Judgement No. 82

(Original: French)

Case No. 83: Puvrez *Against:* **The Secretary-General of the International Civil Aviation Organization**

Request for rescission of the decision of the Secretary-General of ICAO to apply to the Applicant amendments in the Service Code adopted by the ICAO Council after the Applicant's entry into service and affecting to his disadvantage the system of post adjustments and dependency allowances. Absence from the Applicant's contract of any provision concerning these two allowances, the terms of which are governed exclusively by the Service Code.

The provision of the Service Code empowering the Council to amend the Code, provided that no such amendment might adversely affect the benefits actually earned by staff members between their entry into service and the effective date of amendments.—Meaning of the proviso.—Its effect limited to benefits and advantages accruing to staff members for service completed before the entry into force of amendments.

The Council's decision empowering the Secretary-General to fix the effective date of amendments modifying the system of post adjustments and dependency allowances, and to pay personal allowances to staff members affected by such amendments.—General rise in the level of allowances following an increase in the cost of living.—Decision of the Secretary-General to apply the amendments in question to the Applicant two months after the general rise in the level of allowances and to pay him a personal allowance to ensure that the total amount of his emoluments was maintained at the level reached before that rise.—Complaint by the Applicant that the Secretary-General failed to take into account the general rise in the level of allowances when calculating the amount of the personal allowance payable to the Applicant.—Dismissal of the complaint on the ground that the Secretary-General's decision did not exceed the powers conferred on him by the Council.

Rejection of the application.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Sture Petrén, Vice-President; Mr. Omar Loutfi; Mr. Héctor Gros Espiell, alternate;

Whereas Paul Auguste Puvrez, staff member of the International Civil Aviation Organization, hereinafter called ICAO, filed an application to the Tribunal on 31 August 1961, requesting the Tribunal:

(*a*) To declare that the Secretary-General did not have the right to invite the Applicant to furnish, with respect to the income of his spouse, the information sought in Form P-10 Provisional for the purpose of implementing the amendments to the system of allowances adopted by the ICAO Council on 17 June 1960;

(*b*) To declare that, to the extent that those amendments were applied to the Applicant, the latter is entitled to a personal allowance equal to the difference between the net emoluments received by an official of his grade with a dependent spouse within the meaning of the said amendments and those received by an official of the same grade without a dependent spouse;

(*c*) To order that such personal allowance be paid to the Applicant until he expiry of his contract, subject to his family status remaining unchanged,

without possibility of its reduction by reason of any increase in salary or allowances or the establishment of new allowances ;

(*d*) To order the payment of the token sum of $1 as damages ;

(*e*) To order the payment of $50 in respect of costs ;

Whereas the Respondent delivered his answer on 24 October 1961 ;

Whereas the Applicant filed written observations on the answer of the Respondent on 10 November 1961 ;

Whereas the President of the Tribunal put a question to the parties on 14 November 1961 ;

Whereas, on 20 November 1961, the Tribunal put several questions to the parties and, in conformity with article 19, paragraph 2, of the Rules of the Tribunal, authorized the ICAO Staff Association to submit a written statement ;

Whereas this statement was submitted on 21 November 1961 ;

Whereas, on the same day, the Tribunal held public oral proceedings in the course of which the parties replied to the questions put by the President and the Tribunal ;

Whereas, at the request of the Tribunal, the Respondent produced Additional documents on 27 November 1961 ;

Whereas the facts in the case are as follows :

The applicant is an ICAO official at P-4 level, married and father of three children of full age. After holding a temporary appointment, he signed, on 15 August 1949, a permanent appointment which is still in force. From his entry into ICAO up to 30 June 1960, the Applicant enjoyed all the pecuniary benefits granted by the Organization to married staff members. The nature of those benefits and the régime applicable to them were varied at different times. Before 1 July 1950, those benefits were part of the system of deductions in lieu of income tax which were at that time levied on the salary of staff members in pursuance of article III of Part III of the Service Code, administrative instruction OI S/71 and, more especially as regards the Applicant, an express provision in his letter of permanent appointment. The benefits took the form of an exemption from tax which had the effect of freeing from any deduction an amount of $625 of the salary of married officials. On 1 July 1950, the system of deductions was replaced by a staff assessment plan in pursuance of a prior decision of the Council. The plan, the regulations of which were set forth in administrative instructions OI T/215, GSI-1.8.4 and GSI-1.8.4.Rev.1, maintained, on a modified scale, the deductions on salary, thereafter called assessments, but substituted in place of the exemption from tax a credit of $200 entered each year to the account of married officials and deducted from the amount of assessments due for the current year. Administrative instruction OI T/215 stated that the introduction of the plan did not involve any decrease in the net amount of emoluments received up to that time by staff members. On 30 September 1957, the Council altered the whole system of salaries, allowances and benefits by introducing in the Service Code, with retroactive effect from 1 January 1957, a set of new provisions based on the common system recommended by resolution 1095 B (XI) of the General Assembly of the United Nations. With regard to the pecuniary benefits granted to heads of families, these new provisions established an annual allowance of $200 for a dependent

