

Judgement No. 359*(Original: French)***Case No. 339:
Gbikpi****Against: The Secretary-General
of the United Nations**

Request by a former staff member of the United Nations for reinstatement, for payment of salary during the period between the expiry of his contract and his repatriation, and for compensation.

Conclusion of the Joint Appeals Board that the delay in the Applicant's repatriation was due to the faults committed both by him and by the Respondent.—Recommendation to pay to the Applicant one third of the salary and allowances which would have been paid if his contract had been extended until the date of the dissolution of the Committee of Inquiry set up to examine the circumstances of the case.—Recommendation accepted.—Conclusion of the Joint Appeals Board that the Applicant's second appeal, relating to the non-renewal of his contract, was not receivable.

Consideration of the circumstances of the case.—Conclusion that the application relating to the Applicant's term of appointment and reappointment was not filed within the time-limit laid down in article 7 of the Tribunal's statute and is therefore not receivable.—Finding that there are no grounds for suspending the provisions on time-limits.—Applicant's request to be paid salary and subsistence allowance until the date of his repatriation.—Staff Rule 209.11.—Finding that the responsibility for the Applicant's delayed repatriation rests with the Administration.—Staff rule 204.6 (b).—Mandatory nature of the medical examination before separation from service for technical assistance project personnel.—Finding that the Applicant sustained injury because of the way the Administration acted and should be compensated.—Applicant's request for compensation on account of procedural delays.—Finding that these delays were in part due to the Applicant's attitude.—Request rejected.—Tribunal's concern at the excessive procedural delays.

Award of salary and allowances the Applicant would have received had his contract been extended until the date of his repatriation, minus amounts paid as a result of the recommendation of the Joint Appeals Board.—Award of interest on amounts due at an annual compounded rate of 6 per cent.—All other pleas rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. T. Mutuale, President; Mr. Luis de Posadas Montero;
Mr. Roger Pinto;

Whereas, on 14 May 1984, Mr. Vincent Bênessan Gbikpi, a former staff member of the United Nations, filed an application which did not meet the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, having made the necessary adjustments, filed his corrected application on 10 September 1984;

Whereas in his pleas, the Applicant requested the Tribunal, in summary, to adjudge and declare:

1. That the Applicant is entitled to compensation for the injury suffered as a result of the delay attributable to the procedure followed;

2. That the Respondent should pay the Applicant the salary and daily subsistence allowance due to him from 8 May 1979, the date of his arrival in Addis Ababa, to 16 May 1980, the date of his arrival at the place of entitlement in his country;

3. That the Respondent should reinstate the Applicant as technical assistance expert at the Economic Commission for Africa (ECA) or recommend him for a post with another organization of the United Nations system at the P-5 level or above;

4. That the Respondent should pay the Applicant his full salary from 16 May 1980 until the date of the judgement or until a date to be determined by the Tribunal;

5. That, by way of compensation, the Respondent should pay the Applicant the sum of \$1,000 (one thousand) dollars a month from the time of the judgement until it is executed;

6. That the Applicant, with the agreement of the Secretary of the United Nations Joint Staff Pension Board, may replenish the capital withdrawn from the Fund and regularize his situation with the participation of the Respondent;

Whereas the Respondent submitted his answer on 14 August 1985;

Whereas the Applicant filed written observations on 14 October 1985, further requesting the Tribunal *inter alia* to:

“Order the Respondent to pay all the costs, estimated at \$10,000, which the Applicant has incurred in the last six years;

“Order the urgent execution of the Judgement, given the Applicant’s state of health;

“Order the immediate payment by the Respondent of the sum he undertook to pay the Applicant (letter dated 24 September 1984 from the Respondent to the Applicant)”;

Whereas additional documents were filed by the Applicant on 16 October 1985, 17 October 1985, 23 October 1985 and 6 November 1985;

Whereas, at the request of the Tribunal dated 16 October 1985, the Respondent submitted additional information and documents on 18 October 1985, 30 October 1985 and 6 November 1985;

Whereas the facts in the case are as follows:

Mr. Vincent Bêniissan Gbikpi, a Togolese national, entered the service of the United Nations on 31 December 1973 in the Department of Economic and Social Affairs/Office of Technical Co-operation, under an intermediate-term, 12-month contract at the L-4 (step II) level. He was assigned to Niamey, Niger, as an expert in human resources. His contract was renewed repeatedly on a fixed-term basis until 31 December 1978. During that period, as a result of organizational restructuring, his post was transferred to the pay-roll of the Economic Commission for Africa (ECA).

On 27 November 1978, the Chief of the Economic Co-operation Office, ECA, informed the Chief of the Personnel Section, ECA, that the Applicant’s contract “should be renewed for a period of three months when it expires on 31 December 1978”. Any subsequent renewal would have to be considered in the light of the “new programme of work of the MULPOC (Multinational Programming and Operational Centre) at Niamey, taking into account the expertise which would be needed for the implementation of that programme”. In fact, the Applicant’s contract was extended for two months until 28 February 1979. In a memorandum dated 5 March 1979, the Chief of the Economic Co-operation Office, ECA, further informed the Chief of the Personnel Section, ECA, that he had “recommended to the Executive Secretary [of ECA] not to renew the contract of Mr. V. Gbikpi beyond 31 March 1979”. He went on to say:

“He should be transferred to ECA, Addis Ababa, effective 1 April 1979 for a period of three months, that is to say until 30 June 1979, to give him time to wind up his affairs. There are no plans to renew Mr. V. Gbikpi's contract with ECA beyond 30 June 1979.

“I would be grateful if you would be so good as to inform Mr. Gbikpi of the above and explain to him clearly that he is being transferred to Addis Ababa only for three months and that there are no plans to renew his contract beyond 30 June 1979.”

The Applicant was informed of that decision by the Chief of the Personnel Section, ECA, in a letter dated 7 March 1979.

A personnel action form was issued on 22 May 1979 formalizing the renewal of the Applicant's contract for a period of four months beginning 1 March 1979, his assignment to Addis Ababa for three months effective 1 April 1979 and the payment of a daily subsistence allowance for the period of his stay in Addis Ababa. The Applicant signed his last letter of appointment on 25 May 1979.

Upon his arrival at the headquarters of the Economic Commission for Africa, the Applicant tried to find another post with the United Nations and, to that end, wrote to the Regional Representative of FAO for Africa, to the Director-General of FAO and to several officials; however, his efforts to find another United Nations post were all to no avail.

After 30 June 1979—the date on which his last contract expired—he continued to report for work and to sit in his office as though nothing had changed.

On 21 August 1979, the Applicant sent the Acting Chief, Administration and Conference Services Division, ECA, a memorandum on ECA stationery concerning his “job situation”; it read in part as follows:

“1. I do not know whether ECA wishes to repatriate me before the Executive Secretary of ECA carries out his intention of recruiting me for another post. That seems to have been envisaged in the mean time, but now does not seem likely to happen before January 1980 unless certain Division Chiefs make specific proposals following a further application for employment which I am being advised to submit.

“In any event, I am still considered, legally, as dependent on ECA for the following reasons:

“2. Under rule 209.11 (b) of the Staff Rules applicable to technical assistance project personnel, return travel must commence no later than the day following the date established under paragraph (a), that is to say the date established in the letter of appointment in the case of the expiration of a fixed-term contract; in my case that was 30 June 1979.

“3. However, the formalities relating to separation from service and repatriation have not been completed or even set in motion by the relevant services of ECA since 30 June 1979.

“(a) Under rule 204.6 (b), project personnel ‘shall undergo a medical examination on separation from service, and the report on this last medical examination shall be submitted to the United Nations Medical Director’. I have not yet been invited to undergo this last medical examination.

“(b) Furthermore, except for a salary advance, I have not been paid for the month of June 1979.”

In a telegram dated 11 September 1979, the Deputy Executive Secretary of ECA informed the Executive Secretary of the Applicant's situation and requested instructions on what steps to take. He stated *inter alia*:

"WISH BRING TO YOUR ATTENTION PRIMO SITUATION OF GBIKPI WHO WAS DETAILED FROM NIAMEY MULPOC TO ECA 1 MARCH THROUGH 30 JUNE 1979. HIS SALARY FOR THIS PERIOD PAID AGAINST HIS NIAMEY POST. SINCE NO CLEAR DECISION REGARDING HIS CONTRACTUAL STATUS BEYOND 30 JUNE WAS MADE HE STILL REPORTING FOR WORK IN ECONOMIC COOPERATION OFFICE. WE UNDERSTAND FROM STAFF MEMBER THAT YOU WERE AWAITING CONCRETE PROPOSALS FROM CHIEFS OF DIVISION FOR FURTHER EXTENSION HIS CONTRACT. WE ALSO NOTE ECA/FAO AGRICULTURE DIVISION IN MEMO DATED 15 JUNE SERIOUSLY CONSIDERED HIM TO FILL FAO HUMAN RESOURCES SPECIALIST POST ON INITIAL TWO/THREE MONTHS CONSULTANCY. GRATEFUL YOU CABLE DECISION WHETHER P5 ACTION SHOULD BE ISSUED TO COVER PERIOD 1 JULY TO PRESENT AND BE TERMINATED OR IF HE COULD BE GIVEN THE CONSULTANCY AS RECOMMENDED BY ECA/FAO AGRICULTURE DIVISION OR REMAIN ON DETAIL ON HIS NIAMEY POST . . .".

In the top right-hand margin of the text of the cable, the Executive Secretary wrote the following note, dated 12 September 1979:

"1. Mr. Gbikpi's contract expired on 30/6. His remaining in Addis Ababa was *his* decision. He *cannot* be paid for any period after 30/6/79.

"2. I am not aware of any proposal from Agriculture Division to appoint Gbikpi as consultant. Please ask [the Chief, Joint ECA/FAO Agriculture Division] when he returns from leave to submit concrete proposal".

A personnel action form concerning separation was issued on 16 September 1979. It was entitled "Expiration of appointment" and indicated that the last day for pay purposes was 30 June 1979. On 18 September 1979, the Acting Chief of the Personnel Section, ECA, sent the Applicant a letter which read as follows:

"With reference to our talk of 4 September . . . we submitted your case to the Deputy Executive Secretary [of ECA], who in turn referred it, by cable, to the Executive Secretary [of ECA].

"The reply received was that the decision to continue working beyond 30 June 1979 was yours, not that of ECA, particularly since, in his confidential letter dated 7 March 1979 the Chief of Personnel, Mr. Antoine Makhlouf, had already informed you that your contract would not be renewed after 30 June 1979. A copy of that letter is attached. Accordingly, you cannot be paid for the period after 30 June 1979. The Executive Secretary added that he had received no recommendation to recruit you as a consultant. However, he suggested that we should ask Mr. Antonio, Chief of the Agriculture Division, to make concrete proposals when he returns from leave.

"We will therefore communicate to you without delay the instructions for your repatriation, and we will not contact you again unless we receive from Mr. Antonio [Chief of the Agriculture Division] a recommendation for your reappointment."

In a memorandum dated 20 September 1979, the Applicant thanked the Acting Chief of the Personnel Section, ECA, and the Acting Chief of the Administration Division, ECA, "for the representations which you have kindly made to the Deputy Executive Secretary . . ." and stated that he was not disputing the fact that the expiration date of his contract was 30 June 1979. He

requested payment of the salary and allowances to which he was entitled under staff rule 209.11 (b).

On 20 September 1979, an ECA Personnel Officer asked the Applicant to inform the Personnel Section as soon as possible of his plans regarding return travel and shipment of his household goods and personal effects. On 24 September 1979, the Applicant informed the Personnel Officer of his plans concerning return travel for himself and his dependants.

