

hotel there was neither negligence nor misconduct on his part in leaving this property locked in a suitcase in his locked bedroom instead of depositing it in the custody of the hotel.

VIII. The Tribunal therefore orders:

1. The rescission of the decision of the Secretary-General conveyed to the Applicant by a letter dated 28 January 1980, insofar as it confirms the previous decision of the Secretary-General that the Applicant's claim for compensation for the loss of personal effects be denied; and

2. The payment to the Applicant of such amount as the Claims Board may assess as compensation for the loss of his personal effects.

(Signatures)

Francis T. P. PLIMPTON
Vice-President, presiding

Arnold KEAN
Member

Endre USTOR
Vice-President

Jean HARDY
Executive Secretary

New York, 6 November 1980

Judgement No. 260

(Original: French)

Case No. 252:
Denis

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

Dispute concerning the receivability of an appeal by the Joint Appeals Board of UNIDO.

Letter from the Secretary of the Joint Appeals Board giving his opinion concerning the receivability of the appeal.—Failure of the Board to consider the question of a possible waiver of the time-limits provided for in Staff Rule 111.3 (d).—Referral of case to the Board for consideration in the light of that Staff Rule.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean; Madame Paul Bastid, President, alternate member;

Whereas, on 17 April 1980, Jacques Denis, a former staff member of the United Nations, filed an application the pleas of which requested the Tribunal:

“—TO RESCIND the decision of the Secretary of the Joint Appeals Board of UNIDO dated 6 February 1980;

“—To RESCIND the decision of 3 August 1972;

“—To ENJOIN the Administration to give the Applicant a permanent appointment as a translator;

“—Or, failing that, to grant him an indemnity in the amount of 1,913,008 Austrian schillings;

“—To RESCIND the decision of 19 March 1979.”

Whereas the Respondent filed his answer on 20 June 1980;

Whereas the Applicant filed written observations on 18 August 1980;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNIDO on 15 February 1969 as a translator under a probationary appointment which was extended for one year on 15 February 1971. On 3 August 1972, the officer in charge of the Office of Personnel Services informed him that the Secretary-General, on the recommendation of the Appointment and Promotion Committee, had decided to terminate his appointment in accordance with Staff Regulation 9.1 (c); the relevant extracts from the report of the Committee would be sent to him upon request. The Applicant having requested them on 15 September 1972, the extracts in question were sent to him on 10 October 1972. From 11 September 1972 to 23 November 1973, the Applicant was employed by UNIDO under short-term and fixed-term appointments.

In letters dated 13 and 31 December 1974, the Applicant informed the recruitment services of the United Nations that he wished to participate in the upcoming examination for French translators. On 27 January 1975 the Chief of the Recruitment Section of the Secretariat of the United Nations Office in Geneva informed him that, since he had succeeded in the 1968 examination, and had subsequently been employed as a translator in the United Nations, it would serve no purpose for him to take the examination a second time; since he wished to resubmit his candidature for a post as translator with the United Nations Secretariat, his file would be transmitted, for whatever useful purpose that might serve, to the Office of Personnel Services at United Nations Headquarters. The Applicant having also applied for a post as translator with UNIDO, the Chief of the Translation Service of UNIDO informed him, on 25 June 1976, that in order to obtain such a post he would have to take the examination for French translators again. In view of the contradiction in the information he had been given, the Applicant's file was transmitted to the UNIDO section of Personnel Services which, on 15 March 1977, informed the Applicant that he should submit his candidature to United Nations Headquarters in New York. On 3 April 1978, the Applicant wrote to the Director of the Translation Division of the United Nations requesting reintegration in the language services of the United Nations. In a reply dated 7 June 1978, he was informed that it was not possible to act favourably on his request. Having again expressed the desire to participate in an examination for French translators organized by the United Nations, the Applicant was informed, on 19 March 1979, that the examination jury had not found it possible to retain his name among the candidates admitted to the written tests. In a communication addressed to the Secretary-General and received on 6 December 1979, the Applicant requested:

“—a review of his status;

“—rescission of the decision of 3 August 1972;

“—a permanent appointment for him to a translator's post;

- “—or, failing that, payment of an indemnity of 1,913,008 Austrian schillings;
 “—alternatively, that the application be submitted directly to the Administrative Tribunal;
 “—rescission of the decision of 19 March 1979.”