spouse in lieu of the credit of the same amount and substituted a post allowance, called "post adjustment", for the cost-of-living allowance of $500 previously granted. The amount of the post adjustment varied in relation to the grade of the person concerned and in relation to the class in which his duty station was placed. Besides, in contrast to the scale of the former cost-of-living allowance, which had been uniform for a given grade and a given duty station, the scale of post adjustments provided for two rates for each grade and each class of duty station. The first rate was applied to officials with no primary dependents, the second to officials with one or more primary dependents. For the grade of the Applicant and for Class 5 in which Montreal—his duty station—had been placed, these rates were, respectively, $1,015 and $1,525 per year. Since the new provisions introduced by the Council into the Service Code had, like the texts previously in force, defined the spouse as a dependent, the Applicant received under the new system the dependency allowance of $200 and the post adjustment at the rate of $1,525. Two and half years later, on 11 April 1960, the Secretary-General proposed to the Council in document C-WP/3129 that it make a series of amendments to the Service Code giving new definitions of dependency. These amendments were based on a common system recommended by the heads of the secretariats of international organizations and agencies on the basis of a report presented in 1956 by a committee of the General Assembly of the United Nations. With regard to the definition of a dependent spouse, the Secretary-General proposed to include in the Code provisions which introduced a notion which had not appeared in any of the texts previously in force. While those texts had not provided for any link between the amount of a spouse's personal income and the allowances or pecuniary benefits granted to her husband, the provisions proposed by the Secretary-General specified that a spouse would not be considered as a dependent within the meaning of the Service Code unless her income was less than a certain figure. In the same document, the Secretary-General requested the Council to give him the authority to pay personal allowances in order to avoid a reduction in the net salary of officials who would be affected by the new dependency definitions. Moreover, he added that in the case of Headquarters officials in the professional category, the category to which the Applicant belonged, any reduction in salary would be avoided if the Council decided, at the same time, to transfer Montreal from Class 5 to Class 6. In this connexion, the Secretary-General submitted to the Council, on 26 May 1960, a new document, bearing the symbol C-WP/3151, which formally proposed such a transfer in view of the increase in the cost of living in Montreal during the preceding nine months. Documents C-WP/3129 and 3151 were considered by the Council on 16 and 17 June 1960 in reverse order of their submission. On 16 June, the Council transferred Montreal from Class 5 to Class 6, with effect from 1 May 1960. This decision increased from $1,015 to $1,215 the post adjustment for officials with no primary dependents and from $1,525 to $1,825 the post adjustment for officials such as the Applicant, *i.e.*, with one or more primary dependents. The decision did not affect the allowance for a dependent wife which remained at $200. The following day, 17 June, the Council adopted, in the version which had been meanwhile given to them by a Working Group, the amendments to the Code submitted by the Secretary-General in document C-WP/3129. In this version, the provisions proposed by the Secretary-General for the definition of spouse for the purposes of the allowance for dependent wife and post adjustment, became paragraphs 2,

2.1 (*a*) and 2.2 of Part VII of the Code entitled "General Provisions". These paragraphs read:

"2. Whenever in this Code provision is made for benefits for, or in respect of, the staff member's spouse (husband or wife), child, parent, brother, sister or, generally, dependents, such persons will be regarded as qualifying for the benefit under conditions specified in these provisions only if they are considered as the staff member's recognized dependents. The following shall be considered as the staff member's recognized dependents:

"2.1 For the purpose of payment of the dependency allowance:

(*a*) spouse—whose gross income is less than the amount either of gross salary at level G-2 Step I or of the staff member's own gross salary, whichever is the smaller; at duty stations other than Headquarters this amount may be modified by the Secretary-General in the light of local circumstances;

"...

