

VI. Taking all these considerations into account, the Tribunal awards to the Applicant compensation in the sum of \$4,000.

VII. The Tribunal orders the Respondent to pay \$4,000 to the Applicant.

All other pleas are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Luis de POSADAS MONTERO
Member

Arnold KEAN
Vice-President

Nicholas TESLENKO
Acting Executive Secretary

New York, 12 October 1982

Judgement No. 299

(Original: English)

Case No. 274:
Moser (termination of appointment)

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

Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.

Pleas relating to the withholding of the Applicant's within-grade salary increment.—The pleas are not receivable since they were not the subject of an opinion of the Joint Appeals Board.

Request to reverse the decision to terminate the Applicant's appointment.—Argument based on procedural irregularities.—Procedural irregularities committed in dealing with the termination.—Although there were departures from the required procedures, the requirements of due process were satisfied.—Allegation relating to the existence of an extraneous factor.—Irrelevance of the allegation.—The application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President; Mr. Arnold Kean, Vice-President; Mr. Luis de Posadas Montero, alternate member;

Whereas at the request of Hans Jürgen Moser, a former staff member of the United Nations Industrial Development Organization, hereinafter called UNIDO, the President of the Tribunal, with the agreement of the Respondent, successively extended to 1 March 1981, 25 May 1981, 12 August 1981, 1 November 1981 and 2 January 1982 the time-limit for the filing of an application to the Tribunal;

Whereas, on 4 January 1982, the Applicant filed an application in which he requested the Tribunal:

“1. To rescind the decision of 6 April 1976, by which the UNIDO Administration withheld the Appellant’s within-grade increment;

“2. To rescind the decision of 27 April 1977, by which the UNIDO Administration withheld the Appellant’s within-grade increment;

“3. To rescind the decision of 1 March 1978, by which the UNIDO Administration withheld the Appellant’s within-grade increment;

“4. To validate [*sic*] the violation of the provisions of the Administrative Instruction ST/AI/222 in the course of the Appellant’s termination;

“5. To validate [*sic*] the existence of an extraneous factor in the reasons for the Appellant’s termination;

“6. To order that the case be remanded for correction of procedure, if only procedural irregularities are recognized;

“7. To order that the Appellant be reinstated in his former post if the existence of an extraneous factor in the reasons for the Appellant’s termination is validated [*sic*]; should the Secretary-General make use of the option left to him under article 9 of the Statute of the Administrative Tribunal, the Tribunal should consider it justified, under article 9 of its Statute, that the Respondent should pay to the Applicant a sum equivalent to five years’ net base salary, in order to compensate the moral and material injury sustained by him in the course of his termination and the withholding of within-grade increments.”

Whereas the Respondent filed his answer on 18 June 1982;

Whereas the Applicant filed written observations on 16 August 1982;

Whereas on 29 September 1982, the Tribunal requested the Respondent to produce a document;

Whereas on 1 October 1982, the Respondent produced the document requested by the Tribunal;

Whereas the facts in the case are as follows:

The Applicant, an Austrian national, entered the service of UNIDO on 1 March 1972 as a Programmer Aide in the Administrative Management Section, Division of Administration, with a fixed-term appointment for six months at the G-7 level. On 1 September 1972, his appointment was extended for two months and on 1 October 1972 it was converted to a probationary appointment which in turn was converted to a permanent appointment on 1 February 1974. On 1 May 1974 his functional title was changed to Programmer.

The Applicant’s performance from 1 March 1972 to 31 January 1973 and from 1 February 1973 to 30 September 1973 was evaluated in two periodic reports in which he was rated as “an efficient staff member giving complete satisfaction”. In a third periodic report, covering the period from 1 October 1973 to 30 September 1975, the Chief of the Administrative Management Section, as second reporting officer, rated the Applicant as “a staff member who maintains only a minimum standard” and commented:

“For the first year after my arrival at UNIDO (January 1974) Mr. Moser’s industry, co-operation, attitude, and responsibility were below the standards I would deem acceptable in any employees UN or otherwise. However, over the past ten

months there seems to have been some improvement in these critical areas. Hopefully this will continue to develop to the point where Mr. Moser is an asset to UNIDO.”

On 23 December 1975, the Applicant filed a rebuttal to this periodic report in a memorandum addressed to Mr. L. G. Poole, Personnel Officer; he stated *inter alia*:

“2. I have been employed at the G-7 level since I joined UNIDO in March 1972. My appeal for equitable treatment, to which I had become accustomed during my employment with IBM, is, I believe, responsible for the current adverse report.

“3. My attitude towards the UN and towards my work in the organization has always been one of deep devotion (as witnessed in two periodic reports from Mr. Niazi), but my attitude in the face of an unequitable grading situation is an altogether different matter. This attitude is the subject of the current report, which implies *inter alia* that I have no right to react to an illegal situation. . . .

“4. The report is based on a relatively short period (7 months out of 2 years) under the supervision of Mr. Tucker in order to paint as negative a picture as possible of my efforts to secure a legally proper and equitable grade.

“5. Before taking up in detail the various points of the report, it would seem to be necessary to describe something of the background in explanation of the low evaluations found in this report.

