

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

F. A. FORTEZA
Member

Geneva, 26 April 1974

MUTUALE TSHIKANKIE
Alternate Member

Jean HARDY
Executive Secretary

STATEMENT BY MR. MUTUALE TSHIKANKIE

I have participated in the deliberations and the text of the judgement has been translated into French for me. I concur with the decision.

Geneva, 26 April 1974

(Signature)
MUTUALE TSHIKANKIE

Judgement No. 187

(Original: French)

Case No. 166:
Quémerais

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

Request for revision of Judgement No. 172.

Article 12 of the Statute of the Tribunal.—Award to the Applicant by Judgement No. 172 of an indemnity fixed on the basis that the European Office of UNICEF was transferred to Geneva on 1 October 1972.—The Applicant claims to have discovered that the European Office of UNICEF was not transferred on 1 October 1972 but on 31 August 1973.—Applicant's request for reinstatement or for the payment of a supplementary indemnity as compensation.—The fact that certain staff members of the Programme Development Service remained in Paris after 1 October 1972 cannot be equated with the discovery of a new fact.—Conditions on which the retention of the Applicant in one of the few posts retained in Paris would have depended.—The existence of these posts cannot be regarded as a decisive factor.—The Tribunal cannot consider that the Applicant, by learning that the transfer was carried out in stages, discovered a new fact.—Applicant's alleged discovery that certain locally recruited staff members of the European Office of UNICEF were transferred to UNESCO.—Irrelevance of this alleged discovery, since the Applicant was not entitled to consideration for posts outside UNICEF.—Request for rectification of the part of the judgement relating to the drawing up of a certificate of service.—The Tribunal notes that the request is not covered by the procedure envisaged in article 12 of the Statute.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. R. Venkataraman, President; Mr. Mutuale Tshikankie;

Whereas on 21 December 1973 the Applicant filed with the Tribunal an applica-

tion requesting, *inter alia*, under article 12 of the Statute of the Administrative Tribunal, the revision of Judgement No. 172 pronounced on 5 April 1973 in the case relating to him;

Whereas the pleas of the application read as follows:

“The Tribunal is requested:

“To revise that part of its Judgement in which it orders payment of an indemnity in lieu of reinstatement;

“To admit the Applicant’s application for reinstatement in a post of the Organization in Paris;

“Alternatively, to order that there be awarded to the Applicant, in lieu of reinstatement, an indemnity calculated in accordance with the principles laid down by the Tribunal in its previous judgements, taking into account the fact that the Applicant could and can still be employed in a post of the Organization in Paris;

“To order that there be paid to the Applicant, for injury sustained as a result of the non-implementation of the Judgement with regard to the issue of a new certificate of service, a sum equivalent to the net amount of his most recent salary for a period of one month for each month of delay in the issue of the certificate, to run from 5 April 1973, the date of the Judgement;

“To rectify that part of its Judgement in which it orders the drawing up of a new certificate of service;

“To order that the sum of \$400 be paid to the Applicant as costs;

“To order oral proceedings for the purpose of hearing the parties.”;

Whereas the Respondent filed his answer on 24 January 1974;

Whereas the Applicant filed written observations on 19 February 1974;

Whereas, on 11 March 1974, the Respondent filed observations on a question raised in the written observations of the Applicant;

Whereas, on 12 March 1974, the Applicant filed additional explanations and documentary proof at the request of the Tribunal as well as additional written observations on the Respondent’s answer;

Whereas, also on 12 March 1974, the Respondent filed additional information at the request of the Tribunal;

Whereas the Applicant filed observations of this information on 9 April 1974;

Whereas the facts in the case have been set forth in Judgement No. 172;

Whereas the Applicant’s principal contentions are:

1. The Applicant discovered accidentally that the European Office of UNICEF (United Nations Children’s Fund) was only partially transferred from Paris to Geneva. This fact, which was known to the Respondent but unknown to the Applicant when the Judgement was given, that ignorance not being due to negligence, is of such a nature as to be a decisive factor. Although the Applicant was recruited for a specific duty station, he was not recruited for the performance of a specific task in a particular service, since he had been granted a regular appointment. His reinstatement could, therefore, have been ordered, especially since the present Paris Office consists of his own Service, with the same staff, headed by the same officer.