"2.2 For the purpose of payment of the dependency rate of the post adjustment: spouse or child on conditions specified in paragraph 2.1 (*a*) and (*b*) above, respectively."

At the same time, the Council, having accepted the suggestion of the Secretary-General, granted to the latter "full authority to implement [these amendments], including determination of the effective date and payment of any necessary personal allowances to staff members adversely affected by them". By a notice dated 22 June 1960, distributed under number SN/573, the Secretary-General informed all staff members that the new system would enter into force on 1 July 1960 and he requested them to furnish information necessary for its implementation by completing, before 9 July 1960, Form P-10 Provisional. Married staff members, in particular, were required to indicate therein whether the personal income of their spouse was higher than the maximum established by the new text. Since the Applicant failed to complete the questionnaire as requested, the Administration forwarded to him a notice of personnel action dated 15 September 1960, informing him that, with effect from 1 July 1960, he was no longer entitled to the allowance of $200 for a dependent wife and that his post adjustment would be paid at the rate established for staff members with no primary dependents, this meaning that the post adjustment was reduced from $1,825 to $1,215. The notice added, however, that the Applicant would receive, as a counterpart, a personal allowance of $510 per year, which would be offset by the amount of any future increases in salary. The effect of this allowance was to bring the total emoluments in fact received by the Applicant to the level existing on 30 April 1960, on the eve of the date established by the Council for the transfer of Montreal from Class 5 to Class 6. On 27 October 1960, the Applicant requested the Secretary-General to review the decisions communicated to the Applicant by the notice of 15 September 1960. The Secretary-General having confirmed that notice on 3 November 1960, the Applicant brought the dispute before the Advisory Joint Appeals Board. On 12 June 1961, the Board adopted in regard to the merits of the case the following recommendation:

"The Board recommends to the Secretary-General that the Appellant be granted, until the expiration of his contract, a personal allowance

computed from the date of entry into force of the amendments to the dependency regulations. This allowance should be the full equivalent of the losses he has suffered as a result of the application of the new definition of dependents in his case. Moreover, the personal allowance should not affect or be affected by entitlements to any future increase in other emoluments."

The Secretary-General having rejected this recommendation on 16 June 1961, the Applicant filed the above-mentioned application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The ICAO Council has not the power to amend unilaterally the rules concerning the determination of a dependent spouse in a manner affecting, to the detriment of the Applicant, the dependency allowance and the post adjustment. Since these benefits are, in fact, part of the salary, they constitute, in accordance with established jurisprudence of the Administrative Tribunal, a contractual element of the legal situation of staff members and, consequently, do not fall within the statutory power of the Organization. Besides, they give rise to acquired rights and are thereby removed by paragraph 1.1 of article XV of Part III of the Service Code from the unilateral power of amendment granted to the Council by paragraph 1 of that text.

2. In addition, the Organization could not validly have inserted in the Service Code a provision reserving to the Council the right to amend unilaterally such an important element of a staff member's contract as the salary and related benefits. Such a provision would, in effect, be null and void on two grounds, since it would be contrary both to the Chicago Convention and to general principles of law which prohibit leonine clauses.

3. By establishing a maximum figure for spouse's income beyond which the allowance for dependent wife would be abolished and the post adjustment reduced, the amendments to the Service Code adopted by the Council on 17 June 1960 unilaterally amended the system of benefits which the Applicant had enjoyed until that time. Therefore, those amendments were not applicable to him and he could not, with a view to their implementation, be compelled to furnish the information requested in Form P-10 Provisional concerning the personal income of his spouse.

4. If the Secretary-General considered that he could not maintain for the benefit of the Applicant the old system of the two allowances at issue, he was bound to pay to the Applicant a personal allowance equal to the difference between the benefits granted by the old and new systems. By paying to the Applicant a smaller allowance which had the effect of bringing his salary to the level attained on the eve of the reclassification of Montreal from Class 5 to Class 6 and by deciding, in addition, that this allowance would be reduced by any future increases in salary, the Secretary-General had committed a breach of the Applicant's contract and had interfered with the Applicant's acquired rights. Furthermore, the increase of salary resulting from the reclassification of Montreal from Class 5 to Class 6 was intended to compensate for the increase in the cost of living in that town. In those circumstances, if the Secretary-General wished to keep at its former level the real salary of the Applicant, and not merely the Applicant's nominal salary, he should have taken that increase of emoluments into account in the calculation of the amount of the personal allowance.

