

because his appointment from 10 September 1967 to 9 March 1969 fell short by a few months of the qualifying period of five years' service as associate participant.

In fact, in a letter dated 15 December 1971, the Chief of the Special Services Section of UNIDO stated "We sincerely regret that action was not taken to provide you with the type of contract which would have permitted participation prior to your reaching age 60".

It could be argued that in equity the Applicant should have been enabled to earn the benefits of participation in the Pension Fund. But the Tribunal notes that the Applicant did not raise any question regarding the duration of his appointment and its extension to 31 October 1969, which was the contemplated date of project termination, either when an offer was made to him on 31 July 1967 or when letter of appointment No. 14-a was issued to him on 5 October 1967, even though he had been informed on 19 June 1967 that the date of completion of the project would have to be shifted to 31 October 1969.

XXVIII. If there was any oversight on the part of the Respondent in not providing the Applicant with a type of contract which would have placed him, in respect of pension benefits, on a par with other staff members of comparable length of service, there was equally a lapse on the part of the Applicant in not bringing the matter at the relevant time to the attention of the Administration.

XXIX. For the reasons stated earlier, the Tribunal rejects the Applicant's claim and his requests for consequential relief.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

New York, 19 October 1973

F. A. FORTEZA
Member

Jean HARDY
Executive Secretary

Judgement No. 181

(Original: English)

Case No. 171:
Nath

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

Non-renewal of the fixed-term appointment of a staff member of the United Nations Children's Fund (UNICEF).

Assertion of the Applicant that he had a verbal commitment of continued employment.—Contradiction of that affirmation by the officials concerned.—Applicant's admission that as a civil servant of the Government of India he could not negotiate with UNICEF for a period of employment beyond that agreed to by the Government in its secondment.—Irrelevance of a letter addressed to the Administrative Division of UNICEF by the Regional Director, which does not constitute an agreement with the Applicant.—Conduct of the Applicant belies his claim based on assurances of continued employment with UNICEF.—The Bhattacharyya case not in point.—The employment commitments given the Applicant were for

fixed terms with no expectancy of renewal.—Since the Applicant had no right to employment after the expiration of his last appointment there is no validity in his contention that the Regional Director should have accommodated him in another post after his own post was abolished.—Applicant's allegations of prejudice on the part of the Regional Director not substantiated by any evidence.—The Regional Director's suppression of the recommendation made by the National Officer Staff Promotion Committee for the inclusion of the Applicant's name in the promotion register was not in keeping with good administrative practice.—The Tribunal orders the Respondent to place the recommendation in the Applicant's dossier and service record.—Subject to that order, the application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Stevens;

Whereas on 19 September 1972, at the request of Basheshar Nath, a former staff member of the United Nations specifically recruited for the United Nations Children's Fund, hereinafter called UNICEF, the President of the Tribunal, with the agreement of the Respondent, extended by three weeks the time-limit for the filing of an application to the Tribunal;

Whereas, on 6 October 1972, the Applicant filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 20 December 1972;

Whereas the pleas of the application read:

"Pleas:

"(a) Violation of Staff Regulations of the United Nations:

"The non-renewal of my Contract not on the basis of expiration of my fixed term assignment but on the grounds of reduction/abolition of the single 'B' Grade N.O. [National Officer] post which I have been holding in the Health Section (UNICEF New Delhi) against retention of three staff members with a fewer years of fixed term service and two seniors who were not recommended by the APC [Appointment and Promotion Committee] for promotion to 'C' Grade at its meeting held on 16th June, 1970 violates the provisions of Staff Rule 109.1 (c).

"(b) Breach of assurances:

"On 23rd April, 1966 Mr. Guibbert, the then Deputy Director UNICEF New Delhi requested me on telephone to see him in his office. He discussed with me the question of my assignment with UNICEF. As I was holding a senior post under the Government of India and was due for promotion as Deputy Secretary to the Government I made it clear that I shall be prepared to consider the offer provided it is at least for a period of six years which would give me employment for additional two years and would entitle me to pension from UNICEF on completion of five years service before attaining the age of sixty years. Both Mr. Guibbert and Dr. Egger gave me assurance in clear and unambiguous terms that dependent upon my performance during the initial six months, the period of my employment with UNICEF would be at least for six years on periodic extensions of two years at a time till I attained the age of sixty years in September, 1972.

