

**Judgement No. 102***(Original : English)***Case No. 102 :  
Fort****Against : The Secretary-General  
of the United Nations**

*Request for rescission of a decision of the Secretary-General refusing to convert a short-term appointment into a one-year fixed-term appointment with retroactive effect to the date of entry into service.—Alternative request for the payment of the allowances and benefits which would have flowed from such an appointment.*

*Examination of the events surrounding the Applicant's contractual position.—At no time did the Applicant receive from any authorized official any communication promising or holding out any hopes that his requests would be satisfied.—Held that the Applicant was not legally entitled to a fixed-term appointment for one year or to the corresponding allowances and benefits.*

*Respondent's right not to disclose to the Applicant the existence of adverse references or the references themselves.—Pleas for the production of the documents containing adverse references rejected.*

*Staff Rules 101.1 through 112.8 not applicable to staff members engaged for short-term service or to periods of short-term service.—Installation allowance.—Post adjustment, assignment allowance, dependency allowance and education grant.—Reimbursement of travel expenses of dependants.—Repatriation grant.*

*Principal request and alternative request rejected.*

*Further request for rescission of the decision not to re-employ the Applicant.—Request not receivable, as there was no opinion by the Joint Appeals Board.*

*Further request for compensation for abnormal delays imputable to the Respondent.—Request rejected, as the Respondent himself took the delays into account in determining the conditions of the appointment.*

*Application rejected.*

**THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,**

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; the Hon. Francis T. P. Plimpton ;

Whereas, on 17 January 1966, at the request of Joel Fort, a former staff member of the United Nations and the Applicant herein, the President of the Tribunal, with the agreement of the Respondent, extended to 7 February 1966 the time-limit for the filing of an application to the Tribunal ;

Whereas the Applicant filed the application on 25 January 1966 ;

Whereas the Respondent filed his answer on 15 April 1966 ;

Whereas, following a request by the Applicant, the Respondent produced, as annex 40 to the answer, the text, with one deletion, of a memorandum dated 22 April 1965 from the Director of Personnel to the Deputy Director of the United Nations Office at Geneva ;

Whereas, on 5 July 1966, the Applicant filed written observations ;

Whereas, on 26 July 1966, the Applicant filed a supplementary memorandum ;

Whereas the written observations and the supplementary memorandum amended the pleas contained in the application filed on 25 January 1966 ;

Whereas the pleas as amended read as follows :

“(a) Applicant requests that the Tribunal order Respondent to produce a letter sent on 25 May 1964 by the US Bureau of Narcotics, under the Signature of Henry L. Giordano, Commissioner of Narcotics to Mr. Chapman, Director of the Division of Narcotic Drugs of the United Nations, in which attempts were made to prevent Applicant’s employment by the United Nations.

“(b) Applicant requests that the Tribunal order Respondent to produce :

“(i) Any document in which mention was made of the directive whereby Respondent on 22 April 1965, ruled Applicant ineligible for further employment with the UN after 31 July 1965, and particularly a memorandum addressed by Mr. Isoré, (Applicant’s Chief of Section) to the Divisional Director, Mr. Chapman, on 19 July 1965 ;

“(ii) The alleged ‘adverse references’ received by Respondent, as mentioned in Annex 40 produced by Respondent himself, and in his Answer.

“(c) (i) Applicant requests the Tribunal to order the payment in favour of Applicant of an installation allowance and of the unpaid part of the following allowances : Post adjustment, Assignment allowance, Dependency allowance, Education grant, Repatriation grant for a total amount of \$3,769, as follows :

|   | <i>Dollars</i> |
|---|----------------|
| Installation allowance (full annual amount) . . . . . | 1,260          |
| Post adjustment . . . . .                             | 756            |
| Assignment allowance . . . . .                        | 700            |
| Dependency allowance . . . . .                        | 756            |
| Education grant . . . . .                             | 231            |
| Repatriation grant . . . . .                          | 66             |

This amount of \$66 represents the difference between the Repatriation grant calculated from 31 July 1964 to 31 July 1965, paid to Applicant and the Repatriation grant calculated from 4 July 1964 to 31 July 1965.

TOTAL 3,769

Applicant’s request is based on his entitlement to receive these allowances, in conformity with the Staff Rules and Regulations. The request is also based on Applicant’s legitimate expectancy that he would receive payment of these allowances, on the *pro rata* of his continuous period of service of 13 months.

