

factors. The report of the ICSC does not indicate how much weight, if any, should be given to the views of the releasing Government if the effect of refusing its consent could not have been to recover the staff member for its own service (which in the circumstances of the Applicant's case was clearly impossible) but only to prevent his future employment by the United Nations.

12. For the foregoing reasons, my opinion is that the Respondent's decision was flawed by fundamental mistakes of fact or law and requires to be set aside, and that the Tribunal should accept the Applicant's plea that he was illegally denied his right to reasonable consideration for a career appointment.\*

Arnold KEAN

Jean HARDY  
Executive Secretary

Geneva, 8 June 1984

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### Judgement No. 334

(Original: French)

Case No. 327:  
Morin

Against: The Secretary-General  
of the United Nations

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*Request by a former technical assistance expert of UNCTAD to rescind decisions denying him compensation for injuries sustained as a result of an accident attributable to the performance of official duties.*

*Conclusion of the Advisory Board on Compensation Claims that the Applicant was not engaged in the performance of official duties at the time of the accident.—Recommendation to deny the claim.—Recommendation accepted.*

*Direct submission of the application to the Tribunal under article 7.1 of its statute.*

*Question of the official nature of the travel during which the accident occurred.—Consideration of the circumstances of the case.—The Tribunal regrets that the Advisory Board did not state any grounds for its recommendations to deny the Applicant's claim.—Consideration of the conditions in which the Applicant was called upon to organize his work.—Finding of the Tribunal that the fact that the Applicant carried out his mission on a Saturday does not make it unofficial and that an expert working in the field can hardly be expected to keep strict office hours.—Conclusion of the Tribunal that the accident was attributable to the performance of official duties within the meaning of article 2 (a) and (b) of appendix D to the Staff Rules.*

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\* Reference has been made in the majority judgement to Judgement No. 326 (*Fischman*), a decision made previously during the present session of the Tribunal. This referred to a report of the Fifth Committee, dated 1953 (Doc. A/2615, para. 70), recording a "widely shared view" that "international officials should be true representatives of the culture and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations". Consideration of this view requires caution because the next two paragraphs of the report (paras. 71 and 72) record that two proposals inconsistent with that view were put forward, one by the representative of Czechoslovakia (which was rejected) and the other by the representative of Lebanon (which was accepted by a majority vote). Both proposals were concerned with the quotas to which officials who had broken their ties with their country should be assigned for the purposes of geographical distribution, a question which would have been meaningless if it had been accepted that such officials "no longer fulfilled the conditions governing employment in the United Nations".

*The Tribunal orders the rescinding of the decision and remands the case to the Advisory Board on Compensation Claims to make a recommendation to the Secretary-General.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Endre Ustor, President; Mr. T. Mutuale; Mr. Roger Pinto;

Whereas, at the request of Pierre-Louis Morin, a former technical assistance expert with the United Nations Conference on Trade and Development, hereinafter referred to as UNCTAD, the President of the Tribunal, with the agreement of the Respondent, extended to 9 May 1984 the time-limit for the filing of an application with the Tribunal;

Whereas, on 9 April 1984, the Applicant filed an application the pleas of which read as follows:

“(a) The accident in which I was involved on 27 January 1980 in Rwanda was attributable to the performance of official duties on behalf of the United Nations. . . .

“That is why I am requesting the application of the provisions of Staff Regulation 6.2, which refers to ‘reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the United Nations’, and of Staff Rule 206.5, which refers to the more detailed rules set forth in appendix D to the Staff Rules.

“In order to have a better basis for its decision, the Tribunal might obtain the testimony of Mr. MAMPUYA, at the time an administrative officer with UNDP [the United Nations Development Programme] at Kigali, and of Mr. Marc PAYOT, a United Nations expert with the Ministry of Planning.

“Lastly, it would be useful to request Mr. SENYONI to supplement his initial testimony.

“(b) I request the Tribunal to rescind, in accordance with article 9, paragraph 1, of its Statute, the decisions taken by the Advisory Board on Compensation Claims (ABCC) on 21 October 1980 and sustained on 6 November 1981.

“(c) I request the Tribunal to rescind the decision taken on 24 July 1980 by Dr. DULAC, at the time the Director of the United Nations Medical Service at Geneva. According to his report, ‘the subject’ was able to resume his professional activities as early as 1 June 1980, whereas, according to the attached medical certificates, the reverse was true. I therefore request that the administrative action based on that decision should also be rescinded.

“(d) In accordance with article 9, paragraph 1, of the Statute, I have the honour to request the Tribunal to award me compensation for three years of unemployment in the amount of \$US 63,624.60, which corresponds to the net base salary as at 1 January 1977.

