

## Judgement No. 324

*(Original: English)*

**Case No. 315:**  
**Nasralla**

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

*Request by a staff member of ICAO for rescinding the decision to withhold the annual salary increment and to offer the Applicant a renewal of contract for one year only, subject to a review of his performance, instead of the normal renewal of two years.*

*Conclusion of the Advisory Joint Appeals Board that there was no breach of administrative procedure and that the Appellant's allegations of bias and prejudice were not substantiated.—Recommendation that the appeal be rejected.*

*Applicant's allegations of bias and prejudice and contention that the recommendations of the Chief of Personnel were arbitrary.—Consideration of the circumstances of the case.—Conclusion of the Tribunal that the Chief of Personnel acted correctly and that his recommendations were not arbitrary.—The Tribunal cannot substitute its own judgement for that of the Secretary-General in assessing the work of a staff member.—The Tribunal finds that the available report provided adequate support for the Secretary-General's judgement.—The Tribunal holds that the Secretary-General's course of action was valid and proper exercise of his discretion.—General Secretariat instruction 1.4.2.—Applicant's contention that any withholding of increment should be on the basis of a confidential report and not of the Increment Authorization Form.—Contention rejected inasmuch as the Applicant was given an opportunity to rebut the remarks on this form.*

*Application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
 Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Herbert Reis;  
 Mr. Luis M. de Posadas Montero;

Whereas, on 28 September 1983, Waguïh S. Nasralla, a staff member of the International Civil Aviation Organization, hereinafter called ICAO, filed an application, the pleas of which read as follows:

"I hereby request the removal of the following two sanctions imposed by the Secretary-General based on recommendations made by C/PER [Chief, Personnel Branch] (See Annex 11);

"(a) the withholding (originally for a six-month period) of the annual increment due to me on 8 January 1983. It should be noted that this increment continues to be withheld as per C/PER's letter of 19 July 1983 (See Annex 13).

"(b) the renewal of my appointment for one year only, which is subject to a review of my performance in September 1983 'based on which a decision will be taken on whether a further appointment should be offered', be changed to the standard ICAO practice of two or three years.

"Since the whole matter was set in motion by the biased attitude towards me of a new Chief of Section (C/FR) [Chief, French Section] backed up by an equally biased new Chief of Branch (C/LAN) [Chief, Language Branch], I consider that a gross injustice has been and is still being done to me, and as will be shown in the next section 'Statements', the Organisation, through several irregularities of procedure, has done nothing to seek out the facts but instead has given the above-mentioned supervisors

all the assistance they needed to implement a long-term scheme covering a one-year period, the outcome of which is intended to be the termination of my employment without just cause or reason after 5 years of satisfactory service with the Organisation.

"In view of recent developments, detailed in Part (a) of the 'Statements' Section, I also request that:

"(i) all salient points that were excluded by the Advisory Joint Appeals Board in their report to the Secretary-General be taken into consideration by the Tribunal;

"(ii) the Tribunal instruct the Secretary-General of ICAO to arrange for an independent outside appraisal of my performance; and

"(iii) in the event an independent outside appraisal of my performance cannot be executed for any reason, the Tribunal instruct the Secretary-General of ICAO to arrange for my transfer from the Language Branch at Headquarters in Montreal to another position within ICAO.";

Whereas the Respondent filed his answer on 1 November 1983;

Whereas the facts in the case are as follows:

The Applicant entered the service of ICAO on 8 January 1979 as a translator in the French Section of the Language Branch under a two-year appointment at the P-3 level which was renewed for two years on 8 January 1981. In a first periodic report, covering the period from 1 February 1979 to 31 January 1980, the Applicant was rated as a staff member "who performs well and produces performance results expected of a staff member of average competence and qualifications". In a second periodic report, for the period from 1 February 1980 to 31 January 1981, he was rated as a staff member who "usually performs adequately but occasionally does not meet expected standards in all respects". On 13 September 1982 the Chief of the French Section reported to the Chief of the Personnel Branch, with the concurrence of the Chief of the Language Branch, that the granting of an annual salary increment due on 8 January 1983 to the Applicant was not justified on the ground that his performance had been gradually declining over the years and had become totally unsatisfactory. On 28 September 1982 the Applicant contested that report in a letter to the Chief of the Personnel Branch. On 8 October 1982 the Chief of the French Section commented on the Applicant's letter at the request of the Chief of the Personnel Branch. On 13 October 1982 the Chief of the Personnel Branch recommended to the Secretary-General that the Applicant's annual salary increment due on 8 January 1983 be withheld and that he be offered a further one-year term appointment from 8 January 1983 to 7 January 1984. The Secretary-General accepted that recommendation on 14 October 1982 and, on 18 October 1982, the Chief of the Personnel Branch informed the Applicant that the Secretary-General had considered the reports submitted by the Applicant's supervisors and the comments thereon contained in his letter of 28 September 1982 and had taken the following decisions:

"(a) Your annual increment which would normally fall due on 8 January 1983 will be withheld. In accordance with paragraph 3.4 of GSI [General Secretariat Instruction] 1.8.1, a review of this decision will be undertaken in six months.

"(b) Upon expiry of your current two-year appointment, you will be offered a term appointment for a period of one year from 8 January 1983. A further review of your performance will be undertaken in September 1983 based on which a decision will be taken on whether a further appointment should be offered."

On 20 October 1982 the Applicant asked the Secretary-General to review those decisions. On 21 October 1982 the Secretary-General confirmed the decisions and on 3 November 1982 the Applicant lodged an appeal with the Advisory Joint Appeals Board, which submitted its report on 23 June 1983. The Board's conclusion and recommendation read as follows:

*“Conclusion*

“34. The Board therefore concludes:

“(a) There was no breach of administrative procedure in the withholding of the annual increment and the offering of a one-year contract. The Board notes with concern, however, a complacent attitude on the part of the Administration in respect of supervisors leaving the Organization without first completing confidential reports on their subordinate staff.

“(b) The Appellant's allegations of bias and prejudice towards him were not substantiated.

*“Recommendation*

“35. The Board recommends that the appeal be rejected as unfounded in fact and in law.”

On 27 June 1983 the Secretary-General accepted the recommendation of the Board and on 28 September 1983 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The procedure followed by the Respondent in the Applicant's case was irregular. An Increment Authorization Form was used by the Organization to determine the Applicant's suitability for contract purposes in lieu of a Confidential Staff Report as specified in GSI 1.4.2, and it took the Advisory Joint Appeals Board an inexplicable six weeks from the termination of its hearing to present its report to the Secretary-General.

2. The Chief of the French Section showed bias and prejudice towards the Applicant and the Chief of the Language Branch had a strong animosity against him.

3. Witnesses called by the Respondent misrepresented facts before the Advisory Joint Appeals Board.

Whereas the Respondent's principal contentions are:

1. The withholding of the annual increment of the Applicant from 8 January 1983 until 8 August 1983 was properly justified and the ICAO administrative procedure in that respect was strictly complied with.

2. The offering of a one-year appointment was strictly in compliance with paragraph 4.9.3 of article IV of ICAO Staff Regulations.

3. The Advisory Joint Appeals Board's recommendation was not vitiated by any irregularities.

The Tribunal, having deliberated from 2 to 16 May 1984, now pronounces the following judgement:

I. The Applicant has alleged bias and prejudice against his immediate supervisors (the Chief of the French Section and the Chief of the Language Branch) and impugns the recommendations made by the Chief of the Personnel Branch as arbitrary. He further comments adversely on the lapses of the Advisory Joint Appeals Board first in delaying its recommendations to the Secretary-General of ICAO and secondly in omitting to cite certain aspects of the evidence which might have been helpful to the Applicant; however, the

Tribunal considers that such instances as the Applicant gives do not come in the way of the general conclusions the Board has drawn.

II. In view of charges of wrong-doing against a number of people, the Tribunal examined in some detail the course of events leading to the withholding of the annual salary increment of the Applicant due on 8 January 1983 and to the decision that his fixed-term contract was to be renewed for one year only, also from 8 January 1983, pending further assessment of his work. The decision to withhold the increment was taken in October 1982 and at the same time the Applicant was advised that a further review of his performance would be undertaken in September 1983 "based on which a decision will be taken on whether a further appointment should be offered".

These actions were initiated by the Chief of the Personnel Branch, who reported to the Secretary-General on 13 October 1982 in the following terms:

"(1) Mr. Nasralla's annual increment, which is due on 8 January 1983, should be withheld. This decision should be reviewed six months later, in June, 1983.

"(2) Mr. Nasralla should be offered a further one-year term appointment, from 8 January 1983 to 7 January 1984.

