

in accordance with its previous Judgements No. 113, para. XIII (*Coll*, 1967) and No. 172, para. XVI (*Quémerais*, 1973), the Tribunal considers the Respondent should pay to the Applicant nine months' net base salary from 1 November 1981 to 31 July 1982, less \$25,000, being the amount of the termination indemnity already paid.

XXI. The Tribunal decides to base the assessment of its award on the Applicant's claim in respect of the unexpired portion of his fixed-term contract, rather than awarding him damages for the arbitrariness of the decision which terminated his contract.

XXII. Under article 7.1 of its Statute, the Tribunal rejects the Applicant's claim for the differential between the replacement cost of his lost household effects and the compensation already received, since that claim was not submitted to the Joint Appeals Board.

XXIII. The Tribunal notes that the Applicant's failure to make use of the services of counsel increased the difficulty of the case for both the Applicant and the Respondent.

XXIV. For the foregoing reasons, the Tribunal orders the Respondent to pay the Applicant nine months' net base salary from 1 November 1981 to 31 July 1982, less \$25,000 (U.S.) being the amount of the termination indemnity already paid.

XXV. All other pleas, including the claim to costs, are rejected.

(Signatures)

Samar SEN
Vice-President, presiding
Arnold KEAN
Vice-President
Geneva, 13 June 1985

Roger PINTO
Member
R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 348

(Original: French)

Case No. 334:
Lugman

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

Request by a former staff member of UNIDO for correction of his date of birth used in administrative records, and for compensation for losses sustained on account of retirement imposed by the Organization before retirement age.

Conclusion of the Joint Appeals Board that, despite the absence of clear rules, allowing a change of the date of birth 12 years after recruitment would not contribute to the fair administration and to proper application of the Staff Regulations and Rules.—Recommendation to reject the application.

Applicant's claim for a modification of his date of birth.—The Tribunal observes that there do not seem to be any rules or guidelines concerning correction of basic data provided by staff members.—Duty of staff members, under staff rule 104.4 (a), to supply such data on appointment, which entails the obligation to ensure that the information is correct.—Finding that

the Applicant was manifestly negligent in fulfilling this obligation.—In the presence of different dates of birth mentioned by the Applicant the Administration acted reasonably in relying on the date in the Applicant's diplomatic passport.—Applicant used that date for many years for various administrative purposes.—The Tribunal holds that the Applicant waited too long before requesting a correction.—Applicant's contention that the Administration's refusal to grant his request was discriminatory in view of its action in an identical case.—Contention rejected.—Conclusion that the request is without merit.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. T. Mutuale, President; Mr. Samar Sen, Vice-President;
Mr. Luis de Posadas Montero;

Whereas, on 15 March 1984, Muhammad Seedi Luqman, a former staff member of the United Nations Industrial Development Organization, hereinafter referred to as UNIDO, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 18 June 1984, the Applicant filed a corrected application requesting of the Tribunal:

“That Respondent be enjoined to recognize the date of 12 June 1930 as being Applicant's correct date of birth and to amend Applicant's administrative record accordingly.

“Subsidiarily, if the Tribunal's decision does not intervene before the untimely termination by Respondent of Applicant's employment, that Respondent be required to pay Applicant compensation in an amount equal to the salaries, allowances and other benefits Applicant would have earned between the date of such termination and the date when he would reach the mandatory retirement age, i.e. 30 June 1990 or any later date which may result from any future amendment to the Staff Regulations with respect to the age of retirement.

“As a final subsidiary plea, Applicant requests that the date of 12 June 1926 be recognized as his correct birth date, considering that he mentioned the year 1926 in his application for appointment . . . and that his contractual relationship with the Organization was formed on that basis as evidenced by the letter of appointment which provides that Applicant is offered employment on the basis of his certification of accuracy of the information provided in his Personal History form. With regard to this final subsidiary plea, the first subsidiary plea as in the preceding paragraph is mentioned *mutatis mutandis*.”

Whereas the Respondent filed his answer on 3 October 1984;

Whereas the Tribunal requested additional information from the Applicant on 22 May 1985;

Whereas the facts in the case are as follows:

The Applicant, a national of the Islamic Republic of Mauritania at birth, completed and signed two applications for employment with the United Nations on 18 August 1967 and on 13 October 1967. In these applications—otherwise called “personal history forms”—he indicated that his “date of birth” was 1926. However, a curriculum vitae attached to the personal history form of 13 October 1967 stated that the Applicant was born in “Boutilimit, Mauritania, in 1928”. Officials at the Office of Personnel Services of the United Nations

initiated procedures to recruit the Applicant and, on 9 January 1968, submitted a recommendation to that effect to the Chairman of the Appointment and Promotion Committee. A different curriculum vitae attached to the recommendation stated that the Applicant's "date of birth" was "1926".

