

be overlooked. However, the Tribunal is of the view that, considering the nature of the Board, the omission to establish it annually cannot be held in this instance to have vitiated its proceedings.

Since no Joint Appeals Board in fact existed when the Applicant's case arose, there were only two alternatives: to make good the omission by establishing a Board to consider his case and any other cases; or to deprive him of the right to have his case considered by a Board at all. The first of these paths was chosen, and the Applicant suffered no prejudice, particularly in view of the selection of a chairman who was unfamiliar with the Applicant's case. In reality this position did not differ from that of any other person whose case might arise for consideration by the Board at a time when annual appointments or elections became due under the Staff Rules.

The Tribunal agrees with the Board's observation that

"While the Board does not believe that its impartiality was in fact affected by the failure to observe the procedures which call for annual appointments, it suggests that this impartiality would be better seen to be assured if these procedures were routinely followed."

The Tribunal concludes that there has been no miscarriage of justice or biased proceedings because of the composition of the Board.

IV. For the foregoing reasons, the Application is rejected.

(Signatures)

Samar SEN
Vice-President, presiding

L. de POSADOS MONTERO
Member

Arnold KEAN
Member

Jean HARDY
Executive Secretary

Geneva, 13 May 1982

Judgement No. 288

(Original: English)

Case No. 268:
Marrett

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

Request by a staff member of ICAO that his post be reclassified with retroactive effect.

Unanimous decision by the Advisory Joint Appeals Board that the appeal was frivolous.—Right of the Tribunal to consider whether that decision was vitiated by some irregularity.—Procedural irregularities

alleged by the Applicant.—Consideration of the allegations by the Tribunal.—The Tribunal concludes that the Board's decision was not vitiated by any irregularity.—The application is not receivable.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Madame Paul Bastid, Vice-President; Mr. Luis de Posadas Montero; Mr. T. Mutuale, alternate member;

Whereas at the request of John Evelyn Marrett, a staff member of the International Civil Aviation Organization, hereinafter called ICAO, the President of the Tribunal, with the agreement of the Respondent, extended to 15 August 1981 the time-limit for the filing of an application to the Tribunal;

Whereas, on 13 August 1981, the Applicant filed an application the pleas of which read as follows:

“The Applicant submits that the United Nations [Administrative] Tribunal (UNAT), notwithstanding the provisions of article 7, paragraph 3 of the UNAT Statute and in accordance with the provisions of article 27 and article 6 of the said Statute, should:

- “(i) review the ICAO Advisory Joint Appeals Board (AJAB) decision (Annex 1) which states that among other matters the Applicant's case is ‘frivolous’;
- “(ii) declare that decision of the ICAO—AJAB (Opinion #66) vitiated by the litany of defects, injustices, mal-administrative practices and actions which occurred prior to, during and after the hearing of the Applicant's appeal by the ICAO AJAB (Annex 2);
- “(iii) rule that the Applicant's submissions on the procedures which should have been used by ICAO to assess, evaluate and grade the then newly established post of technical officer aviation security—(to which the Applicant had been the first appointee and for which there was no equivalent post in the UN or Common System)—are valid and enjoin ICAO to apply such procedures retroactively to the Applicant's case as of 1 February 1972 (Annex 3);
- “(iv) direct the Secretary General of ICAO to:
 - “(a) pay the Applicant salary, allowances and other emoluments at the level of P-5 step 1 as of 1 February 1972 together with all other subsequent annual increments and adjustments (including service date) which flow therefrom in a logical sequence to date;
 - “(b) pay the Applicant compound interest, computed on an annual cumulative basis on the amounts due and owing and as set out in the award sought in (a) above, at the average (annual) rate of interest paid by commercial banks in the Montreal area during the period;
 - “(c) arrange for the Applicant's pension status with the United Nations Joint Staff Pension Fund (UNJSPF) to be adjusted retroactively as of 1 February 1972 commensurate with the contributions required in accordance with (a) above; such penalties and other costs as are assessed for the late payment of UNJSPF contributions by both parties to be paid by ICAO; and

- “(v) rule that the Applicant’s submissions in Annex 2 are valid and enjoin ICAO and the ICAO-AJAB to cease and desist from continuance of those mal-administrative practices and actions as well as the injurious and abusive procedures suffered by the Applicant as listed in Annex II; to which indignities and abuse other staff members have been subjected to and been intimidated by in the course of their respective appeals.”

