

Judgement No. 340

(Original: English)

Case No. 328:
Lebaga

Against: **The Secretary-General
of the International
Maritime Organization**

Request by a former staff member of IMO for the rescission of the decision to dismiss him on the basis of findings of the Disciplinary Board or for compensation in an amount higher than the maximum specified in article 9.1 of the Tribunal's statute.—Request for preliminary measures: production of various documents.

Recommendation of the Joint Appeals Board either to offer the Applicant a new probationary contract at a lower level or to pay him compensation of at least four months' salary.—Recommendation rejected.

Request for preliminary measures rejected.

Consideration of the regularity of the procedure of the Disciplinary Board.—The Tribunal finds that the proceedings of the Board were marred by procedural defects sufficiently fundamental to vitiate them and therefore also to vitiate the contested decision.—The Applicant had no opportunity to participate in the examination of the evidence, contrary to the requirement established by the Tribunal in Judgement No. 183 (Lindblad).—The Applicant was neither assisted by counsel nor informed of his right.—Right guaranteed for United Nations staff by staff rule 110.5 (b).—The Tribunal holds, in conformity with Judgement No. 123 (Roy), that the fulfilment of these requirements in the proceedings before the Joint Appeals Board did not provide a cure for the defects before the Disciplinary Board.—The Tribunal considers that the defects in procedure amounted to a denial of due process of law and vitiated the contested decision.—Decision of the Tribunal, in pursuance of article 18.1 of its Rules, to notify the parties that the case should be remanded for correction of procedure under article 9.2 of its statute.—Notification by the Respondent that he did not wish to request a remand.—Decision of the Tribunal on the substance of the case, as required by rule 18.2 on the basis of the evidence before it.—Finding of the Tribunal that the charges against the Applicant had not been proved by evidence received in accordance with due process of law.

The Tribunal orders the rescinding of the decision to dismiss the Applicant.—If the Respondent decides to take no further action, award of compensation equivalent to six months' net base salary at the time of dismissal.—All other pleas rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
 Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Herbert
 Reis; Mr. Luis de Posadas Montero;

Whereas at the request of Joseph Langmia Lebaga, a former staff member of the International Maritime Organization, hereinafter referred to as IMO, the President of the Tribunal with the agreement of the Respondent, extended the time-limit for filing the application to 9 April 1984;

Whereas, on 11 April 1984, the Applicant filed an application as follows:

“1. *Preliminary application*

“The Tribunal is requested:

“(a) *to impress* on the Respondent the importance of acting promptly in order to facilitate an early hearing by the Tribunal as the delays in dealing with this case in IMO have already caused considerable hardship and suffering to the Applicant;

“(b) *to order* the Respondent to produce to the Tribunal any correspondence or documents on the case (other than those annexed to this

application) relating to action taken, contemplated or advocated, or relating to any expression of opinion on the case, by the Secretary-General, the Administration, the Legal Office or other persons or bodies, whether staff members of IMO or otherwise, and including any parts of documents, or memoranda or other communications included only by reference, which have not been made available to the Applicant.

“2. *Principal application*

“The Tribunal is requested:

“(a) *to rule* that the evidence available to the Disciplinary Board and the Joint Appeals Board was not of sufficient probative value to support the conclusion that the applicant was guilty of falsifying the leave records;

“(b) *to rule* that the evidence available to the Disciplinary Board and the Joint Appeals Board relating to an alleged financial transaction in connection with the obtaining of leave consisted solely of the unsupported testimony of Mr. Wong [an IMO staff member] and that, in the absence of corroborative evidence, the charge that any alteration of leave records was made for financial gain cannot be sustained and must therefore be rejected;

“(c) *to rule* that the Disciplinary Board and the Joint Appeals Board failed to make a full, fair and objective review of the evidence;

“(d) *to rule* that the Administration of IMO ought, in fairness to the Applicant, to have looked more closely into the possibility that Mr. Wong’s evidence might not be reliable;