“(ii) Alternatively, Applicant requests the Tribunal to order the rescission of Respondent’s contested decision notified to Applicant on or about 25 February 1965 as a result of which Applicant was denied the payment of whole or part of the allowances above-mentioned. Rescission of the contested decision is requested on the grounds that it is vitiated by the non-disclosure of material facts by Respondent to Applicant, by arbitrary use of administrative power, by lack of due process and by improper motive. And in view of the practical impossibility of ordering now full *restitutio ad integrum*, Applicant requests the Tribunal to order the payment in his favour of damages equivalent to the amounts of which Applicant has been arbitrarily and unlawfully deprived, i.e., \$3,769.

“(d) In addition, Applicant requests the Tribunal to order the rescission of Respondent’s directive dated 22 April 1965 whereby Applicant was ‘ruled

ineligible for re-employment beyond the expiration of his present contract'; this request being based on the fact that such directive violates Article 8 of the Charter of the United Nations and article 1 of Convention 111 adopted by the International Labour Conference on 25 June 1958, known as the 'Discrimination (Employment and Occupation) Convention, 1958'.

"(e) Applicant finally requests the Tribunal to order Respondent to pay him in addition to the amount mentioned above a sum of \$3,000 as compensation for the prejudice suffered by him as a consequence of the abnormal delays imputable to Respondent and of the unlawful prohibition of employment hereabove mentioned."

Whereas, in the course of oral proceedings held on 23 September 1966, the Tribunal heard counsel for the parties and received further documents;

Whereas, on 26 September 1966, the parties filed additional written statements at the Tribunal's request;

Whereas, on 27 September 1966, the Applicant filed a further written statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations at the Geneva Office on 4 July 1964 as a Social Affairs Officer in the Division of Narcotic Drugs on a short-term appointment. His letter of appointment specified *inter alia* that he would receive a "net remuneration" of \$954 per month and that his appointment would expire on 2 January 1965, a term which was subsequently extended to 31 January 1965, and then again to 28 February 1965. It also indicated that the Applicant had been made "acquainted with the Staff Rules governing staff members engaged for conferences and other short-term service, a copy of which [had] been transmitted to [him]". Those Staff Rules—numbered 301.1 to 312.6—made no provision for the payment of allowances and grants and none were paid to the Applicant. From September 1964 to February 1965 the Applicant requested on repeated occasions that his short-term appointment should be converted into a one-year fixed-term appointment with retroactive effect to the date of his entry into service. Under the Staff Rules applicable to such an appointment—numbered 101.1 to 112.8—the Applicant would have been entitled to receive, in addition to his salary, an installation grant and the following benefits at the yearly rate: education grant, post adjustment, assignment allowance and dependency allowance. He would also have been reimbursed the travel expenses of his wife and children who had accompanied him to Geneva. After a lengthy exchange of communications—which is analysed below in paragraphs III to IX—the Applicant's short-term appointment was converted into a fixed-term six-month appointment for the period 1 February to 31 July 1965. The letter of appointment, which the Applicant signed on 19 March 1965, specified *inter alia* that he was placed at the P.4, step 6 level, that his "approximate net salary" was \$10,130 per annum and this figure did not include "any allowances to which you [the Applicant] may be entitled". Under Staff Rules 101.1 to 112.8, the Applicant was paid, in addition to his salary, half the amount of the yearly rate of the education grant, post adjustment, assignment allowance and dependency allowance. Since his appointment was for a duration of less than one year he was refused the installation grant, in conformity with Staff Rule 107.20. The Applicant, however, was reimbursed the travel expenses of his wife and children in pursuance of a special provision in a letter dated 25 February 1965 from the Chief of the Personnel Division of the

Geneva Office. By a letter dated 11 April 1965 the Applicant requested the Secretary-General under Staff Rule 111.3 to review the decision by which he had been given a six-month instead of a one-year fixed-term appointment retroactive to the date of his entry into service (4 July 1964). The letter requested the Secretary-General, *inter alia*, "to arrange for me [the Applicant] to receive the expected installation allowance and the dependency, assignment, and post adjustment allowances for the first seven months (July 1964 through January 1965] of my work here as a Social Affairs Officer. Further, I should like to request the granting of the P.5 rating as originally requested..." The Applicant's letter to the Secretary-General concluded with the following statement :

"Among the puzzling aspects regarding the handling of my contract, which you may wish to explore before reaching a final decision on the matter are the following :

- "(1) The numerous unexplained delays in both the Geneva and New York Personnel Offices, the surrounding secretiveness, and the degree of co-ordination between the two offices ;
- "(2) The possibility of undue behind-the-scenes influence being exerted to block my contract despite the stated independence of the Secretariat from such influence ;
- "(3) Before originally joining the UN for what was then planned to be a six-month period, I asked about entitlements such as the transportation for my family and received a letter stating that this was only possible in connexion with appointments of one year or longer ;
- "(4) When the request was made to convert my contract I was informed by the Geneva Personnel Office that it was because we were asking for a one-year fixed term appointment rather than one for a shorter period that the matter had to be referred to New York for consideration ; and
- "(5) The Staff Rules appear to indicate that most of the entitlements which have now been granted me on the basis of the six-month fixed-term contract, can only be granted on the basis of a fixed-term appointment of one year or more."

