

Administration is liable and consequently adequate compensation should be given to the Applicant.”

IX. The 1977 promotion register no longer having any effect, the Tribunal cannot rescind the omission of the Applicant's name from that register, as the Applicant requests. Nor can the Tribunal effect her promotion as from 1977, promotions being within the discretionary powers of the Secretary-General. Bearing in mind the absence of any other way of correcting the situation brought about by the violation of the Applicant's rights under ST/AI/240, the Tribunal awards compensation to the Applicant in the amount of \$7,500.

(Signatures)

Arnold KEAN
Vice-President, presiding

Herbert REIS
Member

New York, 18 October 1983

L. de POSADAS MONTERO
Member

Jean HARDY
Executive Secretary

Judgement No. 315

(Original: French)

Case No. 252:
Denis

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

Request by a former staff member of the United Nations to rescind the decision terminating his probationary appointment, to rescind the decision refusing his admission to an examination for French translators, to rescind the report of the Joint Appeals Board and the letter of the Assistant Secretary-General for Personnel Services taking note of the report, and to award compensation.

Conclusion of the Joint Appeals Board, pursuant to Judgement No. 260, that the appeal was time-barred and therefore not receivable and that the Applicant failed to establish the existence of exceptional circumstances warranting waiver of the time-limits.

The Tribunal rules that the Applicant, not having raised the issue of allegedly improper composition of the Joint Appeals Board before the Board itself, is barred from raising it before the Tribunal.—The Tribunal decides that the report of the Board is not vitiated by any procedural irregularity.—The Tribunal observes that there is no particular form which the Secretary-General must use to accept the recommendations of the Board.—Requests to rescind the report of the Joint Appeals Board and the letter of the Assistant Secretary-General for Personnel Services rejected.—The Tribunal considers that the refusal to grant a waiver of the time-limits falls within the discretionary power of the Joint Appeals Board and is not vitiated by any arbitrary assessment.—The Tribunal concurs with the decision of the Board not to waive the time-limits.—Applicant's contention that the decision refusing his admission to an examination for French translators may be appealed against at any time as it did not contain any statement of reasons thereof.—Contention rejected.—Staff rule 111.3 (a) which provides for a time-limit of one month for the appeal to the Secretary-General must be met in all cases, even if the contested decision contains no statement of reasons.—No waiver of the time-limits having been granted by the Joint Appeals Board and the Applicant having failed to justify the exceptional nature of his case, the appeal is not receivable.—Request that the Tribunal invite the Administration to let the Applicant know the

posts which were mentioned to him.—This request was not submitted by the Applicant to the procedure provided for in staff rule 111.3 and is therefore not receivable.

Application rejected.

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

Whereas on 17 April 1980, Jacques Denis, a former staff member of the United Nations, filed an application the pleas of which requested the Tribunal

“—TO RESCIND the decision of the Secretary of the Joint Appeals Board of UNIDO dated 6 February 1980;

“—TO RESCIND the decision of 3 August 1972;

“—TO ENJOIN the Administration to give the Applicant a permanent appointment as a translator;

“—Or, failing that, to grant him an indemnity in the amount of 1,913,008 Austrian schillings;

“—TO RESCIND the decision of 19 March 1979.”

Whereas, in its Judgement No. 260 of 6 November 1980, the Tribunal considered that it would be inappropriate to consider the merits of the case at that stage and referred the case to the Joint Appeals Board of UNIDO for consideration in the light of Staff Rule 111.3 (*d*);

Whereas, on 29 October 1982, the Applicant filed a new application the pleas of which requested the Tribunal

“(1) To rescind the letter of the Assistant Secretary-General for Personnel Services dated 20 April 1982.

“(2) To rescind the report of the Joint Appeals Board of UNIDO.

TO HEAR THE CASE

“(3) To rescind the decision of 3 August 1972.

“(4) To invite the Administration to let the Applicant know the proposals of posts which were made known to him at the end of his interview of 1 September 1981.