“(e) Lastly, I request the Tribunal to constitute a medical board to determine the after-effects of the accident as now established and the extent of the resulting permanent disability.”

Whereas the Respondent filed his answer on 28 May 1984;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNCTAD on 3 October 1979 as a transport economist under a one-year contract governed by the 200 series of the

Staff Rules; his duty station was Kigali, Rwanda. On Saturday, 26 January 1980, he left Kigali by bus for Byumba, where he stayed overnight. On Sunday, 27 January 1980, in order to return to Kigali, he took a bush taxi, which was involved in an accident on the way. As a result of the accident, the Applicant, who was injured, was unable to resume duty. Around 30 January 1980, the regional project leader, Mr. Simon Thomas, sent the UNDP Resident Representative at Kigali an accident report which read, *inter alia*:

“. . . There is the question as to whether Mr. Morin was undertaking the trip for official or private reasons. This is difficult to answer with any great certainty and it would appear to be that the trip was made for a variety of motives, some personal and others associated with the project. I come to this conclusion after taking into account a number of factors:

“(a) The route via Byumba to the frontier of Uganda should perhaps be the major transit route for Rwanda. For a number of reasons it is not used by heavy commercial vehicles.

“(b) Mr. Morin had never travelled along the road and wished to do so in order to have some knowledge of the problems on the route.

“(c) The route was the subject of a report given to the Secretary-General of Transport the previous week.

“On the other hand:

“(a) Investigating a road is not done best from the back of a Peugeot camionette.

“(b) Mr. Morin could have used the project car, and the trip was made over a weekend with the night being spent at a Mission at Byumba.

“(c) Mr. Morin liked to spend all his weekends outside of Kigali, for personal reasons.

“(d) When the subject of the weekend was raised on the Friday, by Mr. Weiss from Geneva, Mr. Morin said that he was going away for the weekend but made no mention of going on the route to Byumba.

There are thus a number of factors to be considered. It seems probable to me that Mr. Morin decided to go away for personal reasons but chose his destination with some regard to the needs of the project—the transit problems of Rwanda.”

On 13 March 1980, the Resident Representative informed the Expert Servicing Unit that he was “in full agreement with Mr. Thomas’s discerning views on Mr. Morin’s reasons for undertaking the trip”. On 22 April 1980, the Applicant submitted a claim for compensation under Staff Rule 206.5 and appendix D to the Rules. On 17 October 1980, the Advisory Board on Compensation Claims, having found on the evidence submitted no basis to conclude that the claimant was engaged in the performance of official duties on behalf of the Organization at the time of the accident, recommended that the Secretary-General should deny the claim. The recommendation was approved on behalf of the Secretary-General on 21 October 1980. On 27 November 1980, the Applicant requested the Secretary-General to reconsider the decision for the following reasons:

“It appears obvious to me, after going through the dossier submitted to ABCC [the Advisory Board on Compensation Claims] and considering the decision taken, that there has been a procedural irregularity (which makes the decision liable to be rescinded by the Administrative Tribunal).

“The dossier does not contain the crucial testimony of the key witness, Mr. Athanase Senyoni, the Director-General of the Rwandese Department

of Transportation, on whose instructions I undertook the road survey. I have asked him to send his testimony directly to you so that you may quickly take cognizance of it.

“In addition, I have in my possession two reports from the project leader. The first was rather favourable to me, but the Board had before it only the second, which was clearly unfavourable.

“Lastly, I observe that the notification of the Board’s decision fails to state any grounds for the decision.”

On 15 July 1981, the Assistant Secretary-General for Financial Services informed the Applicant that the Advisory Board on Compensation Claims had requested additional information from Rwanda in order to facilitate the reconsideration of the case. On 12 August 1981, the Secretary of the Advisory Board requested the UNDP Resident Representative at Kigali to ask Mr. Senyoni, the Director-General of the Rwandese Department of Transportation, for a written statement as to whether the Applicant’s travel on the Byumba road on 26 and 27 January 1980 had been of an official nature or not. On 26 August 1981, the Office of the Resident Representative replied to her that Mr. Senyoni had had nothing to do regarding the approval of the Applicant’s mission and that it was the expert’s own responsibility to have decided to undertake the trip within the framework of his assignment. On 4 September 1981, Mr. Senyoni sent the following statement to the Secretary of the Advisory Board:

“With reference to the various appeals from the Embassy of France for a statement about the automobile accident in which Mr. Morin, an international civil servant, was involved, I have the honour to confirm that it was decided, during a working session between his project leader, Mr. Thomas, and myself, that Mr. Morin, as part of his mission, should undertake a trip on the Kigali-Gatuna road to evaluate the factors preventing transport vehicles from using that route. We were supposed to go together in an official vehicle.

