

XII. Certain of the witnesses examined provided no new information on this point, but one witness, who had worked side by side with the Applicant, said of the ex-staff member who was subsequently recruited, that this person "happened to be a trained operator and I guess he was more capable".

XIII. The Tribunal is not able to hold that extraneous motivations and prejudice led to the separation from the service of the Applicant.

XIV. Staff Rules 301.1 to 312.6 relating to short-term service issued in January 1962 govern the case under consideration and Rule 304.4 specifies that the short-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment. Staff Rule 309.5 provides that the short-term appointment shall expire automatically without prior notice on the expiry of the period specified in the Letter of Appointment and paragraph (b) of the same rule makes it clear that separation as a result of the expiration of the contract shall not be regarded as a termination within the meaning of the Staff Regulations and Rules. The Tribunal finds that there has been no non-observance of the contract of employment or terms of employment or the Staff Regulations and Rules in force applicable to the Applicant.

XV. The Tribunal accordingly dismisses the application.

*(Signatures)*

CROOK  
*Vice-President, presiding*

R. VENKATARAMAN  
*Vice-President*

*New York, 23 September 1965.*

H. GROS ESPIELL  
*Member*

N. TESLENKO  
*Executive Secretary*

## Judgement No. 95

*(Original : English)*

**Case No. 93 :**  
**Sikand**

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

*Termination of a permanent appointment on the grounds of unsatisfactory service, grant of fixed-term appointments.—Non-renewal of a fixed-term appointment.*

*Request for a ruling by the Tribunal that the Applicant's permanent appointment was not terminated.—Refutation of argument based on the fact that the Applicant's terminal benefits were held in escrow.—Request rejected.—Rejection of contention that, since the Applicant was detailed to the Technical Assistance Board after receiving his first fixed-term appointment, there was a secondment.—Applicant's appointment status changed by the second fixed-term appointment.*

*Request for a ruling by the Tribunal that the Applicant enjoyed the right to reinstatement with the United Nations.—Terms and conditions of employment of a staff member may be gathered from correspondence and surrounding facts and circumstances.*

*—Correspondence and circumstances show that the Respondent had impliedly made a commitment to review the Applicant's case with a view to reinstating him.—Examinations made by the Respondent to meet this obligation.—Change in the original arrangements with the Applicant's consent.—Request rejected.*

*Delay in disposal of the case by the Joint Appeals Board.—No prejudice suffered by the Applicant.*

*Application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Honourable Mr. R. Venkataraman, Vice-President ; Mr. Héctor Gros Espiell ;

Whereas, on 31 July 1964, Harcharan Dass Sikand, a former staff member of the United Nations and the Applicant herein, requested the President of the Tribunal to extend the time-limit for the filing of an application with the Tribunal ;

Whereas, on 14 August 1964, the President granted an extension of the time-limit to 1 November 1964 ;

Whereas, on 1 November 1964, the Applicant filed an application requesting the Tribunal :

(a) To rule that the permanent appointment granted to the Applicant in 1953 was not terminated in 1959 within the meaning of Staff Rule 109.1 (b) ;

(b) To rule that the Applicant enjoyed re-employment rights at the time of his secondment to the Technical Assistance Board ;

(c) To order the Respondent to make all due and reasonable efforts to place the Applicant in another suitable post within the United Nations family ;

(d) To order the Respondent, in the event that he exercises the option given to him under article 9.1 of the Statute of the Tribunal, to pay to the Applicant two years' net base salary as compensation for the injury sustained and the loss of his career, in addition to the lump sum previously recommended by the Joint Appeals Board ;

Whereas, on 3 November 1964, the Applicant requested the Tribunal to hold oral proceedings under article 15 of its Rules ;

Whereas, on 1 February 1965, the Respondent filed his answer ;

Whereas, on 30 March 1965, the Applicant filed written observations on the Respondent's answer ;

Whereas, on the same day, the Applicant inquired whether the United Nations would pay his travel expenses from his home country to the place where the Tribunal would hold oral proceedings in his case ;