The Applicant entered the service of the United Nations on 4 April 1968. On 8 April 1968, a personnel action form was issued to implement his appointment. The Applicant's "date of birth" was registered therein as "12 June 1924", and a note at the bottom of the form stated:

"Year of birth verified from passport. Day and month of birth not verified as no birth certificate exists."

In four different personnel induction questionnaires completed by him on 8 April 1968, 6 January 1969, 16 January 1970 and 31 January 1972, the Applicant gave "12 June 1924" as his date of birth. During his period of service, the Applicant, on 25 July 1974, 5 September 1975 and 21 July 1976, initiated recourse action with a view to promotion to the P-5 level and stated that his date of birth was 1924.

On 21 October 1980, the Applicant, who had been transferred to UNIDO, addressed the following memorandum to the Head of the Personnel Service at UNIDO:

"I would like to bring to your attention the fact that due to the absence of a regional birth registration and following lengthy contacts with the Mauritanian Government I now have obtained all the evidences to establish the authenticity of my real date of birth.

"Please find hereto attached a copy of my official birth certificate according to which my birth date is corrected from 12 June 1924 to 12 June 1930. The necessary changes have been made in my national diplomatic passport No. 1667 PROT MAE dated 23 October 1979.

"I therefore would appreciate that my official and corrected date of birth be reflected in my personnel records as well as in all related UN documents."

The "copy" of his original birth certificate was an "excerpt of transcript of judgement in lieu of birth certificate" ("*extrait de transcription de jugement supplétif d'acte de naissance*") dated 7 February 1980, in which the Court of the Cadi of Boutilimit had declared, on 23 January 1961, that the Applicant had been born on 12 June 1930 in Boutilimit.

In a memorandum dated 6 May 1981, the Chief of the Personnel Administration Section at UNIDO informed the Chief of Staff Services, Division of Personnel Administration, at Headquarters, of the Applicant's request and asked for his views. The Chief of the Personnel Administration Section at UNIDO summarized the Applicant's history as follows:

"Several different birth years (1928, 1926 and 1924) are mentioned in the various papers contained in his Official Status File. However, his P.11 states that he was born in 1926 and started to work in Saudi Arabia, first for the Sharia Court, then for the Customs and Excise authorities and, in 1944, for Aramco. We assume that his experience with Aramco (1944-60) was to a certain extent taken into account when he was recruited in 1968 and when his entrance level of P-4 step 4 was determined. If his claim to have been born in 1930 is correct, he would have begun to work in Saudi Arabia when only 12 years old and with Aramco at the age of 14. During an interview with a Personnel Officer, Mr. Luqman explained that he came from a

nomadic family in Mauritania and moved with his mother to Saudi Arabia while still a small boy. He had learned to read and write in a religious school in Mauritania and was consequently able to find a post as a messenger boy and clerk in the Sharia Court. While with Aramco he carried out manual worker and clerical jobs and at the same time studied at the American University, Beirut, where he gained a B.A. degree in 1958.

“Mr. Luqman confirmed that his professional career in its real sense only started with his entrance into the service of his Government in 1961. It seems that he first requested certification of his birth date from the Mauritanian authorities while in Egypt in 1965, but he did not mention this point at the time of his recruitment by the United Nations.”

In addition, the Chief of the Personnel Administration Section noted that the Applicant's case illustrated “the difficulty faced by staff members from developing countries who were born long before the independence of their countries, especially if they came from remote areas, in obtaining official certification of their birth dates.” He also mentioned the case of another staff member of European nationality at birth, who had requested a change of birth year from 1929 to 1927 on account of the absence of records arising from “the confused situation in Middle Europe just after the Second World War”. He stated that in the light of the prospective personnel and pension-related implications of these requests, it might be desirable to issue a personnel directive on the matter, and added: “I would like to mention that, unless very important reasons speak against it, we are inclined to accept the change of Mr. Luqman's birth date.”

An exchange of memoranda ensued between the Chief of Staff Services at Headquarters and the Chief of the Personnel Administration Section at UNIDO. In a memorandum dated 22 July 1981, the former informed the latter of “advice of a general nature” that had been provided by the Office of Legal Affairs in connection with a similar request made by another staff member at the United Nations; in the light of this advice and of the facts related to the Applicant's employment history, in particular the fact that “the 1924 birthdate had been repeatedly relied upon by Mr. Luqman in order to support his claim for promotion to the P-5 level . . .”, the Applicant was “estopped from requesting a change in the birthdate he [had] repeatedly relied upon”, and his request was therefore to be denied.