"It was thereafter that on 28th April, 1966 UNICEF made an urgent request to the Government of India for my services, to organise, implement and supervise its Drought Relief Programme and to replace Mr. D. C. Newton, the then Chief of Emergency Relief Section, who proceeded on leave in June, 1966.

"The assurances of continued employment were repeated by Dr. S. Cuspilici, the then acting Deputy Regional Director on more than one occasion individually as well as in the presence of persons named in the Explanatory Statement. Mr. Carter also confirmed these assurances. As I was available on the spot and have been dealing with UNICEF work for several years the question of exchange of letters between myself and UNICEF as in the case of Mr. A. G. Bhattacharyya (Judgement No. 142) did not arise. *The non-extension of the period of my employment beyond September, 1970 for another two years* amounts to violation of the verbal and implied assurances and breach of trust which I imposed in UNICEF authorities have been associated with its work and senior officials for several years as a senior officer of the Government of India in the Ministry of Health.

"(c) Prejudice of the Regional Director (Mr. Gordon Carter) against me:

"The Regional Director's decision not to extend my appointment with UNICEF for another two years beyond 12 September, 1972 was motivated by his prejudice against me and by the exercise of his local absolute authority with a view to provide an Officer (Mr. G. S. Mulgonkar) far junior to me at higher level (straight from ND [New Delhi] VII to N.O. B. Grade) by transfer of the B Grade post which I was holding in the Health Section to supply Service Section in which Mr. Mulgonkar was working and to deny me my hard earned promotion against one of the two 'C' Grade vacancies available on UNICEF Manning Table for which *I was the only official* recommended by the A.P.C. on 16th June, 1970 and to provide Mr. R. C. Dore and Mr. H. S. Narula against these two vacancies both of whom though had entered UNICEF employment before me but were not recommended by the A.P.C. for promotion to 'C' Grade. Mr. Gordon Carter's prejudice was so great that in June, 1972 when UNICEF needed the services of an experienced official for Relief operations in Bangladesh he preferred to appoint an official who had worked under me in UNICEF despite the fact that the UNICEF Field Representative in the Eastern Region did not want a lady to assist him and my claims and written request were ignored.

"(d) Oral hearing and witnesses:

"In view of the importance of the case which has affected my whole career adversely the Tribunal may be pleased to hold oral proceedings and call the following persons as witnesses:

"(1) Mr. Q. V. E. Guibbert

"(2) Dr. S. C. Cuspilici

"(3) Dr. G. H. Gidwani (Flat No. 2, 4th floor, ESIC Building, Colaba Bombay-5)

"(4) Mr. M. M. Sharma, (Flat No. 4 (Municipal Quarters), Kalka Nagar New Delhi)

"(e) Redress sought:

"My systematic manipulated separation from UNICEF in the midstream has brought in its wake frustration, untold misery, tension, humiliation, harassment, financial difficulties and has adversely affected the education of my three University/School going daughters. UNICEF must therefore announce my promotion from B Grade to C Grade effective 16 June, 1970 and pay me full salary from 16th June, 1970 to 19th September, 1972 at C level as well as retirement benefits after deducting the contribution payable by me to which I would have been entitled if I had completed five years service as an Associated Participant in Pension Fund.

"The terrible financial and mental strain which I have suffered and the humiliation which I have faced before my colleagues in the Government of India

and UNICEF for the non-renewal of my contract against retention of my juniors as well as seniors who were considered less efficient and the adverse effects on the education of my daughters should please be taken into consideration while determining the compensation payable to me.”;

Whereas the Respondent filed his answer on 12 February 1973;

Whereas, on 8 October 1973, the Applicant filed a supplement to his application in which he reformulated his pleas as follows:

“I, therefore, pray,

“(a) UNICEF must reinstate me in service with retrospective effect i.e. from 12 September 1970 and promote me to ‘C’ level w.e.f. 1st June 1970. I am now mentally alert and physically fit, agile and active.

