

V. In the circumstances, the Applicant is entitled to compensation which the Tribunal assesses at \$US 4,000. This amount is to be paid to him by the Respondent.

VI. Subject to the above, all other pleas are rejected.

(Signatures)

Samar SEN
Vice-President, presiding
 Herbert REIS
Member
 New York, 2 November 1984

Luis de POSADAS MONTERO
Member
 R. Maria VICIEN-MILBURN
Acting Executive Secretary

Judgement No. 342

(Original: English)

Case No. 345:
 Gomez

Against: The Secretary-General
 of the United Nations

Request by a staff member of the United Nations to find that the Respondent erred in not recommending her for promotion under the procedure for promotion from the General Service to the Professional category in force before the changes subsequent to General Assembly resolution 33/143; request for granting a special post allowance and for compensation for injuries sustained.

Conclusion of the Joint Appeals Board that the Applicant did not have an acquired right to promotion under the system existing prior to General Assembly resolution 33/143.—Recommendation to reject the Applicant's claims.—Recommendation to grant her a sum equivalent to three months' net base salary as compensation for the anxiety which the situation caused her.—Recommendation rejected.

Question of the Administration's responsibility for not assigning the Applicant to a Professional post and not providing suitable training for her.—Consideration of the circumstances of the case.—Conclusion that there was no legal responsibility on the part of the Administration.—Nature of the memorandum by which the Applicant was assigned on a trial basis to the Dag Hammarskjöld Library.—The Tribunal observes that, as a general rule, the Organization does not enter into legally binding contractual arrangements for the career development of its staff.—Question of the application to the Applicant of the procedure for promotion from the General Service to the Professional category established pursuant to General Assembly resolution 33/143.—Conclusion that Judgement No. 266 (Capio) is not relevant to the present case.—Applicant's contention that the new policy should not have been applied to her case.—Contention rejected.—The Tribunal reiterates its rejection, as in Judgement No. 311 (Schurz), of the theory that staff members who were "collateral" to, or on a level with or superior to, staff members recommended for promotion before the introduction of the new policy should be regarded as having an acquired right to be considered for promotion.—Applicant's claim that she was entitled to a special post allowance under staff rule 103.11 (b).—The Tribunal holds, in conformity with Judgement No. 275 (Vassiliou), that the granting of this allowance is within the discretion of the Secretary-General and that it is limited to exceptional cases.—Applicant's claim for three months' salary for professional and moral injury, as recommended by the Joint Appeals Board.—Without seeking to justify the refusal to comply with this recommendation, the Tribunal has no legal basis for obliging the Secretary-General to make the award.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Endre Ustor; Mr. Herbert Reis;

Whereas at the request of Oraima L. Gomez, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successfully extended to 11 August 1984 and 1 December 1984 the time-limit for the filing of an application to the Tribunal;

Whereas on 4 December 1984, the Applicant filed an application in which she requested the Tribunal

“to find that

“(i) the respondent failed to implement the agreement concerning her [*sic*] applicant’s assignment to the Dag Hammarskjöld Library;

“(ii) the respondent was in error in not recommending the applicant for exceptional promotion under the transitional arrangements instituted by the Respondent in the wake of General Assembly resolution 33/143;

“(iii) the applicant had an acquired right to be considered for promotion under the 1957 procedure which the transnational [*sic*] arrangements failed to adequately protect;

“(iv) the Respondent wrongly denied the Applicant a special post allowance; and

“(v) as a result of the circumstances surrounding the Applicant’s assignment to the Dag Hammarskjöld Library, the Respondent has seriously damaged the Applicant’s career development and has otherwise caused her pain and suffering for which she should be compensated.”;

Whereas the Respondent filed his answer on 4 February 1985;

Whereas the Applicant filed written observations on 7 March 1985;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 12 September 1967 as a Mimeograph Operator/Collator on a short-term appointment at the G-2 level in the Department of Conference Services. She subsequently served on a series of short-term and fixed-term appointments until 9 December 1969 when her appointment was converted to a probationary appointment at the G-3, step 1 level. On 1 June 1971 she was offered a permanent appointment and on 1 April 1973 she was promoted to the G-4 level as a Layout Technician in the Reproduction Section of the Publishing Division of the Department of Conference Services. On 6 June 1975, she obtained the degree of Master of Library Science at the Pratt Institute in New York and expressed her interest to officers at the Career Development Office in the Office of Personnel Services to be assigned to the department in which she could make use of her recently acquired qualifications.

