

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

XI. The proceedings before the Joint Appeals Board in this case lasted from 13 August 1974 to 19 March 1979. The Tribunal feels constrained to observe that such protracted procedure is not consistent with Staff Rule 111.3 (h) and is hardly conducive to the proper administration of justice.

(Signatures)

Endre USTOR  
Vice-President, presiding

Francisco A. FORTEZA  
Member

New York, 11 November 1980

Samar SEN  
Member

Jean HARDY  
Executive Secretary

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## Judgement No. 262

(Original: French)

**Case No. 248:**  
**Thorgevsky**

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

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*Request of a former staff member promoted from the General Service to the Professional category, seeking to ensure that her promotion does not have the effect of reducing her pension entitlement.*

*The Tribunal notes that during the last five years of the Applicant's participation in the Pension Fund, her pensionable remuneration was lower than it would have been had she not been promoted.—Inapplicability of Staff Rules 103.9 and 103.16(c).—Applicant's contention based on Judgement No. 257 of the ILO Administrative Tribunal.—Notwithstanding the desire to strengthen the common system, solutions differ from one Organization to another.—Grounds of the aforementioned judgement No. 257.—Since that judgement was expressly based on a text which is not included in the provisions which the Tribunal must apply, the latter cannot apply the solution provided in that judgement for the benefit of the Applicant.*

*Request for compensation for procedural delays.—Since the Applicant has sustained no injury as a result of the procedure followed, the request is rejected.*

*Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas on 11 February 1980, Wanda Thorgevsky, a former staff member of the United Nations, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after effecting the necessary corrections, again filed the application on 12 March 1980;

Whereas the pleas of the application are as follows:

“The Applicant requests the Administrative Tribunal to ask the Secretary-General of the United Nations to take the measures necessary to ensure that the Applicant receives a pension equal to what it would have been if there had been no promotion to P-1, if the Applicant had retired on 30 April 1978 at the G-6, step XI level.

“This decision would be in accordance with the judicial precedent established in the matter by Judgement No. 257 [of the ILO Administrative Tribunal] . . .

“Moreover, considering that justice was requested over four years ago and that the Office of Personnel Services at United Nations Headquarters in New York, in a memorandum dated 9 April 1979, . . . expressed the fear that it might ultimately have to pay substantial damages, the Applicant requests the Administrative Tribunal to award her compensation in the amount of six thousand dollars because of excessive procedural delays.”

Whereas the Respondent filed his answer on 28 April 1980;

Whereas on 30 October 1980, the Respondent provided, at the request of the Tribunal, additional information about the action taken by the Director-General of FAO to implement paragraph 2 of the operative part of Judgement No. 257 of the ILO Administrative Tribunal and the role played by the interorganization co-ordination organs in the adoption of United Nations Staff Rule 103.16 (c) and provisions 302.3103 and 302.442 of the FAO Staff Manual;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Office at Geneva in February 1953 with a temporary appointment as a typist at the G-2 level in the Languages Division. In 1955 she was granted a permanent appointment. In 1956, she was transferred to the Library and promoted to G-3. She was promoted to G-4 in 1957, G-5 in 1962 and G-6 in 1967. On 1 April 1971 she was promoted to the P-1 level as Assistant Librarian. Having reached normal retirement age on 2 October 1977, her appointment was extended until 30 April 1978, when she retired.

As early as 17 January 1975, the Applicant, who had decided to take early retirement and had even submitted her resignation to that end, complained in a letter to the Chief of the Personnel Administration Section in the Geneva Office that her pension would be much smaller than it would have been had she not been promoted to the Professional category; in particular she wrote:

“ . . .

“An informal consultation in the Financial Service has shown that my ‘*promotion*’ to P-1 on 1 April 1971 reduced my pensionable remuneration very substantially and that if I had remained a ‘G’ I would receive about 400 F more each month. I also learned that the Administration, aware that promotion was proving prejudicial although it should, by definition, improve the position of the person concerned, has decided that henceforth those promoted from ‘G’ to ‘P’ will retain all the rights acquired under the ‘G’ system until their progress in the ‘P’ category enables them to regain their previous level; thereafter they will continue under the ‘P’ system (from P-3, step 6).

“It would be absolutely unjust if I were to be the victim of discrimination and be refused the benefit of the new rule. For out of 22 years of service with the United Nations, I was ‘G’ for 19 years and have been a ‘P’ for only 3 years. Yet it is precisely those three years—the most unfavourable for me—that you will use as a basis for calculating my pension!

“ . . .

“In fact, if Personnel Administration had informed me of the disastrous consequences which a promotion to P-1 at the end of my career would have for me, I would certainly have refused it. But *I was told nothing* and I shall now lose about 5,000 Fr. a year until the end of my life as a result of my ‘promotion’.

“In conclusion, I reiterate my request to benefit from the pension rights acquired under the ‘G’ system as provided by the new rule. If that is impossible, I withdraw my resignation and request my immediate reclassification at G-7, at the level closest to my current salary.

“ . . . ”

On 27 January 1975, the Applicant, who had withdrawn her resignation, reiterated her complaints in a letter addressed to the Director of the Administrative and Financial Services of the Geneva Office. On 18 July 1975, the Applicant once again wrote to the Chief of the Personnel Administration Section invoking Judgement No. 257 of the ILO Administrative Tribunal in the case of Grafström against FAO. On 25 September 1975, the Chief of the Personnel Administration Section replied that, according to an opinion given by the Office of Legal Affairs at Headquarters, Judgement No. 257 of the ILO Administrative Tribunal had no bearing on her situation because it was based on rules peculiar to FAO. On 25 October 1975, the Applicant wrote to the Secretary-General, requesting him to review his decision. On 12 January 1976, the Assistant Secretary-General for Personnel Services replied stating that after reviewing her case, the Secretary-General had decided to maintain the decision for the following reasons:

“ . . .

“The difference between your pensionable remuneration at your present level at this time and the pensionable remuneration which would have accrued to you had you not been promoted to the Professional category was due not to the promotion itself but rather to upward revisions in the salary scales of the General Service category subsequent to your promotion. While the Organization has assumed certain obligations in Administrative Instruction ST/AI/209 towards maintaining the level of pensionable remunerations upon promotion from the General Service category to the Professional category, those obligations relate only to the amount of pensionable remuneration at the time of promotion. It would not be reasonable for the Organization to assume an indefinite obligation to staff members promoted from the General Service category to match whatever increased pensionable remuneration might have ensued as a result of salary increases in the former category. One would certainly not expect such adjustment if the salary movement in the meantime was in favour of a reduced pensionable remuneration for those in the General Service category. A staff member who has accepted a promotion from the General Service to the Professional category is subject to the rules governing salary, benefits and allowances as in effect at the time of promotion.