“But availing himself of another means which I have been unable to identify, Mr. Morin went ahead and met with the unfortunate accident.”

On 3 November 1981, the Advisory Board, having reconsidered the claim for compensation and considered the additional information forwarded by the Applicant, recommended to the Secretary-General that the original decision should be sustained. The recommendation was approved on behalf of the Secretary-General on 6 November 1981. On 29 September 1983, the Applicant was authorized by the Secretary-General to appeal directly to the Tribunal, and, on 9 April 1984, he filed the aforementioned application.

Whereas the Applicant’s principal contentions are:

1. The accident in which the Applicant was involved was attributable to the performance of official duties on behalf of the United Nations. Staff Regulation 1.2 states that “staff members are subject to the authority of the Secretary-General . . . The whole time of staff members shall be at the disposal of the Secretary-General.” The accident occurred during a road survey planned and requested by the Director-General of the Rwandese Department of Transportation, in agreement with the UNDP administrative services.

2. The accident was considered work-related by UNCTAD.

Whereas the Respondent’s principal contentions are:

1. Since the trip, which commenced after office hours on Saturday, 26 January 1980, was not officially authorized, the accident, which occurred on

Sunday, 27 January 1980, was not attributable to the performance of official duties on behalf of the United Nations.

2. In particular, the Applicant's case does not fall within article 2 (b) (iii) of appendix D to the Staff Rules, because the accident was not a direct result of travelling by means of transportation furnished by or at the expense or direction of the United Nations in connection with the performance of official duties.

The Tribunal, having deliberated from 12 to 23 October 1984, now pronounces the following judgement:

I. The Applicant was appointed for one year as a transport economist; his duty station was Kigali, Rwanda. His assignment came under a regional project, with Mr. Simon Thomas as project leader. As part of his assignment—transit problems in Rwanda—the Applicant had decided, in agreement with Mr. Thomas, to carry out a survey of the Kigali-Byumba road leading to the frontier with Uganda. As noted by the project leader in his report of January 1980, that route, which should have been the major transit route for Rwanda, was not used by heavy commercial vehicles.

II. On the afternoon of Friday, 25 January 1980, the Applicant informed Mr. Thomas of his intention to survey the Byumba road the following day, Saturday. On Sunday, 27 January, the Applicant was scheduled to have lunch in Kigali with Mr. Weiss, the representative of the Director of the "Special Programme for Least Developed, Land-locked and Island Developing Countries", who had just arrived from Geneva. According to the instructions received by the Applicant at the start of his assignment, it was to Mr. Weiss that he was supposed to address any correspondence concerning his assignment. It was at the request of Mr. Weiss that the Applicant had left the project car at Mr. Weiss's disposal for the weekend.

III. Mr. Thomas admitted in his aforementioned report that the conversation of Friday, 25 January 1980 had indeed taken place, but, according to him, the Applicant had not said that he would take the Byumba road. Mr. Weiss's testimony is not on file.

IV. The Applicant used the available means of mass or public transport to go to Byumba—a taxi then a bus. The bus, however, instead of taking the new road as expected, went from village to village across the countryside and did not reach Byumba until about 5 p.m. The Applicant then decided to spend the night at Byumba and survey the new road on his return trip the following morning.

V. On Sunday, 27 January 1980, the Applicant used the only available means of transport, a passenger vehicle known as a "bush taxi", to travel along the new road and return to Kigali. The accident occurred on the way.

VI. The Tribunal regrets that no grounds were stated for the two recommendations by the Advisory Board on Compensation Claims to the Secretary-General to deny the Applicant's claim. As indicated by the Secretary of the Local Claims Board in his letter of 28 November 1980, that Board was not advised of the grounds for the first recommendation: "Since I have not been informed of the reasons for the denial, I am requesting the Secretary of the Advisory Board to communicate them to us". Similarly, with regard to the second recommendation, the Advisory Board did not give its views on the information and comments contained in a letter dated 12 October 1981 from the Secretary of the Local Board, which read:

"As stated in our cable, the entire case has been handled very badly by the UNDP office in Kigali. . . . The reports on the accident itself were tendentious and inaccurate. Without all the elements which would have

enabled the Board to present a more favourable recommendation, we are of the opinion that should there be a doubt as to the veracity of the facts as reported by the UNDP, the doubt should benefit the claimant.”