"This solution will permit an assessment of Mr. Nasralla's work in June 1983, when the decision to withhold his increment is reviewed, and a further review in September 1983 when a decision on the renewal of his appointment will have to be made. By the time the one-year renewal to 8 January 1984 expires, Mr. Nasralla's file will contain a further Confidential Staff Report for the period ending 31 December 1982, and his performance during the full year 1983 can be assessed.

"If this recommendation is accepted, I recommend further that C/LAN and C/FR be instructed to maintain a file on detected deficiencies in Mr. Nasralla's work, and to counsel him on each occasion that his work is found to be deficient."

Before the Advisory Joint Appeals Board, the Chief of the Personnel Branch was asked why a renewal of contract had been offered (while annual increment was being withheld), and he stated "that he had recommended this course of action because he felt that the combined circumstances of the lack of confidential report for 1981 on the Appellant and the fairly recent arrival of the new C/FR warranted a further period of revision for all concerned, and also provided the Appellant with a period of time in which to improve his performance."

III. In view of these statements and arguments, the Tribunal concludes that the Chief of the Personnel Branch was acting correctly and that criticism of his recommendations as being arbitrary was not justified. Indeed, his recommendations, based on reports received in 1982 on the Applicant's performance, should be considered both objective and helpful. Subsequent events have shown that a review of the Applicant's work was undertaken in September 1983 when "marginal" improvement in his work was noticed by his supervisors. His contract too was renewed for a period of one year from 8 January 1984. These developments belie the fears and innuendoes of the Applicant that some long-term scheme was being worked out either to get rid of him or to humiliate him.

IV. The Tribunal notes that the Chief of the French Section who took office in May 1982 had known the Applicant before and had a poor opinion of his work as a French translator, and that he was consistent in expressing unfavourable views about the Applicant's performance and attitude. However,

these views were not influenced by any prejudice or malice and were based on what the Chief of the French Section considered as requirements of a suitable French translator in ICAO. The Tribunal cannot substitute its own judgement for that of the Secretary-General in assessing the work of a staff member, and wishes to state that available reports on the Applicant's work provided an adequate basis of judgement by the Secretary-General. Regrettably, it appears that no report was written on the Applicant's work for 15 months (from 1 February 1981 to 30 April 1982) and that some of the adverse comments on the Applicant's work by his former supervisors were not made known to him on time. But subsequent documents show that both the Chief of the French Section and the Chief of the Language Branch found that the Applicant's performance was becoming increasingly unsatisfactory and that he was not responsive to guidance. Minor discrepancies in the various evaluations of the Applicant's work do not, in the opinion of the Tribunal, vitiate the general assessment they are meant to convey. In the statements made by the Applicant in his appeal to the Tribunal, there are numerous references to conversations between the Applicant and other officials in ICAO. However, their evidentiary value is questionable as they lack corroboration, and at times are purely speculative (e.g. hint of vendetta because of ethnic origin).

V. In the circumstances, the Tribunal confirms the finding of the Advisory Joint Appeals Board that "the Appellant's allegations of bias and prejudice towards him were not substantiated". The Secretary-General was prepared at one stage to seek outside opinion on the Applicant's work, but on the basis of the Board's conclusion communicated to the Secretary-General in June 1983 that there was no bias or prejudice, he decided, on the suggestion of his legal adviser, supported by the Chief of the Personnel Branch, to wait for a subsequent review, due in September 1983, of the Applicant's work by his own superiors. The Tribunal holds that in the event the course of action followed by the Secretary-General was a valid and proper exercise of his discretion.

VI. Much has been said about the form and procedure followed in withholding the Applicant's salary increment from 8 January 1983. The "Increment Authorization Form" asks for a recommendation on the basis of the staff member's "performance and conduct", and an argument has been advanced that any withholding of increment should be on the basis of a confidential report as specified in General Secretariat Instruction 1.4.2. The Tribunal finds that in the present case this argument is not relevant inasmuch as the Applicant was shown the Increment Authorization Form and given an opportunity to rebut the adverse remarks made on it.

VII. Finally, the Tribunal notes that the salary increment of the Applicant has since been agreed to and that his contract has been extended by another year. Whether it should be extended beyond 7 January 1985 is for the Secretary-General to decide after taking into account all the factors, including the nature and level of the Applicant's performance.

VIII. The Application is rejected.

*(Signatures)*

Samar SEN  
*Vice-President, presiding*

Herbert REIS  
*Member*

Luis M. de POSADAS MONTERO  
*Member*

Jean HARDY  
*Executive Secretary*

Geneva, 16 May 1984