

Nations need take no initiative *vis-à-vis* the Pension Fund on the basis of rule B.1 of the Administrative Rules of the Fund and that, in these circumstances, the United Nations Joint Staff Pension Board should not be included as a Respondent at the beginning of this judgement.

XIV. For these reasons, the application is rejected.

(Signatures)

Suzanne BASTID

President

Francisco A. FORTEZA

Member

T. MUTUALE

Member

New York, 6 October 1981

Samar SEN

Alternate Member

Jean HARDY

Executive Secretary

Judgement No. 277

(Original: English)

Case No. 259:
Bartel

**Against: The Secretary General of
the International Civil
Aviation Organization**

Application for the revision of Judgement No. 269.

Request for oral proceedings.—Rejected.—Request for revision.—Article 12 of the Statute of the Tribunal.—Facts that the Applicant claims to have discovered.—The facts were not unknown to him within the meaning of article 12.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francisco A. Forteza, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean; Mr. T. Mutuale, alternate member;

Whereas, on 10 June 1981, the Applicant filed an application in which he requested, *inter alia*, a revision of Judgement No. 269 rendered in his case on 8 May 1981;

Whereas the relevant part of the application read as follows:

“The Applicant . . . states at this time that he has been supplied with new information, statement(s), and/or Affidavits which is of such a nature as to be a

decisive factor in his case and which was not made available to the Applicant or the Tribunal prior to its judgement, but which would have been made available to the Tribunal had it heard the witnesses requested in the Application's Preliminary or Provisional measures.

“Therefore . . . the Applicant requests a revision of Judgement 269 with respect to the hearing of said new evidence, particularly with respect to the testimony of witnesses and his representative before the joint appeals body.”

Whereas the Respondent filed his answer on 23 June 1981;

Whereas the Applicant submitted additional written statements on 8 and 25 September 1981;

Whereas the facts in the case were set out in Judgement No. 269;

The Tribunal, having deliberated from 24 September to 6 October 1981, now pronounces the following judgement:

I. At the outset, the Tribunal denied oral proceedings in the case under consideration as all the relevant material for the disposal of the application was on record before the Tribunal.

II. The Applicant seeks revision, under article 12 of the Statute of the Tribunal, of Judgement No. 269 rendered in his case on 8 May 1981.

III. The Tribunal recalls that under article 12 of its Statute, the Tribunal may 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 of such a nature as to be a decisive factor; and

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

The Tribunal further recalls that its powers of revision are strictly limited by its Statute and cannot be enlarged or abridged by the Tribunal in the exercise of its jurisdiction.

IV. In his additional statement of 8 September 1981, the Applicant claims that, “since the Judgement”, he has “discovered that the entire episode with ICAO . . . was hasty action” by the Respondent “based upon inadequate and erroneous information” about an investigation conducted during the summer of 1979 by the Montreal police with the assistance of the Applicant. These events took place almost two years before the judgement was given; nonetheless the Applicant failed to bring them to the notice of the Tribunal at an earlier date.

V. In the circumstances, the Tribunal finds that the alleged discovery does not constitute a fact unknown to the Applicant for the purposes of article 12 of the Statute.

VI. In his additional statement of 25 September 1981, the Applicant points out *inter alia* that “no consent has been offered under article 10, paragraph 2 [of the Rules] with reference to original application or application for revision”. In paragraph I of Judgement No. 269, the Tribunal disposed of the relevance of article 10.2 of the Rules to the original application. As regards the application now before the Tribunal, there are in fact no documents to which that provision could apply.

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

(Signatures)

Francisco A. FORTEZA
Vice-President, presiding

Samar SEN
Member

Arnold KEAN
Member

New York, 6 October 1981

T. MUTUALE
Alternate Member

Jean HARDY
Executive Secretary

Judgement No. 278

(Original: English)

Case No. 261:
Tong

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

Termination of the indefinite appointment of a locally recruited staff member of a field office of the United Nations Development Programme (UNDP) on the ground of abolition of post.

The Applicant requests recognition of his entitlement to salary until his receipt of written notice of the termination of his appointment.—Staff Rule 109.3, paragraphs (b) and (c).—Closing of the UNDP office at Phnom Penh.—Exceptional character of the closing, brought about by events over which the parties had no control.—The Applicant's contract became ineffective by reason of force majeure.—Request rejected.—The delay in UNDP headquarters' notifying the Applicant of termination was inexcusable.—There is no justification for the practice of backdating official correspondence.

Applicant's claim for the recalculation of his termination benefits.—Decision of UNDP to pay the Applicant, a local employee, in dollars, the Cambodian riel having no value on the date of payment.—Use of the exchange rate in effect during the last month of the Applicant's service.—Claim rejected. Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Herbert Reis;

Whereas, on 21 April 1981, Eng Ngo Tong, a staff member of the United Nations Development Programme, hereinafter called UNDP, filed an application in which he requested the Tribunal:

“A. As a preliminary measure, to request the Respondent to produce certain files and documents which the Applicant believes to be pertinent to his case, and without which he cannot adequately present his claim; in particular: