

counter to article 49 of the Pension Fund regulations. That article sets forth the rules for amendments to the regulations. Paragraph (b) states:

“The Regulations so amended shall enter into force as from the date specified by the General Assembly *but without prejudice to rights to benefits acquired through contributory service prior to that date*” (emphasis added).

When the Applicant made his choice in 1983, that choice could not have a negative effect on his right to restoration, which no longer existed. To apply to the Applicant today the condition of non-payment of a benefit established as from 1 January 1984 would unquestionably prejudice a right to benefits acquired during a period of contributory service prior to that date. The fact that a benefit was paid to the Applicant cannot deprive him of the advantages conferred by article 21 (b).

XXXVII. I note, moreover, that the benefit was paid to him when he had already resumed his contributory service. The second condition is fulfilled since the Applicant resumed his service on 10 July 1983 “without a benefit having been paid to him” That benefit was paid to him on 18 July 1983.

XXXVIII. I consider that article 21 (b) is applicable. In accordance with the provisions of that article, the Applicant’s participation in the Pension Fund did not end when he resumed his contributory service with FAO on 10 July 1983. I therefore consider that the decision of 17 May 1984 rejecting the Applicant’s plea concerning the restoration of his prior contributory service should be rescinded.

(Signed)

Roger PINTO
Member

New York, 8 November 1985

Curdon WATTLES
Acting Executive Secretary

Judgement No. 361

(Original: English)

Case No. 367:
Minter

Against: The Secretary-General
of the United Nations

Request by a former staff member of UNIDO for compensation for loss incurred through the denial of the conversion of his savings on the cessation of service.

Conclusion of the Joint Appeals Board that the Applicant relied on a certain practice, withdrawn suddenly, which implied the possibility of the conversion of his savings at the official rate of exchange.—Recommendation to pay the Applicant compensation of \$US 3,981, plus interest.—Recommendation rejected.

The Tribunal recalls that its jurisdiction under article 2.1 of its statute can only be invoked in the case of violation of the relevant contract of employment, terms of appointment or pertinent rules or regulations.—Applicant’s assertion that the Respondent is financially responsible for the loss suffered by the Applicant by the denial of the host Government of the facilities for conversion of savings at the official rate of exchange.—Consideration of the circumstances of the case.—Finding that the savings in question resulted from the accumulation of unspent portions of daily subsistence allowance and that the normal expectation is that this allowance would not result in

substantial savings.—Staff rule 203.9 (a).—Absence of any legal obligation to convert the daily subsistence allowance.—Question of a possible legitimate expectation of such conversion resulting from practice.—Finding to the contrary.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, President; Mr. Herbert Reis, Vice-President;
Mr. Endre Ustor;

Whereas on 4 November 1985 Alfred Lawrence Minter, a former staff member of the United Nations Industrial Development Organization, hereinafter referred to as UNIDO, filed an application in which he requested the Respondent:

“ . . . to require the Secretary-General to re-imburse me as recommended in Paragraph 25 of the Report of the Joint Appeals Board.

“The amount of compensation sought is \$US [United States dollars] 3981 plus interest at the various London bank rates from 27 June 1983 up to the date of final settlement.”

Whereas the Respondent filed his answer on 27 January 1986;

Whereas the Applicant filed written observations on 24 February 1986;

Whereas at the request of the Tribunal, the Respondent submitted additional documents on 12 May 1986;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNIDO on 4 January 1983 as an Expert in Production Control System. He was offered a six-month project personnel appointment at the L-5 Step X level, under the 200 series of the Staff Regulations and Rules. He was assigned to Baghdad, Iraq. During the course of his employment, the Applicant's salary was paid in U.S. dollars and his daily subsistence allowance in Iraqi dinars.