On 26 September 1979, in a memorandum addressed to the Acting Chief of the Personnel Section, ECA, the Applicant expanded on the arguments which he had set forth in his memorandum of 21 August 1979. In his reply, dated 1 October 1979, the Acting Chief of the Personnel Section said, *inter alia*:

“We differ with your interpretation that your entitlement to salary, allowance and benefit shall continue until the date of your return to your place of repatriation If the Personnel Section has failed to contact you regarding your repatriation, it is to be noted that, after receiving Mr. Makhlouf’s [Chief, Personnel Section, ECA] memorandum of 7 March 1979 informing you of the expiration of your appointment on 30 June 1979, you made no effort to advise the Section of your repatriation arrangements

“In view of the above and after a further discussion with Mr. Tall [Acting Chief, Administration and Conference Services Division], it was decided that the decision to overstay was yours and not that of the Organization and as a result you cannot claim payment of salary beyond 30 June 1979.

“I should like to add that the matter is closed as far as the ECA Administration is concerned.”

In a memorandum to the Executive Secretary of ECA dated 3 October 1979, the Applicant noted that the Acting Chief of the Personnel Section, ECA, had mentioned, in his communication of 1 October 1979 “certain responsibilities of the Personnel Section”. The Applicant gave a list of “seven” responsibilities, namely those relating to his travel and repatriation, the payment of a repatriation grant, payment of the salary and allowances due to him prior to the expiration of his contract, and an “invitation” to “undergo the last medical examination referred to in staff rule 204.6 (b)”. The Applicant stated that “by failing to complete those formalities, the relevant sections of the ECA Administration Division in fact extended the effective date of expiration of [his] contract . . .”, since that date could not be determined until all the “formalities relating to separation from service and repatriation of the expert [had] been completed . . .”. He added that he had continued to report “regularly” for work after 30 June 1979 “because the silence of ECA concerning the formalities relating to his repatriation had led him to believe that the Administration might have decided to postpone his departure with a view to reappointing him”.

By letter dated 18 October 1979, the Chief of the Personnel Section, ECA, informed the Applicant that he could “undergo the terminal medical examination upon [his] return home”. In a memorandum to the Chief of the Administration and Conference Services Division of ECA dated 25 October 1979, the Applicant protested against the letter dated 18 October 1979 from the Chief of the Personnel Section of ECA concerning the medical examination which he was supposed to undergo, and asked him kindly to instruct the relevant services to ensure “that the Staff Rules were strictly applied” and that the travel authorization was not issued before he had undergone a medical examination.

On 30 October 1979, the Chief of the Administration and Conference Services Division of ECA wrote to the Applicant informing him that the Chief of the Personnel Section of ECA had been instructed to make the necessary arrangements to have the Applicant undergo the required medical examination in Addis Ababa. He added that the Administration had not changed its mind concerning the Applicant's other requests, and asked him to provide the Personnel Section with "the information necessary for the completion of [his] repatriation formalities."

On 21 November 1979, the Director of the Division of Personnel Administration, Office of Personnel Services, at Headquarters in New York, informed the Applicant that no favourable consideration could be given to his claim against ECA for the payment of salary and subsistence allowance since 30 June 1979, and that the position taken by the ECA Administration was maintained.

On 22 November 1979, the Applicant was informed by the Acting Chief of the Administration and Conference Services Division of ECA that ECA was authorizing the renewal of his United Nations laissez-passer in order to enable him to complete the formalities necessary for his repatriation travel.

In a telegram dated 5 December 1979, the Acting Chief, Administration and Conference Services Division, ECA, informed the Director of the Division of Personnel Administration, Office of Personnel Services, at Headquarters, that, on the recommendation of a doctor the Applicant had been admitted to Balcha Hospital on 4 December 1979 and that ECA had agreed to pay his hospital costs and all the related bills.

On 11 December 1979, the Assistant Secretary-General for Personnel Services wrote to inform the Applicant that the Secretary-General, after examining his case, had endorsed the position taken in the letter of 21 November 1979 addressed to the Applicant by the Director of the Division of Personnel Administration, Office of Personnel Services, and had decided "that no favourable consideration be given [to his] request for review of the administrative decision of 1 October 1979."

