

III. In a memorandum addressed to the Executive Director of UNIDO on 16 August 1977, the Applicant referred to the memorandum of 27 July 1977 as having "rejected my request for reclassification of my post". On 10 October 1977, the Executive Director replied that "it is my view that no administrative decision was conveyed to you in the memorandum dated 27 July 1977" which "merely provided the information that the Programmer/Analyst posts in the Computer Services, UNIDO had already been upgraded to the Professional category, and that this was confirmed by the fact that four Programmers had been promoted over a period of time from the General Service category to the Professional category". However, by 27 July 1977, the date of the memorandum in question, the Applicant must already have been aware that four Programmers at UNIDO had previously been promoted, so that there had been no need for the Officer-in-Charge of the Personnel Services Section to "provide the information". In all the circumstances, the Applicant can only have interpreted the Executive Director's reply as a confirmation of the refusal to upgrade the Applicant's own post.

IV. The Applicant's continued employment in the same work and with the same classification as before removed all doubt that his request for reclassification had been rejected.

V. For the foregoing reasons, the Tribunal remands the case, including the additional information received by the Tribunal, to the Joint Appeals Board for consideration of the merits.

(Signatures)

Endre USTOR
President

Samar SEN
Vice-President

Arnold KEAN
Vice-President

Geneva, 1 June 1983

Luis de POSADAS MONTERO
Alternate Member

Jean HARDY
Executive Secretary

Judgement No. 305

(Original: English)

Case No. 301:
Jabbour

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

Request by a former staff member of the United Nations to rescind the decision not to renew his fixed-term appointment.

Recommendation of the Joint Appeals Board to grant to the Applicant compensation equivalent to three months' net base salary on account of inequitable and irregular treatment.— Recommendation rejected.

Question whether the Administration has carried out its contractual and other obligations in its treatment of the Applicant.—The Tribunal finds that the Applicant had no legal expectation for extension of his appointment but that, having been retained in service for many years and having rendered satisfactory services, he could reasonably expect a measure of accommodation, either in the form of an extension or of a serious effort to find him alternative employment.—

Negligence in the way in which the Applicant's record of performance had been maintained and failure of the Administration to extend to him fair and just treatment.—Delay in the disposal of the appeal by the Joint Appeals Board.—In view of the fact that the Respondent had no legal obligation to renew the Applicant's appointment, or find other employment for him, the plea for reinstatement fails.

Award of compensation of \$US 2,500 for wrong administrative treatment and delay in the disposal of the appeal.—All other pleas rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Herbert Reis,
Mr. Roger Pinto;

Whereas, on 26 February 1982, Ibrahim I. Jabbour, 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 making the necessary corrections, again filed the application on 8 November 1982;

Whereas the pleas of the application read as follows:

“(a) If the Tribunal considers it necessary, the Applicant requests the production of the document of which the Applicant encloses a copy as annex 22;

“(b) The Applicant contests the decision not to renew his contract after 30 September 1976 and requests the revision of this decision in conformity with article 9, paragraph 1 of the Statute;

“(c) The Applicant requests under article 9, paragraph 1 of the Statute of the Administrative Tribunal, that the decision not to renew his appointment beyond 30 September 1976 be rescinded and that, consequently, the Applicant be reinstated as a staff member of the United Nations with retroactive effect for the period of 1 October 1976 to 16 April 1979;

“(d) In the event that the Secretary-General decides, in the interest of the United Nations, to pay compensation to the Applicant in accordance with article 9, paragraph [1] of the Statute of the Administrative Tribunal, this compensation should amount to an equivalent of the Applicant's net salary for the period in question (30 months and 16 days);

“(e) The Applicant further requests to be reinstated into his position with regard to the United Nations Joint Staff Pension Fund (he had to opt for an early retirement at the age of 55—)”;