In a letter dated 2 April 1983 addressed to the Secretary-General, the Applicant complained about a series of matters related to his conditions of employment in Iraq. On 26 April 1983 the Acting Chief, Administrative Review Unit, Office of Personnel Services, OPS informed the Applicant that this letter would be treated as a request for review of an administrative decision under Staff Rule 111.3. On 1 June 1983, not having received a reply from the Secretary-General, the Applicant lodged an appeal with the Joint Appeals Board. None of the issues raised in this preliminary exchange of correspondence with the Secretary-General and the Joint Appeals Board are before the Tribunal in the present case.

It appears that in June 1983, before the Applicant's appointment was due to expire, the Government of Iraq had suspended a practice whereby UNDP [United Nations Development Programme] staff members could convert local currency into foreign currency at the official rate of exchange. The Applicant asserts that on 13 June 1983 he went to the Rafidain Bank in Baghdad to arrange the transfer of a sum of Iraqi dinars that he had accumulated during his stay in Iraq to a London Bank, and was then informed that “all such transfers had been suspended since 9 June 1983”. He “immediately” discussed the problem with the UNDP Resident Representative and his Deputy who, according to the Applicant, were interceding *vis-à-vis* the Iraqi authorities to

obtain a removal of the suspension which they considered "formed part of the official agreements between the Iraqi Government and the U.N.". The Applicant alleges that the UNDP authorities were not able "to achieve any removal of the ban" until some weeks after the Applicant left Iraq. According to the Applicant, they made it "quite clear to [him] that there was no way in which [the Applicant] could leave any money in official care . . . against the day when the ban would be lifted". The Applicant was therefore obliged to make private arrangements in order to minimize his losses in the exchange of the Iraqi dinars, but still suffered a loss of \$US 3,981. The Applicant left Iraq on 27 June 1983.

The UNIDO Joint Appeals Board in Vienna adopted its report on 27 September 1984. Its unanimous Conclusions and Recommendations with respect to the claim of the Applicant at issue in this case read as follows:

"25. The Board is of the view that the appellant whose salary and allowances were paid by the Organization relied on certain conditions, especially the possibility of converting the local currency accumulated at the end of his assignment. The Organization having informed him of this facility should ensure that it is not withdrawn to his disadvantage. The loss ensuing from the sudden ban on conversion must, under the circumstances of this case, be borne by the Organization that pays the appellant's salary. The Board therefore recommends that the Organization pays the appellant \$US 3981 plus interest rate at the London Bank rate from 27 June 1983 until the date of final settlement. This sum represents the loss incurred by the appellant. At the end of June 1983, the Pound Sterling was worth 0.447 Iraqi dinars. This makes the ID [Iraqi dinars] 2100.000 the appellant had, worth £Stg [Pound Sterling] 4698. Since he was able to obtain £Stg 2100.00 unofficially, there was a loss of £Stg 2598, equal to \$US 3981 at the then rate of exchange of \$US 1.5325 to £Stg 1.00. To this must be added the interest accrued from 27 June 1983 to the date of final settlement, on the \$US 3981."

On 26 July 1985 the Secretary-General informed the Applicant that:

"The Secretary-General, having re-examined your case in the light of the Board's report, has decided not to accept the Board's recommendation contained in paragraph 25 of the report and to take no further action on your case.

"The Secretary-General's decision to reject the Board's recommendation is based on his conclusion that there was no provision in your terms of appointment, including all pertinent rules and regulations, which could give rise to an obligation on the part of the Organization to convert into convertible currency your accumulated savings of local currency. In arriving at this conclusion, the Secretary-General bore in mind the advice given by UNDP that, in accordance with its established policy, the facility of conversion of accumulated local currency upon departure from a field duty station is not provided to short-term experts and neither is this facility provided in respect of accumulated daily subsistence allowance."

On 4 November 1985 the Applicant filed the Application referred to above.

Whereas the Applicant's principal contentions are:

1. The Secretary-General's reason for rejecting the recommendation of the Joint Appeals Board is based on erroneous and irrelevant advice from UNDP.
2. While there is no written evidence to support the practice whereby experts on short-term appointments were allowed to convert local currency at

the expiration of their appointments at the official rate of exchange, this practice was *de facto* carried out.

3. The UNDP authorities in Baghdad interceded *vis-à-vis* the Government of Iraq to rescind the decision to suspend conversion of local currency to foreign currencies at the official rate of exchange. The Applicant was informed that the facility for conversion of local funds to other currencies at the official rate of exchange was restored by the Iraqi Government for United Nations personnel, three months after the Applicant left Baghdad.

Whereas the Respondent's principal contentions are:

1. The Staff Rules provide that DSA [daily subsistence allowance] is payable in local currency. It follows that staff do have a right to demand that the United Nations convert into hard currency their accumulated savings of DSA.

2. The withdrawal by the Government of Iraq of a facility enabling staff, upon separation from service, to convert Iraqi dinars to dollars at favourable rates of exchange does not oblige the United Nations to provide conversion facilities over and above those established pursuant to the Staff Rules.

The Tribunal having deliberated from 28 April 1986 to 14 May 1986 now pronounces the following judgement:

I. Under its Statute, the jurisdiction of the Administrative Tribunal extends to applications by staff members alleging non-observance of contracts of employment and terms of appointment (Article 2, paragraph 1). The Statute makes clear that the fundamental concepts on which this jurisdiction is based, namely, "contracts of employment" and "terms of appointment", include "all pertinent regulations and rules in force at the time of alleged non-observance . . .". An attempt to invoke the jurisdiction of the Tribunal must depend upon a reasoned assertion of violation by the Respondent of the relevant contract of employment, terms of appointment or pertinent rule(s) or regulation(s).

II. In the case before the Tribunal, the Applicant asserts that the Respondent is financially responsible for the loss suffered by the Applicant as a result of the denial by the Government of Iraq of the obligation it allegedly undertook in 1976 upon entering into an agreement with the United Nations Development Programme. According to Article X of this Agreement, Iraq granted "rights and facilities" for "The most favourable legal rate of exchange" in connection with UNDP-assisted development projects carried out in Iraq. The Applicant asserts that this provision guaranteed free conversion of local currency into convertible currency.

III. As the six-month period of his appointment in Iraq was drawing to a close, the Applicant sought to obtain the favourable conversion into convertible currency of a sum of Iraqi dinars which he had accumulated during his stay. He was unable to do so because of the denial by Iraqi banking authorities of prior arrangements allowing for freely changing dinars into convertible currency. The Applicant does not find fault with the conduct of the local United Nations authorities at the time of this denial. On the contrary, his application states that the denial was "with no prior notice", and he cites an assertion by the UNDP Deputy Resident Representative at Baghdad "that the Resident Representative was doing everything possible to get the official decision [to deny currency conversion] rescinded by the Iraqi Government." Bearing in mind what has been said in paragraph I above, in order for the jurisdiction of the Tribunal to be successfully invoked, the Applicant must assert, at least by implication, and support by argumentation, that the asserted violation by the host government of this supposed contractual commitment in turn caused a violation by the

Respondent of the Applicant's contract of employment, the terms of his appointment or pertinent regulation(s) or rule(s) then in force.

IV. Before examining in detail the question of whether the Respondent violated the contract of employment, terms of appointment or governing regulations or rules, the Tribunal considers it appropriate to look more carefully into the character of the transactions that underlay the Applicant's wish to convert a certain amount of local currency into convertible currency. The facts show that the Applicant, an Expert in Production Control Systems in the steel industry, was employed by UNIDO for six months under a project personnel appointment governed by the 200 Series of the Staff Rules. Appointed from his home to a third country, the Applicant entered into a contract with UNIDO to be paid a salary in United States dollars. According to long-standing rules, he was also to be paid a daily subsistence allowance in Iraqi dinars while in Iraq. Such an allowance is intended to be used on a continuing basis to defray costs of living arising from establishing a short-term residence in a foreign country; that is the purpose of the allowance in the generality of cases. The record provides no indication of how and in what circumstances the Applicant was able to accumulate a substantial sum of money in Iraqi dinars from unspent portions of his daily subsistence allowance. Whatever the reasons, the question of legal entitlement to compensation for loss caused by denial of currency conversion needs to be examined in light of the fact that the expectations of the parties on entering into the contract of employment must have been that any daily subsistence allowance would be used to meet daily living expenses and would not result in substantial personal savings. Neither the Applicant nor the Respondent could have considered that the same rules would apply to daily subsistence allowance as to salary. Nor is there any evidence that the Applicant entertained a hope of saving any part of this allowance when he entered into the contract of employment. The Tribunal notes that, in the course of making the appointment, UNIDO sent him a Form /IOD. [Industrial Operations Division] 31/Rev.1(8.79)E "Conditions of Employment (Short-term)", specifying that net base salary was payable in a currency of his choice but that DSA was payable in Iraqi dinars. The Applicant is candid in stating, in his written observations, that "It was [only] from informal discussion and enquiry with UNDP staff at Baghdad that Applicant obtained the information that savings accumulated from DSA could be remitted officially (and had been, in the past)."

