

Judgement No. 339

*(Original: English)***Case No. 326:
Rau****Against: The Secretary-General
of the United Nations**

Request by a former staff member of UNIDO for renewal of his fixed-term contract and for a permanent or long-term appointment; request for compensation for damage to his personal and professional reputation and for the fact that he was assigned to inappropriate functions.

Conclusion of the Joint Appeals Board that there was no intention of the parties to enter into a contract granting the Applicant a permanent post, that the Applicant did not have any expectancy of renewal and that the contested decision was properly taken.—Recommendation to reject the Applicant's claims.

Applicant's plea that he was entitled to expect a "permanent or long-term appointment".—Consideration of the circumstances of the Applicant's recruitment.—Respondent undertook to submit to the Appointment and Promotion Board a recommendation for an extension of the Applicant's appointment, subject to satisfactory services.—Interpretation of the concept of "satisfactory service".—Tribunal's finding that in assessing that the Applicant did not fulfil the condition of satisfactory service the Respondent acted reasonably and in good faith.—Jurisprudence of the Tribunal in Judgement No. 219 (Pochonet) that the award of salary increments does not show that the Respondent recognized the Applicant's service as satisfactory.—Applicant's contention that the decision not to renew his appointment was unjust.—Conclusion of the Tribunal that the decision was not vitiated.—All requests for compensation rejected.—Applicant's request for compensation for damage on account of damaging materials placed in his personnel file.—The Tribunal notes that the Respondent is prepared to consider the Applicant's request for the removal of such material.—Any claim for damages can only be considered after the Applicant has made such request.—Applicant's contention that he was assigned to inappropriate functions.—Finding of the Tribunal that the Respondent's discretion under staff regulation 1.2 was not vitiated.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. T. Mutuale;
Mr. Luis de Posadas Montero;

Whereas, at the request of Mira Rau, a former staff member of the United Nations Industrial Development Organization, hereinafter referred to as UNIDO, the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for filing an application successively to 30 September 1983, 24 October 1983 and 7 November 1983;

Whereas, on 7 November 1983, the Applicant filed an application which the Executive Secretary returned to him for correction since it did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 7 February 1984, the Applicant filed a corrected application in which he requested the Tribunal:

“to permit Counsel for the Appellant to make oral submissions and for that purpose to have oral hearings in the consideration of this application”;

Whereas on 3 October 1984 the presiding member ruled that no oral proceedings would be held in the case;

Whereas, in the corrected application the Applicant requested the Tribunal:

“. . . to determine that:

“(a) the Appellant was entitled to a further contract of service upon the expiry of the Fixed-Term contracts;

“(b) that the Appellant was entitled to a permanence or long-term employment in accordance with the arrangements and the assurances which were subject to conditions to be fulfilled and which were in fact fulfilled;

“(c) that the Appellant is entitled to damages for breach of contract in the amount of the salary and allowances he would have received between the date of separation of service up to the age of retirement;

“(d) that the Appellant is entitled in pension fund contributions for the same period of time as referred to in item (c) above;

“(e) that the Appellant is entitled to compensation for damage to his personal and professional reputation on account of the damaging material placed in his personnel file;

“(f) that the Appellant is entitled to compensation for damage to his personal and professional reputation caused by the communication of reports and assessments of his work to prospective employers in the private sector and in other international agencies and organs or sections of the United Nations;

“(g) that the Appellant is entitled to damages for the moral wrong and injustice done to him by the failure to assign him to an appropriate post suitable to his qualifications and experience;

“(h) that the Appellant is entitled to specific performance of the contractual undertaking made to him and the continuation of his services and alternatively, to compensation therefor;

“(i) that the Appellant is entitled to compensation for the damage caused to his career development as a result of his premature separation from service;

“(j) that the Appellant is entitled to compensation for the damage caused to his career development as a result of his being assigned to inappropriate functions;