Whereas, on 7 April 1965, the Respondent informed the President of the Tribunal that he believed that the payment by the United Nations of the Applicant's travel expenses would not be justified since the Applicant had been provided with counsel by the Organization and since the case related mainly to questions of law ;

Whereas, on 21 May 1965, the President decided that, in the circumstances of the case, the question of the payment of the Applicant's travel expenses was within the Respondent's discretion ;

Whereas, on 30 August 1965, the President fixed 17 September 1965 as the date for the oral proceedings ;

Whereas, on 10 September 1965, the Applicant requested the Tribunal to hold

the oral proceedings at a later date without postponing the consideration of the case to another session ;

Whereas, on the same day, the Tribunal informed the Applicant that the oral proceedings would be held on 17 September 1965 as scheduled since the only possibility of postponement was to another session ;

Whereas, on 16 September 1965, the Respondent filed a rejoinder to the Applicant's written observations ;

Whereas, on 17 September 1965, the Tribunal heard the parties in public session ;

Whereas, on the same day, the Applicant filed a document to which he had referred in the course of the public session ;

Whereas, on 20, 21 and 23 September 1965, the parties filed additional written statements at the Tribunal's request ;

Whereas the facts in the case are as follows :

The Applicant, who had joined the Secretariat of the United Nations in 1947 under a temporary appointment, received a permanent appointment in 1953 as an Administrative Officer at the P-3 level in the Field Operations Service. On 1 November 1954 he was transferred to the Department of Public Information and, subsequently, detailed to the Technical Assistance Administration. In 1956, 1957 and 1958 the annual increment of his salary was withheld for unsatisfactory service. By a letter dated 28 April 1959 the Director of Personnel informed the Applicant that the Appointment and Promotion Board had recommended that his permanent appointment should be terminated on the grounds of unsatisfactory service, and that the Secretary-General had accepted that recommendation. The Director of Personnel added :

“ This letter constitutes formal notice of the termination of your appointment as required by Staff Rule 109.3 to become effective 1 August 1959. You will also be paid termination indemnity in accordance with Annex III to the Staff Regulations, as well as payment for accrued annual leave within the limits set by the Staff Rules. ”

On 26 May 1959 the Applicant requested the Secretary-General to review the decision to terminate his permanent appointment. On 18 June 1959 the Secretary-General informed the Applicant that :

“ The matter has once more been reviewed, and I find it necessary to maintain the decision to terminate your appointment with the United Nations. I shall, however, change the effective date from 1 August to 31 August 1959 in order that you may have a little more time to arrange your affairs. ”

On 2 July 1959, the Applicant informed the Secretary of the Joint Appeals Board that he was lodging an appeal with the Board. On 21 August 1959 he wrote again to the Secretary-General. By a letter dated 26 October 1959, the Director of Personnel offered the Applicant a fixed-term appointment for thirteen months at step 9 of the P-2 level. The letter read :

“ In accordance with our recent conversations, I am writing to offer you, on behalf of the Secretary-General, a fixed-term appointment to the Secretariat for one year and one month at step 9 of the P-2 level, effective 1 October 1959. You would be on advanced annual leave status during the month of October and detailed to the Technical Assistance Board as of 1 November 1959 with a view to assignment to Manila as Assistant to the Resident Representative.

“ The salary of step 9 of the Associate Officer level is \$7,870 gross per annum which after deduction for the United Nations Staff Assessment Plan amounts to an approximate net base salary of \$6,400 per annum. In addition, at the present time a non-pensionable post adjustment of \$1,425 net per annum is added to the salary of a staff member at Headquarters with a dependent wife or a dependent child. The post adjustment is increased to \$2,550 upon your arrival in Manila.

“ On the attached Annex you will find further information on conditions of employment, travel and related matters relative to the assignment in Manila. Certain items which, on the basis of the information you have supplied, appear to apply to this appointment are marked “ Yes ”. Other items which are not applicable are marked “ No ”.

“ In addition to the relevant conditions indicated in the enclosed Annex, you will be entitled to an Assignment Allowance at the rate of \$1,000 net per annum during your service in Manila.

“ This offer is subject to your medical clearance for this assignment by the Health Service at Headquarters.

“ I would like to take this opportunity to indicate to you the procedure we contemplate should you accept the present offer of a fixed-term contract.

“ In accordance with normal provisions when periods of service accumulate to over six years, you will continue to be a participant in the Joint Staff Pension Fund.

“ Similarly, you will continue to accrue entitlement to repatriation grant, at the rate appropriate to the fixed-term appointment for the duration of your service outside your home country on this fixed-term appointment.

“ Termination of your permanent contract became effective on 31 August 1959 ; the total dollar value of the termination indemnity, repatriation grant and payment for unexpended annual leave payable under the Staff Regulations and Staff Rules will be established as of that date. As you are being offered a new contract, this amount will be held in escrow for the time being.

“ The fixed-term appointment presently being offered to you is a new and separate contract. In order that you may have income during the month of October 1959, annual leave will be advanced to you under the fixed-term contract up to 22 working days, notwithstanding the lower limit for advance annual leave provided by Rule 105.3 (e).

“ If you should separate from the service at the end of, or during, the fixed-term contract you will be paid the amount held in escrow in respect of the previous permanent contract ; for the purposes of Rule 107.4 (b) (Loss of Entitlement to Return Transportation) and Rule 107.28 (c) (Loss of Entitlement to Removal Expenses), the date of your separation under the fixed-term contract will be accepted as ‘ the date of separation ’.

“ On the other hand, if you are subsequently awarded a permanent appointment the above amounts held in escrow based on separation will not be paid to you and your entitlements thereafter will be based upon the total length of your service with the United Nations.

“ I am sure you will agree that this is a fair and generous course of action in the circumstances, and I would be grateful if you would indicate whether you accept the position outlined above as regulating your relationship with the Organization. ”

In reply to that offer, the Applicant, on 29 October 1959, addressed the following letter to the Director of Personnel :

“ I acknowledge with thanks the receipt of your letter of 26 October and write to inform you that I accept the offer of an appointment contained therein. I am happy that I shall be able to continue to work for the United Nations to the service of which so many years of my professional life have been devoted.

“ I am also pleased to note from the penultimate paragraph of your letter that the possibility of my being subsequently awarded a permanent appointment has been kept open, and I am grateful to you for making these arrangements possible.

“ I understand that the provision concerning holding in escrow the entitlements under Rule 107.4 (b) and 107.28 (c), means that New York will remain the place of separation, which will enable me to wind up my and my family's affairs here.

“ In my new assignment, I wish to assure you, Sir, that I will devote all my efforts to serve the Organization well and to give full satisfaction to my Supervisors. ”

On 30 November 1959 the Applicant signed a Letter of Appointment as Programme Officer at the P-2 level in the Department of Economic and Social Affairs for a fixed term of thirteen months from 1 October 1959 to 31 October 1960. On 23 December 1959 he was detailed to the Technical Assistance Board as the Board's Assistant Resident Representative in Manila. At the end of the year he assumed his duties in that city. On 6 October 1960 the Applicant signed a periodic report relating to his work from December 1959 to August 1960, which rated him as “ a staff member who maintains a good standard of efficiency ”. On 29 November 1960 he signed a new Letter of Appointment for a fixed-term of one year, from 1 November 1960 to 31 October 1961. The letter specified that the Applicant's appointment was “ in the secretariat of the Technical Assistance Board of the United Nations ” and that he would exercise the function of Assistant Resident Representative in Manila at the P-2 level. On the same day he addressed to the Deputy Director of Personnel a letter stating *inter alia* :

“ As regards the new fixed-term appointment, I wish to state that it was my understanding during the course of my conversation with Mr. Hamilton [Director of Personnel], that the question of my reinstatement with the United Nations would be reviewed on the basis of my performance in my new assignment on the expiration of my one year detailment to the Philippines. ”