Whereas the Respondent filed his answer on 2 November 1981;

Whereas, in written observations filed on 5 January 1982, the Applicant requested oral proceedings and asked the Tribunal to rule

“upon the following general issues:

“(a) the need for the plan called for by ICAO Service Code to include procedures so that a newly created post is assessed and evaluated in accordance with established administrative practice—particularly for a post in the circumstance of the Applicant’s case for which there is no precedence in ICAO or the Common System;

“(b) a ruling by the Tribunal on the malpractices perpetuated on the Applicant and permitted prior to and during the proceedings before the AJAB; and

“(c) the manner in which staff members of ICAO are to be dealt with when they seek redress for perceived grievances in accordance with the provisions of the ICAO Service Code and General Service Instructions (G.S.I) and in particular with respect to the ICAO policy of attacks upon the good name and reputation of Applicants.”;

Whereas the Respondent submitted an additional written statement on 18 January 1982;

Whereas the Applicant’s request for oral proceedings was denied on 17 March 1982;

Whereas the facts in the case are as follows:

In letters of 17 August 1977 and 19 January 1978 addressed to the Secretary General, the Applicant requested that his post of Aviation Security Officer be regraded from P-4 to P-5. On 15 February 1978 the Secretary General advised him that he was unable to accede to that request. On 24 February 1978 the Applicant asked the Secretary General to review his decision. On 1 March 1978 the Secretary General confirmed his decision and on 14 April 1978 the Applicant lodged an appeal with the Advisory Joint Appeals Board. While the appeal was pending, the Applicant’s post was regraded to P-5 and with effect from 1 July 1979 he was promoted to that grade. The Applicant consequently restricted his appeal to the period of his service prior to that date. The Advisory Joint Appeals Board submitted its report on 23 April 1981. In its report, the Board recommended unanimously that the appeal be rejected as unfounded, adding:

“For the above stated reasons and, in particular, applying the principles which limit the power of review of an administrative decision taken in the exercise of discretionary authority granted by the ICAO Service Code, the Board further believes that any continuation of this appeal at the level of the United Nations Administrative Tribunal would be pointless and wasteful. The Board, therefore, regrets that it has no option but to unanimously declare this appeal ‘frivolous’ in the sense of Article 7, paragraph 3 of the Statute of the United Nations Administrative Tribunal. In so doing, the Board does not question the Appellant’s motives or good faith, and would

not wish the Appellant to be in any way offended by its use of the term 'frivolous', which the Board interpreted as meaning 'futile', 'not having any basis in facts or in law', and, therefore, bound to fail before the UN Administrative Tribunal.'

On 28 April 1981 the Secretary General accepted the unanimous recommendation of the Board that the appeal be rejected as unfounded and also noted its unanimous decision that the appeal was frivolous in the sense of article 7, paragraph 3, of the Statute of the Tribunal. On 13 August 1981 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions on receivability are:

1. The bias of two members of the Advisory Joint Appeals Board was demonstrated during the hearing.
2. The Board failed to rule out of order the reprehensible behaviour of the Secretary General's representative and permitted an hostile and adversary environment during its hearings.
3. The Board refused to respond to the Applicant's written requests for rulings on a number of issues.
4. While the Secretary General's representative had full and unfettered access to the Applicant's personal and confidential file, that same access was denied to the Applicant.
5. The above actions vitiated the Board's decision that the Applicant's appeal was frivolous.

Whereas the Respondent's principal contentions on receivability are:

1. The Applicant's allegation of bias referred to in paragraph 1 above has been rejected by the two members concerned.
2. The Applicant's allegations referred to in paragraph 2 above have been declared without foundation by all three members of the Board.
3. The substantive issues raised by the Applicant before the Board were duly considered by the Board.
4. The question of refusal of access to his files was never raised by the Applicant before the Board. Furthermore, although entitled to it, the Secretary General's representative did not have access to the Applicant's file.

The Tribunal, having deliberated from 30 April to 13 May 1982, now pronounces the following judgement:

I. The Advisory Joint Appeals Board, believing that any continuation of the appeal at the level of the Tribunal would be pointless and wasteful, declared "that it has no option but to unanimously declare this appeal 'frivolous' in the sense of article 7, paragraph 3 of the Statute of the United Nations Administrative Tribunal".

