or errors arising therein from any accidental slip or omission.

The Tribunal recalls that, in its Judgement No. 73 (*Bulsara*), it stated: "The powers of revision are strictly limited by the Statute of the Administrative Tribunal and cannot be enlarged or abridged in the exercise of its jurisdiction by the Tribunal".

IV. The Tribunal observes that the application does not mention any newly discovered fact. The Applicant merely presents the same case in different terms with further argumentation. For example, the Applicant requests the Tribunal "to declare formally that the special service agreement was not an instrument that could govern the employment relationship between the parties" and "to investigate the actual nature of the work performed by the Applicant". However, in Judgement No. 233 the Tribunal noted that the Administration itself acknowledged that in the Applicant's case the use of special service agreements was contrary to the relevant instructions, and the Tribunal described

that practice as improper. The Tribunal concludes that, in his application for a revision, the Applicant has not established the existence of any fact of such a nature as to be a decisive factor, which fact was unknown to the Tribunal when the Judgement was given; this request by the Applicant should therefore be denied.

V. With regard to the Applicant's request that the Tribunal should declare that violations of the national laws of States Members of the United Nations "normally will be violations also of the independent standards of integrity developed by, and proper to, the United Nations", the Tribunal considers that this request has, in effect, already been considered in Judgement No. 233 and does not refer to any new fact.

VI. Lastly, the Applicant requests the Tribunal to direct the Respondent "to seek a settlement whereby the grave injuries sustained by the Applicant and his family during this period may be redressed". The Tribunal notes that this request is in the nature of an appeal against the Tribunal's Judgement and does not constitute an application for revision under article 12 of the Statute. The Tribunal also notes that, in its Judgement No. 233, "in view of the length of the period during which the Applicant worked for ECLA" and "given the circumstances of the case", it decided that the Applicant was entitled to an indemnity. The Tribunal fixed the amount of the indemnity to be paid to the Applicant at $3,000, and in that connexion the Applicant is not invoking any clerical or arithmetical mistake which might warrant a correction of the Judgement.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

Suzanne BASTID
President

Francis T. P. PLIMPTON
Vice-President, Alternate Member

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

T. MUTUALE
Member

Geneva, 24 April 1980

Judgement No. 256

(Original: English)

Case No. 243: Willems

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

Request for reimbursement of the cost of transporting an automobile from a staff member's home country to his duty station.