On 1 January 1961 the Applicant was given a special post allowance bringing his salary to the P-3 level. On 8 February 1961 the Office of Personnel issued a P.5 Personnel Action form for the Applicant's “ transfer ” from the Department of Economic and Social Affairs to the Technical Assistance Board. On 28 August 1961 he wrote to the Director of Personnel requesting that “ due consideration... be given to my request for restoration of my grade and reinstatement with the United Nations ”. In October 1961 the Applicant's appointment with the Technical Assistance Board was extended for a period of one year. On 10 November 1961 a member of the Office of Personnel informed the Applicant that :

“ We have seriously considered your request to return to the United Nations proper. However, I am sorry to inform you that this will not be possible. On the other hand, I am glad that TAB [Technical Assistance

Board] has recently offered you a further appointment for one year. Since your appointment is in the TAB secretariat, the question of any future extension would be one for the Executive Chairman to decide”.

In December 1961 and April 1962 the Applicant exchanged further correspondence on the matter with the Director of Personnel. On 2 October 1962 the Applicant's supervisor wrote to the Deputy Director of the Joint Administration Division that : “ Mr. Sikand did a most creditable job during my absence on home leave. I therefore very much hope I can give him good news regarding his confirmation of grade in the near future.” Two weeks later the Applicant's appointment with the Technical Assistance Board was extended for a further period of one year. On 11 January 1963, in a letter addressed to the Executive Officer of the Joint Administration Division, the Applicant's supervisor again recommended that he should be promoted to the P-3 level. On 15 March 1963 the Applicant wrote to the Senior Director of the Technical Assistance Board that he had been informed by his supervisor that his post in Manila “ would become redundant ” and that he was requesting therefore “ a transfer to another duty station ”. On 8 April 1963 the Director of the Joint Administration Division addressed the following letter to the Applicant :

“PERSONAL AND CONFIDENTIAL

“ Your personal and confidential letter of 15 March to Mr. McDiarmid [Senior Director, Technical Assistance Board] arrived here just as he was departing for an extended tour of our offices in Central and South America. I have, however, had an opportunity to discuss the question of your future with TAB [Technical Assistance Board] with Mr. McDiarmid, and Mr. Owen [Executive Chairman, Technical Assistance Board].

“ After a careful review of your qualifications and experience, and of the TAB posts which are now available or expected to become available in the balance of the year, we have regretfully concluded that it will not be possible for TAB to extend your appointment beyond its present expiration date of 31 October 1963.

“ There is, of course, the possibility that unforeseen vacancies will arise between now and the expiration date of your appointment. However, I want you know that, after the careful review of which I spoke, it is my judgement that the possibility of this happening is indeed remote.

“ I am writing to you now, so as to give you the fullest possible opportunity to make other plans before the expiration date of your appointment.

“ If an unforeseen opportunity should arise, I shall not hesitate to inform you immediately ”.

The Applicant also raised the question of his further employment with the United Nations in letters addressed to the Director of the Bureau of Operations of the Special Fund, the Executive Chairman of the Technical Assistance Board, the Director and the Deputy Director of Personnel, the Chef de Cabinet, and the Under-Secretary in charge of the Department of Economic and Social Affairs. On 14 May 1963 he was informed by the Director of Personnel that the Office of Personnel was undertaking a thorough study of his case. On 21 June 1963 the Applicant was shown and signed two periodic reports on his work. The first related to the period August 1960-January 1962 ; the second, to the period February 1962-December 1962. Both reports rated him as “ a staff member who

maintains only a minimum standard". On 18 July 1963 the Acting Director of Personnel informed the Applicant that :

"Now that the review mentioned by Sir Alexander [Director of Personnel] in his letter to you of 14 May 1963 has been completed, I very much regret to have to inform you that the United Nations is not in a position to accept your kind offer of services. "