“(k) that the Appellant is entitled to compensation for the damage caused by the loss of his medical insurance coverage upon his separation from service while the expectancy of employment continued;

“(l) that the Appellant is entitled to reimbursement of the expenses incurred in preparation and presentation of the appeal, *inter alia*, on account of the fact that the Appellant was compelled to return to New York upon separation from service and to obtain the advice and assistance of Counsel from New York to prosecute his appeal;

“(m) that all damaging and detrimental documentation and correspondence be removed from the Appellant's Personnel File;

“. . . to require the Respondent to:

“(a) comply with the determination as requested above, and

“(b) make payment to the Appellant of such sums as damages and/or compensation as may seem appropriate in the circumstances, and

“(c) for such other and further relief as they may deem appropriate.”

Whereas the Respondent filed his answer on 14 June 1984;

Whereas the Applicant filed written observations on 9 October 1984 in which he reiterated his request for oral proceedings;

Whereas on 18 October 1984 and 22 October 1984 the Applicant submitted additional information;

Whereas on 22 October 1984 the Respondent submitted his comments;

Whereas on 22 October 1984 the Tribunal reiterated its decision that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 20 October 1965, as an Economic Affairs Officer at the Centre for Industrial Development and then as an Industrial Development Officer at the Technical Co-operation Liaison Division of UNIDO at Headquarters. His initial three-month “temporary appointment for a short-term” was successfully extended for further fixed-terms until 30 September 1967 when he re-entered private practice in his field as a mechanical engineer.

Between July 1971 and October 1976, the Applicant re-applied for a series of posts at UNIDO. On 21 December 1976 a Recruitment Officer at Personnel Services Section in UNIDO, Vienna, informed the Applicant in writing that he had been “selected” to fill a vacant post as an Industrial Development Officer at the P-4 level in the Development and Transfer of Technology Section. Although the Applicant accepted the offer in a letter dated 29 December 1976, on 10 February 1977 the Recruitment Officer notified him that “following an internal reorganization in the International Centre for Industrial Studies [ICIS], it [had] been decided to fill the post in question by transfer of a staff member . . .” and consequently, procedures to recruit him had been discontinued. During March and May of 1977, the Applicant applied for a series of positions with UNIDO.

In the meantime, there was an exchange of correspondence between the Executive Secretary of the Economic Commission for Europe, hereinafter referred to as ECE, and the Executive Director of UNIDO related to two professional posts to be located in the office of the Director of ICIS in Vienna, in order to harmonize studies and research activities in the field of industry between UNIDO and ECE. On 13 May 1977 the Executive Director of UNIDO notified the Executive Secretary of ECE that the Applicant had been selected for one of the posts, and that appropriate personnel action was being implemented to secure his services.

On 17 June 1977 the Chief of Secretariat Recruitment at UNIDO offered the Applicant an eleven-month fixed-term appointment at the P-4, step VI level, as an Industrial Development Officer, in the Office of the Director of ICIS. The letter read in part as follows:

“. . . Please note that this offer of appointment does not carry any expectation of an extension or of another appointment. However, subject to satisfactory services, UNIDO will be prepared to submit—as a separate exercise—a recommendation to the Appointment and Promotion Review Bodies at the United Nations Headquarters for your recruitment on a regular appointment. The decision of those review bodies shall be final. If

that appointment is approved, your contractual status will be amended accordingly with effect from a date to be decided by the Organization.

“We hope that you will accept this offer of appointment and would appreciate receiving your written acceptance . . .”

In a letter dated 27 June 1977, the Applicant accepted the offer and also requested the Chief of Secretariat Recruitment to “. . . consider processing [his] case straight away for a longer term appointment by placing [his] candidacy before the Appointment and Promotion Board, if necessary . . .” and to grant him a higher step at the P-4 level.