5. The personnel action applying to the Applicant, as from 1 July 1960, the new system of allowances now at issue, was communicated to him by a notice dated 15 September and transmitted on 28 September 1960. By thus giving the decision a retroactive effect of almost three months, the Respondent aggravated the injury which he caused to the Applicant.

Whereas the Respondent's principal contentions are:

1. The ICAO Service Code, not only in the version in force at the time of the signature of the Applicant's permanent appointment, but also in later versions, expressly reserved to the Council the right to amend unilaterally the salary of ICAO staff members. By this, the Code gave to the salary, and in particular to benefits due under the two allowances at issue, the character of a statutory and non-contractual element of the legal situation of those concerned. The jurisprudence of the Administrative Tribunal relied upon by the Applicant in support of the argument to the contrary was exclusively concerned with the United Nations and was based on Staff Regulations which, unlike the ICAO Code, did not authorize a unilateral amendment of the salary. Therefore, that jurisprudence could not be deemed applicable to the legal situation of ICAO staff members.

2. In any event, the amendments made on 17 June 1960 to the system of the two allowances in dispute are based on the power to amend that system unilaterally, a power which is granted to the Council by the express provisions of paragraph 7—at the time, paragraph 8—of Part V of the Service Code in regard to the allowance for a dependent spouse, and of article XV of Part III of the Code in regard to post adjustment.

3. Although these provisions were not expressly included in the Applicant's contract, they were nevertheless part of the contract, in pursuance of the clause of that contract which stipulated that the whole of the Service Code applied to the permanent appointment of the Applicant. Besides, the provisions, whether leonine or not, were in conformity with a well-established practice of international organizations the validity of which had been recognized by the Administrative Tribunals of the League of Nations and the United Nations.

4. Since the amendments of 17 June 1960 applied to the Applicant, the Secretary-General could lawfully request the Applicant to furnish, by completing Form P-10 Provisional, the information necessary for the implementation of those amendments.

5. The actions communicated to the Applicant by the notice of 15 September 1960 were wholly in conformity with the amendments of 17 June 1960 and with the decisions taken by the Council in regard to their implementation and the granting of personal allowances by the Secretary-General. Those decisions had not produced any retroactive effect. The delay in their application to the Applicant was due to the fact that he had refused to complete Form P-10 Provisional.

The Tribunal, having deliberated from 20 November to 4 December 1961, now pronounces the following judgement:

I. The Tribunal is called upon to take a decision concerning the legality of the application to the Applicant, an ICAO staff member and the holder of a permanent contract, of provisions included in the Service Code in pursuance of a Council decision dated 17 June 1960.

In accordance with a decision taken by the Secretary-General of the

Organization, in the absence of a declaration by the Applicant attesting that the income of his spouse was less than a certain amount, the Applicant suffered the withdrawal of the dependency allowance with effect from 1 July 1960. In addition, his post adjustment was thereafter that of a staff member with no dependents. On the other hand, a personal allowance was granted to him and this, added to the increase in post adjustment due to the reclassification of Montreal, assured him of emoluments equal to his former emoluments. However, this personal allowance is due to disappear to the extent that future increases in salary applicable to the Applicant ensure that the said emoluments are maintained at their present level.

The Applicant submits that the Council did not have the right to adopt the amendments depriving him of the benefits for a dependent spouse which he had received until that time and that, in any event, he should receive a compensatory allowance equal to those benefits without being deprived of any other future increases in salary. He bases his petition principally on the contention that salary constitutes a contractual element of his status as a staff member, an element which cannot be affected by a unilateral decision of the Organization.

II. The Tribunal notes that the Chicago Convention on International Civil Aviation has, in articles 54 (*b*) and 58, laid down the powers of the ICAO Council concerning the personnel of the Organization.

According to article 54 (*b*):

"[The Council shall:]

"(*b*) Carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;"

Article 58 provides:

"*Appointment of personnel*

"Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary-General and other personnel of the Organization, . . .".