On 30 July 1963 the Applicant requested the Secretary-General "to review the administrative decision [communicated to him by the Acting Director of Personnel] and reinstate me to my function as a second officer [P-3] in the United Nations Secretariat." That request having been refused, the Applicant filed on 28 August 1963 an appeal with the Joint Appeals Board. On 28 October 1963 the Applicant was repatriated from Manila to his home country. On 21 January 1964, a periodic report was issued on the Applicant's work from January to October 1963. It rated him as "on the whole, an unsatisfactory staff member". On 27 April 1964 the Joint Appeals Board submitted a unanimous report to the Secretary-General. The report recommended "the Secretary-General to reject the appeal or appeals of the Appellant", adding, however, that :

"The Joint Appeals Board, taking into account all the various circumstances of the case, considers that it should recommend to the Secretary-General that besides the entitlements that the Appellant may have in consequence of the termination of his permanent contract and his fixed-term appointments, the Appellant be paid, on compassionate grounds, a lump-sum equivalent of one month's salary for each year that he held a fixed-term appointment. "

On 3 June 1964 the Director of Personnel addressed the following letter to the Applicant :

"CONFIDENTIAL

"Attached is a copy of the report of the Joint Appeals Board to the Secretary-General including the Board's recommendation concerning your appeal.

"I have to inform you that the Secretary-General has accepted the Board's recommendation to maintain the Secretary-General's decision regarding your separation from the TAB [Technical Assistance Board] and that your separation payments be limited to those arising under the Staff Regulations and Rules.

"Your file will be transmitted to the competent section of the Secretariat for processing the payment of all your entitlements. "

On 1 November 1964 the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are :

1. The decision to terminate the Applicant's permanent appointment in 1959 was only partially implemented. The termination procedure was interrupted by the offer of a fixed-term appointment made by the Director of Personnel in his letter of 26 October 1959. There was no separation from service and the termination indemnities due to the Applicant were held in escrow until 1964. The Applicant's permanent appointment, therefore, was not terminated in 1959 within the meaning of Staff Rule 109.1 (b) and the rights obtaining under that appointment were preserved during the Applicant's further employment with the United Nations.

2. The letter of 26 October 1959 from the Director of Personnel offering a fixed-term appointment and the letter of 29 October 1959 from the Applicant

accepting the offer constituted a binding contract. The circumstances which led to the conclusion of that contract and the subsequent correspondence relating to it clearly show that the parties intended to keep open the possibility of the restoration of the Applicant's permanent status with the United Nations Secretariat and agreed that the Office of Personnel would review for that purpose the Applicant's performance after one year of service under the fixed-term appointment. The failure by the Respondent to initiate such a review constituted a breach of contract.

3. The contract concluded by the exchange of letters in October 1959 was not affected by the fixed-term appointments subsequently granted to the Applicant, since those appointments were the offspring of that contract and could not operate to the detriment of the rights given therein to the Applicant and, in particular, his expectancy of continued employment.

4. Since the Applicant's subsequent transfer to the Technical Assistance Board was a secondment, he retained his rights of employment in the United Nations Secretariat. Furthermore, he was transferred to the Board without his consent, in violation of the rules governing transfers, and without a review of his performance, in violation of the contract concluded by the exchange of letters in October 1959. The transfer therefore did not relieve the Office of Personnel of its obligations under that contract.

5. The Applicant's performance with the Technical Assistance Board was such that he was recommended for promotion, received a special post allowance and was offered three extensions of his fixed-term appointment. It is true that some unfavourable comments on the Applicant's work appeared in the periodic reports of 15 February 1963 and 21 January 1964. The first of these reports, however, did not comply with the rules governing reporting procedures and the second related mainly to the period during which the Applicant was looking for other employment after having been informed that his appointment with the United Nations would not be extended.

6. The Applicant's separation from service in 1963 was effected with none of the safeguards provided for the termination of permanent appointments.