“(5) To grant him an indemnity in the amount of 1,913,008 Austrian schillings, together with interest at the rate of 15 percent reckoned from the initial application to the Secretary-General, together with interest on the interest.

“(6) To rescind the decision of 19 March 1979.”

Whereas the Respondent filed his answer on 24 March 1983;

Whereas the Applicant filed written observations on 22 April 1983 and an additional written statement on 4 October 1983;

Whereas the facts in the case subsequent to the statement of facts contained in Judgement No. 260 are as follows:

On 1 February 1982, the Joint Appeals Board of UNIDO submitted its report. The conclusions and recommendations of the Board were as follows:

“*Conclusions and recommendations*

“30. The Board concludes that on the evidence and arguments presented to it, the appeal by the appellant as regards the decision of 3

August 1972 to terminate his probationary appointment and not to grant him a permanent appointment is not receivable in view of the appellant's failure to observe the time limits laid down in Staff Rule 11.3 (a).

"31. The Board is of the view that the appellant has not established the existence of any exceptional circumstances which would justify a waiver of the time limits in accordance with Staff Rule 111.3 (d) and therefore declines to grant the waiver requested by the appellant as regards the decision of 3 August 1972.

"32. Furthermore, the Board concludes that the appeal of the appellant as regards the decision of 19 March 1979 is not receivable in view of the fact that at the time of this decision, the appellant was no longer a staff member and could not invoke in his favour any right arising from a contract of employment or terms of appointment.

"33. Having decided not to entertain the appeal since it is not receivable for failure to observe the time limits laid down in Staff Rule 111.3, the Board does not consider it appropriate to express any opinion about the merits of the case; consequently, the question of compensation does not arise.

"34. Accordingly, the Board makes no recommendation in support of this appeal."

On 20 April 1982, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board's report and of its unanimous decisions not to entertain the appeal against the decision of 3 August 1972 because it was time-barred and not to entertain the appeal against the decision of 19 March 1979 because of lack of competence. On 29 October 1982, the Applicant filed the new application mentioned above.

Whereas the Applicant's principal contentions are:

1. The recommendation of the Joint Appeals Board and the letter of the Assistant Secretary-General for Personnel Services dated 20 April 1982 are vitiated by irregularities of form and procedure.

2. The case is vitiated by irregularities of substance:

(a) The circumstances of the case are exceptional and constitute a special case justifying a waiver of the time-limits;

(b) It is not established that the time-limits set in Staff Rule 111.3, as amended, are applicable to the Applicant.

3. The letter of 19 March 1979, which contained no statement of reasons, is not the start-point for the running of the time-limits.

Whereas the Respondent's principal contentions are:

1. The Joint Appeals Board was properly constituted and its findings of the non-receivability of the appeal's time-limits are within its competence. Thus, in the absence of a recommendation on the merits from the Board, the application is not receivable by the Tribunal under article 7 of the Tribunal's Statute.

2. The Joint Appeals Board properly refrained from granting to the Applicant a waiver of the appeal's time-limits under Staff Rule 111.3 (d) as the delay of the Applicant in submitting the appeal cannot be attributed to exceptional circumstances beyond his control with respect to either of the decisions of the Administration.

3. As a subsidiary submission, the Applicant's allegations, with respect to his candidature for an appointment to a translator post in 1979, are not within the Tribunal's competence under article 2 of the Tribunal's Statute.

The Tribunal, having deliberated from 6 to 19 October 1983, now pronounces the following judgement:

I. The Tribunal has before it an application referring in essence to three decisions: the first, of 3 August 1972, was to terminate the Applicant's probationary appointment and not to grant him a permanent appointment; the second, of 19 March 1979, concerns the refusal of the jury for the examination for French translators organized by the United Nations to retain his name among the candidates admitted to the written tests; the third results from the silence maintained by the Respondent since 1 September 1981 regarding the decision concerning the Applicant taken by the jury for the examination for French translators for which he was authorized to present himself in 1979.

II. Before ruling on each of these three decisions, the Tribunal will consider the request to rescind the letter dated 20 April 1982 from the Assistant Secretary-General for Personnel Services and the report of the Joint Appeals Board of UNIDO dated 1 February 1982.