“(e) *to rule* that the Disciplinary Board and the Joint Appeals Board were negligent in that they failed to look into the medical history of Mr. Wong and that the medical report submitted to the Tribunal . . . casts sufficient doubt on the reliability of Mr. Wong as a witness to invalidate his unsupported testimony;

“(f) *to rule* that the long delay in the disposal of this case in IMO, the Administration’s failure to give the Applicant a written statement of the charge that was brought against him and considered by the Disciplinary Board, the Disciplinary Board’s failure to give him the opportunity to consider the evidence under reasonable conditions in consultation, if necessary, with an adviser of his choice, and the failure of the administration machinery set up by the Secretary-General to respect the rights of the defence, in particular by not allowing the applicant to be present during the examination of the evidence by the Disciplinary Board or during the interviews with other staff members involved, amount to a denial of due process and result in the nullification of the guarantees established for staff members in the Staff Rules and Staff Regulations and that the findings of the Disciplinary Board and the Joint Appeals Board as to the merits of the case must therefore be declared invalid;

“(g) *to rule* that the Secretary-General’s decision to dismiss the Applicant on the basis of the findings of the Disciplinary Board, though taken by the Secretary-General in good faith and in the sincere belief that the applicant’s guilt had been proved, was based on an inadequate, biased and incorrect appreciation of the evidence by the Disciplinary Board and cannot therefore be sustained;

“(h) *to order* the rescission of the Secretary-General’s decision of 7 April 1983 which he took on the basis of the recommendations of the Disciplinary Board and which he confirmed on 7 December 1983 after he had considered the recommendations of the Joint Appeals Board;

“(i) *to order* the reinstatement of the Applicant either in his former post or in a post of the same grade or, if no suitable post in IMO is vacant, *to order* that he be placed on special leave under the provisions of Staff Rule 105.2 (a) with full pay equal in all respects to the salary he would have received if the disciplinary proceedings in connection with the case had never occurred, until such time as a suitable post becomes vacant or until such time as the applicant has been appointed to a post of his own choosing outside the Organization;

“(j) *to order* the Respondent to compensate the Applicant for loss of earnings since his dismissal, including any annual increments that would normally have been expected;

“(k) *to order* the Respondent to pay to the Applicant a sum to be fixed by the Tribunal as compensation for moral injury suffered by the Applicant as a result of the humiliating treatment to which he was subjected, as a result of the contested decision and, in particular, as a result of the dilatory way in which the Administration made arrangements to have the case heard by the Joint Appeals Board;

“(l) *to order* the Respondent to take, in good faith, whatever steps are necessary to ensure that the Applicant’s good name and reputation are restored as far as possible, in particular by placing the Judgement of the Tribunal on the Applicant’s personnel file and by informing the staff of IMO at large and the Assembly and Council of the Organization of the facts of the case, including the Judgement of the Tribunal;

“(m) *to rule* that this is an exceptional case that justifies the payment of an indemnity considerably higher than the maximum amount specified in article 9, paragraph 1, of the Statute of the Tribunal, and *to order* the payment of such higher amount should the Secretary-General decide, under the provisions of that paragraph of the Statute, that the Applicant shall be compensated without further action.”

Whereas the Respondent filed his answer on 28 June 1984;

Whereas the Applicant filed written observations on 7 August 1984 in which he withdrew the plea contained in paragraph 1 (a);

Whereas on 17 October 1984, the Tribunal informed the parties, pursuant to article 18 of its Rules, that it had in mind remanding the case in accordance with Article 9, paragraph 2 of the Statute of the Tribunal, in order that the required procedure should be instituted or corrected;

Whereas on 19 October 1984, the Respondent informed the Tribunal that he would not request that the case be remanded to it in accordance with Article 9, paragraph 2 of the Statute of the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the IMO as a Senior Clerk at the General Service level on 15 December 1975, on a supernumerary appointment of eleven days which was subsequently renewed for further fixed-terms until 30 April 1976. On 1 May 1976 his appointment was converted to a probationary appointment at the G-5, step 1 level in the Personnel Section of the Administrative Division. On 1 July 1977 his appointment was converted to a regular appointment and on 1 April 1978 he was promoted to the G-6 level. The Applicant’s responsibilities as a Principal Clerk in the Personnel Section of the Administrative Division included the recording, storing and safekeeping of leave records of staff members.