On 14 December 1979, the officer-in-charge of the Administration and Conference Services Division of ECA confirmed to the Applicant that the Acting Chief of the Division had "set up a committee . . . to find out who is authorizing your entering the premises of the ECA and using the stationery of the ECA", but that it had refused to consider the Applicant's claims against ECA.

On 21 December 1979, the Chief of the Personnel Section, ECA, informed the Applicant that, after 31 December 1979, he would no longer be entitled to payment of return travel expenses, and urged him to go and pick up his tickets from the Travel Unit.

In a letter dated 28 December 1979, the Applicant informed the Acting Chief of the Administration and Conference Services Division, ECA, that, as a result of the medical examination he had undergone, he had been advised to consult a neuro-surgeon within three weeks "with a view to possible surgery". He said that "in the mean time, the neurologist of Balcha Hospital [had given him] two weeks' sick leave from 21 December 1979 to 5 January 1980." He added:

"Under the circumstances, the last medical examination referred to in rule 204.6 (b) has not been completed and I cannot leave Addis Ababa on 31 December 1979 as I would have wished.

“Please obtain from the Secretary-General the waiver referred to in staff rule 207.24 (e) so that rule 207.24 (c) would not be applied in my case, for *force majeure* justifies such a waiver.”

On 28 December 1979, the Applicant filed an appeal with the Joint Appeals Board (hereinafter referred to as “the first appeal”).

On 31 December 1979, the Acting Chief, Administration and Conference Services Division, ECA, addressed to three staff members of ECA a memorandum announcing the setting up of a committee of inquiry. It read as follows:

“[The Applicant’s] separation from the Commission having created some controversial comments, the Executive Secretary and the Staff Council have expressed the need that a committee be set up to investigate on all the circumstances which surrounded this separation.

“After the necessary consultations your names are recommended to me for the composition of this committee, the chairman and convenor of which will be [one of the three staff members to whom the memorandum was addressed].

“By a copy of this memorandum, I am instructing Chiefs of Personnel, Finance, General Services Section as well as Chief of Security to make available to you all information the committee may need including documents and interviews of their colleagues.

“It will be appreciated that the committee delivers its report at its earliest convenience but it is also wished that this be not later than 15 January 1980.”

The Committee of Inquiry established on 31 December 1979 collected the relevant documentation and adopted a schedule of “interviews” with several persons, including the Applicant, for the period of 5 to 11 February 1980. However, before the Committee could proceed with those interviews, it was dissolved by the Acting Chief, Administration and Conference Services Division, ECA, in pursuance of cabled instruction from United Nations Headquarters. The Applicant was informed of the dissolution of the Committee by a letter from the Chairman of the ECA Staff Association, dated 5 February 1980.

In a memorandum dated 29 February 1980, the Acting Chief, Administration and Conference Services Division, ECA, sent the Chairman of the Staff Committee the text of a cable he had received from Headquarters in which the Office of Personnel Services had authorized the repatriation of the Applicant from Addis Ababa “as exception to staff rule 207.24 (c)”. He further requested the Chairman of the Staff Committee to inform the Applicant that the relevant services were ready to take the necessary action relating to his repatriation.

In a cable dated 18 July 1983, addressed to the Office of Personnel Services at Headquarters, at the request of the Joint Appeals Board, the Acting Chief, Administration and Conference Services Division, ECA, stated that, on 16 January 1980, the Applicant had undergone his last medical examination on separation from service at Addis Ababa.

The Applicant began his return journey on 13 May 1980 and arrived home on 16 May 1980, according to the dates mentioned several times by him and not contested by the Respondent.

In the mean time, on 6 February 1980 and 12 March 1980, respectively, the Applicant had sent the Secretary of the Joint Appeals Board additional annexes relating to his first appeal.

On 11 April 1980, the Applicant submitted a second appeal, hereinafter referred to as "the second appeal", in which he listed seven "grievances" including:

"I. Allegations having wrongly justified the transfer of the expert [the Applicant] from Niamey to Addis Ababa and the non-renewal of his contract."