VII. The Tribunal considers that the Applicant, as an expert, was in a position to organize his field work and decide on the surveys to be carried out in Rwanda under his own responsibility and on his own initiative. He enjoyed a certain amount of autonomy with regard to the regional project leader and the Director-General of the Rwandese Department of Transportation. Nevertheless, the Applicant had discussed the survey of the Byumba road both with the project leader and with the Director-General. Both had agreed on the importance of determining and assessing the factors preventing transport vehicles from using the route from Kigali to the frontier with Uganda. The Applicant, who had never travelled on that route, was justified in doing so in order to have an initial understanding of the significant problem which it posed for transit in Rwanda.

VIII. Under his instructions, the Applicant was not required to seek “official authorization”. The Tribunal therefore considers that there is no point in determining whether the Applicant, as he maintains, did indeed inform the regional project leader of his intention to go on a survey mission on the Saturday morning.

IX. The Tribunal considers that it is not relevant to examine all the reasons why the Applicant may have carried out his survey mission on the Saturday morning. It is sufficient to note that one of those reasons was undeniably, as admitted by the regional project leader in his report, to study at first hand the problems posed by the fact that the route between Kigali and the frontier with Uganda was not being used by transport vehicles. Accordingly, the Applicant’s mission was indeed official.

X. In the opinion of the Tribunal, the fact that the Applicant carried out his mission on a Saturday does not make it unofficial. On the one hand, the Tribunal notes that, in Rwanda, UNDP offices are open on Saturday until noon. The Applicant actually began his mission before the offices closed. On the other hand, an expert working in the field, particularly a transport expert, can hardly be expected to keep strict office hours. Lastly, the Applicant had planned to be back in Kigali by Saturday evening; it was circumstances beyond his control—the unexpected itinerary of the bus—which obliged him to wait until the Sunday before starting back and actually travelling on the new road.

XI. Accordingly, the Tribunal decides that the accident was indeed “attributable to the performance of official duties on behalf of the United Nations” within the meaning of article 2 (a) of appendix D to the Staff Rules.

XII. The Tribunal further decides that the accident is covered by the provisions of article 2 (b) of appendix D to the Rules.

XIII. Contrary to the arguments developed by the Respondent, the Tribunal considers that the conditions set forth in subparagraph (iii) of that article have been met. The Applicant did not use a private vehicle, i.e., his own vehicle. If he did not use the only official project car, it was because Mr. Weiss had asked whether the car could be left at his disposal. The Applicant could hardly have denied that request. He used the local means of mass or public transport. Article 2 (b) (iii) does not rule out such use.

XIV. The Respondent does not contend that the accident was due to the wilful misconduct of the Applicant or to any wilful intent on his part. In that

respect too, the Tribunal decides that the accident was attributable to the performance of official duties.

XV. The Applicant requests the Tribunal to rescind Dr. Dulac's "decision" of 24 July 1980 fixing 1 June 1980 as the date on which the Applicant was able to resume his professional activities. It is not for the Tribunal to pronounce on that medical opinion. The Applicant will be able to assert his rights before the Advisory Board on Compensation Claims, to which the case will be remanded in the first instance.

XVI. The same applies to the Applicant's appeal to the Tribunal to constitute a medical board to determine the extent of the permanent disability resulting from the accident, and to his request for compensation for three years of unemployment.

XVII. For the foregoing reasons, the Tribunal rescinds the Secretary-General's decisions of 21 October 1980 and 6 November 1981 denying the Applicant's claim for compensation.

XVIII. The Tribunal remands the case to the Advisory Board on Compensation Claims, which, with the due participation of the Applicant in the procedure, shall make recommendations to the Secretary-General in accordance with article 16 of appendix D to the Staff Rules.

XIX. All other pleas are rejected.

*(Signatures)*

Endre USTOR  
*President*

T. MUTUALE  
*Member*

*New York, 23 October 1984*

Roger PINTO  
*Member*

Jean HARDY  
*Executive Secretary*

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## Judgement No. 335

*(Original: English)*

**Case No. 321:**  
**Shafqat**

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

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*Request by a former technical assistance expert of the United Nations contesting the decision denying him ex gratia payments for the loss of personal and household effects.*

*Conclusion of the Joint Appeals Board that the Applicant had no legal claim against the United Nations for compensation in addition to that paid by the insurance company.—Recommendation to grant the Applicant an ex gratia payment of \$US 1,000 on account of the fact that the relevant rules did not clarify that insurance could be obtained to cover the replacement value of the articles at the place of destination.—Recommendation rejected.*

*Applicant's contention that the Respondent was under an obligation to repatriate safely his goods.—The Tribunal notes that the Applicant's claims are only against the decision of the Respondent not to give effect to the recommendation of the Joint Appeals Board.—The Tribunal*