In pursuance of these provisions, the Council drew up a Service Code which at present has seven parts. Article IV of Part III provides that each staff member shall receive, on appointment, a letter of appointment signed by the Secretary-General. The appointee accepts his appointment by signing and returning to the Secretary-General a notice of acceptance, a form of which is enclosed with the letter of appointment. In accordance with paragraph 4 of article IV, the letter of appointment and the notice of acceptance shall constitute the contract of employment.

According to the provisions of article IV, paragraph 2, the letter of appointment must contain various particulars (level and title of the position, the effective date of the appointment, the duration of the appointment, the salary at which the appointment is made, and the salary scale applicable). It should also state that the appointment is subject to the provisions of the Service Code in force.

III. The contract which at present governs the situation of the Applicant is constituted by two documents dated respectively 29 July and 15 August 1949. It contains the particulars mentioned in article IV of Part III of the Code. It

also includes a provision concerning the deduction for the pension fund and a provision concerning deductions in lieu of income tax, which expressly provides for the possibility of an amendment of the system employed by ICAO.

The Tribunal notes that the contract of the Applicant contains no mention of the dependency allowance or of the post adjustment. However, it recognizes that at the date of the contract there was provision in the system of deductions in lieu of income tax for a dependency exemption which later underwent various amendments before the dependency allowance was introduced by decision of the Council on 30 September 1957.

The post adjustment appears to have been provided for in the Service Code only by a decision of the Council on 30 September 1957, in pursuance of a decision in principle dated 11 June 1957. At the date of the contract, there was only a cost-of-living bonus established by the Council which underwent successive amendments before being replaced by the post adjustment.

IV. Under these circumstances, when a decision of the Council dated 17 June 1960 introduced a new dependency definition capable of modifying the rights of staff members in the matter of the post adjustment and dependency allowance, the terms of the contract of the Applicant, as established in 1949, were affected only to the extent that the Service Code to which the contract referred had been amended. No other provision of the contract is involved in the case. Therefore, the stipulations concerning salary therein contained are not under discussion.

V. The reference in the Applicant's contract to the Service Code has the effect of subjecting the Applicant himself to rules which might be adopted by the Council in pursuance of the Chicago Convention; this power to adopt general provisions implies in principle the right to amend the rules established. But the Council itself can regulate its right of amendment and has in fact done so in several provisions. As long as these provisions concerning amendments are in force, they must be respected by the Council.

VI. In the case under consideration, the Council, by a decision of 17 June 1960, amended the definition of dependents for the determination of dependency allowance and post adjustment. In contrast to salary properly so called, the amount and nature of these benefits are neither provided for nor included in the contract dated 29 July 1949, but are solely established by the provisions of the ICAO Service Code (Part III, article III, paras. 4 and 4.1 and Part V). Since this is a question exclusively governed by the Service Code, the Tribunal has to determine whether, in this matter, a provision of the Code limited the competence of the Council with regard to the Applicant.

Several texts of the Code are concerned with the Council's right of amendment. Thus, in Part V of the Code, which establishes the rules relating, among other things, to dependency allowances, paragraph 8 in force at the time when the revision took place only stated that "these rules may be amended at any time by Council". On the other hand, there is a restriction to the right of amendment in article XV of Part III which is concerned with staff regulations as a whole, including the rules on post adjustment. In the English text, which is the original text, this article is drafted as follows:

"*Amendment*

"1. These regulations may be amended at any time by Council, provided that no such amendment may adversely affect entitlement to the following:

"1.1 For all staff members, any benefits actually earned through service prior to the effective date of the amendments."

Changes were made in the French version. A first translation read as follows:

« Amendements

« 1. *Le présent règlement pourra être amendé à tout moment par le Conseil, à condition qu'aucun amendement ne porte atteinte aux droits suivants*:

« 1.1 *Pour tous les employés aux droits effectivement acquis par suite de services accomplis avant la date d'entrée en vigueur de l'amendement.*»

On the other hand, the French version of the third edition of the Code, dated 1959, contained the following text:

« Amendements

« 1. *Le Conseil peut à tout moment apporter des amendements au présent règlement, à condition que ces amendements ne soient pas préjudiciables:*

« 1.1 *Aux droits acquis par les membres du personnel depuis leur entrée en service jusqu'à la date à laquelle lesdits amendements prennent effet.*»