I

III. The Applicant contends that the Joint Appeals Board was not properly constituted. He expresses surprise that the members of the Board were the same in 1982 as in 1978 and regards that as evidence that the members of Board were not reappointed annually as provided for in Staff Rule 111.2 (a). The Applicant, having been duly notified of the composition of the Board on 6 October 1981 in accordance with Staff Rule 111.3 (e), did not raise the matter of the improper composition of the Board before the Board itself. The Tribunal considers that the Applicant assented to the composition of the Board and is therefore barred from raising that ground before the Tribunal. Finally, as the report indicates, the Secretary of the Board is not a member of the Board.

IV. The Applicant moreover does not produce any document or other evidence that would allow the Tribunal to question that the Joint Appeals Board was properly constituted.

V. The Applicant's second contention is that the report of the Joint Appeals Board does not certify that, for each of its meetings, its composition was the same. The Tribunal notes that the report of the Board indicates the composition of the said Board, the names of its members, and the number and dates of its meetings. These references are sufficient evidence that the composition of the Board did not change in the course of its meetings.

VI. The Applicant did not submit to the Tribunal any document or other extrinsic element which might disprove the statements in the report of the Joint Appeals Board.

VII. Furthermore, according to the provisions of Staff Rule 111.3 (j), the said report "shall be considered as constituting a record of the proceedings". The Joint Appeals Board does not have to keep any records of its proceedings other than its report.

VIII. The Tribunal decides that the report of the Joint Appeals Board is not vitiated by any procedural irregularity. Consequently, it rejects the request of the Applicant that the Board's report should be rescinded.

IX. In addition, the Applicant contends that the letter dated 20 April 1982 from the Assistant Secretary-General for Personnel Services does not constitute a decision to accept the recommendations of the Joint Appeals Board, claiming that it simply "takes note of" those recommendations.

X. The Tribunal observes that there is no particular form which the Secretary-General must use to accept the recommendations of the Joint Appeals Board.

XI. Moreover, the Tribunal notes that the Applicant has nothing to gain by claiming that the letter of 20 April 1982 is invalid. Such invalidity, assuming that it was justified, would have no effect on the rights of the Applicant. He can, under article 7 of the Statute of the Tribunal, bring a matter before the Tribunal in the event that the recommendations made by the Joint Appeals Board are unfavourable to him

"within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant."

XII. Therefore, the right to seek remedy before the Tribunal does not require a decision of the Secretary-General.

XIII. The Tribunal consequently decides to reject the request that the letter dated 20 April 1982 from the Assistant Secretary-General for Personnel Services should be rescinded.

II

XIV. In a communication addressed to the Secretary-General and received on 6 December 1979, the Applicant requested the rescission of the decision of 3 August 1972 to terminate the Applicant's probationary period and not to grant him a permanent appointment. That request comes more than seven years after the date of the decision. The Applicant did not observe the time-limit for appeal provided for in Staff Rule 111.3 (a) and (d). His request was rejected in a letter from the Assistant Secretary-General for Personnel Services dated 17 December 1979 and posted in France on 7 January 1980. The Applicant addressed in good time an appeal to the Secretary of the Joint Appeals Board of UNIDO on 28 January 1980. The Secretary of the Board rejected that appeal without referring it to the Board.

XV. The Tribunal decided in its Judgement No. 260 that the Board should act on the appeal. Pursuant to the judgement of the Tribunal, the Joint Appeals Board, in its report of 1 February 1982, considered whether it was appropriate to grant the Applicant a waiver of the time-limits for appeal in accordance with Staff Rule III.3 (d). The Board considers that the Applicant has not established the existence of any exceptional circumstances which would justify a waiver. It therefore does not grant a waiver of the time-limits laid down and not observed.

XVI. The Tribunal considers that this refusal to grant a waiver falls within the discretionary powers of the Joint Appeals Board and is not vitiated by an arbitrary assessment of the exceptional nature of the present case.