2. The Applicant also discovered that the UNICEF staff members transferred to UNESCO (United Nations Educational, Scientific and Cultural Organization) headquarters in Paris were transferred *at the suggestion of the Respondent*.

3. The Tribunal made an error arising from an accidental slip by stating that the European Office of UNICEF was transferred to Geneva on 1 October 1972. The

European Office was not transferred on 1 October 1972 but on 31 August 1973. Since Judgement No. 172 was given on 5 April 1973, the reinstatement of the Applicant could thus have been ordered on that date, for the period extending up to 31 August 1973 at the very least.

4. The Respondent has not yet executed the part of Judgement No. 172 concerning the issue of a certificate of service. The Respondent's failure to perform an obligation imposed on him has caused and is causing injury to the Applicant, for which reparation should be made. The responsibility of the Respondent in this regard is not diminished by the "letters of reference" to which he referred, which have no official status.

Whereas the Respondent's principal contentions are:

1. Not only were the allegedly "newly discovered" facts known previously to the Applicant, but the Tribunal's Judgement was made after consideration of the Applicant's undisputed allegation that some officials in the Programme Division remained in Paris after the transfer of the Food Conservation Service and the official removal from Paris to Geneva of the European Office.

The offers of employment by UNESCO to certain former UNICEF staff members have no bearing whatever on the contractual rights of the Applicant vis-à-vis UNICEF.

2. It appears from Judgement No. 172 that, given the Applicant's status as a local recruit, his entitlement was in any event limited to availability of a suitable post for him in Paris. The circumstances surrounding the gradual closing of the European Office in Paris, whether or not "newly discovered", could not reasonably be considered as bearing upon the availability in Paris of a suitable post for the Applicant.

3. It appears from Judgement No. 172 that the Tribunal, in determining the Applicant's entitlements, took into account not the date when the last Programme Division officer left Paris but the time when the post of technical assistant, Food Conservation Division, ceased to exist in Paris—which date coincided with the official removal of the European Office to Geneva, namely, 1 October 1972.

4. The Applicant's requests concerning the certificate of service are without purpose or foundation.

The Tribunal, having deliberated from 16 to 26 April 1974, now pronounces the following judgement:

I. This application seeks to obtain the revision of Judgement No. 172 under article 12 of the Statute of the Tribunal, which reads as follows:

"The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

The Applicant informed the Tribunal that on 1 December 1973 he learnt facts previously unknown to him, which in his opinion would justify the revision of Judgement No. 172. His application for revision dated 5 December 1973 was received by the Tribunal on 21 December 1973.

II. In Judgement No. 172, pronounced on 5 April 1973, the Tribunal decided that, as a locally recruited staff member, the Applicant was entitled to remain in service only so long as the European Office of UNICEF had its headquarters in Paris and that, since the European Office was transferred to Geneva on 1 October 1972, the conclusion

which the Tribunal had reached, namely, that the final termination decision was improper and must be rescinded, did not afford a basis for ordering the Applicant's reinstatement. The Tribunal accordingly awarded the Applicant an indemnity in lieu of reinstatement.

The indemnity was fixed at the net base salary of the Applicant from the end of his appointment (28 February 1971) up to 30 September 1972.

The latter date was selected since the transfer to Geneva of the European Office of UNICEF was fixed for 1 October 1972.

III. The Applicant claims to have discovered that "the European Office of UNICEF was not transferred on 1 October 1972 but on 31 August 1973, the date of the effective closure of the Neuilly Offices", that the decision to transfer the Office on 1 October 1972, mentioned in a memorandum from the Director of the European Office of UNICEF, was "purely formal and fictitious" and that it "should not have been put forward by the Respondent Organization as representing the effective date of the transfer".