In a reply dated 25 August 1981, the Chief of the Personnel Administration Section at UNIDO requested the Chief of Staff Services at Headquarters to reconsider his position with respect to the Applicant's request. The Chief of the Personnel Administration Section at UNIDO enclosed a “summary note” related to the other staff member, of European nationality, who had requested the correction of his birth date and whose request had been granted.

In a memorandum dated 25 September 1981, the Chief of Staff Services at Headquarters informed the Chief of the Personnel Administration Section at UNIDO that in the light of the information he had provided in the case of . . . , he was content “to let the case rest”; however, the Applicant's case was “an entirely different matter” and the decision not to grant his request should be maintained. In this connection, the Chief of Staff Services stated:

“To repeat the obvious, an applicant for a position with the UN is first required to certify that the statements made by him in the P.11 form are true, complete and correct to the best of his knowledge and belief. Any misinformation, in fact, renders the staff member of the UN liable to

termination or dismissal (. . .). Mr. Luqman made no reservations about his age at the time of his entry on duty, pointed out at the time of his recourse as one of "the most important elements" that he was 50 years of age, let the matter rest for 13 years, and now requests that our records should be changed to make him 5 years younger. Let me repeat, it cannot be done . . .

"4. At the time when the General Assembly is very much concerned with the age of retirement, we need to be vigilant about staff who request to have their record of birth with the UN changed. We would be remiss if we were to allow staff members to reopen the question of the date of birth long after they have been in service. A staff member cannot assert a right contrary to his own representation of facts which are particularly within his competence to establish . . ."

In a memorandum dated 8 March 1982, the Head of the Personnel Service at UNIDO requested the Assistant Secretary-General for Personnel Services to reconsider the decision not to grant the Applicant's request to change his birth date. On 24 September 1982, the Director of the Division of Personnel Administration at Headquarters informed the Head of the Personnel Service at UNIDO that he would appreciate it if he would notify the staff member that the Office of Personnel Services was "not in a position to change his birth date from 12 June 1924 to 12 June 1930".

On 4 October 1982, the Chief of the Personnel Administration Section at UNIDO officially informed the Applicant that his request for correction of his birth date from 12 June 1924 to 12 June 1930 had been denied by the Director of the Division of Personnel Administration at Headquarters. The rationale for the decision, taken in consultation with the Office of Legal Affairs, was as follows:

"(a) Your request would have to be denied because it was out of time. Normally such requests must be submitted within a reasonable period after the date of appointment (two years) and should be made promptly within six months after the discovery of the error in the birth date. It was felt that it would not be possible to allow staff members to re-open the question of the date of birth long after they have been in service. In your own case this question came up more than 12 years after you joined the Organization and more than six months after the change of birth date was made official by the authorities of your home country.

"(b) Your request would also have to be denied for legal considerations. Requests such as yours should be governed by the basic principle that a staff member cannot assert a right contrary to his own representation of facts which are particularly within his competence to establish. An applicant for a United Nations post is first requested to certify that the statements made by him in the Personal History form P.11 are true and complete and correct to the best of his knowledge and belief. You had made no reservations about your age at the time of your entry on duty. The Office of Personnel Services also pointed out that at the time of your recourse action to the Appointment and Promotion Board you had mentioned as one of the most important elements that you were 50 years of age. According to your own oral submission, you had requested the Mauritanian authorities to change your birth date several years ago which is evidence for the fact that you had doubts concerning the correctness of your birth at a

time when you relied on your age for official purposes such as a recourse action.”

On 22 October 1982, the Applicant asked the Secretary-General to review under Staff Rule 111.3 (e) the administrative decision of 4 October 1982. On 23 November 1982, the Director of the Division of Personnel Administration at Headquarters informed the Applicant:

“On the basis of your statements in the personal history form which you signed on 13 October 1967, and of an affidavit you submitted, the requested birth date of 12 June 1930 cannot be accepted.

“You stated that you were employed from October 1944 to November 1960 by ARAMCO and in his letter to you dated 12 December 1966 the ARAMCO District Manager, Dhahran, confirmed that you had worked in the following classifications: ‘From 10-1-1944 to 4-30-1948, Senior Floorman’. Had you been born in 1930, you would have been recruited as a senior floorman at age 14. Furthermore, according to the same letter you would have been promoted at age 18 ‘to Senior Staff status . . . after graduating from American University of Beirut with a Bachelor of Arts’.