“(b) In the alternative, UNICEF should employ me till I reach the age of 65 years at any place where my services could be utilized in the best interest of UNICEF.

“(c) UNICEF should pay me full salary at ‘C’ level from 1st June 1970 to 19 September 1972 and relevant benefits i.e. pension for me and allowance for my child to which I am entitled, after deducting the contribution payable by me. Also I am entitled to suitable damages for the humiliation and strain suffered by me due to suppression by Mr. Carter of the facts and circumstances leading to my assignment and ‘studied and fully considered’ correspondence between UNICEF New Delhi and UNICEF HQ New York ‘following relevant conversation’ with me.”;

Whereas the Applicant filed written observations on the Respondent’s answer on 19 October 1973;

Whereas the facts in the case are as follows:

The Applicant, who was Under Secretary in the Ministry of Health and Family Planning of the Government of India, entered the service of UNICEF on 20 May 1966, on secondment from his Government, under a special service agreement for four months as Assistant Programme Officer at the South Central Asia Regional Office (SCARO) of UNICEF at New Delhi. The then Regional Director of SCARO, Mr. C. A. Egge had written to the Ministry on 28 April 1966, referring to the UNICEF programme for assistance to the Government in the drought emergency caused by the failure of the monsoon, and asking for the services of the Applicant “for a short-term assignment”, stating: “The assignment will be for the period of emergency i.e. about six months . . .”. On 19 May 1966 the Government approved the secondment of the Applicant for four months as from 20 May 1966, and the special service agreement referred to above was entered into. Noting that the Government had confirmed the necessity of extending the emergency programmes for a further period of six months from November 1966, Mr. Cuspilici, Programme Officer, wrote on behalf of SCARO to the Ministry on 15 September 1966 that “UNICEF feel that retention of Mr. Nath’s services in the Organization for a further period of two years at least will be both in the interest of the Government of India and UNICEF”. In answering on 31 October 1966 an inquiry by the Ministry as to the terms of the appointment and as to the Applicant’s willingness to accept it, Mr. G. Carter, then Deputy Director of SCARO, set out the terms of the deputation as “for a period of two years from 20 September 1966”; the Applicant initialled the letter. In January 1967 the Applicant signed a letter of appointment effective 20 September 1966 for a fixed term of two years as Programme and Supply Officer at the National Professional B level. The Applicant’s performance for the period 20 September 1966 to 19 September 1967 was praised in a periodic report rendered in April/May 1968. On 5 September 1968, the Chief of the Administration and Finance Service of SCARO wrote the Ministry requesting the Government of India’s agreement to a further extension of the Applicant’s deputation “for a period of

another two years". On 12 September 1968, the Director of SCARO explained the reasons for the request in a letter to the Ministry reading in part:

" . . .

"Mr. Basheshar Nath has heretofore been largely engaged in the UNICEF programme of emergency aid to the drought-affected states. Consequent upon the new organization which I have implemented in the Regional Office recently, Mr. Basheshar Nath has been assigned a responsible position in the Health Section, in which he seconds Mr. El Atki in the planning and implementation of the wide range of UNICEF support to health programmes in India.

"I do not need to remind you that this programme comprises a substantial number of different activities, involving health planning, training, basic services, disease control, vaccine production, water supply and equipment maintenance. A man with Basheshar Nath's long experience in health work in the Government of India and with his managerial ability is invaluable to us at a time when, in agreement with you, we are seeking to orientate our participation in the health services in India for the coming years along the lines of the Fourth Plan.

"I should, therefore, be personally grateful to you to support this request for an extension, as I am convinced that Mr. Basheshar Nath's present functions in UNICEF will jointly benefit the Ministry of Health and UNICEF in our common ventures in the field of health."