On 14 March 1977 the Director of the Library addressed a memorandum to the Executive Officer of the Department of Conference Services, concerning the Applicant’s possible assignment to a vacant P-1/P-2 post in the Library. The memorandum read in part as follows:

“2. Ms Gomez has impressed us favorably and we are willing to have her on a one-year trial basis against one of our vacant professional posts as soon as possible.

"3. If Ms Gomez is satisfactory in her new assignment, she will be absorbed on our regular staffing table and recommended for promotion to the P-1 level in due time.

"4. However, it should be noted that if Ms Gomez is not successful, the agreement will be that she will not remain in the Library as a clerk but will return to her previous post in the Reproduction Section of Publishing Division or reassigned to any other function associated with her level within the Department, even during the probationary period."

On 29 March 1977 a Personnel Action form was issued to implement the Applicant's one-year assignment to the Library at the "Documentation Services, Conventional Indexing Department". Item 12 of the form on "Remarks of the issuing department" provides: "Ex— . . . Post No. UNA 23789-E-P-2-003 to be blocked". In a memorandum dated 12 April 1977 addressed to the Director of the Library, the Deputy Chief of the Catalogue section set forth the training programme to be undertaken by the Applicant at the "Catalogue Section" under her supervision and the supervision of another Library staff member.

On 27 September 1977 the Applicant requested the Director of the Library's "personal intervention" in order that she "be placed under the same intensive and accelerated training programme, and at the same level, speed and consideration that has been given to the other two staff members who are training as Professional Cataloguers."

On 6 October 1977 the Deputy Chief of the Catalogue Section submitted a progress report on the Applicant's training to the Director of the Library and stated:

"4. She lacks the basic knowledge of cataloguing, of assigning subject headings, of basic reference sources and classification that is why she starts filing cards in the Subject catalogue to familiarize with subject headings used in the DHL [Dag Hammarskjöld Library] and to continue to read the manual, especially on such chapters pertaining to classification.

"5. She did not have experience in library work and as cataloguing is quite new to her, she needs time for intensive training. However, she is trying to learn quite cheerfully."

The Applicant's services during the period 1 April 1977 to 30 November 1977 were evaluated in a performance evaluation report dated 19 December 1977, and signed by the Applicant on 6 January 1978. The Applicant's overall performance was rated as "a performance that does not fully meet standards." The first reporting officer stated in Part B of the report that: "due to the extended illness of the Chief of the Section and the vacation of the Deputy Chief, Mrs. Gomez did not receive full training". In addition, she commented that "Mrs. Gomez was not familiar with library work before; she lacks knowledge of the UN Library peculiarities. However, she is trying to learn the UN Library system to become a good Librarian . . .".

On 6 February 1978 the Applicant instituted a rebuttal procedure, in accordance with the provisions of Administrative Instruction ST/AI/240, against the performance evaluation report covering her period of service from 1 April 1977 to 30 November 1977. On 7 April 1978, after reviewing the report completed by the Panel of Investigation constituted to appraise the Applicant's rebuttal, the Under-Secretary-General for Conference Services and Special Assignments concluded that he saw "no reason to warrant a change in the original appraisal of [the Applicant] either by her supervisors or by [him] personally."

In the mean time, on 9 January 1978, the Director of the Library had informed the Library staff that the Applicant would be re-assigned, effective 16 January 1978 "from the Catalogue Section, Library Services Division, to Computer Operations Section, Documentation Services Division". The Applicant was subsequently assigned to the Documents, Reference and Collection Section and in a memorandum dated 10 April 1978, the Coordinator, UN [United Nations] SA [Specialized Agencies] Reporting Group, informed the Chief, Documents, Reference and Collection Section of the training programme he had prepared for the Applicant at that Section.