On 1 December 1982 the Deputy Director, Administrative Division was informed by the Head, Personnel Section that "a member of his staff had been told by Mrs. Jean Wade (Principal Secretary, Sub-Division for Technology) that Mr. A. Wong (Senior Clerk, Common Services Section) had 'purchased' annual leave from [the Applicant]." Subsequently, on 2 December 1982, Mrs. Jean Wade stated in writing:

"I was told a few days ago that Alex Wong had 'bought leave' from Joseph Lebaga".

On the same date, and in a written statement, Mr. Wong informed the Deputy Director, Administrative Division that:

"(a) During the month of August 1982 Mr. Lebaga approached myself concerning the balance of days leave for the remaining year of 1982. A figure something in the region of 5 days was mentioned, and that I would be running short of leave for the year.

"(b) It was suggested by Mr. Lebaga that I would need more, and that arrangements could be made to increase the number of days leave for a consideration. With persuasion I foolishly accepted to have 5 days leave added to my existing leave of course for a consideration for himself.

"It is with great regret that I allowed myself to be persuaded into such a deal, and am a little relieved that it has come to light as time has proved that it would inevitably show up in personnel records. Unfortunately once the agreement was made, there was no way I could reverse the process.

"In the term consideration, the sum of [pounds] 40 were to be paid in instalments, of which [pounds] 30 has been paid to date . . ."

In a handwritten memorandum dated 2 December 1982 addressed to the Secretary-General, the Applicant denied the allegations.

On 3 December 1982 the Head, Personnel Section informed the Applicant that:

"following the charge of serious misconduct made against [him] by another staff member and in view of the *prima facie* evidence available to the Secretary-General", he had "decided to suspend [him] from duty forthwith, with pay, and without prejudice to [his] rights as an IMO staff member, pending further investigation of [the] case."

In a letter dated 5 December 1982, to the Secretary-General, the Applicant stated that he thought that after his memorandum of 2 December 1982

"there was going to be some sort of an investigation with me present or being asked to nominate an independent observer to be present during these investigations. To suspend me from duty saying there is *prima facie* evidence available to You Sir, when I know nothing of the evidence . . . makes me to think that somebody might suffer a miscarriage of justice."

On 7 December 1982 the Head, Personnel Section informed the Applicant that the Secretary-General had decided to establish an *ad hoc* Committee of Enquiry composed of four IMO staff members, and an internal auditor who would act as observer in order to establish the facts in the case, in the light of the written submissions made by the Applicant and Mr. Wong—the two parties concerned. After an investigation was conducted, on 11 December 1982 the Committee submitted a factual report to the Secretary-General.

On 22 December 1982 the Director, Administrative Division informed the Secretary-General that the investigation conducted by the Committee of

Enquiry had revealed that another staff member, Mr. Roy Camp, seemed to be implicated in "purchasing" annual leave as well.

On 18 January 1983 the Secretary-General constituted a Disciplinary Board, pursuant to Staff Regulation 10.1, with the following terms of reference:

"To investigate further the allegations that have been made of irregularities in the arrangements for the taking and recording of leave within the Organization and which were given initial examination by a fact-finding enquiry, and to investigate any new facts which have since emerged;

"To determine, as far as possible, the nature and extent of any irregularities which may have occurred and of any individual responsibility, and to make recommendations with respect to any appropriate disciplinary action;

"To examine the current system for the control and recording of leave absences for the purpose of establishing whether there are any weaknesses which may have facilitated or contributed to the irregularities and, if so, to recommend any improvements which may be necessary or desirable; and

"To report its findings, conclusions and recommendations to the Secretary-General".

On 11 February 1983 the Disciplinary Board submitted a report to the Secretary-General. The Disciplinary Board's general conclusions on disciplinary matters read as follows:

"IV. General Conclusions on Disciplinary Matters

"74. We are satisfied, from the evidence before us on the nature, extent and results of the checks of leave records undertaken by Mr. Aitken [Deputy-Director, Administrative Division] and by the External Auditors, that there has been no widespread or systematic falsification of the leave records within the Organization. We have not considered it necessary to undertake any further extensive checking ourselves in order to add to that assurance. However, our investigations have enabled us to identify certain irregularities which have in fact occurred, and we have therefore concentrated our attention on these.