Upon the decision of its Chairman, the Joint Appeals Board first examined the question of the receivability of the second appeal, and, on 27 May 1982, decided that it was not receivable. On 1 June 1982, the Secretary of the Board transmitted that decision, together with a copy of the Statute and Rules of the Administrative Tribunal, to the Applicant through the UNDP Resident Representative in Togo, who gave the envelope containing these documents to the Applicant on 17 June 1982.

The Board adopted its report on the "first appeal" on 29 February 1984. Its conclusions and recommendation were as follows:

"Conclusions and recommendation"

"51. With respect to the appellant's pleas relating directly to the main issue raised by the first appeal, the Board finds that the delay in the appellant's repatriation from Addis Ababa to his home country caused him a serious loss. It also finds that, because of the existence of elements of fault in the conduct of the respondent and of the appellant, that delay was attributable to both parties and that, accordingly, the appellant is entitled to compensation for the part of the delay for which the respondent was responsible. The Board estimates that compensation at the equivalent in dollars of one third of the amount of the salary and allowances to which the appellant would have been entitled if his appointment had been extended until 5 February 1980, the date of the dissolution of the Committee of Inquiry.

"52. The Board finds that the other pleas submitted by the appellant are either devoid of merit or not receivable.

"53. In view of the above, the Board recommends that the Secretary-General pay to the appellant the equivalent in dollars of one third of the amount of the salary and allowances to which the appellant would have been entitled if his appointment had been extended until 5 February 1980, the date of the dissolution of the Committee of Inquiry."

On 24 September 1984, the Assistant Secretary-General for Personnel Services sent the Applicant a memorandum which read as follows:

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

"(a) to pay you, in an attempt to settle the case, an amount equivalent to one third the salary and allowances which you would have received had your appointment been extended from 1 July 1979 until 5 February 1980, and

"(b) To take no further action on this case.

"The decision taken by the Secretary-General is 'the final decision on the appeal' mentioned by Staff Rule 111.2 (o). Therefore, any further recourse you might wish to file should be addressed to the Administrative Tribunal."

On 10 September 1984, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. By taking three years and nine months to deliver its advisory opinion on the first appeal, the Joint Appeals Board did not follow the procedure set forth in the Staff Regulations and Staff Rules.

2. The Board took 25 months to deliver its advisory opinion on the second appeal, which it retroactively declared not receivable and, by so doing, set aside the first appeal, which had been judged receivable.

3. Although it dismissed the plea relating to the Applicant's reappointment, the Board proved the existence of a clear link between the two appeals, both of which dealt with non-observance of the contract, in which remuneration and reappointment are connected.

4. In considering that the Applicant's presence in Addis Ababa was required by the Respondent for the work of the Committee of Inquiry and for the last medical examination, the Board ruled on the legal contractual bonds that existed between the Applicant and the Respondent. The fact that the Committee of Inquiry was set up six months after the expiration of the Applicant's contract shows that the Respondent felt uneasy about the way in which he had treated the Applicant.

5. The Administration did not take the initiative in arranging for a medical examination on separation from service. In fact, the Applicant found it necessary to send 12 memoranda to the Respondent before obtaining a favourable reply to his request for a medical examination.

6. The Applicant has been left unemployed. The irregularities of which he was a victim have thus dealt a fatal blow to his international career.

Whereas the Respondent's principal contentions are:

1. The application is not receivable as to its merits in so far as the Tribunal is invited to consider the Applicant's terms of appointment and reappointment.

2. In view of the letter of appointment and the circumstances, the Applicant had no legal grounds for expecting a renewal or extension of his contract upon the expiration of his fixed-term appointment.

The Tribunal, having deliberated from 16 October to 8 November 1985, now pronounces the following judgement:

I. The Applicant was in the service of the United Nations (Department of Economic and Social Affairs/Office of Technical Co-operation, then ECA), from 31 December 1973 to 30 June 1979 under fixed-term appointments, which initially were for an average period of 12 months, later of 4 months. The last of those contracts was a fixed-term project personnel appointment from 1 March to 30 June 1979, subject to staff rules 200.1 to 212. Before signing that contract, the Applicant was advised by the Chief of the Personnel Section, ECA, that his contract would not be extended beyond 30 June 1979.