On 11 May 1978, the Director of the Library informed the Executive Officer of the Department of Conference Services that

"2. The Library has now reached the conclusion that Miss Gomez's performance during the past year does not merit a recommendation for promotion to the professional category at this time. The situation has been discussed with Miss Gomez and she has expressed the desire to remain in the Library as a clerk in order to acquire the necessary experience in the field and to prepare herself for a professional assignment in the future.

"3. The Library is willing to accept the permanent transfer of Miss Gomez but makes no commitments for her recommendation to the professional category in the near future. Miss Gomez has, at present, been re-assigned to Documents Reference and Collections Section."

In a note for the file dated 22 May 1978, the Director of the Library recorded the circumstances that led to the Applicant's transfer to the Library from the Reproduction Section of the Publishing Division of the Department of Conference Services. The note read in part as follows:

"1. Miss Oraitha Gomez was re-assigned to the Library on 1 April 1977 for a period of one year, from the Publishing Service, on a trial basis, as a candidate for a Librarian post, as per memorandum of 14 March 1977. Miss Gomez was assigned to the Catalogue Section/LSD [Library Service Division] against a post on loan from the Conventional Indexing Section/DSD [Documentation Service Division].

"2. After a period of eight months in the Catalogue Section and following extensive discussions between the Chiefs and supervisors concerned, the Library decided that Miss Gomez was not ready at this time for a job as a Librarian, probably due to her lack of experience in the field.

"3. Miss Gomez was told of the decision by the Director of the Library and an alternative was suggested to her instead of the return to the Publishing Service. Miss Gomez was offered a permanent assignment in the Library as a clerk, where she could gain experience that might prepare her for the future.

"4. Miss Gomez accepted and she was transferred to the Computer Operations Section/DSD on 16 January 1978 and then re-assigned to a more suitable job in the Documents Reference and Collections Section/DSD on 10 April 1978, with the staff member's agreement."

On 20 December 1978, at its 33rd session, the General Assembly adopted Resolution 33/143 and requested the Secretary-General, in Part I, paragraph (g), to adopt measures to ensure that

"Movement of staff from the General Service category to the Professional category should be limited to the P-1 and P-2 levels and be permitted up to 30 per cent of the total posts available for appointment at those levels

and such recruitment should be conducted exclusively through competitive methods of selection from General Service staff with at least five years' experience and post-secondary educational qualification."

In order to implement General Assembly Resolution 33/143, on 29 August 1979 the Secretary-General established in ST/SGB/173 [Staff/Secretary-General Bulletin] a new system for promotion of staff members from the General Service to the Professional Category that involved a competitive examination. On the same date, the Assistant Secretary-General for Personnel Services issued Administrative Instruction ST/AI/268 in which he set forth the procedures that would govern the new system. Later, on 10 March 1981, as a result of Administrative Tribunal Judgement No. 266, Capiro against the Secretary-General of the United Nations, the Assistant Secretary-General for Personnel Services issued Information Circular ST/IC/81/19 on "Review of General Service Staff Members recommended for promotion to the Professional Category for the 1979 Register". The circular provided that staff members in the General Service category who had been assigned the functions of a Professional post and for whom the department or office concerned had prepared recommendations prior to ST/SGB/173 [Staff/Secretary-General Bulletin] and ST/AI/268 [Staff/Administrative Instruction] of 29 August 1979, were entitled to be considered for promotion from the General Service category to the Professional category without a competitive examination.

In a memorandum dated 17 January 1980 addressed to the President of the Central Examination Board, the Applicant had sought an exemption from the competitive exam, on the ground that she had been assigned to the Library on 5 April 1977 "long before the establishment of the Competitive Exams" and fulfilled the requirements to be considered for a professional post, namely a Master degree in Library and Information Science and UN Library experience since April 1977. On 21 February 1980 the President of the Central Examination Board denied her request.