On 4 July 1977 the Chief of Secretariat Recruitment at UNIDO informed the Applicant that although he fully understood his considerations, a candidacy for a regular appointment would take a long time to process. Since the Applicant’s medical and United States clearances had been received, the Applicant could report to duty immediately and therefore a definite acceptance of the offer of employment was required. On 20 July 1977 the Applicant cabled his acceptance of UNIDO’s offer as follows:

“accept your offer on understanding processing case through review bodies for regular appointment my discussions with hq [headquarters] indicate favorable and good response will report in 2nd week august.”

On 31 August 1977 the Applicant signed an eleven-month fixed-term appointment due to expire on 27 July 1978.

On 3 March 1978 the Chief of Secretariat Recruitment at UNIDO submitted a recommendation to the Appointment and Promotion Committee to grant the Applicant a two-year fixed-term appointment for a vacant P-4 post in the Office of the Director of ICIS related to ECE. The recommendation stated that “in view of the urgent need to fill the post in question, Mr. Rau was recruited on an eleven-month fixed-term appointment pending normal recruitment procedures”. According to the Chief of Secretariat Recruitment, when the Committee considered the recommendation and examined the Applicant’s qualifications in relation to the particular types of expertise required by ECE, it concluded that the Applicant, while possessing suitable qualifications in his field which were relevant to UNIDO’s work, did not meet the immediate needs specifically indicated by ECE. The Committee, however, recommended the Applicant’s appointment and requested that the Director of ICIS be advised that the Applicant “should be deployed in ICIS in accordance with [his] qualifications and experience, and not necessarily for liaison with ECE. . . .” The Applicant was subsequently granted on 1 June 1978 a two-year fixed-term appointment due to expire on 31 May 1980 which stated: “This Letter of Appointment cancels and supersedes the unserved portion of [the Applicant’s] previous fixed-term appointment.”

On 13 July 1978 a Personnel Officer requested the Director of ICIS to prepare a performance evaluation report on the Applicant to cover his period of service from 28 August 1977 to 15 July 1978. The report was finalized on 25 January 1979 and signed by the Executive Director on 5 February 1979. The Applicant’s overall performance was rated as “a performance that does not fully meet standards. His professional/technical competence, his initiative, his punctuality, and his written and oral expression were rated as “adequate”. The quality and quantity of work accomplished by the Applicant, his speed of work, his work relationships, his ability to work independently, his planning and organization of work and his skill in producing a solution were rated as “somewhat below standard”. The report was submitted to the Applicant who

according to notes for the file dated 13 March 1979 and 8 June 1979, refused to sign it until 25 June 1979.

On 18 July 1979 the Applicant submitted a rebuttal to his performance evaluation report. A panel to investigate the case and advise the Executive Director was set up in accordance with the procedures set forth in Administrative Instruction ST/AI/240 of 3 January 1977.

On 19 September 1979 the Officer-in-charge of Personnel Administration at UNIDO requested the Director of the ICIS to submit a recommendation with regard to the extension of the Applicant's fixed-term appointment or its conversion to a probationary appointment in order to discuss the recommendation with the Executive Director of UNIDO. The decision not to extend the Applicant's appointment was communicated on 11 October 1979 by the Officer-in-charge of Personnel Administration at UNIDO to the Chief of Staff Services at Headquarters as follows:

"In the cases of . . . Mira RAU . . . , the Executive Director has endorsed the Divisional recommendations not to extend the staff members' appointments beyond the expiry date as their performance did not meet the expectation of the Organization."

In addition, on 1 November 1979, the Director of ICIS recommended that the Applicant's within-grade salary increment, due 1 August 1979 be withheld pending the outcome of the rebuttal procedures and the Executive Director's determination thereof. In a memorandum dated 23 November 1979 the Applicant submitted a rebuttal to this decision as well.