“I must inform you, therefore, that the Secretary-General finds no ground to rescind the decision conveyed to you by the Chief, Personnel Administration Section, UNIDO.”

On 11 January 1983, the Applicant lodged an appeal with the UNIDO Joint Appeals Board. The Joint Appeals Board adopted its report on 15 November 1983. The Board’s conclusions and recommendations read as follows:

“Conclusions and recommendations

“32. For the reasons stated above, the Board concludes as follows:

“(a) There do not seem to be any definite rules or guidelines concerning correction of basic data such as date of birth which staff members provide for recruitment and personnel purposes;

“(b) Despite the absence of clear rules, the Board is of the view that it would not contribute to fair and proper administration if staff members could modify such dates at will and particularly to influence staff rules and regulations that may be otherwise applicable;

“(c) The appellant in the present case has not clearly established his good faith in requesting the change of his birth date from 12 June 1924 to 12 June 1930;

“(d) One cannot ignore the fact that the request for change of birth date comes from the appellant at a time when he is approaching the retirement age;

“(e) Requests for corrections of date of birth, if genuine, should be made within a reasonable time after the error has been discovered and not, as in the present case, some twelve (12) years after the date was given even though the appellant seems to have had doubts all along about the exact date; and

“(f) Despite the doubts the appellant claims to have had about his date of birth, he stated 1924 as his date of birth in four different Personnel Induction Questionnaires completed by him on 8 April 1968, 6 January 1969, 16 January 1970 and 31 January 1977 and certified by him to be true, and repeated the same date in his recourse actions of 25 July 1974, 5 September 1975 and 21 July 1976 concerning promotion to the P-5 level.

“33. In view of the above, the Board rejects the appellant’s appeal and makes no recommendation in its support.”

On 29 December 1983, the Assistant Secretary-General for Personnel Services informed the Applicant:

“The Secretary-General has taken note of the Board’s report and, having re-examined your case in the light of the Board’s report, has decided to take no further action in the matter.”

On 30 June 1984, the Applicant retired from UNIDO at the D-1 level, having reached 60 years of age, the statutory age of separation from service under the Staff Regulations and Rules.

On 18 June 1984, before separating from service, the Applicant had filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The Applicant, like most nationals of developing countries, did not have an official record of his birth. That is why, during the course of his employment and to the knowledge of the United Nations, he used different birth dates—1924, 1926 and 1928—on different occasions.

2. The Applicant’s birth date was officially established by a Mauritanian court as being 12 June 1930. The United Nations does not have the right to refuse to recognize the Applicant’s judicially established birth date as opposed to the Applicant’s birth date established on an earlier national passport, merely a travel document. All official documents of a State Member of the United Nations are equally authentic.

3. The Administration acted in a discriminatory manner towards the Applicant, a national of an African Member State, since it granted a similar request to change the birth date of a staff member of a European Member State.

4. If, as the Respondent argues, the date of birth is an element of the contractual relationship between the staff member and the Organization, the Respondent must be declared bound by the date of 12 June 1926, since the Applicant mentioned the year 1926 in his application for employment and was employed on the basis of the information supplied by him in his application.

Whereas the Respondent’s principal contentions are:

1. The Applicant failed to establish that 12 June 1930 was his correct date of birth to justify its acceptance for United Nations internal administrative purposes.

2. The Applicant’s request for change of his date of birth 12 years after his appointment is time-barred or otherwise precluded by the doctrine of laches and was properly rejected by the Secretary-General.

3. The repeated voluntary reliance of the Applicant on 12 June 1924 as his date of birth estops or precludes him from averring anything to the contrary.

4. The Applicant failed to substantiate his allegation of discrimination by the Administration when his request for change in his date of birth was rejected.

The Tribunal, having deliberated from 22 May to 14 June 1985, now pronounces the following judgement:

1. The Applicant completed and signed two applications for employment with the United Nations (personal history forms), one on 18 August 1967, the other on 13 October 1967; his curriculum vitae was attached to the second application or personal history form. On both forms, the Applicant gave 1926 as his date of birth; however, the aforementioned curriculum vitae mentioned a

different date (1928), while the Mauritanian diplomatic passport issued to the Applicant showed yet another date (1924). The last mentioned of these three dates was the one chosen by the Administration and registered on the personnel action form (P-5). The Administration did, however, express reservations as to the day and month of birth. Neither the day nor the month was subsequently changed.