“6. When I joined UNIDO in 1972, I accepted appointment at the G-7/05 level following Mr. Niazi’s [then Chief of the Administrative Management Section] explanation that promotion to the P-category was impossible from the G-8 level, and that, despite the fact that staff engaged in the kind of work involved should be graded on the P-level, promotion was precluded by the quota problem for Austrian nationals. In fact, my G-7 grading was indicated to be of a temporary nature since I was considered the technically most experienced staff member of AMS (of course, nothing is available in writing on this subject).

“ . . .

“10. Mr. Gillcrist’s [Chief of the Administrative Management Section] evaluations seem to be based solely on my reactions to an illegal grading situation. The current report has, in my opinion, very little to do with my abilities, experience and job performance. I am apparently not the only staff member who has reacted to Mr. Gillcrist’s managerial methods, but, unfortunately, the other two staff members in our Section, who came into contact with Mr. Gillcrist, left the Section after his appearance.

“ . . . ”

The matters raised in the Applicant’s rebuttal were investigated by the Director of the Administrative Services Division who, on 13 May 1976, communicated the following appraisal to the Personnel Services Section:

“ . . .

“2. I find that Mr. Moser is incorrect in stating that his current grading in the UNIDO Secretariat is ‘illegal’. He accepted an appointment at the G-7 level, as did a number of his colleagues, but no guarantee could have been, or was, given that he would reach the professional category. There are at the present time three other G-7 Programmers in the Computer Service as well as three who hold professional appointments. Nor is Mr. Moser correct in stating that the report reflects only the opinion of Mr. Tucker, who supervised him for seven months in 1974. While

account was taken of Mr. Tucker's views, Section I of the report was prepared by Mr. Moffat, Mr. Moser's current supervisor, and by Mr. Gillcrisp, his Chief.

"3. Mr. Moser compares his own qualifications and experience with those of others in the Section and concludes that two of his three supervisors were not qualified to judge his work, while the third, Mr. Gillcrisp, was biased against him. However, while it might be possible for one supervisor to make an inaccurate assessment of a staff member's performance, I do not believe that three supervisors in succession would do so.

"4. I find that the report gives a fair assessment of Mr. Moser's performance during the period in question and it is to be greatly regretted that a staff member of his undoubted intelligence and ability should have allowed his disappointment with his grading to affect his attitude and output to the extent indicated."

This appraisal was transmitted to the Applicant on 19 May 1976. In the meantime, the annual within-grade salary increment of the Applicant, due in March 1976, had been withheld on the recommendation of the Chief of the Computer Services Unit on the ground that his performance and conduct could not be considered satisfactory, and on 17 May 1976, the Applicant had submitted a rebuttal against this decision. The matter was investigated by the Director of the Administrative Services Division, who upheld the decision, and on 9 June 1976, the Applicant was advised accordingly. In a fourth periodic report, covering the period from 1 October 1975 to 31 January 1977, the Applicant again received the overall rating of "a staff member who maintains only a minimum standard" and the same second reporting officer, now Chief of the Computer Services Unit, commented:

"Mr. Moser's open hypercritical attitude towards his work and colleagues has improved over this reporting period. His productivity also has picked up, although it is still borderline as to acceptability."

The Applicant refused to sign the periodic report. On 27 April 1977, Mr. Poole recommended in a special report that the Applicant's annual within-grade salary increment, due in March 1977, be withheld. This recommendation was approved by the Head of the Personnel Services Section and on 28 April 1977, the Applicant was advised of that decision and of his right to submit a rebuttal to the special report. On 5 May 1977, the Applicant returned the unsigned periodic report and the special report to Mr. Poole, who on 13 May 1977, sent them back to him, reminding him of his right to rebut both the periodic report and the special report on the withholding of his salary increment. On 16 January 1978, the Personnel Services Section sent to the UNIDO Appointment and Promotion Panel, for review, a recommendation by the Executive Director to the Secretary-General that the Applicant's permanent appointment be terminated on grounds of unsatisfactory service in accordance with Staff Regulation 9.1(a). A copy of the recommendation was sent on the same day to the Applicant, who was advised of his rights under paragraph 7 of Administrative Instruction ST/AI/222. On 30 January 1978, the Applicant submitted comments on the recommendation for termination of his appointment. In its report dated 28 February 1978, to the Appointment and Promotion Board at Headquarters, the UNIDO Appointment and Promotion Panel recommended that the Applicant's permanent appointment be terminated for unsatisfactory service in accordance with Staff Regulation 9.1(a). This recommendation was endorsed by the Appointment and

On 20 August 1980, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided to maintain the contested decision. On 4 January 1982, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The body which reviewed the termination proposal was improperly composed.
2. The procedure prescribed in Administrative Instruction ST/AI/240 was not observed as the UNIDO Administration failed to produce a special report in support of the termination proposal.
3. The procedural irregularities pointed out by the Applicant were recognized by the UNIDO Joint Appeals Board which chose to overlook them. The Board also overlooked the inconsistency of the initiation of termination proceedings on the basis of an assessment of the Applicant's performance that clearly indicated certain improvements.