The Panel of Investigation that had been constituted to consider the Applicant's rebuttals submitted a report on 20 March 1980. The Panel recommended that several of the ratings in the report be upgraded. In addition, its unanimous conclusions read as follows:

"(a) Mr. Rau was originally recruited for a post not in line with his experience and qualifications. Although he did not, in fact, take up this post . . . , he was never provided with an alternative assignment that was in line with his professional background;

"(b) Out of frustration he began to look for tasks outside the ICIS and, to avoid remaining idle, he took up an assignment, the cement study, for which his qualifications were not appropriate;

"(c) Mr. Rau did not receive the detailed supervision necessary if he was to carry out the cement study satisfactorily and expeditiously.

"We feel that to a great extent Mr. Rau's placement and supervision were matters beyond his control and that he should not be penalized for the Organization's inability to use him in a field where his experience could have been more suitable."

The Panel also recommended that the Applicant's within-grade salary increment be paid on the ground that the brief time which the Applicant had spent on a study on capital goods should not be allowed to influence the question of his overall performance.

On 25 March 1980 the Chief of Personnel Administration at UNIDO transmitted to the Executive Director of UNIDO, for his information, copies of the Applicant's performance evaluation report, his two rebuttals and the reports from the Panel of Investigation thereon. In addition, the Chief of Personnel Administration commented:

“4. On behalf of Personnel Administration, I would only comment that we are not entirely convinced that Mr. Rau has provided an adequate performance. It has been suggested by knowledgeable colleagues that he could develop some kind of usefulness if employed at the plant level, but he is certainly not of P-4 calibre. We do not wish to affect his future career outside UNIDO with too bad a report but feel that the panel’s recommendations to up-grade his ratings to a point at which he can be granted his within-grade salary increment were based more on compassionate reasons than on the substance of the work which he carried out. We recognize, of course, that Personnel Administration cannot over-rule a panel’s report and would agree, with some reluctance, to the implementation of the panel’s findings.

“5. It would be appreciated if you could kindly provide an appraisal in respect of each rebuttal. Mr. Rau will receive copies of the two appraisals and the originals will be filed with his performance evaluation report and rebuttal in his Official Status File. A suitable note will be made on his Fact Sheet.”

In memorandums dated 8 April 1980 addressed to the Chief of Personnel Administration, the Executive Director decided to accept the Panel’s recommendations to upgrade a number of the Applicant’s ratings and change the comments thereon and to rate his overall performance as an “adequate” performance. The Executive Director also decided that the Applicant should receive the within-grade salary increment due in August 1979. The Executive Director’s decisions were communicated to the Applicant on 9 April 1980.

On 17 April 1980 the Applicant asked the Executive Director to review the decision taken by UNIDO not to extend his appointment. Subsequently, on 21 May 1980, the Applicant transmitted to the Executive Director of UNIDO a copy of an application he had submitted for other posts at UNIDO and requested him to extend his contract for a further six months, particularly in the light of a request that had been made for the Applicant’s services by the Chief of the Industrial Information Section on 17 April 1980.

The Applicant’s appointment was finally extended for a fixed-term of “twenty days (i.e. 15 working days)” until 20 June 1980. On 10 July 1980, in the absence of an answer from the Executive Director, the Applicant asked the Head of Personnel Services Section at UNIDO whether the Executive Director, who was considering his contractual status had taken a decision, and if so, what was the decision. On 21 July 1980 the Head of Personnel Services Section addressed a letter to the Applicant that stated in part:

“This is to confirm the decision taken by the Executive Director to the effect that it was not possible to extend your fixed-term contract. This decision was communicated to you by Mr. Poole, Chief, Secretariat Recruitment and Mrs. Salburg, your Personnel Officer, on several occasions.

“As you know an extension of 15 working days was subsequently approved to enable you to proceed on sick leave with full pay in accordance with a recommendation by the Head of the Joint Medical Service”.