"75. The leave records are official records of the Organization which are important both in their own right and because of their potential financial consequences. We therefore consider that leave records should be treated with as much care as financial records; and that any falsification of leave records is as serious as the falsification of financial records. This view is reflected in our conclusions and recommendations.

"76. It has been established beyond doubt that the Leave Record Cards for Mr. Wong and Mr. Camp did overstate their remaining leave credits, by 5 1/2 days and 11 days respectively. We have considered whether these overstatements could have been due to innocent errors or were the result of deliberate falsification. The close correspondence between the allegations made by Mr. Wong, who could not have had any prior knowledge of any innocent errors on the Leave Record Cards, and the discrepancies actually found provides very strong *prima facie* evidence that some at least of them must have been due to deliberate falsification. We have sought, and have invited our witnesses to provide, any possible innocent explanations for the discrepancies; but we have been left with

some items for which, on any reasonable interpretations of the facts, it is impossible to find any innocent explanation. We are therefore satisfied that there was some deliberate falsification of the leave records; and we consider such deliberate falsification to be nothing less than an attempt to defraud the Organization."

The Disciplinary Board reviewed the individual responsibilities of Mr. Wong, Mr. Camp and the Applicant. With respect to the Applicant, the Board stated:

"Mr. J. Lebaga

"81. Our conclusions about the individual responsibility of Mr. Wong necessarily imply a judgement that Mr. Lebaga was also party to an arrangement aimed at defrauding the Organization; and that we are reasonably satisfied that he did so for financial gain. It also follows from our conclusions with respect to Mr. Camp that we are reasonably satisfied that Mr. Lebaga colluded with Mr. Camp to exclude his 10 day leave absence in August 1982 from the official leave records.

"82. We are convinced that Mr. Lebaga was directly responsible for the deliberate falsification of official leave records and for the suppression of the related Leave Request forms. We consider that this has been established beyond any reasonable doubt in relation to Mr. Wong's absences on 9, 10 and 25 August 1982 (for which the entries on the white copy of the Leave Report were obliterated) and to Mr. Camp's absence from 9 to 20 August 1982 (for which the original entry on the Leave Record Card was obliterated). Although it was not provable with the same degree of certainty, we are satisfied that it also applied to Mr. Wong's further absences on 1, 2 and 21 September 1982. The concealment of Mr. Camp's absence on 4 May 1982 may also have been deliberate, but there is no positive evidence on this.

"83. Mr. Lebaga was not, in our judgement, a truthful witness in the evidence he gave to us and we are satisfied that he lied both to the earlier Committee of Enquiry and to us."

The Board's recommendations read in part as follows:

"84. Our terms of reference require us to make recommendations with respect to any appropriate disciplinary action. Regulation 10.2 of the Organization's Staff Regulations empowers the Secretary-General to impose disciplinary measures on staff members whose conduct is unsatisfactory and to summarily dismiss a staff member for serious misconduct; but it does not otherwise specify the disciplinary measures available to him. However, we have assumed that, by analogy with the provisions of Rule 110.3 (b) of the United Nations' Staff Rules, such measures will include written censure, suspension without pay, demotion and dismissal for misconduct. . . .

"87. In our judgement the greatest measure of guilt rests on Mr. Lebaga. He was the essential participant in the arrangement with Mr. Wong to defraud the Organization; and we are reasonably satisfied that his participation was for personal financial gain. He was responsible for the deliberate falsification of the official leave records and the suppression of official documents in his care, in direct betrayal not only of his declaration of loyalty as a staff member but also of the specific trust placed in him by the Organization. He also lied persistently both to the earlier Committee of Enquiry and to us. We consider that in his case the penalty of dismissal would be amply justified."