The Applicant maintains that the Programme Development Service, where he had discharged functions since 1966, remained in Paris until 31 August 1973 and that, moreover, up to that date the staff members not yet transferred to Geneva were used for various tasks, which were sometimes quite different from those which they had been performing before the vacation of the premises began; he adds that part of the staff was assigned to a new UNICEF Office in Paris.

The Applicant concludes that, since Judgement No. 172 was given on 5 April 1973, his reinstatement in Paris could have been ordered on that date, for the period extending up to 31 August 1973 at the very least, and that he could even still be employed in Paris at present. The application for revision therefore seeks to obtain the reinstatement of the Applicant or the payment of a supplementary indemnity as compensation.

IV. The Tribunal observes, firstly, that during the discussions which preceded Judgement No. 172 the parties noted that certain staff members of the Programme Development Service remained in Paris after 1 October 1972. Accordingly, no new fact was discovered in this connexion which could serve as a basis for application for revision.

V. Furthermore, the Tribunal notes that, in ordering the payment of an indemnity in lieu of reinstatement, the Judgement considered that the Applicant, as a locally recruited staff member of UNICEF, was entitled to remain in the service of UNICEF only so long as the European Office had its headquarters in Paris.

The retention of the Applicant in service in Paris following the transfer of the European Office to Geneva would have depended on various factors, including the requirements of the few posts retained in Paris and the Applicant's suitability for one of those posts. The fact that certain UNICEF staff members remained in Paris in new circumstances after the official transfer of the European Office of UNICEF to Geneva did not entitle the Applicant to remain in service without it being established that the aforementioned conditions had been met, namely, the requirements of the posts retained in Paris and the Applicant's suitability for one of those posts. Accordingly, even supposing that it could be considered that the existence of a new UNICEF Office in Paris constitutes a fact which was unknown to the Tribunal when it pronounced Judgement No. 172, this fact is not of such a nature as to be a decisive factor justifying a revision.

VI. Lastly, the Tribunal observes that the Applicant does not contest the fact that the transfer officially fixed for 1 October 1972 did in fact begin on that date. Nor does the Applicant maintain that the transfer decision was subsequently reconsidered.

In the circumstances, the Tribunal cannot consider that the Applicant, by learning that this operation was carried out in stages and over a reasonable period of time in view of the practical problems involved in any transfer of this type, discovered a new fact capable of casting doubt on the legal basis of Judgement No. 172.

VII: The Applicant claims to have discovered another new fact, namely, that certain locally recruited staff members of the European Office of UNICEF were "transferred" to UNESCO at the suggestion of the Respondent, and he requests the Tribunal "to revise its judgement . . . in the light of the discovery of this last fact".

The Tribunal observes that, under Staff Rule 109.1 (c) (ii) (b), the Applicant was not entitled to consideration for posts outside UNICEF. The Tribunal therefore decides that the alleged discovery is irrelevant to the case.

VIII. With regard to the Applicant's request that the Tribunal should rectify that part of its Judgement relating to the drawing up of a certificate of service, the Tribunal, while deploring the delay by the Respondent in providing the Applicant with a certificate of service which conforms to the terms of Judgement No. 172, notes that the request is not covered by the procedure envisaged in article 12 of the Statute.

IX. For these reasons, the application is rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding
R. VENKATARAMAN
President
Geneva, 26 April 1974

MUTUALE TSHIKANKIE
Member
Jean HARDY
Executive Secretary

STATEMENT BY MR. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

Geneva, 26 April 1974

(Signature)
R. VENKATARAMAN

Judgement No. 188

(Original: English)

Case No. 163:
Sule

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

Request for revision of Judgement No. 170.

Article 12 of the Statute of the Tribunal.—Condition relating to the discovery of a new fact.—That condition not having been met, the application is rejected.