The Applicant's services during the period 1 December 1977 to 30 November 1979 at the Documentation Service/Documents Reference and Collection Section were evaluated in a performance evaluation report dated 15 January 1980 and signed by the Applicant on 30 January 1980 in which her performance was rated as an "adequate performance" and in which she obtained eight individual "very good" ratings and two individual "adequate" ratings.

On 17 October 1980 the Applicant requested the Assistant Secretary-General for the Office of Personnel Services to order his Department to conduct "a special study" of her case in order to implement her assignment to a professional post "as ordered by the Office of Personnel Services during 1977" and to grant her a special post allowance. In a memorandum dated 2 January 1981 addressed to the Personnel Officer for the Department of Conference Services, the Director of the Library recommended that the Applicant take the competitive examination "to vindicate her claims" and denied the request for a special post allowance.

In a memorandum dated 28 January 1981 addressed to the Assistant Secretary-General for the Office of Personnel Services, the Applicant reiterated her request to be assigned to a professional post and be granted a special post allowance. These requests were denied by a memorandum of 18 March 1981 from the Office of Personnel Services to the Applicant.

On 17 April 1981 the Applicant requested the Secretary-General to review the administrative decision of 18 March 1981. On 5 May 1981 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided to maintain the administrative decision challenged by her. The letter read in part as follows:

“As you know, following the adoption by the General Assembly of resolution 33/143, part I, paragraph 1 (g), movement of staff from the General Service category to the Professional category should be conducted exclusively through competitive methods of selection.

“This is now the only way whereby a staff member in your situation can be promoted to the Professional category. Your case was also considered in the light of Judgement No. 266 of the Administrative Tribunal (*Capio v. The Secretary-General of the United Nations*), as well as of Information Circular ST/IC/81/19, which made the substance of such judgement applicable to other staff members similarly situated, i.e., staff members in the General Service category who had been assigned the functions of a Professional post and for whom the department or office concerned had prepared recommendations prior to the issuance of the above-mentioned Secretary-General’s bulletin and administrative instruction. Following such careful consideration, it could be determined that your case does not meet the relevant criteria.”

On 1 June 1981 the Applicant lodged an appeal with the Joint Appeals Board. The Board adopted its report on 17 March 1983. Its unanimous conclusions and recommendations read as follows:

“Conclusions and Recommendations

“103. The Board concludes that the conditions set up by the Library for the trial assignment of the appellant to the Library were in accordance with existing principles. The Board also finds that the revision of the initial agreement which, following a reasonable period of time after which the Library had reached the conclusion that the appellant was not ready for a Professional post, allowed the appellant to be transferred to the Library on a permanent basis, as a clerk, to acquire the necessary experience to become a Librarian in the future, was a reasonable and fair solution to the appellant’s case.

“104. In view of the performance evaluation reports and the various statements issued by the Library on the appellant’s performance during the relevant period, the Board concludes that the reasons for not including the appellant’s name in the lists of staff members recommended for promotion by the Department for the promotion exercise 1979 and its review pursuant to ST/IC/81/19 were not due to errors or misinterpretation of the relevant provisions but to the Library’s conviction that the appellant was not ready for promotion at that time.

“105. Moreover, the Board finds that the appellant having been unsuccessful in her trial assignment to the Library, her case did not fall within the letter of the spirit of the requirements stipulated in ST/IC/81/19 as the qualifying factors for a promotion to be considered under the system instituted in 1957.

“106. In addition, the Board could not recognize in the facts and the circumstances of the case an unqualified and reasonable expectation of imminent promotion under the existing system prior to the issuance of the Administrative Instruction ST/AI/268 of 29 August 1979.

"107. The Board therefore concludes that the appellant does not fall within the statutory provisions or the equitable principles laid down by the United Nations Administrative Tribunal concerning the protection of acquired rights to be considered for promotion under the existing system prior to that described by Administrative Instruction ST/AI/268 of 29 August 1979.