7. The considerable delay in convening the Joint Appeals Board was prejudicial to the Applicant since the Board was unable to complete its consideration of the case before the repatriation of the Applicant to his home country.

Whereas the Respondent's principal contentions are :

1. The Applicant's permanent appointment was effectively terminated in 1959 both in fact, since the Applicant was separated from the service for at least two months, and in law, since the definition of termination given in Staff Rule 109.1 (b) was fully complied with. Moreover, neither the letter dated 26 October 1959 from the Director of Personnel nor any of the Applicant's subsequent Letters of Appointment contained any stipulation for his reinstatement or for a rescission of the termination of his permanent appointment. The matter is therefore governed by Staff Rule 104.3, which provides that the services of a staff member who is re-employed cannot be deemed continuous unless his new Letter of Appointment embodies an express stipulation for reinstatement.

2. The Applicant had no right to re-employment or to placement in another post at the time of the termination of his permanent appointment in 1959 since the reason for that termination was unsatisfactory service. The provision relating to the preservation of re-employment rights appearing in the 1953 Agreement between

the United Nations and the Technical Assistance Board is therefore not applicable to the present case.

3. The Applicant's transfer to the Technical Assistance Board was not a secondment since the Board was not a separate organization. That transfer was completely consistent with the Staff Rules and Regulations. It did not contravene the letter of 26 October 1959, and was a logical development under the circumstances existing at the time.

4. The quality of the Applicant's performance is irrelevant in the present case since it concerns the non-renewal of a fixed-term appointment. In any event, the evidence shows that there were good reasons to doubt whether the Applicant's performance was of a sufficiently high standard, taking into account his previous employment history, to warrant his return to the career service.

5. The Applicant had no expectancy of continued employment either under the Staff Rules and Regulations or under the letter of 26 October 1959, which was not a contract of employment and contained no promise of continuity of employment.

6. Although the Respondent was under no obligation to review the Applicant's performance, he did proceed to such a review in 1961 and again in 1963.

7. The delay in the hearing of the Applicant's case before the Joint Appeals Board, while regrettable, was not deliberately sought by the Respondent and did not affect the Applicant's rights.

The Tribunal, having deliberated until 29 September 1965, now pronounces the following judgement :

I. The Applicant requests the Tribunal to rule that his permanent appointment was not terminated in 1959 within the meaning of Staff Rule 109.1 (b). In support of the plea, the Applicant states that the order of termination was later modified by a special arrangement, based on personal discussions, entered into between the Applicant and the Respondent, resulting in the offer of a fixed-term appointment by the Director of Personnel in a letter dated 26 October 1959 and accepted by the Applicant on 29 October 1959. The letter dated 26 October 1959 contained certain financial arrangements whereby the Applicant's terminal benefits were held in escrow pending the finalization of his future employment status. The Applicant contends that, since the termination benefits due to him on separation were held in escrow, there was no compliance with Staff Regulation 9.3 (a). The Applicant also relies on the fact that on 18 July 1963 the Acting Director of Personnel ruled that " as Mr. Sikand's service under the Staff Regulations has been continuous, he is entitled on separation from service to travel to the place from which he was recruited. . . ". The Tribunal is unable to accept the plea that the mere non-payment of indemnities invalidates the separation. The Tribunal also notes that the non-payment of the termination indemnities was in accordance with an arrangement agreed to between the Applicant and the Director of Personnel. The offer contained in the letter of 26 October 1959 which was accepted by the Applicant categorically states that the Applicant's termination of his permanent contract became effective on 1 August 1959. The Tribunal therefore negatives the Applicant's plea and holds that the permanent appointment of the Applicant was terminated in 1959.

II. Based on the plea that there was no separation, the Applicant contends that this appointment with the Technical Assistance Board should be regarded as

secondment from the United Nations. He contends that a P.5 form issued on 4 December 1959 shows that his salary was paid by the Department of Economic and Social Affairs of the United Nations and that his placement was in the hands of the Office of Personnel. The Applicant also relies on Judgement No. 92 of the Administrative Tribunal.