The Spanish version of article XV was drafted as follows:

« Modificaciones

« 1. *Este reglamento podrá modificarse en todo momento por el Consejo, siempre que las modificaciones no vayan en perjuicio de lo siguiente:*

« 1.1 *Todos los derechos adquiridos por el personal durante el período de servicio anterior a la fecha en que entre en vigor la modificación en cuestión.*»

VII. The Applicant contends that article XV obliges the Council, in exercising its right to amend the Service Code, to respect the acquired rights of staff members and that the amendment made regarding the definition of a dependent spouse is, in so far as he is concerned, contrary to acquired rights. He considers, in effect, that previous provisions of the Service Code established a contractual right in his favour which could not, without his consent, be later amended by the Council to his detriment.

In the opinion of the Tribunal, this interpretation is not in conformity with the provisions of article XV.

The text of article XV of Part III of the Code was originally drafted in English. The French and Spanish translations were published later by ICAO with the following respective indications: « *Ce code est adopté et publié par décision du Conseil* » and « *Aprobado por el Consejo y publicado con su autorización* ». In any event, these translations do not support an interpretation along the lines advanced by the Applicant.

Indeed, no matter what text is taken as the basis of interpretation, and in spite of the differences in the translations, article XV means simply that no amendment of the regulations may affect the benefits and advantages accruing to the staff member for services rendered before the entry into force of the amendment. Hence, no amendment may have an adverse retroactive effect in relation to a staff member, but nothing prohibits an amendment of the regulations where the effects of such amendment apply only to benefits and advantages accruing through service after the adoption of such amendment.

VIII. The grant of the dependency allowance and the post adjustment was linked by the Council to a certain definition of dependent spouse; it follows from what has just been stated that the Council had the power to adopt another definition in 1960 by statutory action without the staff members who had a right to the previous system being entitled to continue to enjoy the benefits of that system after the entry into force of the amendment in question.

In conclusion, the Tribunal considers that no right arising out of the 1949 contract permits the Applicant to claim the maintenance of benefits under the definition of dependent spouse in force before the decision taken by the Council on 17 June 1960.

The Tribunal also notes that, in the case under consideration, all the circumstances preceding the introduction of the new system in ICAO show that it was part of a reform common to several international organizations, the various aspects of such reform having been studied at length by a committee of the General Assembly of the United Nations and the heads of the secretariats concerned.

IX. While it is thus established that the provisions concerning dependency allowances and post adjustments could be amended at any time by the Council, it should be noted, on the other hand, that the decision of 17 June 1960, by which the Council amended the said rules, was accompanied by a stipulation concerning the implementation of that decision whereby

> "the Council ... gave the Secretary-General full authority to implement [the amendments], including determination of the effective date and payment of any necessary personal allowances to staff members adversely affected by them." (Doc. 8078-9, para. 1.)

The origin of this stipulation is found in a statement concerning the proposed amendments given by the Secretary-General to the Council in document C-WP/3129, dated 11 April 1960. Paragraph 6 of this document reads as follows:

> "6. If the Council approves the new dependency definition it will be necessary to implement it with a substantial degree of discretion to avoid reduction of total emoluments of staff which would otherwise occur in certain cases, particularly where the staff member's wife ceases to qualify for the dependency allowance because of income exceeding the maximum permissible for a wife, recognized as a dependant under the new definition. At Headquarters this can be avoided, in the case of Professional and higher Categories staff fully and in the case of General Service Category staff partially, if the new dependency definition becomes effective as of a date of introduction of a higher post adjustment classification for Professional and higher Categories and of an upwards adjustment of salaries of the General Service Category staff—measures which I expect to be recommending to the Council shortly. I have, therefore, provided in the amendments to the Service Code at A of the Appendix for determination of the effective date of those amendments by the Secretary-Genreal. Even so, it may be necessary, in order to avoid reduction of emoluments, to pay to staff in certain cases, particularly to General Service Category staff at Headquarters and staff in Regional Offices, a personal allowance to be gradually offset by any future increases in the staff member's salary, and I *recommend* that the authority to pay such personal allowances be given to the Secretary-

General, together with authority to make any other discretionary implementation arrangements."

The transfer of Montreal from Class 5 to Class 6 in order to take into account the increase in the cost of living, a reclassification which had been in preparation for a long time, was decided by the Council on 16 June 1960 effective retroactively from 1 May 1960.