On 7 November 1968, the Ministry advised the Director of SCARO of the Government's approval of the extension of the Applicant's deputation "for a further period from 20 September 1968 to 11 September 1970". The Applicant then signed a letter of appointment for a fixed term of one year from 20 September 1968 to 19 September 1969. On 3 June 1969, the Acting Director of SCARO addressed to the Applicant a letter reading in part:

" . . .

"4. Most of the new operational procedures have already been adopted and very little remains to be done in this respect. Therefore, it is expected that the staffing pattern in the Health Section, SCARO, as well as that in other Sections in this Office be brought to a size properly adapted to their actual workload.

"5. In line with the above, UNICEF has decided not to request the Government of India to renew your secondment beyond September 1970. This leaves an alternative with two possibilities:

- "(i) the first is that, having obtained the Government's agreement to a two-year extension, to renew your contract next September *for an additional and final year* (unless the Government, in the meantime, requests your earlier return), and
- "(ii) the second is that you return to Government of India service, when your present contract expires—next September—which you may prefer to do for personal reasons.

"In both the cases, the decision to be taken lies with you and I expect to have your reaction the soonest possible, so that I can act in accordance with the instructions I have received."

On 12 June 1969 the Applicant replied:

" . . .

"I have no personal reasons to ask for the curtailment of the duration of two years extended period of my deputation to UNICEF from 20th September 1968

to 19th September 1970, already agreed to by the Government of India at the request of UNICEF. In this connection I may also mention that since the date of the expiry of my two years' extended period of deputation synchronizes with the date of my superannuation from the Government of India's employment and the consequential arrangements having already been made by Government on long term basis any such move, in the circumstances, is likely to create an embarrassing awkward situation both for me and the Government of India."

On 24 September 1969, the Director of SCARO confirmed to the Applicant that he was extending the Applicant's contract "until 19 September 1970, in order to complete the period of extended deputation which I had earlier requested the Government to agree to"; the Director added: "I sincerely trust that this will give you the time to make other plans from that date onward." A letter of appointment for a fixed term of one year, from 20 September 1969 to 19 September 1970, was signed by the Applicant on 5 December 1969. On 10 June 1970 the Director of SCARO wrote to the New Delhi offices of various United Nations agencies, informing them that the Applicant, consequent upon abolition of his post, would be leaving UNICEF on 19 September 1970 when his contract is completed and his retirement from Government service takes place, and asking them to consider the possibility of offering him continuing employment should they have a suitable vacancy. On 16 June 1970 the National Officer Staff Promotion Committee of SCARO conducted its annual review and unanimously recommended the Applicant for inclusion in the promotion register. The Director, however, apparently did not establish a promotion register, and issued a promotion list which did not include the Applicant's name. On 31 August 1970 the Applicant sent a protest against the non-extension of his appointment to the Director, who replied on 9 September 1970 that the terms of duration of the Applicant's employment had been clearly stated in letters and in contracts, confirmed verbally, and honoured by UNICEF. In September 1970 further efforts were made by SCARO to find other employment for the Applicant. After further correspondence with the Director of SCARO the Applicant, in two letters dated 2 October 1970, requested the Executive Director of UNICEF and the Secretary-General of the United Nations, respectively, to review the decision not to extend his appointment. Having received negative replies, he lodged an appeal with the Joint Appeals Board on 16 December 1970. The Joint Appeals Board submitted its report on 12 April 1972. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations

"51. The Board finds that: (a) the appellant's allegations that he was given oral assurances of continued employment by UNICEF to September 1972 have not been proved; (b) the correspondence between UNICEF and the Government concerning the appellant's secondment to UNICEF did not contain any undertaking by UNICEF to retain the appellant in its service for two years beyond the date of his retirement from government service; and (c) the appellant's contention that he was induced to accept the UNICEF assignment at disadvantageous terms was unfounded since those terms actually provided him with definite financial benefits.

"52. The Board concludes that: (a) the circumstances in which the appellant entered into his contracts of employment with UNICEF were not such as to create a legitimate expectancy in his mind that his services would be utilized for at least six years, and (b) the respondent had no obligation to provide the appellant continued employment within UNICEF beyond 19 September 1970.