The Tribunal notes that the Applicant signed a Letter of Appointment on 30 November 1959 as a Programme Officer at the P-2 level in the Department of Economic and Social Affairs and that, on 23 December 1959, he was detailed to the Technical Assistance Board as the Board's Assistant Resident Representative in Manila. But his appointment status was changed on 29 November 1960, when he signed a new Letter of Appointment for a fixed term of one year in the secretariat of the Technical Assistance Board. The Tribunal considers that the Applicant's acceptance of a fixed-term appointment with the Technical Assistance Board in 1960 at the expiry of the earlier fixed-term appointment of 1959, militates against the plea of secondment to the Board and holds that there was no secondment in this case.

III. The Applicant asserts that at the time that he was offered an assignment with the Technical Assistance Board, it was specifically agreed to between the Applicant and the Administration that his performance would be reviewed by the Office of Personnel at the end of the period and that upon satisfactory performance he would be reinstated with the United Nations. The Respondent denies any such arrangement and contends that the Applicant's appointment under the terms of the letter of 26 October 1959 is one for a fixed term without any qualifications and is governed by the Staff Regulations and Rules regulating such contract. There is no record of any undertaking by the Office of Personnel that it would review the performance of the Applicant or offer reinstatement with the United Nations. Nevertheless the Applicant relies on a number of letters and circumstances to support his plea that there was an understanding to that effect. The Tribunal in its jurisprudence has established that the terms and conditions of employment of a staff member with the United Nations may be expressed or implied and may be gathered from correspondence and surrounding facts and circumstances. The Tribunal notes that this is not a simple case of termination of the permanent appointment and the granting of a new fixed-term appointment. In the first place, the offer of employment contained in the letter dated 26 October 1959 mentions "our recent conversations", implying thereby that there had been conversations preceding the issue of that letter. Secondly, if it were a case of simple offer of a fixed-term appointment, there would have been no need for the following provision in the letter dated 26 October 1959: "On the other hand, if you are subsequently awarded a permanent appointment the above amounts held in escrow based on separation will not be paid to you and your entitlements thereafter will be based upon the total length of your service with the United Nations." The reference in the said letter to the possibility of an award of a permanent appointment to the Applicant implies that such a contingency was under the contemplation of the parties. The Applicant's reply in the letter of 29 October 1959 reinforces the plea in the following words: "I am also pleased to note from the penultimate paragraph of your letter that the possibility of my being subsequently awarded a permanent appointment has been kept open, and I am grateful to you for making these arrangements possible." In the periodic report covering 1 January 1963 to 31 October 1963, the Resident Representative in the Philippines stated as follows:

“During Sikand’s ‘on trial’ period under me, i.e. in 1962, his performance. . .” suggesting that the Applicant was on trial for the purpose of assessing his work performance. On 29 November 1960, the Resident Representative in the Philippines wrote to the Director of the Joint Administration Division that the Applicant “tells me that his understanding on accepting the Manila assignment was that after a one-year trial away from Head Office, the question of his reinstatement in his previous post and grade would be decided. Apparently there was no exchange of letters on this but I assume that on an important matter such as this, his file would be minuted.” The Applicant himself wrote a letter dated 29 November 1960 to the Deputy Director of Personnel, in which he mentioned as follows: “As regards the new fixed-term appointment, I wish to state that it was my understanding during the course of my conversation with Mr. Hamilton that the question of my reinstatement with the United Nations would be reviewed on the basis of my performance in my new assignment on the expiration of my one-year detailment to the Philippines.” On this the Office minuted “Anything to be done?” It is significant that the Applicant’s repeated assertions that he was entitled to a review were never contradicted by the Office of Personnel. In the face of the foregoing correspondence and circumstances, the Respondent’s plea that there was absolutely nothing which explicitly or impliedly committed the United Nations to review the Applicant’s performance or to absorb him into permanent service at any time is unacceptable to the Tribunal. The Respondent pleads that the various administrative arrangements such as holding the termination benefits in escrow and the offer of a fixed-term appointment for one year were done entirely in the interest of the Applicant and that the Administration gave most sympathetic consideration to the Applicant. The Tribunal feels that such a sympathetic consideration of the Applicant’s case is not inconsistent with the plea of the Applicant that his restoration to the services of the United Nations would be decided after a fair trial.