Whereas the Respondent filed his answer on 30 December 1982;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Office of the Technical Assistance Board (TAB) in Beirut, Lebanon, on 6 September 1961 as a Senior Clerk under a short-term appointment which was converted to a fixed-term appointment for one year on 1 December 1961. On 1 June 1962 he was promoted Administrative Assistant and on 1 December 1962 his appointment was converted to an indefinite appointment. On 8 November 1964 the Applicant was assigned to the TAB Office in Yaounde, Cameroon, and his appointment converted to a fixed-term appointment for two years which was extended for two years on 8 November 1966. On 16 July 1968 the Applicant was reassigned to the Office of

the United Nations Development Programme (UNDP) in Lumumbashi, Zaire, and on 8 November 1968 his appointment was extended for two years. On 16 July 1970 he was reassigned to the UNDP Office in Accra, Ghana. On 8 November 1970 the Applicant's appointment was renewed for two years and on 8 November 1972 it was extended until 13 March 1973. On 14 March 1973 the Applicant was transferred as Administrative Officer to the United Nations Development Advisory Team (UNDAT) I, a project of the Office of Technical Co-operation in Lusaka, Zambia, and he received an intermediate-term appointment for one year under the 200 series of the Staff Rules. On 14 March 1974 his appointment was extended for one year, on 16 September 1974 he was reassigned to UNDAT II in Niamey, Niger, and on 14 March 1975 his appointment was extended until 31 December 1975. On 1 January 1976, as the budgetary and financial situation of UNDAT II had apparently become precarious, the Applicant's appointment was extended for three months only. On 19 March 1976 the Acting Chief of the Division of Administration of the Economic Commission for Africa (ECA), which had become responsible for UNDAT II, cabled to Headquarters that due to financial difficulties ECA had had to reduce some UNDAT posts, including the post occupied by the Applicant, whose contract would not be extended after 31 March 1976; he asked to be informed of any possibility of accommodating the Applicant elsewhere. In a cabled reply of the same day Headquarters expressed surprise at that sudden decision, which left the staff member in a precarious situation, and advised ECA that because of the projects cutbacks there was unfortunately no known vacancy available. On 19 March 1976 also, the Acting Chief of the Division of Administration of the Economic Commission for Africa informed by cable the Team Leader of the project that due to shortage of funds the post of Administrative Officer—the Applicant's post—would be abolished at the beginning of April 1976 and requested him to advise the Applicant accordingly; he added that the possibility of absorbing the Applicant elsewhere was being considered but that so far there were no good prospects. On 20 March 1976, in a reply cabled to the Executive Secretary of ECA, the Team Leader expressed his surprise, stating that the decision to abolish the Applicant's post on 1 April 1976 was not in conformity with an undertaking by ECA representatives at a meeting held in January at Addis Ababa to maintain the post until a new assignment could be found for the Applicant, that the time-limit was inadmissibly short in view of the practice of the United Nations and of the Applicant's long service with the Organization, and that maintaining that decision might compromise the morale of the other members of the team. On 23 March 1976 the Acting Chief of the Division of Administration of ECA cabled the Team Leader that there were "now some possibilities of retaining Jabbour until at least June 1976" and that before a final decision was reached the Applicant's contract would be extended on a monthly basis. On 15 April 1976 the Acting Chief of the Division of Administration of ECA addressed the following letter to the Applicant:

"As you may have learnt from Mr. Causse [the Team Leader], the future of the UNDATs is uncertain due to acute shortage of resources. At an ECA/UNDP meeting held in Addis Ababa last January to review the work programme that the UNDATs could safely undertake during the transitional period of 1976, it was found necessary to cut back on the project in-puts to a minimum and certain posts, including those of the Administrative Officers in all the three UNDATs were dropped. We had hoped to arrange for your transfer to one of the UNDP financed projects,

but the response from New York indicate that there is no post to accommodate you now or in the near future.

“We are continuing to look for possible assignments but as the chances are becoming very limited, I have to inform you with much regret that we shall arrange for your separation from the Organization at the end of June 1976, unless another UN appointment becomes available before then.”

On 22 April 1976 the Applicant, who had been transferred to the ECA payroll, received a three-month extension of his appointment to cover the period until 30 June 1976. On 5 and 14 May 1976 the Team Leader wrote to the Executive Secretary of ECA to draw his attention to the difficulties created by the abolition of the Applicant's post in connexion with the *Maison de l'Afrique*, the building in Niamey in which UNDAT as well as UNDP, FAO and other offices were located, pointing out that *vis-à-vis* the host Government the responsibility for the administration of the building lay with ECA and that the task was in fact carried out by the Applicant. On 27 May 1976 the Executive Secretary of ECA advised the Team Leader by cable that the Applicant would be replaced by Mr. Sanda-Matundu, who arrived in Niamey on 20 June 1976. In the meantime, on 7 June 1976 the Acting Chief of the Division of Administration of ECA had asked Headquarters whether they had succeeded in locating another post to accommodate the Applicant and, on 17 June 1976, Headquarters had replied that there were no current possibilities of reassignment. On 21 June 1976 the Team Leader cabled ECA to request an extension of the Applicant's appointment until 30 September 1976 in view of Mr. Sanda-Matundu's forthcoming home leave and the need to insure interim cover. That request was supported by the UNDP Resident Representative and the Applicant was accordingly granted a fixed-term appointment for three months until 30 September 1976 under the 100 series of the Staff Rules. On 28 September 1976 the Applicant wrote to the Secretary-General requesting a review of the administrative decision taken by ECA Headquarters to separate him from their service. On 26 October 1976, having received no reply, he lodged an appeal with the Joint Appeals Board at Geneva. The Board submitted its report on 15 April 1981. In its report, the Board recommended to the Secretary-General to grant the Applicant, as compensation, an amount equivalent to three months' net base salary at the rate in effect at the time of the expiration of his fixed-term appointment. On 18 December 1981 the Assistant Secretary-General for Personnel Services advised 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 and not to accept the Board's recommendation, on the grounds