"53. The Board also finds that the appellant has not met the burden of proving his charge that the Regional Director's decisions were motivated by prejudice.

"54. The Board considers, however, that the Regional Director's suppression of the recommendation made by the National Officer Staff Promotion Committee

for the inclusion of the appellant's name in the promotion register was not in keeping with good administrative practice.

"55. The Board concludes that UNICEF has not infringed the terms of the appellant's appointment, and accordingly makes no recommendation in support of the appeal."

On 7 June 1972 the Director of Personnel of the United Nations informed the Applicant that, having reviewed the case in the light of the Board's report and having taken note of its recommendation, the Secretary-General had decided to maintain the decision appealed against. On 6 October 1972 the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant, who had not applied to UNICEF for employment, accepted assignment to UNICEF and agreed to its extension, in conditions disadvantageous to him both financially and from the point of view of his career as an Indian civil servant, only on the explicit assurance and commitment on the part of UNICEF—as implied by reference in letters exchanged between UNICEF and the Indian Government—that he would be retained in the Organization at least until the normal retirement age for UNICEF staff members and that he could expect early chances of promotion subject to his work being satisfactory.

2. The decision not to extend the Applicant's appointment for at least another two years beyond September 1970, as well as the decision not to promote the Applicant, were motivated by personal prejudice on the part of the Director of SCARO.

3. The Applicant was separated from service in violation of Staff Rule 109.1 (c) (i).

4. The Applicant's appointment from 19 September 1966 onwards was on a regular basis against a regular post, and its terms and conditions were contained in documents exchanged between authorized UNICEF officials.

Whereas the Respondent's principal contentions are:

1. In the absence of a written commitment by an authorized UNICEF official changing the express terms of the fixed-term appointment, the Applicant had no right to UNICEF employment after his appointment expired.

2. In the absence of any commitment by UNICEF which expanded the Applicant's contract rights beyond those of his fixed-term appointment, there is no reason to examine the Applicant's allegations that the Director of SCARO was prejudiced against him.

3. The efforts made by UNICEF to place the Applicant elsewhere in anticipation of expiry of his contract were not made pursuant to any contractual obligation and could not imply or create any contractual rights with respect to the Applicant's employment after his appointment expired.

4. The recommendation by the Appointment and Promotion Committee did not entitle the Applicant to promotion.

The Tribunal, having deliberated from 9 to 19 April 1974, now pronounces the following judgement:

I. The Applicant claims that in 1966, before and at the time he agreed to enter the service of UNICEF, he was orally assured by UNICEF officials in New Delhi that, dependent on his performance during the initial six months, his employment would be for at least six years, until he reached the age of 60 in September 1972. However, the officials in question, Mr. Egger, Regional Director, Mr. Cuspilici, Programme Officer, and Mr. Guibert, Acting Regional Director, each denied, in letters to the Joint Appeals Board, giving any such assurances.

Mr. Cuspilici wrote: "I rule out that somebody in the Office would have been in a position to provide Mr. B. Nath . . . with the *assurance* of continued employment after his retirement from the government service . . . the only assurance one could have given to him was in respect of a *possibility* of continued employment".

Mr. Guibbert wrote that a commitment could not have been given because "the extension or a new type of contract are to be decided at Headquarters".

Mr. Egger wrote that the staff which the Applicant joined was formed for the specific purpose of dealing with the emergency caused by the extended drought, and that he believed it was made clear that the Office "could not give any assurances concerning . . . employment with UNICEF beyond the emergency period".

The recollection of the officials concerned does not therefore support the Applicant's assertion that he had a verbal commitment of continued employment.

II. The Applicant himself admits that as a senior civil servant of the Government of India, he could not, under Government of India Rules, negotiate with UNICEF for periods of employment beyond that which had been agreed to by the Government in its secondment; in fact, none of the secondments extended beyond two years.

