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

Roger PINTO
Member

T. MUTUALE
Member

Jean HARDY
Executive Secretary

New York, 23 October 1984

Judgement No. 335

(Original: English)

Case No. 321: Shafqat

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

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

holds that it has no competence to give binding force to a recommendation of the Board which would require action by the Respondent which is solely within his discretionary power.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Luis M. de Posadas Montero; Mr. Roger Pinto;

Whereas, on 23 December 1983, Chaudhri Muhammad Shafqat, a former technical assistance expert of the United Nations, filed an application the pleas of which read as follows:

"1. *Decision and claim:* The Applicant contests the UN Secretary-General's decision . . . of 27 September, 1983, rejecting (i) the recommendation of the Joint Appeals Board of 23 May, 1983, awarding him an *ex gratia* payment of $1,000 . . . as well as (ii) the Applicant's claim to *ex gratia* payment by the United Nations, regarding loss at sea of personal and household effect for—

"(*a*) $US 4,705, an amount matching the insurance amount received by him;

"(*b*) interest thereupon from the date of the loss of goods (July, 1978) to the date of payment, because of the negligence of the UN's Representatives at Sanaa (his duty station) to his home in Pakistan with due care and attention, and for failure to invoke and explain the rules as detailed below.

"2. *Obligations*

"(i) The Applicant rests his case principally on the breach by the UN of its obligations to repatriate safely his goods, along with his person and dependants, under-written throughout the Staff Rules, and in Article 5, Section 18 of the Convention on the Privileges and Immunities of the United Nations with which the UN itself obligates its Member-Nations.

"(ii) More specifically the Applicant invokes:

"(*a*) Staff Rule 207.20 (*h*), effective 1.1.1971, to authorize additional excess baggage by air, since made clearer by the new Staff Rule 207.20 (*i*) which came into force after the Applicant's term, and which makes possible the conversion of surface to air freight on the basis of full weight or volume, as stated in para. 26 of the Report of the Joint Appeals Board . . . .

"(*b*) The ambiguous nature of the phrase 'replacement value' as used in 207.21 (*c*) of the Staff Rules and para. 19 of the Administrative Instructions contained in ST/AD/SER.P/46 of 17.6.1976, an ambiguity which the Board by itself could not resolve because of the UN failure to explain the phrase in the Instructions, vide paras. 40-41 of the Report of the Board . . . .";

Whereas the Respondent filed his answer on 30 March 1984;

Whereas the facts in the case are as follows:

The Applicant, a national of Pakistan, was serving as Legal Adviser in the Yemen Arab Republic on a fixed-term appointment under the 200 Series of the Staff Rules since 26 August 1973. On 2 May 1977, in anticipation of his repatriation, he inquired of the Administrative Officer of the Office of Technical Co-operation as to his "entitlement to the amount of baggage by sea and by air". On 18 May 1977 the Administrative Officer replied that the Applicant and his wife were entitled to a total of 1,250 kg of surface shipment

or one-half thereof airfreight; he enclosed in his reply a copy of circular ST/ADM/SER.P/46 on shipping and insurance procedures for shipments of personal effects and household goods. On 22 September 1977 the Applicant wrote again to the Administrative Officer requesting that

> "the following matters may be settled very early:
>
> ". . .
>
> "(2) Travel authorization: 2 tickets . . .; freight packing and the total amount of insurance permissible.
>
> ". . . I shall require insurance in New York: a tentative list is enclosed";

on the enclosed list the Applicant enumerated 30 articles, each with its "Approx. Price in US$ For Ins.", for a total of $5,100. The Travel Authorization, issued on 3 October 1977, indicated that the Applicant was entitled to surface shipment of 1,250 kg or 1/2 airfreight and insurance coverage for $7,000, and specified:

> "United Nations will provide insurance coverage up to the amount of traveller's entitlement indicated above. The traveller must submit an itemized valued inventory for this purpose. Additional coverage may be requested by the traveller at his expense.";

the travel authorization was subsequently amended to allow split shipment (part airfreight and part surface) within the total weight entitlement. On 22 October 1977 the Applicant wrote to the Administrative Officer that he was sending his baggage partly by air and partly by sea; there was a waiting period of 120 days for the sea shipment and there would therefore be a delay in sending the Bill of Lading; however, as the goods were to go from Sana'a to the port of Hodeida by road, insurance prior to the Bill of Lading was essential. On 29 October 1977 the Applicant sent to the Administrative Section of the Office of Technical Co-operation another list broken down according to whether the articles were to be sent by sea or by air and declared a total of $6,700 in replacement cost, of which $4,675 for the sea shipment and $2,035 for the air shipment. The Applicant returned to Pakistan with his wife on 2 November 1977. In a memorandum dated 8 November 1977 the Administrative Officer asked the Traffic Unit to arrange the insurance coverage of the Applicant's personal effects dispatched from Sana'a to Islamabad; he referred to the Travel Authorization and its amendment, noted that the Bill of Lading and the Air Waybill had not yet been received, and enclosed as "itemized valued inventory" the list submitted by the Applicant on 22 September 1977. It appears that shipping insurance was arranged on that basis. On 3 April 1978 the Resident Representative of UNDP in the Yemen Arab Republic wrote to the Administrative Officer asking him to arrange insurance coverage for the Applicant's personal effects (sea shipment only) and transmitting copies of the Bill of Lading and of the Air Waybill; the Bill of Lading provided for trans-shipment at Bombay of the Applicant's goods while on their way from Hodeida to Lahore. On 31 August 1978 the Applicant transmitted to the Administrative Officer a copy of a letter from a shipping company advising him that their ship, the M.V. Vrinda III, on which the Applicant's goods had been trans-shipped at Bombay, had run aground and been abandoned by its owners; he felt that his baggage had to be written off and that its full cost, including replacement cost, should be realized from the United Nations insurer and remitted to him. On 7 October 1978 the Applicant informed the Administrative Officer that the insurers of the M.V. Vrinda III had disclaimed liability and requested early settlement of his claim from the

United Nations insurers; he also asked for compensation from the United Nations on the following grounds:

> "The position is that I have to purchase the articles locally urgently and for that early settlement is necessary. These articles can be locally purchased, or imported against foreign currency, only on payment of heavy customs duty which runs up to 250%. Further, there were a number of items in my baggage which had not high insurance value, but were of great personal value. Lastly, there was material therein for the writing of books which has now been lost and can only be re-built at great cost, labour and time. Consequently, I claim both insurance and compensation. I may add that total loss is a rare event."

On 1 March 1979 the Applicant returned to the Traffic Unit, at its request, a copy of his inventory list of 22 September 1977 indicating which items had gone by air and which by sea. The "approximate price" of the items which had gone by sea amounted to a total of $4,705 and the Traffic Unit accordingly sent to the Applicant a check in that amount issued by the insurance company in final payment for the non-delivery of his shipment. On 6 May and 27 July 1980 the Applicant wrote to the Administrative Section expressing dissatisfaction with the insurance settlement and asking for compensation in addition to insurance. On 20 August 1980 the Administrative Section replied that the settlement of $4,705 made by the insurance company was in accordance with the full insured value of his shipment, that if his personal effects were of more value he should have indicated their "real value" on the inventory list, that the insurance company was only liable for the values as presented on the valued inventory list, and that consequently there was no sufficient justification to consider a separate additional settlement from the United Nations. On 9 September 1980 the Applicant requested reconsideration of the matter. On 9 October 1980 his request was referred "for evaluation and decision" to the Secretary of the Claims Board who, on 27 April 1981, advised the Administrative Section that, in the opinion of the Claims Board, the amount of $4,705 already awarded by the insurance company was sufficient compensation. On 18 May 1981 the Applicant was informed accordingly and on 29 July 1981 he lodged an appeal with the Joint Appeals Board, which submitted its report on 23 May 1983. The Board's conclusions and recommendations read as follows:

> "*Conclusions and recommendations:*
>
> "43. The Board concludes that in accordance with the relevant Staff Rule, the appellant had no legal claim on the United Nations for compensation in addition to that paid him by the insurance company.
>
> "44. The Board concludes that, in order to apprise staff members of an option open to them but of which many of them would otherwise not be aware, the relevant staff rule or the administrative instruction issued under it should make clear that insurance coverage can be obtained which will compensate staff members in case of loss of their shipments for the replacement value of the articles concerned at the place of destination even if this value is much higher than the replacement value of these articles at the place where they were acquired.
>
> "45. The Board concludes that in the absence of such clarification the United Nations is under a moral obligation to provide some relief to the appellant for the loss he suffered as a result of the fact that, while he had acted reasonably in insuring his shipment at the replacement value in the

YAR, his insurance fell short of the value attaching in Pakistan to the articles contained in his lost shipment.