“(a) that, as concluded by the Board itself, there was no legal obligation to extend your appointment;

“(b) that there is no basis for the Board's conclusion that you were inequitably and irregularly treated since the decision not to renew your fixed-term appointment was not found to be motivated by prejudice or other extraneous considerations or vitiated by procedural irregularities. Moreover, the various extensions of your appointment up to 30 September 1976 gave you considerable advance notice of your impending separation from service going well beyond any legal requirement;

“(c) that in these circumstances no justification exists for compensation for injury.”

On 26 February 1982 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's case is not a simple case of non-extension of a fixed-term appointment. There was a legal expectancy of renewal created in his mind by the Administration. Due to his experience of 15 years of service with fixed-term and even short-term appointments never exceeding two years, he could reasonably expect that this time also the Administration would either find other means to finance his post or find another assignment for him.

2. The Administration was under a legal obligation to make serious efforts in order to find another post for the Applicant. The Administration, however, did not fulfil that obligation. The "concern" expressed over the Applicant's situation cannot be considered as a serious effort to find another assignment for him.

3. The particular hardship which the Applicant had to suffer as a consequence of the contested decision justifies the amount of compensation claimed. The Applicant should also be compensated for the long delay, attributable to the Administration, in dealing with his appeal.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legally cognizable expectancy of employment with the Organization beyond the expiry date of his fixed-term appointment.

2. There is no legal obligation to find new appointments for staff on fixed-term appointments which have expired.

3. The expiration of the Applicant's fixed-term appointment does not entitle the Applicant to any end-of-service payment as recommended by the Joint Appeals Board since such payments have been specifically prohibited by the Staff Regulations.

The Tribunal, having deliberated from 18 May to 2 June 1983, now pronounces the following judgement:

I. The facts in this case are not in dispute and the only issue before the Tribunal is whether or not the Respondent has carried out his contractual and other obligations in his treatment of the Applicant. The Tribunal agrees with the Joint Appeals Board that the Applicant could have no legal expectation for extension of his employment after the expiration of his final fixed-term contract on 30 September 1976; nonetheless, the Tribunal has considered that after a staff member has been retained in service by a series of short-term contracts for many years and has rendered satisfactory services to the United Nations he can reasonably expect a measure of accommodation either in the form of extension or renewal of short-term contracts or by the Respondent trying in good faith and earnestly to find him some alternative employment.

II. In the present circumstances, the record of the Applicant's performance was not adequately, correctly or regularly maintained, and the Joint Appeals Board has implied that at some stages at least, especially in the period following 1972, the erratic and casual manner in which periodic reports on the Applicant were maintained could have come in the way of his further extension. The Respondent had an obligation to obtain and analyse these reports in a systematic way and in conformity with the procedure laid down for the purpose. This was not done.

III. Moreover, between the time the Applicant referred his case to the Joint Appeals Board in October 1976 and its final report in April 1981, a period of nearly 4½ years elapsed. The Tribunal finds that much of this delay was caused by the Respondent.