XVII. The Applicant claims that there was a serious failure on the part of the Administration to inform him of the appeals procedures open under the Staff Regulations and Rules. The Tribunal recognized the duty to provide such information. However, it is also up to staff members to demonstrate reasonable diligence with a view to obtaining information about their rights. In the case

under consideration, by allowing more than seven years to elapse before filing an appeal, the Applicant has demonstrated no diligence in seeking and obtaining such information, in particular by taking note of the Staff Rules. His own failure in this regard means that his case cannot be considered exceptional.

XVIII. The Applicant also contends that the Administration, through its behaviour, encouraged him not to appeal. He draws this conclusion from the contracts that UNIDO granted him over the course of more than a year from September 1972 to November 1973.

XIX. The Tribunal notes that such moral pressure, if it ever existed, would have ended when the Applicant left UNIDO in November 1973. From that date, there is nothing exceptional about the Applicant's case. Six years elapsed, however, before his complaint was lodged in 1979.

XX. The Joint Appeals Board therefore had no reason to waive the time-limits laid down for appeal.

XXI. Consequently, the Tribunal decides that the decision of the Joint Appeals Board not to waive the time-limits for appeal with respect to the decision of 3 August 1972 is well-founded.

XXII. As to the decision of 19 March 1979, the Applicant also requests its rescission in his communication received by the Secretary-General on 6 December 1979. He therefore appealed almost nine months after he was notified of the decision that the examination jury had not retained his name among the candidates admitted to the written tests of the examination for French translators organized by the United Nations. He maintains that the notification of that decision did not start the running of the appeal time-limit "because no reasons were stated".

XXIII. The Applicant requests the Tribunal to transpose the precedent of the French *Conseil d'Etat* in the Beudet case (judgement of 9 February 1979, Recueil Lebon, p. 52) and to find that an appeal against a decision of the Administration for which no reasons are stated can be made at any time. The Tribunal notes that, in that case, the applicable law obliged the Administration to state the reasons for its decision. Furthermore, the French *Conseil d'Etat* considered that the decision in dispute "contained sufficient statement of reasons to be considered as having started the running of the appeal time-limit at issue". The judgement referred to does not specify what should be understood by a sufficient statement of reasons. The Applicant refrained from enlightening the Tribunal on that point.

XXIV. Staff Rule 111.3 (a) is clear. It draws no distinction between Administration decisions that contain a statement of reasons over those that do not. Before any appeal is made to the administrative bodies provided for in Staff Regulation 11.1, these decisions must be submitted to the Secretary-General for review. To that end, the Applicant has a time-limit of one month from the time he received notification of the decision in writing (Staff Rule 111.3 (a) *in fine*). If this time-limit is not met by the Applicant, his request is not receivable.

XXV. The appeal to the Secretary-General is a direct appeal to a superior officer to be made within a short time-limit. The Tribunal considers that this time-limit must be met in all cases, even if the decision does not contain a statement of reasons and should have done so. The Applicant should inform the Secretary-General of this complaint and request him, *inter alia*, if he feels that such an obligation exists, to state the reasons for his new decision.

XXVI. In these circumstances, the Tribunal decides that the Applicant's appeal is not receivable since it was made more than one month after he had been informed, on 19 March 1979, of the decision of the Administration not to authorize him to sit for the examination for French translators organized by the United Nations.

XXVII. Moreover, the Tribunal notes that the Joint Appeals Board decided not to grant the waiver of the time-limits provided for, in exceptional cases, in Staff Rule 111.3 (*d*).

XXVIII. The Joint Appeals Board gives the following reasons for refusing to grant a waiver:

“Concerning the decision of 19 March 1979 the Board notes that when the appellant first contacted the Secretary of the Board on 28 January 1980 some ten months had elapsed since the decision he challenges was made and no exceptional circumstance have been advanced which would justify such a delay.”

XXIX. In paragraph 33 of its report, the Joint Appeals Board unanimously concludes:

“33. Having decided not to entertain the appeal since it is not receivable for failure to observe the time limits laid down in Staff Rule 111.3, the Board does not consider it appropriate to express any opinion about the merits of the case; consequently, the question of compensation does not arise.”

