

Applicant interest on \$3,367.98 at the rate of 6 per cent per year from 15 April 1974 to 30 June 1975, and thereafter at the rate of 9 per cent per year until payment, these being the interest rates applicable under the Internal Revenue Code.

IX. The Tribunal accordingly orders the Respondent to pay the Applicant the sum of \$3,367.98, plus interest thereon at the rate of 6 per cent per year from 15 April 1974 to 30 June 1975 and thereafter at the rate of 9 per cent per year until payment.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

New York, 10 October 1975

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Judgement No. 208

(Original: English)

Case No. 201:
Broadhurst

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

Request of a former technical assistance expert for payment of repatriation travel undertaken after he had resigned on the ground of ill-health before completing one year of service.

Fact that the Applicant, contemporaneously with his delivery of his letter of resignation, stated that he was resigning for reasons of ill-health.—Staff Rule 207.24.—Recognition by the Respondent of the entitlement of the Applicant to reimbursement of his travel costs if medical grounds for his departure were established.—Proof of the existence of medical grounds.—Contention of the Respondent that the Applicant should have asked for sick leave instead of resigning on the ground of ill-health.—Irrelevance of the contention.—Conclusion of the Tribunal that the Applicant has established medical grounds for his departure from the duty station.—Rescission of the contested decision and award to the Applicant of his travel expenses according to the Staff Rules.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza, alternate member;

Whereas at the request of Francis Eric Broadhurst, a former technical assistance expert of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 7 February 1975, 7 March 1975, 15 May 1975, 4 July 1975, 30 September 1975, 15 January 1976 and 15 February 1976 the time-limit for the filing of an application to the Tribunal;

Whereas, on 3 February 1976, the Applicant filed an application the pleas of which read as follows:

"The contested decision"

"The contested decision is the denial of a request by Applicant for authorization to claim travel and removal expenses on resignation.

"Specific pleas"

"The Applicant requests the Tribunal

"(a) to order the rescinding of the contested decision; and

"(b) to order the reimbursement of the travel and removal expenses he incurred on resignation.

"Obligation invoked"

"The Applicant reasserts that he resigned his appointment because of compelling medical reasons and this imposes an obligation on the Secretary-General to reimburse Applicant's removal costs from Djajapura in accordance with Staff Rule 207.24 (e).";

Whereas the Respondent filed his answer on 4 March 1976;

Whereas the facts in the case are as follows:

The Applicant, who had served as a Port Cargo Handling Expert on a Technical Assistance project in Saudi Arabia from 22 February 1964 to 21 February 1965, re-entered the service of the United Nations on 26 June 1971 as a Port Operations adviser under a fixed-term appointment of one year and was assigned to West Irian. He arrived in Djajapura, West Irian on 10 July 1971. Soon after his arrival he experienced symptoms of "General Debility", and on 15 July he sought medical attention at the local Health Centre, and continued, periodically, to do so. His condition did not improve and on 24 August 1971 his doctor at the Health Centre, Dr. Emor Nico, diagnosed "General Debility" and prescribed accordingly. On 3 September 1971 he gave to the Deputy Resident Representative of the United Nations Development Programme (UNDP) the following notice of resignation:

"With regret and the greatest reluctance I find myself obliged to give you thirty days notice of the termination of my appointment as from tomorrow, Saturday, 4th September 1971.

"Prior to my departure a report will be submitted in regard to the port of Djajapura, which I trust will prove both helpful and constructive to all concerned."

On the same day the Deputy Resident Representative, after cabling to the Office of Technical Co-operation at Headquarters that the Applicant had submitted his notice of resignation, explained the circumstances of the resignation in a letter to that Office, dated 3 September 1971, reading:

"Further to my cable No. 578 of today's date, I am forwarding enclosed, in original, the letter of resignation received from Mr. F. E. Broadhurst, Port Operations Expert with the Coastal and River Transportation Project (FUNDWI/30), to take effect on 4 October 1971.

"Mr. Broadhurst informs me he is resigning for reasons of ill-health. Since his arrival in Djajapura in early July he has persistently been plagued with indisposition and a general feeling of weakness, which he at first attributed to the change of environment, but which has not improved over time in spite of medication and medical advice. He has now reached the conclusion that he could not do full justice to his assignment in this condition and has therefore decided to terminate his contract.