III. The Applicant also relies on a letter of 9 September 1966 from Mr. Egger, as Regional Director, to the Administrative Division of UNICEF in New York. In this letter, the Regional Director states that he wants to utilize a "regular post . . . for a suitable candidate" and that he intends "to recommend . . . against this post" the Applicant. This letter, however, constitutes merely a statement of intention to utilize the Applicant's services in a particular post. It was not a contractual agreement with the Applicant—indeed, it was not even a representation made to him. Furthermore, the document does not say whether the Applicant's intended appointment would be a regular one or for a fixed term (it was in fact for a fixed term of two years from 20 September 1966).

IV. The Tribunal observes that, although the Applicant now strenuously contends that oral assurances of continued employment were made to him in order to induce him to join the UNICEF service, he did not protest or even mention any such assurances when, by a letter dated 3 June 1969, the Acting Director of SCARO informed him that UNICEF "has decided not to request the Government of India to renew your secondment beyond September 1970" and offered him the option of renewal of the contract "for an additional and final year" or return to the Government of India service at the expiry in September 1969 of the existing contract. On the contrary, the Applicant in his reply dated 12 June 1969 opted for an additional and final year of service without any murmur. The Tribunal considers that the conduct on the part of the Applicant belies his claim based on assurances of continued employment with UNICEF.

V. The *Bhattacharyya* case (Judgement No. 142) is not in point. In that case there were written assurances, made before the staff member's appointment and after consultation with Headquarters, which the Tribunal considered, under the particular circumstances involved, to have created a reasonable expectancy of continued employment. These elements are not present in the case now before the Tribunal.

VI. The Tribunal therefore finds that the employment relationship that was established between the Applicant and UNICEF in September 1966 was for a fixed term of two years and no more, and that the employment commitments thereafter given the Applicant were also for fixed terms, with no expectancy of renewal as provided in Rule 104.12 (b).

VII. Since the Applicant had no right to employment after the expiration of his last fixed-term appointment, there is no validity in his contention that the Regional Director should have accommodated him in another UNICEF post after his post was

abolished, or that the Regional Director should not have assigned a woman staff member to a Bangladesh relief post sought by the Applicant.

VIII. The Applicant's allegations of prejudice on the part of the Regional Director are not substantiated by any evidence. On the contrary, efforts were actually made, in view of the Applicant's valuable experience and service, to place him elsewhere in anticipation of the expiration of his contract, even though there was no contractual obligation on the part of UNICEF to do so.

IX. While promotions are within administrative discretion and while the failure to promote the Applicant for the remaining three months of his service cannot be called an abuse of discretion, the Tribunal concurs with the conclusion of the Joint Appeals Board that the Regional Director's suppression of the recommendation made by the National Officer Staff Promotion Committee for the inclusion of the Applicant's name in the promotion register was not in keeping with good administrative practice. The Tribunal, therefore, orders the Respondent to place the recommendation in the Applicant's dossier and service record.

X. Subject to the Tribunal's order in the preceding paragraph, the application is rejected.

(Signatures):

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

Geneva, 19 April 1974

Roger STEVENS
Member

Jean HARDY
Executive Secretary

Judgement No. 182

(Original: English)

Case No. 176:
Harpignies

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

Request of a retired staff member of the United Nations that the latter maintain the purchasing power of his retirement pension by paying supplementary benefits to take into account rises in the cost of living and devaluation of the dollar.

Adoption, after the submission of the application, of resolution 3100 (XXVIII), in which the General Assembly ordered certain readjustments of pensions.—Maintenance of the application by the Applicant.

Applications for intervention by former United Nations staff members.—Applications admissible.—Application for intervention by a former official of ICAO.—Application not admissible.

Memoranda submitted by groups of staff or former staff members of the United Nations.—Inclusion of these memoranda in the dossier of the case.

Applicant's personal situation as a United Nations pensioner resident in Belgium.—Situation of United Nations pensioners resident in other countries.—Effects in some countries of the devaluation of the dollar, used as the monetary unit under the Pension Fund Regulations.—Measures adopted by the General Assembly to remedy the situation of retired staff members.—Consideration of the question by