XXX. The Tribunal notes that the Applicant has produced no document or set forth any circumstance that would make it possible to consider his case as “exceptional” within the meaning of Staff Rule 111.3 (*d*). The Tribunal cannot therefore conclude that the Joint Appeals Board abused its discretionary powers. The Tribunal considers that, in 1979, after many years of employment in the United Nations or of applying for a post in the Organization, the Applicant could and should have acquainted himself with his rights of appeal.

Consequently, the Tribunal decides that the refusal of the Joint Appeals Board to grant a waiver is well-founded.

XXXI. As to the decision resulting from the silence maintained by the Administration since 1 September 1981, the Applicant requests the Tribunal to invite the Administration to let him know the proposals of posts which were mentioned to him on that date following his admission to the oral examination for French translators.

XXXII. It is clear that the decision which might result from the Administration's silence was not submitted by the Applicant to the procedures provided for in Staff Rule 111.3.

XXXIII. In accordance with article 7, paragraph 1, of its Statute, the Tribunal decides that the application is not receivable on this point.

XXXIV. The Tribunal having thus decided that the pleas submitted by the Applicant in his application were not receivable because of failure to observe either the time-limits or the required procedures, it is not appropriate to consider whether the Tribunal is competent to hear and pass judgement upon the application in accordance with article 2 of its Statute. The Respondent submitted pleas to this effect only as a subsidiary submission and in case the Tribunal decided that the application was receivable.

XXXV. Because the application is not receivable, the request for damages submitted by the Applicant serves no purpose. The Tribunal decides to reject it.

XXXVI. For the foregoing reasons, the Tribunal decides:

1. The request to rescind the letter dated 20 April 1982 from the Assistant Secretary-General for Personnel Services is rejected;

2. The request to rescind the report of the Joint Appeals Board of UNIDO dated 1 February 1982 is rejected;

3. The request to rescind the decision of 3 August 1972 and the decision of 19 March 1979, as well as that resulting from the refusal of the Administration, through its silence, to make proposals of posts to the Applicant is not receivable.

4. All other requests are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Arnold KEAN
Vice-President

New York, 19 October 1983

Roger PINTO
Member

Jean HARDY
Executive Secretary

Judgement No. 316

(Original: English)

Case No. 306:
Jazairi

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

Request by a former staff member of the United Nations for compensation for injury to reputation and career prospects, exposure to grave risk and break in service.—Request for preliminary measures: examination of witnesses and production of documents.

The Joint Appeals Board made no recommendation on the complaint concerning an administrative investigation into the Applicant's association with the American University in Beirut while in the employment of the United Nations.—Recommendation of the Board to reimburse the cost of the evacuation of the Applicant's wife from Beirut and of payment of compensation of \$US 1,000 for the failure to consider whether the circumstances warranted the Applicant's evacuation.—Recommendation accepted.

The Tribunal considers that production of evidence should have been sought by the Applicant before the Joint Appeals Board.—Request for preliminary measures rejected.

Complaint in respect of the prejudice suffered on account of the administrative investigation.—Applicant's contention that the investigation was improperly motivated.—Respondent's contention that decisions relating to the investigation were not administrative decisions subject to appeal.—The Tribunal holds that the decisions to hold an investigation and to disclose its results were administrative decisions subject to appeal.—The Tribunal concludes that these decisions were not motivated by improper motives and that the Applicant suffered no damage.—Request for compensation rejected.—Complaint in respect of the Administration's refusal to evacuate the Applicant and his wife.—The Tribunal finds no basis for compensation additional to that recommended by the Joint Appeals Board.—Complaint in respect of two months' break in employment.—The Tribunal finds that the Applicant is not entitled to compensation on account of a break in short-term appointment which carries no expectancy of renewal.—Complaint in respect of change of duty station.—The Tribunal finds that the Applicant had no entitlement to further employment in Beirut.—Complaint in respect of the release of a