"Since he does not entertain any medical claim against the Organization, he does not give any reasons for his resignation in his letter.

“As the duties foreseen for the Port Operations Expert are physically demanding, requiring prolonged stay at isolated locations with few amenities and medical facilities, I recommend that Mr. Broadhurst’s resignation be accepted.” On 20 September 1971 the Office of Technical Co-operation cabled the following to the Deputy Resident Representative:

“Advise Broadhurst resignation involves loss of repatriation entitlement under Staff Rule 207.24 (b) unless departure can be justified medical grounds. Broadhurst should request own physician to send particulars Medical Director Headquarters. Please cable reply. Note Broadhurst letter resignation not attached your letter three September.”

On 21 September 1971 the Technical Assistance Recruitment Service (TARS) of the Office of Personnel wrote to the Applicant the following letter:

“Even though your actual letter of resignation has not yet been received here, we have been informed of it by the UNDP Office in Djajapura.

“We deeply regret the circumstances of your decision, and we shall act on it as soon as we have received your letter.

“As you know, Staff Rule 207.24 (b) states that resignation before completing one year of service implies loss of entitlement to payment of repatriation travel.

“In order to establish whether Staff Rule 207.24 (e) is applicable in your case, we would be grateful if you would send us all supporting medical documentation from your local physician.”

On 23 September 1971 the Applicant transmitted to the Office of Technical Co-operation a medical certificate from the “Designated United Nations Physician at Djajapura”, Dr. Harahap, adding in his covering letter that on arrival at Malta, his place of recruitment, he would present himself for a further medical examination in accordance with instructions received; the medical certificate read:

“Mr. F. E. Broadhurst, Port Operations Expert, FUNDWI-30 has been receiving medical attention by Doctor NICO EMOR MD, Health Centre, Djajapura, since the 15th July, 1971. Doctor Nico is at present absent from Djajapura. On the 24th August, 1971 Doctor Nico diagnosed General Debility and prescribed accordingly.

“It is now confirmed and certified by me that Mr. Broadhurst’s condition is not satisfactory and for reasons given below it is advisable he should be permitted to leave the area at the earliest possible date.

“(1) Loss of body weight more than 9 pounds in 1 month.

“(2) Continuous relax bowel and distended stomach.”

On 12 October 1971 TARS sought the opinion of the Medical Director of the United Nations as to whether there were valid medical grounds for the Applicant’s resignation and whether those grounds warranted application of Staff Rule 207.24 (b) or (c) [*sic* -(e)?]. On 21 October 1971 the Medical Director advised TARS to ask the Applicant to have the usual exit medical examination. On 1 November 1971 the Office of Technical Co-operation informed the Applicant as follows:

“We are writing to inform you that the UN Medical Director has reviewed the medical data so far made available and he has indicated that prior to rendering a decision as to the medical justification of your repatriation he would wish to have in hand your exit medical examination. Would you therefore consult a physician associated with an established hospital in your home country as soon as possible and have the results forwarded directly to the UN Medical Director. Forms MS 2 and 6 are attached; a chest x-ray should also be submitted as indicated on form MS 2.

“ . . . ”

The results of the Applicant's exit medical examination were sent to the Medical Director who, on 14 January 1972, submitted to TARS the following report:

“Before he went to West Irian in July 1971, Mr. Broadhurst had a pre-placement medical examination, in Malta, on 22 April 1971: based on the results of this examination, he was considered medically fit to go on the one-year assignment.

“Soon after he arrived in West Irian, he began to have symptoms of ‘general debility’ (to quote his attending physician). Mr. Broadhurst himself described his condition as a ‘general feeling of continuous indisposition accompanied by loss of weight during a period of approximately fourteen weeks’: and, in one report, it is stated that he lost ‘more than nine pounds in one month’.

“When he was re-examined in Malta, on 4 October 1971, his physician stated that his ‘general condition was not satisfactory’, without giving any specific diagnosis. Later, on 6 November, this physician examined Mr. Broadhurst again and wrote ‘general condition very satisfactory: no follow-up is necessary’. In November 1971, his weight was 10 stones and in April 1971 it had been 10 stones 3 lbs.

“I do not have sufficient evidence to consider Mr. Broadhurst's departure from West Irian as really being a medical evacuation. I think that he must have found it difficult to adapt to the environment in West Irian: therefore, I would recommend that his resignation is accepted.”