V. The letter of appointment states merely that "The salary shown above does not include any allowance to which you may be entitled"; it says nothing of a subsistence allowance nor, of course, of the convertibility of such an allowance. The Tribunal must thus consider whether any regulation or rule assimilated to the contract of employment or terms of appointment entitled the Applicant to form an expectation that he would be able to convert into convertible currency any local currency savings effected from economies in his use of the daily subsistence allowance. Staff Rule 203.9 (a) provides for payment "in local currency" of a daily subsistence allowance to an expert on short-term field assignment, but the Rule is silent as to any possibility of conversion. By contrast, the rules provide that, where the staff member has been serving for a multi-year term in a soft-currency country, he may, on transfer or separation, convert into convertible currency one-twelfth of each year's salary and the final month's allowances, according to Section 138 of the UNDP Finance Manual. Plainly, however, the letter and rationale of Section 138 are not applicable to the Applicant, who stayed in Iraq no longer than the six months of his appointment and whose salary was in any event paid in U.S. dollars.

VI. It remains to inquire whether, notwithstanding the silence of the rules concerning the right of short-term appointees to convert, the consistent practice of the Respondent was such as to lead the Applicant to entertain a legitimate expectation that he would be afforded such a right. As noted earlier, the Applicant admits that he did not hold any such expectation on taking up his assignment in Iraq. The Tribunal notes that the Joint Appeals Board has stated that, as a matter of practice, conversion under similar circumstances has often taken place. However, the Tribunal holds that this practice, to the extent it exists, cannot be regarded as giving rise to legal rights and obligations. The Applicant alleges that experts on short-term contracts were normally allowed to convert local currency at the end of their assignments, but he produces no evidence as to any guarantees given to him by responsible UNDP officials. He also points to the help UNDP officials extended him as being consistent with his efforts to achieve a conversion even though they knew that he was a short-term appointee. But even if these actions were as described by the Applicant, these officials may have sought to afford him the possibility of conversion as a courtesy and a privilege rather than as of right. Moreover, in a telegram to Headquarters, the UNDP Resident Representative at Baghdad stated expressly that short-term experts in Baghdad were not entitled to convert unused DSA balances and that they were so informed on arrival.

VII. In the face of these conflicting assertions, the Tribunal is unable to find a legal basis for the opinion of the UNIDO Joint Appeals Board that "the practice of allowing experts to convert accumulated local currency at their duty station is so long established that it can at least be considered as an acquired right." In the light of the wording of the UNDP Finance Manual, the Tribunal must conclude that the Respondent's practice of extending a conversion privilege to short-term appointees did not give rise to a legal entitlement on the part of the Applicant.

VIII. For these reasons, the Tribunal rejects all the pleas contained in the Application.

(Signatures)

Samar SEN
President

Herbert REIS
Vice-President

Geneva, 14 May 1986

Endre USTOR
Member

R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 362

(Original: English)

Case No. 358:
Williamson

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

Request by a staff member of UNCTAD for the rescission of the decision not to announce a vacancy, and for compensation.