On 7 April 1983 the Applicant was informed by the Head, Personnel Section, that

“After the most thorough consideration of the Report of the Disciplinary Board, the Secretary-General finds no reason to differ from the conclusion of the Board that ‘the penalty of dismissal would be amply justified’ in your case. The Secretary-General has therefore decided that you should be separated from the service of the Organization. He has however also decided, on compassionate grounds, to offer you the opportunity to resign voluntarily if you prefer that to being dismissed for misconduct. This offer will stand until Friday, 15 April 1983 after which it will be assumed that you do not wish to avail yourself of the opportunity to resign.”

A copy of the Disciplinary Board’s Report was enclosed for the Applicant’s information.

On 13 April 1983 the Applicant informed the Head, Personnel Section, that he would not accept the offer to resign but would appeal against the Secretary-General’s decision to dismiss him from the Organization. He asserted that after reading the Disciplinary Board’s report he had “a strong suspicion that the allegation against [him was] the result of a conspiracy to get [him] out of the Organization”.

On 19 April 1983 the Head, Personnel Section, informed the Applicant that since he had not accepted the Secretary-General’s offer to resign, the Secretary-General had decided to confirm his decision to dismiss him for serious misconduct. His separation from the Organization would take effect from 30 April 1983.

On 4 May 1983 the Applicant requested the Secretary-General to review the administrative decision to dismiss him for serious misconduct. On 26 May 1983 the Head, Personnel Section, informed the Applicant that:

“. . . Having given the most serious consideration to the points made in your letter, the Secretary-General is satisfied that the decision to dismiss you was correct. He is not in a position, therefore, to reconsider that decision.”

On 23 June 1983 the Applicant lodged an appeal with the IMO Joint Appeals Board, which adopted its report on 2 December 1983. The Board’s recommendations read as follows:

“5 *Recommendations*

“5.1 In considering recommendations to the Secretary-General to be made by the Board, the following two alternatives were suggested:

“*Alternative 1*

“The Board is unable to make any recommendation regarding the disciplinary action imposed against Mr. Lebaga. However, in order to compensate for the long waiting period for Mr. Lebaga until the completion of the work of the Board, it is recommended that Mr. Lebaga be given a compensatory payment equivalent to at least four months of his salary.

“*Alternative 2*

“Mr. Lebaga be deposed of his former regular assignment but be offered a probationary contract for twelve months as from 1 May 1983 for a G-4 post within the Organization outside the Personnel Section, commensurate with his new grade. His performance and conduct be reviewed after

the expiry of that period with a view to determining the type of contract and grade to be given to him.

"5.2 Prolonged discussions ensued on the choice of the above alternatives. In this context, the Board took into account the following factors:

“.1 The recommendations of the Administration did not entirely follow those of the DB [Disciplinary Board], and in particular Mr. Camp was allowed to stay in the Organization in spite of his serious misconduct;

“.2 Mr. Lebaga had shown a high standard of performance since he joined the Organization over seven years ago;

“.3 While there was no intention of the Board to criticize the way the Administration and the DB handled the case, it had some sympathy with the complaints made by Mr. Lebaga about prejudice against him;

“.4 The dismissal of Mr. Lebaga might have an adverse effect on future co-operation and trust among staff members of the Organization and impair the good image of the 'IMO family'.

"5.3 In the light of the above, the Board arrived at the consensus that:

“.1 Alternative 2 mentioned in paragraph 5.1 above be recommended to the Secretary-General on equity grounds; and

“.2 If the Secretary-General decided to uphold his decision for the dismissal of Mr. Lebaga, then Alternative 1 be recommended . . ."

"On 7 December 1983 the Head, Personnel Section advised the Applicant that

"In accordance with the provisions of Staff Rule 111.1 (*n*), I am transmitting herewith a copy of the recommendations of the Joint Appeals Board. After the most careful consideration, the Secretary-General has decided that his original decision in this case—which was communicated to you in my memorandum PER/G/83/866 dated 7 April 1983—should stand."

On 11 April 1984 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Administration of IMO did not act with reasonable administrative dispatch.