On 3 February 1972 the Office of Technical Co-operation advised the Applicant that the Medical Director had decided that the Applicant's “departure from the duty station on 1 October 1971 was not justifiable on medical grounds”, and that consequently his resignation as of 4 October 1971 was being processed with application of Staff Rule 207.24 (b) which specified loss of entitlement to travel and removal expenses. On 15 February 1972 the Applicant asked for further consideration of his case in a letter to the Office of Technical Co-operation reading in part:

“ . . . ”

“1. (a) Having spent most of my working life in the Far East with considerable travelling on various missions, it came as no surprise to me shortly after my arrival at Djajapura to experience the usual discomfort and symptoms common to a change of environment. As on many previous occasions I treated myself with the recognized proprietary medicine for such discomfort but, on this occasion, without success. Rather than my condition improving after a week or two it slowly, but very persistently, deteriorated with a continuous loss of weight.

“(b) I took medical advice on a number of occasions and invariably received a prescription for sedatives, and or, vitamin tablets. This proved no answer to my problems and on pursuing the matter further a diagnosis of general debility resulted. On my part I took all possible measures against infection and ensured that drinking water was boiled.

“(c) My loss of weight over a period of about three months was between twelve and fourteen pounds, not nine pounds in one month as stated by Dr. Harahap. Previous to this assignment my weight had invariably remained constant over a prolonged period and this persistent loss caused me some concern. It seemed apparent that it was directly related to a relaxed bowel which I suspected may, over the course of time, lead to a degree of dehydration. The medical services were not in conflict with my views but apart from advising me to take plenty of liquids did not seem to have a remedy. In suggesting that a check-up in Singapore may be advisable it was pointed out that if such a check proved successful would there be any guarantee that on my return the condition would not recur?

“(d) By this time I found myself in a position which can only be described as wholly unsatisfactory. To try and continue conscientiously for a further seven months, visiting the more remote areas as and when necessary, may well have terminated with serious consequences. On the 3rd September, rather than abandon my assignment, I decided to take a calculated risk and gave due notice of my resignation to be effective from 4th October. During the termination period I compiled my report on Djajapura.

“2. (a) On tendering my resignation I gave no reasons for I could not see how satisfactory medical evidence would be obtained. However, I did explain the situation to Mr. Bernander, who appreciated my position, and advised Mr. Tsien accordingly in his letter dated 3rd September, 1971.

“(b) A cable dated 20th September from FAMOTC advised me that I should lose repatriation entitlement unless departure could be justified on medical grounds. In view of this I visited Dr. S. Harahap, M.D., United Nations Designated Physician, who certified my condition not to be satisfactory and recommended that I should leave the area. This certificate is in your possession.

“(c) My letter F.30/OI-PF dated 23rd September addressed to Mr. K. Tsien stated that on my return to Malta I would take a further medical. With this object in mind I requested the Administrative Officer of the Deputy Resident Representative to provide the appropriate forms. I was informed these would be sent to me from New York.

“(d) I arrived in Malta on the 4th October. The following day I contacted Dr. Naudi, United Nations Doctor for Malta. I appreciated the fact that I was free to attend my own Physician, but As Dr. Naudi had examined me for the appointment I considered it best that he should also attend to the exit medical. The examination was arranged for the 6th October. Dr. Naudi expressed some surprise in my condition and called my attention to the fact that he mentioned that I was particularly fit when taking the out-going medical. I explained to Dr. Naudi that the completion of exit medical forms would be required and that these would arrive from New York in due course. However, as I had stated that I would take a further medical as soon as I returned to Malta it was important that I should do so.

“(e) Your letter PR 71 dated 1st November enclosed the forms MS 2 and 6. On receipt I took immediate action and had a further medical together with chest X-Ray, which were returned to you on the 11th November, 1971.

“(f) In regard to the above, I want to make it clear that when the forms were completed and forwarded after my second medical my condition had greatly improved and much of my body weight recovered. This was referred to in my letter dated 31st October addressed to Mr. Watts. There could have been little comparison between my condition then as when I reported to Dr. Harahap on the 23rd September, or even when I arranged for my first medical with Dr. Naudi on the 6th October.