IV. The Applicant contends that the failure by the Respondent to conduct such a review constituted a breach of contract and the non-observance of the terms of employment. The question which arises for consideration on this point is whether there was an obligation to review the work of the Applicant by way of a separate and special procedure or whether the periodic review made by the Technical Assistance Board would suffice. The Respondent contends that there was no legal obligation to review the work of the Applicant with a view to restoring him to the service with the United Nations, but nevertheless a review was made and the results communicated by letter dated 18 July 1963 from Mr. Michelmores, the Acting Director of Personnel, to the Applicant and that the review was unfavourable to the Applicant. In a letter dated 10 November 1961 from Mr. Schoellkopf, a member of the Office of Personnel, to the Applicant, it is stated: “We have seriously considered your request to return to the United Nations proper. However, I am sorry to inform you that this will not be possible.” Again, in a letter dated 13 April 1962 from the Director of Personnel to the Applicant, it was stated as follows: “In my view, Mr. Schoellkopf in his letter of 10 November 1961 to you gave an accurate picture of the situation. You were right, no doubt, in saying that initially you were assigned to TAB [Technical Assistance Board] for one year and that it was not your understanding at that time that your placement would be in the hands of TAB. However, this initial arrangement was later extended by TAB, with your agreement, and on 1 January 1961, you were officially transferred to TAB, also with your agreement.” It appears from the foregoing that

at least on two occasions the Applicant's restoration to the United Nations was considered by the Office of Personnel. Since no specific method of review appears to have been contemplated at the time that these arrangements were concluded, the Tribunal considers that the examinations mentioned by Mr. Schoellkopf in his letter dated 10 November 1961, and by Mr. Michelmore in his letter dated 18 July 1963 would appear to meet the obligation resting with the Respondent.

It also appears to the Tribunal that acceptance by the Applicant of the transfer of his service on 1 January 1961 to the Technical Assistance Board constitutes a change in the original arrangements and should therefore be deemed to conclude his rights, if any, for a review for the purpose of his restoration of service to the United Nations.

V. The Applicant contends that by reason of the extraordinary delay before the Joint Appeals Board, he was greatly prejudiced as his separation became a "fait accompli" in the meantime, and proper consideration could not be given to his case. The Tribunal regrets the delay in disposal of the case by the Joint Appeals Board and repeats its view that, unless arrangements are made for expeditious disposal of appeals, justice may be denied by delays. However, in this case, the Tribunal in the light of the conclusions reached above notes that the Applicant had suffered no prejudice on account of the delay.

For the foregoing reasons, the Tribunal rejects the application.

*(Signatures)*

Suzanne BASTID

*President*

R. VENKATARAMAN

*Vice-President*

*New York, 29 September 1965.*

H. GROS ESPIELL

*Member*

N. TESLENKO

*Executive Secretary*

## Judgement No. 96

*(Original : French)*

**Case No. 96 :**  
**Camargo**

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

*Withdrawal of an offer of appointment before it was accepted by the Applicant. Motion to declare the application non-receivable on the ground that the Applicant never became a staff member of the United Nations.—Provisions of article 2.2. of the Statute of the Tribunal must be interpreted in the light of their context.—Letter written by the Director of Personnel under an appointment procedure laid down by the Staff Regulations and Rules.—Motion rejected.*

*Request for a ruling by the Tribunal that there was a contract of employment between the Applicant and the Respondent.—Applicant's contention that he did not receive the cable withdrawing the offer of appointment rejected.—Visit to a doctor for the prescribed medical examination or verbal statement to an official having no competence*