"108. . . . the Board concludes that the transitional measures instituted by the respondent have failed to provide the staff members with the guarantees available in the former system against error, misinterpretation or *animus*. The Board therefore recommends that the respondent considers providing the transitional system with these guarantees and recommends further that if such revision takes place, the appellant's case be reconsidered by the respondent under the principles of the revised system.

"109. In view of the difficulties encountered by the appellant during the initial period of her trial assignment, due in part to circumstances beyond her control or that of the respondent and in part to poor judgement in the choices made by the appellant's supervisors, the Board recommends that the appellant be awarded a sum equivalent to three months' net base salary to compensate her for the anxiety that the situation had caused her.

"110. Regarding the appellant's claim for the granting of an SPA to P-1/P-2 level from at most six months after the date of her initial assignment to the Library, the Board sees no reasons warranting a recommendation to sustain this claim."

On 27 June 1983, the Assistant Secretary-General for Personnel Services informed the Applicant that

"The Secretary-General, having re-examined your case in the light of the Board's Report, has decided:

"(a) to maintain the contested decisions, and

"(b) to take no further action on your case.

"The above-mentioned decision is based on the finding, supported also by the Board, that you do not fall within the exceptions to the 1979 Competitive Examination for promotion to the Professional category of staff in the General Service and other categories. The Secretary-General also shares the Board's conclusion that your claim for the granting of a special post allowance (SPA) to the P-1/P-2 level is not justified. Having accepted the Board's conclusion, the Secretary-General rejects, as a matter of principle and precedent, the Board's recommendation that you be granted three months' net base salary to compensate you for mental suffering not attributable to any non-observance of your rights or entitlements."

On 4 December 1984 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent failed to implement the agreement concerning the Applicant's assignment to the Dag Hammarskjöld Library.

2. The Respondent erred in not recommending the Applicant for promotion under the transitional arrangements for promotion instituted by the Respondent pursuant to General Assembly Resolution 33/143.

3. The Applicant had an acquired right to be considered for promotion under the 1957 procedure which the transitional arrangements failed to adequately protect.

4. The Respondent wrongly denied the Applicant's special post allowance during the period that she was assigned against a professional post.

5. The Respondent has seriously damaged the Applicant's career development and has otherwise caused her pain and suffering for which she should be compensated.

Whereas the Respondent's principal contentions are:

1. Exemption from the competitive examination procedure depends upon falling within the transitional measures promulgated by the Secretary-General. A staff member falling outside these transitional measures by virtue of an unsatisfactory performance acquires no greater rights than contained in those transitional measures.

2. The Respondent's failure to pay the Applicant a Special Post Allowance did not constitute a non-observance of her contract or terms of appointment.

3. Staff members are not entitled to awards of damages in the absence of a non-observance by the Respondent of their terms of appointment.

The Tribunal, having deliberated from 20 May to 31 May 1985, now pronounces the following judgement:

I. The pleas in this case identify as the principal issue the responsibility of the Administration, first, in not assigning the Applicant to a professional post in the Dag Hammarskjöld Library and, second, in not providing suitable training for her. As a Layout Technician in the Reproduction Section of the Department of Conference Services, the Applicant had for some time sought a position that would offer greater advancement opportunity. In due course, she succeeded in prompting the Library to write to the Conference Services Department to propose a one-year trial assignment. This was agreed by all concerned, and the Applicant was assigned to the Library at the end of March 1977. In effect, the Applicant now contends that a good faith reading of the Library's memorandum proposing this trial assignment requires finding an implied legal commitment to assign her immediately to a professional post and to provide adequate training in the context of such a post so that her performance could be fairly judged. She argues that the Library's failure to fulfil these commitments entails the legal responsibility and financial liability of the Administration for injuries she suffered thereby.

II. It may be noted briefly that the critical memorandum, dated 14 March 1977 and quoted above, explicitly stated the willingness of the Library to accept the Applicant "against one of our vacant professional posts as soon as possible". However, it was silent as to the section of the Library to which she was to be assigned. The Applicant states it was her understanding that she was to be assigned to the Conventional Indexing Section, the work of which, she considers, would have given a far better and an immediate opportunity to do professional work than the Catalogue Section where she was in fact placed upon being assigned to the Library. The relevant Personnel Action form, dated 29 March 1977, supports her understanding by identifying "Conventional Indexing" as the relevant section of assignment. The 14 March 1977 memorandum was likewise silent as to training, but an internal Library memorandum, written some four weeks later on 12 April 1977, specified a training programme for her, although, significantly, in the Catalogue Section.