“ . . . ”

On 15 March 1972 the Office of Technical Co-operation informed the Applicant that the Medical Director had reviewed the case and found no basis for amending his prior decision to the effect that repatriation was not justifiable on medical grounds. On 22 March 1972 the Applicant requested from the Office of Technical Co-operation a further review of his case and suggested that the three doctors familiar with his medical facts, two in Djajapura and one in Malta, be approached by the Medical Director with the purpose of obtaining details he might consider necessary to forming an amended opinion. On 4 April 1972 the Office of Technical Co-operation replied that the Medical

Director was expected to journey in mid-May to Djajapura on an official visit and that at that time it would be most opportune for him to make inquiries of the medical facts surrounding the Applicant's case. On 14 June 1972 the Medical Director reported to the Office of Technical Co-operation as follows:

“ . . .
 “In mid-May, I was in Djajapura and I had an opportunity of talking to the UNDP Deputy Resident Representative, and others, about Mr. Broadhurst.

“From these conversations, I see no reason to change my original decision that a medical evacuation all the way to Malta was unjustified. However, as I believe now that Mr. Broadhurst could possibly not have received adequate treatment for his symptoms in West Irian, I would suggest that he could be reimbursed the cost of a round-trip air ticket to either Singapore or Australia where I am sure he would have undergone successful treatment.”

On 10 July 1972 an Administrative Officer of the Office of Personnel advised the Office of Technical Co-operation as follows:

“ . . . As you are well aware, the established practice in respect of reimbursement of travel expenses restricts the said reimbursement to travel actually undertaken by the staff member. No payment can be made in connexion with the hypothetical travel which the staff member could have had, but did not undertake. I therefore see no way of favourably considering reimbursement of the estimated cost of a round-trip Djajapura/Singapore/Sydney, since Mr. Broadhurst never travelled to either cities for medical treatment. On the other hand, since repatriation on medical grounds was already rejected, and since the former expert was considered to have lost entitlement to repatriation travel expenses, Mr. Broadhurst's present request cannot be granted.”

On 18 August 1972 the Office of Technical Co-operation informed the Applicant that the Medical Director upon his return from his tour of duty had released his findings, which had been duly conveyed to the Office of Personnel for final decision, and that no bases had been found by the Office of Personnel to justify the revoking of their prior negative decision. On 28 August 1972 the Applicant requested that his case be given further consideration under Staff Rule 207.24 (e). On 24 October 1972 the Office of Technical Co-operation advised him that the Office of Personnel could not modify its prior decision unless he could present evidence of the existence of a compelling reason for his resignation. On 1 November 1972 the Applicant replied that ill-health was the one and only reason, essentially a compelling reason, for tendering his note of resignation. On 21 November 1972 the Office of Technical Co-operation wrote to the Applicant that since the matter had been twice referred to the Medical Director and since the latter continued to maintain his original decision that medical evacuation to Malta was not justified, the Applicant's case could not be resubmitted to the Office of Personnel for reconsideration unless he offered “new and certified more substantive medical reasons”. On 1 December 1972 the Applicant replied *inter alia*:

“ . . .
 “In order to comply with your requirements your Designated Physician, Dr. Harahap, M.D. examined me on the 23rd September, 1971. After examination I was issued with a certified certificate. This supported a previous opinion by Dr. Nico Emor that I was not in good health and should arrange to leave the area.

“ . . .
 “Having been advised by your designated Physician to leave the area, what other course of action was left open to me?, obviously none, and I contend therefore that I complied in full with your cabled instructions and that my departure was fully justified for medical reasons.

"If the reasoning in the above paragraph is not to be accepted then surely a major point of principle arises. If the medical certificate signed by your own appointed Physician is not to be accepted, then it would appear tantamount to a total rejection of the medical services available on the spot. Under such conditions and circumstances what alternative action could be taken by the particular Expert involved?"

"I would suggest that if your medical requirements had been known by those concerned and your exit forms available at the time of medical then much correspondence and trouble to those concerned would have been avoided. This may well be a point worthy of consideration.