On 25 August 1980 the Applicant requested the Secretary-General to review the administrative decision of 21 July 1980. On 17 October 1980, having received no answer from the Secretary-General, the Applicant lodged an appeal with the UNIDO Joint Appeals Board. The Joint Appeals Board submitted its

report on 30 December 1982. The Board's conclusions and recommendations read as follows:

“Conclusions and Recommendations

“46. As stated earlier in paragraph 34 above, the Board is of the view that the question as to the effect of the correspondence between the appellant and Ms. Rollet [Recruitment Officer, UNIDO] is not a matter which requires determination by the Board in the present case; the relations of the parties were regulated by a contractual agreement which superseded whatever could have been agreed upon by the parties.

“47. The Board finds that the correspondence between the appellant and Mr. Eggough [Chief of Secretariat Recruitment at UNIDO] resulted in a contractual undertaking by the Organization which was fulfilled by the giving of a fixed-term contract signed by the appellant on 21 June 1978. There is no documented evidence that the intention of the parties was to enter into a contract granting the appellant a permanent post.

“48. The Board further finds that the circumstances and the correspondence relating to this contract could not reasonably have created an expectation in the appellant, a former employee of the UN who must be taken to be familiar with UN recruitment procedures, that established a right to renewal or extension of the fixed-term contract.

“49. Whilst the Board is of the view that an adequate rating of performance does not automatically exclude the renewal of a fixed-term contract, the Board is of the view that there is no evidence that the non-renewal of the appellant's fixed-term contract was improperly decided; the respondent had sufficient time and basis to determine the suitability of the appellant for another fixed-term contract; there is no evidence that there were any improper motives or extraneous factors in deciding not to renew the appellant's contract.

“50. In view of the Board's findings and conclusions in paragraphs 46-49 above, the appellant's claims for compensation for damages suffered are rejected by the Board and consequently no question of assessment of damages arises.

“51. Regarding the appellant's claim for expenses incurred in the preparation and presentation of his appeal, the Board observes that the appellant could have availed himself of the assistance of a member of the panel of counsel at Vienna but chose to secure the services of counsel at Headquarters; the Board further observes that in authorizing counsel to assist the appellant as part of his official duties, Personnel Services informed counsel that any travel he might undertake in connexion with this appeal would be at his own expense and that the Organization assumes no financial responsibility for such expenses. The Board makes no recommendation in this matter.

“52. Concerning the appellant's request that all damages and detrimental documentation and correspondence be removed from his file, the Board does not see any ground for making such a recommendation even if it were within its competence so to decide.

“53. The Board deems it necessary to draw the attention of the Administration to a number of unsatisfactory features of this case:

“(a) The use of language in letters and other communications to candidates for posts in the Secretariat which might lead to wrong

assumptions and understanding by candidates unfamiliar with UN procedures. This also applies to the use of the term 'regular appointment' by Personnel Services which was such as could possibly cause confusion in the mind of potential candidates for posts in the Secretariat;

“(b) The recommendation by Personnel Services for a two-year fixed-term appointment on behalf of the ICIS although there was no evidence of any consultation with the Section and there is no record of such a recommendation by the substantive section;

“(c) The approval of a two-year fixed-term contract for the appellant without any further assessment or report, even though the appellant had held an eleven-month fixed-term appointment prior to the two-year contract;

“(d) The approval of a two-year fixed-term appointment by the Appointment and Promotion Committee, even though the Committee had serious doubts about the suitability of the candidate for the post for which he was being considered and suggested that he be deployed in accordance with his qualifications and experience, but not necessarily for the post he was being considered for;

“(e) Insufficient supervision of the appellant's work during his employment with the Organization;

“(f) The attempt by Personnel Services to interpret the report of a Rebuttal Panel to the detriment of the staff member concerned. The Board would recommend that in all cases, the report of a Rebuttal Panel should be allowed to speak for itself; and

“(g) The apparent involvement of a number of senior officials whose support the appellant sought in a recruitment process which should exclusively be the responsibility of Personnel Services.”

On 11 May 1983 the Assistant Secretary-General for Personnel Services informed the Applicant that:

“Having re-examined [his] case in light of the Board's report, the Secretary-General [had] decided to maintain the decision contested by [him] and to take no further action on [the] case.”