III. The Tribunal is able to appreciate the frustration experienced by the Applicant as a result of being assigned to a different branch than she had expected, one that performed highly technical work, and which at the time was suffering what the Joint Appeals Board has termed "a crisis" due to prolonged senior staff absence and other personnel problems. She also experienced frustration in not promptly receiving a structured training experience and in receiving, at best, mixed performance evaluation reports. These unfortunate aspects were found by the Board to have been "due in part to circumstances beyond her control or that of the respondent and in part to poor judgement in the choices made by the appellant's supervisors . . .". The question for decision by the Tribunal is whether the Administration is liable for injuries the Applicant claims she suffered.

IV. The Tribunal considers that in this case there is no legal responsibility on the part of the Administration. The Applicant mistakenly conceives of the Library's memorandum of 14 March 1977, expressing its willingness to accept her, as a contract or what the Applicant repeatedly refers to as an "agreement", with the clear implication that the memorandum contained contractual obligations. But the memorandum was not contractual in nature. The Tribunal can find no evidence of any intent on the part of the Library to enter into a binding legal undertaking. The memorandum was not addressed to the Applicant but to the Department in which she had been working for many years and it was unilateral in character. There is no basis for considering the Applicant as a third party beneficiary of what was no more than an administrative communication between the Library and the Executive Office of the Conference Services Department. That communication was a straightforward and by no means unusual paper proposing a personnel assignment. Even if the memorandum had contained an explicit identification of the branch of the Library to which the assignment was to take place and had declared an intention to provide a detailed training programme, the memorandum would have been no more than an internal administrative document stating intentions and hopes while not engaging legal responsibility for possible failures in the realization thereof.

V. The Tribunal observes that, as a general matter, the United Nations does not enter into legally binding contractual arrangements for the career development of its staff. Indeed, the Organization should not give the appearance, as it did not in this case, of entering into even a quasi-contractual undertaking with a particular staff member for, say, training or other particular treatment. To do so might give grounds for implying a tendency to invidious discrimination as to those staff members who are not made the subject of special arrangements. Of course, the Administration must behave responsibly in its administrative arrangements and refrain from expressing hopes or intentions it has no expectation of fulfilling; but, in the absence of special considerations that do not appear in the record of this case, failure to realize plans expressed in inter-office memoranda of this type will not give rise to legal responsibility or financial liability.

VI. In this context, it may be observed that the General Assembly has determined that the way to promotion from the General Service to the Professional category is not by any form of special "agreement" but through the competitive written examination procedure. Because it has been raised repeatedly in the pleadings, the Tribunal is obliged to note that its Judgement No. 266 (Capio, 1980), and the implementing transitional measures taken by the Administration, is not relevant to this case. The Applicant asserts in the Written

Observations that, because she was entitled as of right to be occupying a professional post in the Library at the time, there should not be any application to her of the new policy which in 1978 the General Assembly adopted in its Resolution 33/143 of requiring the passing of a written examination as the way to secure promotion from the General Service to the Professional category. That is, she claims her entitlement to be considered for promotion to the Professional category should be without regard to the examination procedure; as has been stated, however, the Applicant had no pre-existing or other legal right to occupy a professional post in the Library. In her Application, by contrast, the Applicant contends that, while the examination procedure may be legally relevant, she falls within the narrow class of staff members exempted from the procedure by reason of acquired rights. The Tribunal understands this argument to comprise the assertions that the Applicant falls within the Capiro exception to the examination procedure because (i) she was at the time legally entitled to be assigned to the functions of a professional post in the Library, and (ii) had she been so assigned, and given the promised training, her performance would have been of a quality high enough to have resulted, under the transitional measures, in a recommendation by her department for promotion to the Professional category without her taking a competitive examination. With regard to the first assertion, the Tribunal has already stated that the Applicant had no legal entitlement to hold a professional post in the Library. As to the second assertion, its speculative character is self-evident. The Applicant's performance might or might not have been regarded by her department as meriting a promotion recommendation under the transitional measures. There is no way to predict hypothetical performance that could be reliable in establishing legal rights.