IV. The history of the case demonstrates that the Applicant was kept in a state of anxiety and uncertainty between 1972, when his services at Accra were to be terminated on the recommendation of Mr. Gordon Menzies, the then Resident Representative of UNDP in Ghana, and his eventual separation at the end of September 1976. In these four years he was transferred from place to place, kept on temporary or fixed-term contracts of varying duration and was subjected to much inconvenience. That he was not being fairly treated was evident from numerous communications exchanged among the officials dealing with his case. Thus, on 17 June 1974, a cable from the Executive Secretary of ECA to Headquarters read in part:

“ . . . IN FAIRNESS TO JABBOUR HE SHOULD BE CONSIDERED FOR TRANSFER TO UNDAT NIAMEY. I REMOVED HIM FROM LUSAKA SO THAT NOMVETE COULD NOT USE HIM AS EXCUSE FOR ANY SHORTCOMINGS BUT ALSO TO HAVE GOOD UNDAT ADMINISTRATIVE SUPPORT HERE . . . [JABBOUR] HAS BETTER CHANCE OF EXTENSION IN UNDATS THAN IN ECA BECAUSE OF NATIONAL QUOTA . . . ”

Furthermore, when on 19 March 1976 ECA informed Headquarters that the Applicant's appointment would not be extended beyond 31 March 1976, Headquarters replied: “. . . much surprised sudden decision on Jabbour which leaves staff member in precarious situation . . .”. About the same time, the Team Leader of UNDAT II at Niamey, Niger, where the Applicant was working, stated that the decision to abolish the Applicant's post was not in conformity with an undertaking by ECA representatives in January 1976 and that the time limit given to the Applicant for separation was “inadmissibly short”.

V. These developments indicate that the Respondent was aware of the unsatisfactory methods followed in terminating the Applicant's services. There is no doubt about the financial and budgetary constraints, of which both parties were cognizant and which accounted, to some extent, for a measure of abruptness in the decision taken; but the fact that even after 31 March 1976 the Applicant could be kept in service for another 6 months raises a doubt whether with a more vigorous search the Applicant could not have been found some other job. The records make it clear that the Applicant's services were extended whenever it suited the Respondent to do so. However, the Tribunal considers that the Respondent did not exert himself sufficiently vigorously, as it behoved him to do, in view of the Applicant's long service and the anxieties and uncertainties to which he had been subjected for four years (1972-1976) chiefly to meet the requirements of the Respondent. This factor has to be taken together with the long delay in the disposal of the Applicant's appeal by the Joint Appeals Board, as also the fact that between 1972 and 1976 the performance of the Applicant was never properly assessed.

VI. Accordingly the Tribunal concludes that:

(a) The Respondent had no legal obligations either to renew the Applicant's contract or to find him another employment even if the Applicant had some reasonable expectation of such accommodation because of his service of about 15 years with the Respondent. In view of this the Applicant's plea for reinstatement fails.

(b) In a variety of ways the Respondent has been negligent as an employer in failing to extend to the Applicant fair and just treatment, and as a consequence the Applicant has suffered. The Tribunal considers that the Applicant is entitled to some compensation for the wrong administrative

treatment he received and for the delay in the disposal of his appeal by the Joint Appeals Board due to procrastination by the Respondent.

VII. Taking all the circumstances of the case into account, the Tribunal awards compensation in the amount of \$US 2,500 to the Applicant.

All other pleas are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Herbert REIS
Member

Geneva, 2 June 1983

Roger PINTO
Member

Jean HARDY
Executive Secretary

Judgement No. 306

Original: English

Case No. 283:
Gakuu

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

Request by a former staff member of the United Nations Centre for Human Settlements (Habitat) to rescind the decision not to renew his fixed-term appointment.

Conclusion of the Joint Appeals Board that omission by the Applicant of material information from the Personal History form when applying for a post resulted from an error and not wilful misrepresentation.—Conclusion that non-renewal of appointment was tainted by improper motivation and was tantamount to disciplinary action and recommendation to award ex gratia payment as compensation.—Recommendation rejected.

The Tribunal reiterates its jurisprudence that, when a staff member is separated after long service and a series of contracts, a determination must be made whether he could reasonably expect an extension.—Question whether the Applicant had reasonable expectations for renewal of his contract and whether the decision was vitiated by improper motives or a failure to observe basic procedural requirements.—The Tribunal finds that the Applicant's statements on Personal History form were false and deliberate.—The Respondent's failure to check this information does not constitute a defence for the making of false statements.—The Tribunal holds that after the discovery of false statements the Applicant could not have any reasonable expectation for continued employment.—Finding that the Respondent was within his rights in deciding not to renew the Applicant's appointment.

The Tribunal believes that the procedure set forth in personnel directive PD/1/76 should have been followed but holds that the Respondent's failure to observe that procedure did not adversely affect Applicant's rights.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President;
Mr. Roger Pinto; Mr. T. Mutuale, alternate member;