II. However, on 21 October 1980, the Applicant informed the Administration that following lengthy contacts with his Government, he had obtained all the evidence "to establish the authenticity of [his] real date of birth". He attached to his memorandum a copy of an "excerpt of transcript of judgement in lieu of birth certificate" ("*extrait de transcription de jugement supplétif d'acte de naissance*") dated 7 February 1980. According to the excerpt, the Cadi of Boutilimit, in judgement No. 16 dated 23 January 1961 and transcribed in register No. 015 of 7 February 1980, had declared 12 June 1930 to be the Applicant's date of birth.

III. The Applicant claims that "passports are merely travel documents not intended to prove dates of birth which are mentioned therein incidentally"; his main plea is that the date "12 June 1924" should be replaced by "12 June 1930" and that his administrative records should be amended accordingly.

IV. First of all, the Tribunal, like the Joint Appeals Board, observes that there do not seem to be any definite rules or guidelines concerning correction of basic data such as date of birth which staff members provide for recruitment and personnel purposes. The Tribunal notes, however, that under Staff Rule 104.4 (a), it is the duty of staff members on appointment to supply such information; clearly this duty imposes on staff members the obligation and the responsibility to make every effort to ensure that the information is correct.

V. With regard to the Applicant's date of birth, the Tribunal notes that the judgement declaring that he was born on 12 June 1930 was rendered on 23 January 1961, while the applications for employment were completed in 1967. Such being the case, the Tribunal considers that the Applicant was manifestly negligent in fulfilling that obligation since he gave several different dates of birth, at a time when the authorities of his country had already established 1930 as the year of birth in a judgement which had been rendered six years before the date of the applications and of which the Applicant should have been aware if he had been acting as diligently as the situation warranted. Moreover, by certifying in the applications that his date of birth was correct, while giving a different date in the curriculum vitae and yet another date in his passport, the Applicant clearly acted with plain carelessness, and knowingly put the Administration in the position of having no alternative but to choose one of the three dates.

VI. The Tribunal takes the view that in the light of the documents submitted by the Applicant, which gave different dates of birth, it was reasonable, for the purposes of his administrative records and in the absence of other information, to rely on the diplomatic passport which he then held.

VII. The Tribunal also notes that when the Respondent chose that date, the Applicant entered no reservation and raised not the slightest objection; on the contrary, he himself subsequently used that date for a number of years, giving it as his date of birth in administrative documents concerning his own interests and career. Unquestionably this is conduct which proves that the Applicant accepted the date of birth shown in his administrative records.

VIII. In addition, the Tribunal notes that the Applicant provided information about his date of birth in 1967; but it was on 21 October 1980 that he sent to the Administration the memorandum transmitting a copy of the "excerpt of transcript of judgement in lieu of birth certificate" dated 7 February 1980, and requesting a correction of his date of birth. The Applicant therefore waited 12 years before asking the Administration to make the correction.

IX. The Tribunal considers that the Applicant waited too many years before requesting the correction (Cunio case, IV). It notes too that the Applicant failed to give, in his defence, any reason or justification for such a long delay.

X. The Applicant claims that "in light of the Administration's action in the identical and contemporary Koenig case, its refusal to grant Applicant's request is discriminatory".

XI. In the opinion of the Tribunal, it has not been established that the Administration's denial of the request for correction involved discrimination against the Applicant.

XII. For the above reasons, the Tribunal considers without merit the Applicant's request for correction of the date used in his administrative records.

XIII. Accordingly, the Tribunal concludes that in the present case, there is no point in examining the Applicant's arguments concerning the authenticity and validity of the "excerpt of transcript of judgement in lieu of birth certificate", issued at Boutilimit on 7 February 1980.

XIV. The application is rejected.

(Signatures)

T. MUTUALE
President

Samar SEN
Vice-President

Geneva, 14 June 1985

Luis M. de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 349

(Original: French)

Case No. 331:
Alinazanga

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

Request by a former staff member of UNHCR for the rescission of the decision to terminate his appointment for misconduct, and for compensation.

Recommendation of the Joint Appeals Board to pay compensation to the Applicant.— Recommendation accepted.

Question of the legality of the decision to terminate the Applicant for misconduct.— Finding that the Applicant was guilty of serious misconduct, though there were attenuating circumstances.— Consideration of the circumstances in which the decision was taken.— Conclusion that the decision was completely irregular: it was not preceded by the formalities for protecting staff members' rights provided in the Staff Rules; it imposed a second disciplinary measure for the same misconduct; it was never notified to the party concerned.— Contention that