On 7 November 1983 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Joint Appeals Board failed to properly conclude that the Respondent's offer of employment contained language that created a definite and established expectancy of the conversion of the Applicant's appointment to a probationary appointment or to another fixed-term appointment for a longer period of time and that the Respondent did not review the Applicant's contractual status after the performance evaluation report was upgraded.

2. The applicant was denied a fair hearing of his appeal before the Joint Appeals Board. The Applicant was denied the opportunity to rebut or counter the case presented by the Respondent.

3. The Joint Appeals Board did not consider vital testimonial evidence presented by the Applicant.

4. That Applicant was denied due process of law when the Joint Appeals Board excluded both the Applicant and his counsel from the *in camera* interview of one of the Applicant's witnesses.

Whereas the Respondent's principal contentions are:

1. The Joint Appeals Board considered all evidence and gave the Applicant a fair and adequate opportunity to present his case and to comment on the Respondent's answer. Consequently, the decision of the Secretary-General to maintain his decision after review of all the facts, including taking note of the Joint Appeals Board report, does not infringe the right of the Applicant to a fair hearing of his case.

2. A fixed-term appointment does not carry any expectancy of renewal or conversion to any other type of appointment. Since no legal expectancy was created by the conduct of the Respondent, the non-renewal of the Applicant's appointment did not violate the Applicant's rights.

3. No rights of the Applicant were violated as a result of his assignment.

The Tribunal, having deliberated from 15 October to 1 November 1984 now pronounces the following judgement.

I. The Applicant contests the decision taken by the Administration not to extend his fixed-term appointment. He requests a "permanence or long-term appointment" and in support of his case he invokes the letter dated 17 June 1977 signed on behalf of the Secretary-General. In that letter, the Chief of Secretariat Recruitment at UNIDO offered the Applicant an eleven-month fixed-term appointment and explained to him its terms with regard to his future prospects of employment on its expiry. The letter stated in part:

" . . . Please note that this offer of appointment does not carry any expectation of an extension or of another appointment. However, subject to satisfactory services, UNIDO will be prepared to submit—as a separate exercise—a recommendation to the Appointment and Promotion Review Bodies at the United Nations Headquarters for your recruitment on a regular appointment. The decision of those review bodies shall be final. If that appointment is approved, your contractual status will be amended accordingly with effect from a date to be decided by the Organization.

"We hope that you will accept this offer of appointment and would appreciate receiving your written acceptance . . ."

The Applicant accepted the offer in a letter dated 27 June 1977, which he summarized in these terms:

"Summing up, I wish to state that I accept your offer of appointment and request that my plea for a longer-term be considered favourably, including an appropriate step at the P-4 level."

II. The Tribunal concludes from the terms of the letter of 27 June 1977 that the Administration did not undertake to grant the Applicant a new appointment on the expiry of the eleven-month appointment, but rather to submit "a recommendation to the Appointment and Promotion Review Bodies at the United Nations Headquarters" for the Applicant's "recruitment on a regular appointment subject to satisfactory services". The Administration thus gave an undertaking only on that condition and even then, the undertaking was "to submit—as a separate exercise—" a recommendation to the appropriate bodies but did not guarantee its results, the ultimate decision resting with the Secretary-General.

III. With regard to that condition, the Tribunal observes that the Applicant's performance evaluation report covering his period of service from 28 August 1977 to 15 July 1978 originally contained the overall rating: "A performance that does not fully meet standards". Following rebuttal proceed-

ings initiated by the Applicant on 18 July 1979, the report was revised and the Applicant's overall performance was rated as "adequate".

IV. The Tribunal observes that the condition in question refers to "satisfactory services", which cannot be interpreted by reference to the ratings used at the time in performance evaluation reports ("Outstanding; Very Good; Adequate; Somewhat below standard; Poor"). Accordingly, the Tribunal must interpret "satisfactory services" in the context in which it was used, as best it can.