VII. The Tribunal notes that the Joint Appeals Board has once again asserted the view that it suffices to fulfil a requirement of the transitional implementing measures if one was a staff member who was "collateral" to, or on a level with or superior to, those individuals expressly recommended for promotion by their departments notwithstanding the new examinations policy. With deference to the otherwise excellent work of the Joint Appeals Board in this case, the Tribunal reiterates its rejection, as in Judgement No. 311, paras. VI-VIII (Schurz, 1983), of any theory that "collaterals" should be regarded as having an acquired right to be considered for promotion when, as a matter of fact, they had not been so recommended by their respective departments.

VIII. The Application also requests that the Applicant be paid a special post allowance on the grounds that, in the initial nine months of her service in the Library, she was formally charged against a professional post in Conventional Indexing while some of her duties in the Catalogue Section, to which she was in fact assigned, were at a higher level than her G-4 position. The Joint Appeals Board reported that the record and testimony provided to it gave "no reasons warranting a recommendation to sustain this claim." The Tribunal is likewise unable to find a legal basis for the claim. The Tribunal has repeatedly emphasized that "The Rule [Staff Rule 103.11 (b)] invoked by the Applicant clearly states that the granting of a special post allowance is within the discretion of the Secretary-General and that moreover it is limited to exceptional cases.", Judgement No. 275, para. II (Vassiliou, 1981). The Applicant states that she can find no indication that any consideration was given to the granting of a special post allowance to her. The Tribunal observes that there is no obligation on the part of the Administration to consider such a grant for every individual who might be regarded as possibly coming within the

terms of the Rule. In addition to the express reference in Rule 103.11 (b) to "exceptional cases", the Rule speaks of a staff member "who is called upon to assume the full duties and responsibilities of a post at a clearly recognizable level higher than his or her own". As the Applicant herself complained to the Director of the Library in a memorandum of 27 September 1977, the duties which she was given in her first eight months in the Catalogue Section, as a Library trainee, comprised "mainly clerical assignment".

IX. The final plea put forward by the Applicant is for three months' salary for professional and moral injury suffered by reason of her mistreatment. The Tribunal accepts the Applicant's contention that she was motivated to move to the Library by the hope of receiving a promotion and that she might otherwise have remained in the Reproduction Section of the Conference Services Department with the possibility, in due course, of achieving the G-5 level there. Similarly, it recognizes that the training she received on moving to the Library did not fulfil either her hopes or those of the Library, and that the evaluation of her performance was, for a time, not positive at least in part because of inadequate training. The Joint Appeals Board cited these factors in recommending an award of three months' net base salary "for the anxiety that the situation had caused her". This recommendation was not accepted by the Administration, citing the Board's conclusion that no entitlement to promotion had been established and basing its refusal "as a matter of principle and precedent". Without seeking to justify this refusal, the Tribunal has no legal basis for obliging the Secretary-General to make the award recommended to him.

X. For the foregoing reasons the claims of the Applicant must be rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

Endre USTOR
Member

Geneva, 3 June 1985

Herbert REIS
Member

R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 343

(Original: English)

Case No. 340:
Talwar

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

Request by a former staff member of UNICEF to find biased and discriminatory treatment and misuse of discretionary powers on account of the decision rejecting the Applicant's request for an extension of his appointment beyond retirement age; request for compensation for injuries sustained.

Conclusion of the Joint Appeals Board that the decision not to extend the Applicant's appointment beyond mandatory retirement age was taken properly within the discretionary authority of the Secretary-General and that the Applicant did not substantiate allegations of discriminatory treatment and misuse of discretionary powers.—Recommendation to reject the application.