2. The procedure before the Disciplinary Board and the Joint Appeals Board denied the Applicant due process of law. Cross examination of the Applicant in the absence of the other accused staff members and in the absence of a legal adviser was improper and not in accordance with usually accepted principles of natural justice. Testimony by the staff member who accused the Applicant was unreliable because he was suffering from severe depression when the alleged incidents took place.

3. The Disciplinary Board and the Joint Appeals Board did not examine the evidence with care and impartiality. The evidence of falsification of leave records by the Applicant is of low probative value. Perfectly plausible explanations can counteract the charge of deliberate falsification. Admission by the Applicant that he made alterations was made under duress and was not necessarily an admission of guilt since alterations with snopake [blotted out with correction fluid] were current practice as a means to correct clerical errors or changes.

4. Articles 10 and 11 (1) of the Declaration of Human Rights were not applied to the Applicant.

5. The Secretary-General's decision was based on an incorrect appreciation of the facts by the Disciplinary Board.

Whereas the Respondent's principal contentions are:

1. There was no unreasonable or unusual delay by the IMO Administration in dealing with the case. At all stages proper and detailed consideration was given to the procedures to be adopted and they were implemented with due process. The timing of the Joint Appeals Board did not in any way adversely affect the Applicant's ability to present his case.

2. The probative value of the evidence was a question to be determined by the Disciplinary Board and there is no evidence of improper or unjust procedure, obvious bias or improper motivation in the Board's conclusions. Both Boards were convinced of the Applicant's guilt and the findings of the Committee of Enquiry were compatible with the conclusions of the Disciplinary Board and the Joint Appeals Board.

3. Even if falsification of documents by the Applicant had not been made for financial gain, the Applicant would still be guilty of serious misconduct for deliberately falsifying records.

4. The Applicant was not denied due process of law.

The Tribunal, having deliberated from 11 October to 2 November 1984, now pronounces the following judgement:

I. In respect to the "preliminary application", the Tribunal finds that the personnel file of the Applicant has been available to the Tribunal, and there is no reason to believe that any relevant documents have been withheld by the Respondent. Accordingly the Applicant's preliminary application is rejected.

II. In respect of the "principal application", the Tribunal's decision is as follows:

III. There is no reason to believe that the Respondent has failed to act promptly to avoid unnecessary delay in the disposal of this case.

IV. The Tribunal holds that the consideration of the Applicant's case by the Disciplinary Board was marred by defects in procedure which, particularly in a case which depended so much on the evidence of witnesses, were sufficiently fundamental to vitiate the proceedings before that Board and therefore also to vitiate the decision of the Respondent, based on the Disciplinary Board's report, to dismiss the Applicant.

V. Concerning the right to examine witnesses: in Judgement No. 183, para. VII (*Lindblad*, 1974) the Tribunal stated, in the context of the Staff Regulations and Rules of the United Nations, that—

"In the Tribunal's view, a staff member against whom disciplinary proceedings are taken under Staff Rule 110.3 should be furnished with a specific charge and should be accorded the right to be heard before a sanction is imposed on him. This right includes *inter alia* the opportunity to participate in the examination of the evidence."

In this case, witnesses against the Applicant were heard by the Disciplinary Board in his absence, and neither he nor counsel on his behalf had any opportunity to participate in the examination of the evidence.

VI. Concerning the right to counsel: in the proceedings of the Disciplinary Board, the Applicant was neither assisted by counsel nor informed of his right. This, in the view of the Tribunal, amounted to a critical defect in procedure.

The Tribunal notes that this right is guaranteed for United Nations staff in Staff Rule 110.5 (b) of the UN Staff Regulations and Rules, which reads:

“The Joint Disciplinary Committee shall permit a staff member to arrange to have his or her case presented before it by any other staff member serving at the duty station where the Committee is established.”

VII. The Tribunal notes that the Respondent was in fact assisted by counsel in the proceedings before the Joint Appeals Board, in accordance with IMO's Staff Rule 111.2 (f). However, although it appears that the defects in the procedure of the Disciplinary Board were not repeated in the proceedings before the Joint Appeals Board, this does not provide a cure. In Judgement No. 123, para. X (*Roy*, 1968), the Tribunal stated:

“The decision to discharge the Applicant, based on an investigation which was not properly conducted under the provisions of the Service Code, cannot be justified by the fact that the requirements of due process were met in the Advisory Joint Appeals Board, inasmuch as the decision maintaining the discharge was not in accordance with the Board's conclusions.”