Consequently, according to the above-mentioned provision of the Statute, an application to the Tribunal in this case is not receivable. The Tribunal can neither decide on the merits of the case nor examine whether the decision declaring the appeal "frivolous" is based on sufficient grounds. Nevertheless, the Tribunal has ruled in the Bartel case (Judgement No. 269) that it is not "precluded from considering whether the joint body's conclusion was vitiated by some irregularity".

II. The Applicant invokes several irregularities which occurred prior to, during and after the Board's hearing and which, in his view, vitiated the procedure and would entitle the Tribunal to reconsider the application of article 7, paragraph 3 of the Statute.

In view of the ruling in the Bartel case, the Tribunal must examine the contentions of the Applicant in this respect.

III. The Tribunal's views on those contentions are as follows:

(a) Alleged bias of two members of the Board

The Applicant has produced no proof on this matter. His contention as to the alleged bias of two members of the Board being demonstrated "when each proclaimed during the hearing that they were fully knowledgeable of the ICAO plan for the assessment and evaluation of posts" has no substance since it refers to a mere statement regarding the knowledge of a fact and not a prejudiced opinion on any issue.

(b) Board's failure to prevent alleged reprehensible behaviour of the representative of the Respondent during the hearing of the case

This allegation refers chiefly to certain opinions regarding the Applicant's record expressed by the representative of the Secretary General.

There is no evidence whatever indicating that those opinions might have led the Board to reject the Applicant's pleas.

(c) Board's refusal to respond to the Applicant's written requests for a ruling on a number of issues

The Tribunal finds that all the issues of substance related to the case and put before the Board have been considered by the Board.

(d) Denial of access by the Applicant to documents connected with the case

The Tribunal notes that according to GSI [General Secretariat Instructions] 1.4.7, paragraph 13, it is within the discretion of the Board to allow or refuse the production of documents.

(e) Unavailability of a representative that might properly assist the Applicant

The Tribunal observes that the Applicant did not raise the point at any time before the Board. In this connection, the Tribunal notes that the Applicant was in no way prevented from stating his case properly before the Board.

(f) Delay of justice

The Tribunal finds that a very long delay has taken place in the procedure before the Board since the Applicant lodged his appeal on 14 April 1978 and the Board submitted its report on 23 April 1981.

Nevertheless, the Tribunal is of opinion that this regrettable delay cannot be considered as an irregularity that might vitiate the Board's decision.

IV. The Tribunal therefore holds that the Board's decision is not vitiated by any irregularity. Accordingly the application is not receivable by the Tribunal.

(Signatures)

Endre USTOR
President

T. MUTUALE
Alternate Member

Suzanne BASTID
Vice-President

Jean HARDY
Executive Secretary

Luis de POSADAS MONTERO
Member
Geneva, 13 May 1982

Judgement No. 289

(Original: French)

Case No. 264:
Talan

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

Request for compensation for injury caused by the delay in the payment of life insurance benefits.

Grounds on which the Applicant, the widow of a technical assistance expert who died as a result of a traffic accident, bases the claim.—Participation of the expert in the group life insurance plan subscribed to by the United Nations in accordance with Staff Rule 206.2—Application of that provision.—Claim for compensation for injuries caused by the negligence of the Respondent's services.—A ruling on the claim necessitates reference to the general principles applicable with respect to administrative responsibility.—Consideration of how the Respondent acted.—Delay of nine months in the payment of the insurance benefits.—Assessment of the injury sustained by the Applicant as a result of the delay.—Argument of the Applicant based on the decline during that period in the rate of exchange for the United States dollar vis-à-vis the French franc.—Argument rejected.—Argument of the Applicant based on changes in the cost-of-living index.—Argument rejected.—Obligation to compensate by the payment of interest for the damage resulting from undue delay in the payment of a sum of money.—Award to the Applicant of interest at the rate of 12 per cent per annum for the nine months' delay on the full amount of the insurance benefits due.—Claim for compensation for moral damage.—Award of \$2,000 to the Applicant for such damage.—The other claims are rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Samar Sen, Vice-President; Mr. T. Mutuale; Mr. Herbert Reis, alternate member;

Whereas on 12 June 1981, Mrs. Geneviève Talan, the Applicant in this case and the widow of Mr. Rolland Talan, a former United Nations technical assistance expert, filed an application which failed to fulfil some of the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 June 1981, the Applicant submitted a preliminary application requesting the Tribunal to order that a copy of the recommendations transmitted to the Secretary-General by the Joint Appeals Board should be made available to her;

Whereas the Respondent forwarded the report of the Joint Appeals Board to the Applicant on 15 July 1981;