" . . . "

On 11 December 1972 the Office of Technical Co-operation informed the Applicant of its inability to obtain modification of the position previously taken by the Office of Personnel. On 2 February 1973 the Applicant requested from the Secretary-General an administrative review of the decision to deny him reimbursement of repatriation travel. On 20 February 1973 the Assistant Secretary-General for Personnel Services informed the Applicant of the Secretary-General's decision as follows:

" . . . "

"It has been observed in the course of the review of your case that you did not invoke any compelling medical reasons for your resignation at the time you tendered it. It has been further observed that the medical reasons belatedly invoked by you were not considered by the medical authorities of the United Nations as justifying your resignation and your departure from the duty station. Therefore, no exception to the relevant provision of Staff Rule 207.24 can be made in your case under paragraph (e) of the same rule.

"I therefore regret to inform you that having reviewed the decision of which you have complained and having taken into consideration all the relevant facts and the pertinent provisions of the Staff Rules, the Secretary-General has decided to maintain the said decision."

On 28 March 1973 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 11 July 1974. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations"

"42. The Board finds no evidence of a compelling nature which would justify the appellant's precipitate resignation or warrant his repatriation to Malta. Therefore, the Board makes no recommendation in support of this appeal."

The Alternate Member elected by the Staff appended to the Board's report the following dissenting opinion:

"In reaching its conclusions and recommendations, the Board based its position mainly on two points: (a) the opinion of the Medical Director's decision that a medical evacuation all the way to Malta was unjustified; and (b) that with his past experience, the appellant should have known that his departure from the area for health reasons had to have the prior approval of the Medical Director. Accordingly, I wish to record my views on these two aspects.

"(a) Justification of a medical evacuation"

"In considering this aspect, an important issue in my view, to which the Board did not give enough weight, was the age of the appellant, who at the time of his resignation was sixty-five. The United Nations Staff Rules, in setting sixty as the mandatory retirement age, recognize that after sixty one's physical energy and mental capacity to face ill health is generally reduced. Normally, the Secretary-General permits extensions of a maximum of two years beyond this age. Thus,

at the appellant's age, the state of his health at the time he tendered his resignation must have caused him great anxiety. The medical certificate states that he lost over nine pounds in one month and the appellant indicates that he lost between twelve to fourteen pounds during the almost three months of his assignment. The fact that the medical treatment available in Djajapura did nothing to arrest his continuous 'relaxed bowel' and therefore his continued weight loss, which amounted to one tenth of his total body weight, showed that he needed treatment elsewhere.

"It is necessary to note that apparently the appellant at no time received official advice, either medical or administrative, that the proper course was for him to seek treatment outside the area instead of offering his resignation. Compelled by the lack of any alternative solution or any assurance regarding possible treatment, the appellant found it necessary to resign.

"That the appellant was right to leave the area is confirmed by the revised opinion of the Medical Director's memorandum dated 14 June 1972. In the memorandum he says that after having talked to 'the UNDP Deputy Resident Representative and others', he believed that Mr. Broadhurst 'could possibly not have received adequate treatment for his symptoms in West Irian' and suggested that the appellant could be reimbursed the cost of a round-trip air ticket to either Singapore or Australia 'where he could have undergone successful treatment'.

"It is evident from this memorandum that the Medical Director did not have all the necessary information when he originally decided that there was no justification for a medical evacuation 'all the way to Malta'.

"(b) The question of the prior approval of the Medical Director

"As the report of the Board shows, the cable from Headquarters dated 20 September 1971 in response to the appellant's resignation said that he would lose repatriation entitlement under Staff Rule 207.24 (b) unless his departure 'could be justified on medical grounds'. It added that the appellant should request his own physician to send particulars to the Medical Director. However, in the appellant's case, as he had been advised to leave the area by the local physician designated by the Medical Director himself, it could not be clear to the appellant that he had to wait for a reply from the Medical Director at Headquarters before leaving the area.

"Also, I cannot share the Board's conclusion that because of his previous experience, the appellant should have known that the telegramme instructing him to submit medical evidence implied that the certification by the UN-designated doctor required further approval by the Medical Director at Headquarters, and that therefore he should have waited for the approval before leaving the area. In my opinion, his previous experience in Saudi Arabia over seven years earlier could have provided little guidance to him. Moreover, at no time prior to his resignation were the administrative rules governing his departure and their implications drawn to his attention by the Office of the Resident Representative.

"In the light of these considerations, it is my view that because of his age, the appellant's state of health gave him 'compelling reasons' to leave the area. This was subsequently recognized by the Medical Director, who suggested that he could have been successfully treated only outside the area.