"4[6]. The Board therefore recommends:

"(*a*) that the Staff Rule on insurance of shipments or the related Administrative Instructions be clarified or amplified as indicated in paragraph 44; and

"(*b*) that the appellant be awarded an *ex gratia* payment in the amount of $1,000."

On 27 September 1983 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General, having re-examined the case in the light of the Board's report, had decided to maintain the contested decision and not to accept the Board's recommendations for an *ex gratia* payment; he added that the Secretary-General's decision not to follow the Board's recommendation for an *ex gratia* payment was based on his conclusion that, in the circumstances as found by the Board, payment was not warranted. On 23 December 1983 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. As Sana'a is a hardship station and the difficulties of shipment by sea were patent to the UNDP at Sana'a, the United Nations should have converted the entire shipment into air freight.

2. The omission to book the goods to Karachi directly was due to lack of care by the United Nations.

3. The "replacement value" is ambiguous and the failure to define it precisely obligates the United Nations to make a suitable *ex gratia* compensation to the Applicant.

4. The "replacement value" as understood by the Traffic Unit, namely that it is for the staff member to determine whether he wishes to insure the goods against possible loss or damage based on the replacement value at the place of acquisition or at the place of destination, was neither moral nor practicable.

Whereas the Respondent's principal contentions are:

1. The United Nations does not undertake to safeguard the shipment of staff members' effects by providing or arranging for insurance in accordance with Staff Rule 207.21 (*b*) and Administrative Instruction ST/AI/238 and therefore has no legal obligation to compensate the Applicant for loss of such personal effects.

2. There was no moral obligation such as to make an *ex gratia* payment desirable in the interest of the Organization. The Respondent decided that such a payment was not warranted particularly since the Applicant was made fully aware of his own insurance coverage possibilities.

The Tribunal, having deliberated from 8 to 23 October 1984, now pronounces the following judgement:

I. Although the Applicant refers to an "obligation" of the United Nations "to repatriate safely his goods", his claims are only against the decision of the Respondent not to give effect to a so-called "award" by the Joint Appeals Board of an *ex gratia* payment of $1,000, and not to make an additional *ex gratia* payment in respect of the loss at sea of the Applicant's personal and household effects, together with interest on the amount of that payment. The Tribunal

therefore does not need to examine the merits of the question whether there has been a breach of any obligation of the United Nations.

II. The Tribunal cannot, within its competence under its Statute, give binding force to a recommendation of the Joint Appeals Board which would require action by the Respondent which is solely within his discretionary power (Judgement No. 123 (*Roy*), para. I).

III. The Tribunal likewise cannot order the making by the Respondent of the additional *ex gratia* payment referred to in paragraph I above.

IV. For this reason, the Applicant's pleas are rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

Roger PINTO
Member

Luis M. de POSADAS MONTERO
Member

Jean HARDY
Executive-Secretary

New York, 23 October 1984

Judgement No. 336

(Original: English)

Case No. 323:
Maqueda Sánchez

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

Request by a former staff member of the United Nations Centre for Human Settlements to find that there was a non-observance of her contract of employment and to order various corrective actions, in particular reclassification.

Conclusion of the Joint Appeals Board that there was no non-observance of the terms of appointment and no discrimination or unfair treatment, that the Applicant did not acquire any entitlement to a special post allowance and that she had no case for reinstatement.—Recommendation to reject the application.

Applicant's challenge of the impartiality of the Joint Appeals Board.—Finding of the Tribunal that the Applicant produced no evidence of prejudice on the part of the Board.—Applicant's plea that the Respondent failed to observe her terms of appointment.—Consideration of the circumstances of the Applicant's recruitment.—Finding of the Tribunal that the Applicant voluntarily accepted the offer of employment made to her.—Applicant's plea that she was wrongly denied a special post allowance.—Application of staff rule 103.11 (a).—The Tribunal finds no evidence of prejudice or of violation of staff rules in the refusal to grant the allowance in this case.

Applicant's request to order the Secretary-General to revive a settlement offer which was made to her.—The Tribunal holds that it is not involved in settlement negotiations between the parties to a case before it and that, where a settlement has not been mutually agreed upon, questions concerning the desirability of settlement, its possible terms and changes of positions do not warrant judicial review.

Application rejected.