In the implementation of the supplementary decision of the Council, dated 17 June 1960, the Applicant was granted by the Secretary-General a personal allowance of $510 which, added to the effects of the reclassification of Montreal, was to ensure that, in spite of the amendment of the definition of dependent spouse and the corresponding loss of allowances, he would maintain the level of emoluments previously received.

X. The Applicant has appeared to contend that the Secretary-General did not have the authority to take into account the increase in salary resulting from the reclassification of Montreal in determining the amount of his personal allowance, since this reclassification had been carried back to 1 May, while the Secretary-General had fixed 1 July for the application of the new definition of dependent spouse.

However, it clearly emerges from paragraph 6 of document C-WP/3129 that when the Secretary-General spoke in that document, on 11 April 1960, of "future" increases in salary, he had especially in view those increases which would result from the reclassification of Montreal then in preparation. Besides, at the end of the same paragraph, the Secretary-General, in summarizing his proposals, recommended that the Council give him the power to pay "personal allowances" as well as to take "any other necessary discretionary implementation arrangements". The formal decision taken by the Council on 17 June 1960 does not provide that personal allowances should be offset by future increases in salary, but gives the Secretary-General full authority to implement the amendments, "including determination of the effective date and payment of any necessary personal allowances to staff members adversely affected by them."

In adopting the new system of dependency benefits, the Council thus gave the Secretary-General "full authority" to pay "necessary" personal allowances. These two expressions could raise doubts as to the scope of the decision, since the first one implies a discretionary authority conferred on the Secretary-General, while the second one appears to imply that the granting of these allowances is compulsory. The Tribunal notes that the Respondent admitted that there was an obligation. However, in order to define the scope of this obligation, the Tribunal, in view of the extremely vague drafting of the decision taken by the Council, has to refer to the considerations on the basis of which the decision was taken, considerations stated in the above-mentioned proposal of the Secretary-General dated 11 April 1960.

It is evident from that text that the Secretary-General wished to avoid having a staff member receive less money per month than he had received before the change in the system of dependency benefits, but it is also clear that, in the opinion of the Secretary-General, the personal allowances necessary to avoid such reductions would be offset by future increases in salary and that he had already intended to proceed in this manner with regard to the reclassification of Montreal which had been in preparation for some time but which, on 11 April 1960, had not yet been agreed upon.

XI. It was only in the month of June 1960 that the Council took its decision concerning the reclassification of Montreal and the new system of dependency benefits. Under these circumstances, neither of these measures could influence the amount of the sums in fact collected by the Applicant before the decision. The fact that the Council made the reclassification of Montreal retroactively effective from 1 May 1960 in no way changed this position. Since the Secretary-General had clearly pointed out to the Council his intention of taking the reclassification of Montreal into account in the determination of the amount of personal allowances, the Tribunal considers that in implementing the decision of the Council in respect of the Applicant, the Secretary-General acted within the scope of his authority.

XII. For these reasons, the Tribunal rejects the conclusions of the Applicant concerning the amount of the personal allowance and the conditions for the granting thereof.

XIII. The complaint based on the retroactive effect of the notice of personnel action dated 15 September 1960 applying the new rules to the Applicant overlooks the fact that the Secretary-General had received from the Council the right to establish the date of implementation of the new dependency definition. This date was communicated to the party concerned by Staff Notice No. 573, dated 22 June 1960. Since he did not complete Form P-10 Provisional, it was only on 15 September 1960 that the Secretary-General drew the necessary conclusions in respect of the Applicant. The regularization of the excess collected was a complementary administrative measure in respect of which a complaint cannot be made against the Respondent.

XIV. A necessary measure for the implementation of the new system of dependency benefits adopted by the Council was that staff members were required to furnish, in Form P-10 Provisional, information concerning the income of their spouse. Since the Applicant refused to complete the form, the Tribunal considers that the Respondent was entitled to draw the conclusions which he communicated to the Applicant on 15 September 1960.

XV. For these reasons, the Tribunal rejects the application.

(Signatures)

Suzanne BASTID
President

Omar LOUTFI
Member

Sture PETRÉN
Vice-President

Héctor GROS ESPIELL
Alternate

Nicolas TESLENKO
Executive Secretary

New York, 4 December 1961.