"The importance of providing such treatment must be viewed also in the light of the long-term need of the Organization to rely on experts, many of whom are in the appellant's age group, and the importance of safeguarding their health. Even cases involving difficulty 'to adapt to the environment' need to be sympathetically handled administratively if the United Nations is to live up to its reputation as a good employer.

“Accordingly, I recommend that the Secretary-General exercise his discretionary power under Staff Rule 207.24 (e) and reimburse the appellant for the cost of his repatriation.”

On 8 August 1974 the Officer-in-Charge of the Office of Personnel Services informed the Applicant that the Secretary-General had re-examined his complaints in the light of the Board’s report and had decided to accept the majority findings of the Board and to maintain the administrative decision appealed against. On 3 February 1976 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The United Nations designated physician in Djajapura determined that medical evacuation of the Applicant at the earliest possible date was necessary, and so advised.

2. The Applicant told the Deputy Resident Representative that he was resigning because of ill-health and the Deputy Resident Representative transmitted that information and the Applicant’s notice of resignation to Headquarters.

3. Headquarters’ response to the Deputy Resident Representative’s communication was understood by the Applicant to request the submission of a medical certificate confirming that the Applicant was sufficiently ill to warrant his departure from his post; so as to avoid a loss in repatriation reimbursements, the requested data were submitted to Headquarters.

4. The Medical Director, after visiting Djajapura and talking with all concerned, essentially agreed with the determination that the Applicant could not have received adequate medical attention locally and suggested reimbursement of round-trip air ticket to Singapore or Australia, where the Applicant could have undergone surgical treatment.

5. The Applicant did not receive the necessary exit medical forms until two months after he had tendered his resignation and a month after he had left Djajapura and received treatment in Malta; the said forms, therefore, reflected a condition subsequent and not prior to the Applicant’s departure from Djajapura.

6. Consequently, the evidence and the attendant circumstances of the case constitute compelling medical grounds which justify the granting of an exception by the Secretary-General under Staff Rule 207.24 (e).

Whereas the Respondent’s principal contentions are:

1. The Applicant resigned from United Nations service on his own initiative and responsibility. His allegation that he resigned for “compelling medical reasons” implies that “medical reasons” left him with no reasonable alternative but to resign. That allegation is unfounded for, even if it be assumed that the Applicant’s medical condition compelled him to take some appropriate remedial action, it does not follow that it compelled him to resign since alternative courses of action were open to him.

2. The Applicant could have availed himself of the Staff Regulations and Rules providing for sick leave and, if necessary, for the termination of an appointment for reasons of health. The fact that he chose not to have recourse to those provisions—of which he must be presumed to have been aware and of which he had made use during the period of an earlier appointment—was his sole responsibility and individual choice.

3. Under Staff Rule 207.24 (b) the Applicant was not entitled to payment of travel expenses on separation. The Respondent was not obligated to grant an exception under Staff Rule 207.24 (e), and the medical reasons advanced by the Applicant did not, in the Respondent’s view, provide a justification for doing so.

The Tribunal, having deliberated from 12 to 21 April 1976, now pronounces the following judgement:

I. The facts are set forth above and are not in dispute.

II. The Tribunal notes, however, that the Assistant Secretary-General for Personnel Services was in error when, in his letter of 20 February 1973 to the Applicant, he referred to "the medical reasons belatedly invoked by you". In point of fact, the Applicant, contemporaneously with his delivery of his letter of resignation to the Deputy Resident Representative of UNDP on 3 September 1971 in Djajapura, informed the Deputy Resident Representative that he was "resigning for reasons of ill-health"—see the Deputy Resident Representative's letter of 3 September 1971 to Headquarters. Indeed, Headquarters learned from such letter of the reason for the Applicant's resignation before it received the resignation itself, which did not accompany that letter—see the Headquarters' cable of 20 September 1971 and letter of 21 September 1971.

III. The application involves Staff Rule 207.24, applicable to Technical Assistance Project Personnel. The Staff Rule reads in part as follows:

"(b) Project personnel who resign before completing one year of service . . . shall not be entitled to payment of travel expenses on separation for themselves or their dependants.

". . .

"(e) The Secretary-General may authorize exceptions to (b) . . . above if he is satisfied that there are compelling reasons for so doing."