II. Even before the expiration of that contract and for several months after, the Administration, at the request of the Applicant, made every effort to find another post for him. In September 1979, the Executive Secretary of ECA suggested to the Chief of the Personnel Section, ECA, that he should ask the Chief of the Joint ECA/FAO Agriculture Division to make concrete proposals concerning the recruitment of the Applicant as a consultant. These efforts were, however, in vain, and the Applicant failed to find other employment in the Organization.

III. The Tribunal considers that if it had had to adjudicate the case on its merits, there would be grounds for ruling that the Applicant had no particular

right to be reinstated as a technical assistance expert or offered other employment. Accordingly, the Administration could not have been held responsible for the fact that no employment was found for the Applicant.

IV. The Respondent objects that that part of the application relating to the consideration of the Applicant's terms of appointment and reappointment is not receivable. In its report No. 395 of 27 May 1982, the Joint Appeals Board declared that part of the Applicant's appeal not receivable on the grounds that the Applicant had not filed his appeal within the time-limit laid down in paragraphs (a) and (b) of staff rule 111.3, which applies to technical assistance project personnel under staff rule 211.1 (c). The report was communicated to the Applicant on 17 June 1982.

V. Under article 7 of the Statute of the Tribunal, an application "shall not be receivable unless it is filed . . . within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant." The only application of which the Tribunal is seized was filed on 14 May 1984 and again on 10 September 1984 after it was brought into line with the formal requirements of the Rules of the Tribunal, that is to say, at least 23 months after the communication to the Applicant, on 17 June 1982, of report No. 395 of the Joint Appeals Board. The application is therefore not receivable in so far as it is directed against the recommendations of report No. 395 of the Joint Appeals Board, which declared not receivable that part of the application relating to the Applicant's terms of appointment and reappointment.

VI. The Tribunal further decides that, in this particular case, there are no grounds for suspending the provisions regarding time-limits, as article 7, paragraph 5, empowers it to do. On the one hand, the suspension of a time-limit must be justified by serious reasons which prevented the Applicant from acting, and must be for a reasonably short time; that is not the case here. Furthermore, as the Tribunal indicated above, consideration of the merits would also lead to rejection of the application.

VII. The Applicant asks the Tribunal to order the Respondent to pay him his salary and subsistence allowance from 8 May 1979, the date on which he arrived in Addis Ababa, to 16 May 1980, the date of his arrival at the place of entitlement. In any event, the Tribunal notes that these amounts are due to the Applicant until the expiration of his contract on 30 June 1979. The Tribunal considers that that is the date of the Applicant's separation from service. Accordingly, his last day for pay purposes is determined by staff rule 209.11:

"(a) When project personnel are separated from service, the date on which entitlement to salary, allowances and benefits shall cease shall be determined according to the following provisions:

" . . .

"(ii) Upon expiration of a fixed-term appointment, the date shall be the date specified in the letter of appointment;"

"VII. This rule is further clarified in paragraph (b):

"When project personnel are exercising an entitlement to return travel, the last day for pay purposes shall be the date established under subparagraphs (a) . . . , (ii) . . . above, or *the estimated date of arrival at the place of entitlement, whichever is later. The estimated date of arrival shall be determined on the basis of the time it would take to travel without interruption by an approved route and mode of direct travel from the duty station to the place of entitlement, the travel commencing no later than the*

day following the date established under paragraph (a) above.” [Emphasis added.]

Under the circumstances, the Tribunal considers that the Applicant cannot invoke that rule to maintain that the estimated date of arrival at the place of entitlement was 16 May 1980. The time is reckoned from no later than the day following the date of separation from service, exclusively on the basis of the necessary conditions of the return journey.

VIII. On the other hand, if the Applicant's departure is delayed or prevented by the Administration, the latter must bear the responsibility for that delay. The Respondent maintains that the Administration neither delayed nor prevented the Applicant's departure, in so far as the Administration's inaction was a necessary consequence of the application of the existing regulations. The Joint Appeals Board, for its part, found that the delay in the Applicant's repatriation "must be attributed in part to the appellant himself". It added: "The Board observed, however, that the Administration's conduct in this case evidenced several instances of negligence, inconsistency and indecisiveness which also contributed to the delay."