V. The Tribunal holds that in this context, having regard to all the circumstances of the case, the Respondent, in deciding that the Applicant's fixed-term appointment which expired on 31 May 1980 should not be extended, acted reasonably and in good faith and within his power of appraisal. The Executive Director of UNIDO accepted the Panel of Investigation's recommendations to upgrade the performance evaluation report on 8 April 1980 and allowed the Applicant's fixed-term appointment to expire on 31 May 1980. This sequence of events shows that he evidently did not consider the upgraded report sufficient to meet the condition of "satisfactory services". In so doing he acted reasonably and in good faith. The upgraded report consisted of ten C (adequate) ratings, together with one B (very good) and one D (somewhat below standard), the latter being of great importance: "Skill in producing a solution (ability to identify problems, power of analysis and soundness of recommendations and decisions)". The Tribunal therefore holds that the Executive Director validly exercised his discretionary power of appraisal (Judgement No. 219, *Pochonet*, 1977).

VI. The Panel of Investigation which considered the Applicant's rebuttal of his performance evaluation report recommended unanimously that his within-grade salary increment, which had been withheld on account of that report, should be paid on the ground that the brief time which the Applicant had spent on a study on capital goods should not be allowed to influence the question of his overall performance. The award of salary increments cannot, however, be taken to show that the Respondent recognized that the performance of the Applicant was satisfactory until that time (Judgement No. 219, *Pochonet*, para. VII, 1977).

VII. In the light of the foregoing, the Tribunal can only conclude that the condition of the offer of appointment was not fulfilled and the Administration was thus relieved of its commitment; the Applicant was no longer entitled to base his expectations of a new contract—"permanence or long-term"—on the terms of the offer.

VIII. The Tribunal notes that when the Respondent submitted a recommendation to the Appointment and Promotion Committee on 3 March 1978 to grant the Applicant a two-year fixed-term appointment, the Administration did not rely on a performance evaluation report.

While this may have been a departure from the usual practice, in the Tribunal's view the Applicant cannot complain since he benefited by obtaining employment for a longer period of time. The Tribunal further notes that the second fixed-term appointment granted to the Applicant included the usual provision that fixed-term appointments do "not carry any expectancy of renewal or conversion to another type of appointment".

IX. The Tribunal does not interpret this extension as a waiver of the condition of satisfactory services.

X. The Applicant contends that the decision not to renew his appointment on the expiry of his two-year fixed-term appointment is unjust because it was based on an "invalid" performance evaluation report. In this connection, the Tribunal notes that as stated in para. V the decision in question was in fact maintained by the Executive Director of UNIDO after he himself had upgraded the performance evaluation report.

XI. The Tribunal therefore decides that the Applicant's separation from service—which occurred on the date specified in his letter of appointment—taking into account 20 days' leave to which he was entitled—was lawful; and the decision not to extend his appointment was not vitiated.

XII. In the light of the foregoing all requests for compensation that the Applicant has submitted in connection with his claim to be retained in the services of the Organization have no basis in law.

XIII. The Applicant requests "compensation for damage to his personal and professional reputation on account of the damaging material placed in his personnel file". The Tribunal limits itself at this stage to noting the Respondent's statement that he is prepared to consider the request for removal of such material from the file, provided that the Applicant specifies which documents are "damaging and detrimental". It is incumbent on the Applicant to do so, after which the Tribunal will be in a position to consider the claim for damages in this connection.

XIV. The Applicant contends that his career development was damaged as a result of his being assigned to inappropriate functions and he requests compensation. The Tribunal notes that according to staff regulation 1.2, the Secretary-General is empowered to assign staff members to any of the activities or offices of the United Nations. The Applicant has not shown that the Respondent exercised this discretion in a manner vitiated by prejudice or other improper motives.

XV. All other pleas of the Applicant are rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

T. MUTUALE
Member

1 November 1984

Luis de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Acting Executive Secretary