VIII. Considering that the defects in procedure amounted to a denial of due process of law and were sufficiently fundamental to vitiate the decision of the Respondent to dismiss the Applicant, and although these defects did not involve a failure to observe specific provisions of the IMO Staff Regulations and Staff Rules (which are silent on these points), the Tribunal decided to notify the parties in pursuance of article 18.1 of its Rules which reads as follows:

“If, in the course of the deliberations, the Tribunal finds that the case be remanded in order that the required procedure may be instituted or corrected under article 9, paragraph 2, of the Statute, it shall notify the parties accordingly.”

Within the time limit allowed, the Respondent replied that he did not wish to make a request for a remand in pursuance of article 9.2 of the Statute of the Tribunal which reads as follows:

“Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. . . .”

The Respondent indicated that some of the witnesses are no longer staff members of IMO and that it may not be possible to get them to appear before a reconvened or reconstituted Disciplinary Board.

IX. Accordingly, the Tribunal has proceeded to decide on the substance of the case as required by Rule 18.2.

X. In so doing, the Tribunal is in no better position than a reconvened or reconstituted Disciplinary Board would have been, in that some of the witnesses are unlikely to be available. That being so, the Tribunal must decide the substance of the case on the basis of the evidence before it.

XI. For the reasons stated above, the Tribunal holds that the decision of the Respondent to dismiss the Applicant from the service of IMO was founded upon a report of the Disciplinary Board which was vitiated for lack of due process and that the decision of the Respondent therefore cannot stand.

XII. The Tribunal finds that the charges against the Applicant have not been proved by evidence received in accordance with due process of law.

XIII. Accordingly, the Tribunal orders the rescinding of the decision of the Respondent but if the Respondent decides that, in the interest of the Organization, no further action shall be taken in the Applicant's case, the Tribunal orders the Respondent to pay to the Applicant six months' net base salary at the time of his dismissal.

XIV. All other pleas are rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

Herbert REIS
Member

2 November 1984

Luis de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Acting Executive Secretary

Judgement No. 341

(Original: English)

Case No. 324:
Paveskovic

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

Request by a former staff member of the United Nations to rescind the decision not to extend his appointment for two years beyond retirement age; request for indemnification of injuries sustained as a result of this decision.

Conclusion of the Joint Appeals Board that the Applicant had no legal right to the extension of his appointment.—Recommendation motivated by personal, human and moral grounds to pay the Applicant equivalent of six weeks' salary.—Recommendation rejected.

Applicant's claim that his appointment should have been extended beyond the age of sixty.—Consideration of the circumstances of the case.—The Tribunal finds that the Applicant resigned from the national civil service from which he was seconded in the belief that he would be retained by the Organization for two years beyond sixty.—This belief arose through the assurances given to the Applicant by certain members of the Administration.—The Tribunal finds that these assurances did not go beyond a promise that the Applicant would be recommended for extension.—Consequence of a more restrictive policy with regard to extensions beyond sixty introduced by General Assembly resolution 33/143 setting a maximum period of extension of six months.—Applicant's contention that his acquired rights were not affected by this change of policy.—Contention rejected.—The Tribunal finds that the granting of a three months' extension, reduced later to two months, must have affected the Applicant adversely.—Applicant's allegation that his successor was not fit for his job and was appointed only to refuse him an extension.—The Tribunal holds that in the absence of an infringement of the regulations or of bad faith it is beyond its competence to judge the suitability of a staff member selected by the Administration for a post.—Applicant's allegations of injury suffered as a result of overwork and inhuman treatment.—The Tribunal notes that no proof thereof was presented but holds that the deterioration of the Applicant's health during the last period of his service can be attributed to overwork and strain.

Award of compensation of \$US 4,000.—All other pleas rejected.