IX. The Tribunal notes that the Applicant took advantage of the situation which was thus created. However, the responsibility for the situation rests with the Administration; it could have put an end to it speedily yet failed to do so. Initially it considered finding other employment for the Applicant and under the circumstances, it was normal that it should delay his repatriation. It took the initiative to set up a Committee of Inquiry, whose work, as the Joint Appeals Board noted, required the presence of the Applicant in Addis Ababa. Finally, the Administration disregarded its obligations concerning the last medical examination which project personnel must have on separation from service, and this led to further, considerable delays in the Applicant's repatriation.

X. The final sentence of rule 204.6 (b) refers to that last medical examination as follows:

“. . . They [project personnel] shall undergo a medical examination on separation from service, and the report on this last examination shall be submitted to the United Nations Medical Director for review.”

Unlike staff rule 104.15, that rule requires the Administration to have technical assistance project personnel undergo a last medical examination on separation from service.

XI. The Tribunal can therefore only reject the summary observations of the Respondent, who maintains that the practice of the United Nations Medical Service is consistent with staff rule 204.6 (b), which, according to the Respondent, "in no way requires the administration of a medical examination prior to separation from service".

XII. Despite the Applicant's repeated requests, the Administration first refused to arrange for that last medical examination prior to the Applicant's repatriation. Then it changed its mind. According to the report of the Joint Appeals Board, "the Board was therefore of the view that the respondent must be held responsible for that decision and for its consequences, in particular the fact that the appellant's presence in Addis Ababa was required for the purpose of the medical examination in question from 30 October 1979 to 16 January 1980". The Tribunal accepts that conclusion. It notes, however, that the last medical examination was delayed until 5 May 1980, when the Applicant was called by Dr. Gatenby, Director of the United Nations Medical Service and Dr. Pumphalov, Chief of the ECA Medical Service, to the latter's office.

XIII. After 5 May 1980, the Applicant was in a position to proceed with his return home.

XIV. The Applicant definitely sustained injury because of the way the Administration acted. He is owed compensation.

XV. The Tribunal considers that the most proper form of compensation for the injury the Administration caused the Applicant would be payment of the equivalent in dollars of the amount of the salary and daily subsistence allowance to which he would have been entitled if his appointment had been extended until 16 May 1980, the date of his arrival at the place of entitlement.

XVI. With regard to the Applicant's request for compensation for the injury suffered because of the delay resulting from the procedure followed, the Tribunal notes that the procedure did take longer than normal. However, these delays were also due to the fact that the Applicant submitted numerous memoranda and documents without considering whether they were useful or relevant. The Tribunal therefore considers that no compensation is due to the Applicant on that count.

It is none the less true that the Tribunal is concerned at the excessive procedural delays and is anxious to see effective implementation of General Assembly resolution 39/245, paragraph 6 (e), which recommends that the Secretary-General should "strengthen the various appeals machinery, with a view to eliminating the backlog of cases".

XVII. For the foregoing reasons, the Tribunal decides:

1. That, in so far as it is directed against the opinion of the Joint Appeals Board (report No. 395) dated 27 May 1982, the appeal is not receivable because it was not filed within the required time-limit;

2. That with regard to plea No. 2, the Respondent shall pay the Applicant the equivalent of the total amount of the salary and allowances which he would have received had his contract been renewed for the period 1 July 1979 to 16 May 1980, minus any amounts which may have been paid to him in execution of the decision of the Secretary-General dated 24 September 1984.

Interest on amounts thus due to the Applicant shall be payable at an annual rate of 6 per cent computed from 16 May 1980 to the date when payment is effected.

3. All the Applicant's other pleas are rejected.

(Signatures)

T. MUTUALE
President

Luis de POSADAS MONTERO
Member

New York, 8 November 1985

Roger PINTO
Member

R. Maria VICIEN-MILBURN
Executive Secretary