The Tribunal notes that the cable of 20 September 1971 from the Office of Technical Co-operation to the Deputy Resident Representative and its letter of 21 September 1971 to the Applicant recognize the entitlement of the Applicant to his travel costs if medical grounds for his departure are established, in other words, that his ill-health, if established, constituted a "compelling reason" for the Secretary-General's exercising, under (e) above, his authority to make an exception to (b) above.

IV. The "medical grounds", the Applicant's ill-health at the time of his resignation, are amply proved by the findings of Dr. Nico Emor, a physician at the local Health Centre, and of the "Designated United Nations Physician at Djajapura", Dr. Harahap—see Dr. Harahap's medical certificate of 23 September 1971—and by the statements in the Deputy Resident Representative's letter of 3 September 1971 to Headquarters. Indeed, that medical certificate stated:

". . . it is advisable he should be permitted to leave the area at the earliest possible date".

Furthermore, Dr. Naudi, the United Nations Doctor for Malta, who re-examined the Applicant at Malta on 4 October 1971 stated (albeit, apparently, without giving any specific diagnosis) that his "general condition was not so satisfactory". The Tribunal also notes that in his report of 14 January 1972 the Medical Director, while saying that he did not have sufficient evidence to consider the Applicant's departure from West Irian "as really being a medical evacuation", thought that the Applicant "must have found it difficult to adapt to the environment in West Irian" and recommended that the Applicant's resignation be accepted—a recommendation tantamount to recognition of the Applicant's ill-health at the time of his resignation. The fact that on 6 November 1971 the United Nations Doctor for Malta, while making the Applicant's exit medical examination, found his "general condition very satisfactory" is of little relevance as to his condition in West Irian at the time of his resignation more than eight weeks before.

V. Furthermore, the Medical Director's report of 14 June 1972, after his visit to Djajapura and his consultations with the Deputy Resident Representative and others, although it states "I see no reason to change my original decision that a medical evacuation all the way to Malta was unjustified", in effect concedes the fact of the Applicant's ill-health by suggesting the reimbursement of the Applicant for a hypothetical round-trip air ticket to Singapore or Australia on the ground that he "could

possibly not have received adequate treatment for his symptoms in West Irian". The Tribunal notes that such reimbursement was not permissible under the Staff Rules and was therefore not granted.

VI. Any contention that the Applicant, instead of resigning on the ground of ill-health, should have asked for sick leave, which would presumably have involved his return to an environment which he had found unsupportable (compare the Medical Director's comment in his report of 14 January 1972 quoted in para. IV above), is irrelevant.

VII. The Tribunal holds that the Applicant has established medical grounds for his departure from the duty station and accordingly decides that the application is well-founded, rescinds the contested decision and orders reimbursement to the Applicant of his travel and removal expenses according to the Staff Rules.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Francis T. P. PLIMPTON
Vice-President

Geneva, 21 April 1976

Francisco A. FORTEZA
Alternate Member

Jean HARDY
Executive Secretary

Judgement No. 209

(Original: French)

Case No. 202:
Corrado

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

Claim of a former technical assistance expert for payment of compensation for losses resulting from a burglary, for loss of professional documents, for extraordinary expenses and hardships and for moral and material injury.

Claims for compensation for losses resulting from a burglary and for loss of professional documents.—Their admissibility.—Claims for compensation for extraordinary expenses and hardships and for moral and material injury.—Their inadmissibility, these claims not having been explicitly submitted to the Respondent and the Joint Appeals Board having made no recommendation concerning them.

Claims for compensation for losses resulting from a burglary and for loss of professional documents.—Staff Rule 206.6.—Limits and conditions set out in Administrative Instruction ST/AI/149.

Claim for compensation for losses resulting from a burglary.—No obligation on the part of the United Nations to obtain insurance for personal effects at the duty station.—Paragraph 3 (a) (ii) of Administrative Instruction ST/AI/149.—Condition relating to the existence of special hazards.—That condition not being fulfilled in this case, conclusion of the Tribunal that the claim cannot be sustained.

Claim for compensation for loss of professional documents from the United Nations warehouse in Conakry.—Dispute concerning the evaluation of compensable damage.—Acknowledgement by the Claims Board that the Applicant should receive compensation for his loss and that the loss of professional documents fell within the category of compensable damage.—Refusal of the Claims Board to decide on