In a reply dated 27 December 1979, the Assistant Secretary-General for Personnel Services drew the Applicant's attention to the provisions of the Staff Regulations and Rules concerning time-limits for the submission of appeals. On 28 January 1980, the Applicant addressed an appeal to the Secretary of the Joint Appeals Board of UNIDO. In a letter dated 6 February 1980, the Secretary replied that in view of the provisions of Staff Rule 111.3 (a), the case could not be considered by the Joint Appeals Board. On 17 April 1980, the Applicant filed the aforementioned application.

Whereas the Applicant's principal contentions are:

1. With regard to the decision of 6 February 1980: in his appeal to the Joint Appeals Board of UNIDO, the Applicant requested that the Board use its powers to waive the time-limits. Neither the appeal nor this request in particular seem to have been referred to the Board. The decision of 6 February 1980 emanates solely from the Secretary of the Board, who was not competent to take a decision to reject, which, moreover, contained no statement of reasons. It was not the business of the Secretary to prevent the matter from being brought to the attention of the Board.

2. With regard to the decision of 3 August 1972:

- (a) The grounds for that decision are inadequate;
 (b) The Appointment and Promotion Committee based its decision on factual grounds which were misrepresented;
 (c) The Administration failed to observe basic rules of procedure;
 (d) The decision is vitiated by prejudice and improper motivation.

3. With regard to the decision of 19 March 1979: no grounds were given for it and it reflects discrimination against the Applicant.

Whereas the Respondent's principal contentions are:

1. With regard to the decision of 3 August 1972: having been initiated more than seven years after the date of the decision, the appeal was on its face not receivable in the light of Staff Rule 111.3 (a). The letter of the Secretary of the Joint Appeals Board of UNIDO dated 6 February 1980 should be considered in that light. Since the Applicant never expressed the intention of contesting the decision, the Administration had no reason to draw his attention to the provisions of the Staff Rules regarding appeal procedures. Moreover, the Applicant did not show any exceptional circumstances which might justify a waiver of the time-limits.

2. With regard to the decision of 19 March 1979: apart from the fact that the appeal was not submitted within the prescribed time-limit, it does not fall within the competence of the Joint Appeals Board or the Tribunal since the decision in question relates to a procedure preceding recruitment.

The Tribunal, having deliberated on 5 and 6 November 1980, now pronounces the following judgement:

I. The letter of the Secretary of the Joint Appeals Board dated 6 February 1980 does not inform the Applicant of a decision of the Joint Appeals Board but only of the

opinion of the Secretary of the Board concerning the receivability of the appeal.

II. The Joint Appeals Board did not consider the question of a possible waiver of the time-limits provided for in Staff Rule 111.3 (d).

III. The Tribunal therefore considers that it would be inappropriate to consider the merits of the case at this stage and refers the case to the Joint Appeals Board for consideration in the light of Staff Rule 111.3 (d).

(Signatures)

Francis T. P. PLIMPTON
Vice-President, presiding

Suzanne BASTID
President, alternate member

Samar SEN
Member

Jean HARDY
Executive Secretary

Arnold KEAN
Member

New York, 6 November 1980

Judgement No. 261

(Original: English)

Case No. 245:
Boelen

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

Non-renewal of a fixed-term appointment.

Nature of the Applicant's appointment and her expectations concerning renewal of such appointment.—Applicant's failure to produce conclusive proof concerning alleged promises.—Conclusion of the Tribunal that the Administration made no commitment about the renewal of the Applicant's appointment.—Circumstances of the Applicant's separation from service.—The Applicant's objections against the periodic report on which the decision not to renew her appointment was based.—Those objections are not well founded.—Failure of the Administration to comply with the provisions of Administrative Instruction ST/AI/115.—It cannot be concluded that the decision not to renew the Applicant's appointment was either unjust or illegal.—A subsidiary request of the Applicant is not receivable.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, Vice-President, presiding; Mr. Francisco A. Forteza;
Mr. Samar Sen;

Whereas, at the request of W. A. Marianne Boelen, a former staff member of the United Nations Development Programme, hereinafter called UNDP, the President of the