On 4 May 1965 Headquarters pouched to Geneva the following memorandum dated 22 April 1965 from the Director of Personnel to the Deputy Director of the Geneva Office :

"I enclose a copy of a letter which Dr. Joel Fort has addressed to the Secretary-General. Dr. Fort raises a number of questions, but the crux of the matter resides in the delay in converting his short-term appointment into a fixed-term appointment. This delay was occasioned, firstly, by the need to check Dr. Fort's references, secondly, by the need to reconsider the desirability of his continued employment in the light of... \* adverse references and, lastly, by the fact that when it was finally agreed to proceed (see cables

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\* The word or words between "in the light of" and "adverse references" in the memorandum quoted above were deleted from the copies submitted by the Respondent to the Tribunal. A note signed by the Chief of Personnel Records explained that the deletion had been made "to protect the confidence of the persons providing the references concerned".

of 21 and 22 December 1964 attached), the Appointment and Promotion bodies were in recess. Dr. Fort's appointment was discussed at the first meeting of these bodies in February 1965. The Division of Personnel in Geneva was informed by letter dated 13 January 1965, and again by cable on 27 January, of the reasons for the delay.

"I think that the numerous exchanges of letters and cables between the Division of Personnel in Geneva and Secretariat Recruitment Service testify to a high degree of co-ordination in the matter of Dr. Fort's appointment. I can assure you that no 'undue behind the scenes influence' was brought to bear. On this question and the question of 'secretiveness', you will appreciate that reference material is confidential and that we have to go very carefully where personal suitability is at issue. Mr. Marx [Chief of the Personnel Division] and Mr. Chapman [Director of the Division of Narcotic Drugs] were, however, fully in the picture, as witnessed by the cables referred to above. May I say in passing that Dr. Fort reveals a surprising knowledge of material that would not normally be available to him.

"We are not in a position to comment on any commitments that Dr. Fort may believe to have been made to him in Geneva. We felt here that it would not be feasible, from an administrative point of view, to convert Dr. Fort's short-term contract into a fixed-term contract with six months' retroactive effect, but we were aware of Dr. Fort's desire that whatever appointment was given should carry with it the right to :

- "(a) Round-trip travel from California for his dependants ;
- "(b) Dependency allowance ;
- "(c) Education grant ;
- "(d) Shipment of excess baggage from California.

"Dr. Fort's views on this matter were taken into account in raising the level of his appointment from P-4, step IV (see our cable No. 3817 of 11 November 1964) to P-4, step VI. This increase would, we felt, compensate for the fact that Dr. Fort would not receive dependency allowance and education grant for his services from July 1964 to the end of January 1965. This was explained to Mr. Marx in our letter of 13 January.

"On the question of reimbursing Dr. Fort for the travel of his family and the shipment of his personal effects from California to Geneva, we would agree that a special condition should be made in Dr. Fort's case to the effect that his previous service under short-term appointments will be counted for the purpose of Staff Rule 107.2 (a) (i).

"To sum up, we regret the delays in converting his short-term contract into a fixed-term contract, but these were due to circumstances beyond our control. We see no justification in Dr. Fort's qualifications, experience or previous salary to reclassify him to P-5, and his entitlements for the period July 1964 to January 1965 were 'built into' his salary for the period February-July 1965. I do not believe that the United Nations can take any responsibility for the arrangements made by Dr. Fort with regard to his house, personal loans and telephone calls.

"I should like to stress that on the basis of the information available to us on Dr. Fort's suitability for employment with the United Nations, he has been ruled ineligible for re-employment beyond the expiration of his present contract.

“ I should be grateful if you would explain the situation to Dr. Fort and I would hope that you would be able to convince him that it would serve no useful purpose to pursue the matter further, either with the Secretary-General or with the Staff Association. ”

A note in the Applicant's file indicates that on 12 May 1965 “ the contents ” of the memorandum quoted above “ were duly communicated to him ” by an official of the Geneva office. It would not seem, however, that the Applicant was shown the phrase in the first paragraph of the memorandum : “ by the need to reconsider the desirability of his continued employment in the light of . . . adverse references ” and the penultimate paragraph stating that the Applicant was ineligible for re-employment. Indeed, that phrase and the penultimate paragraph do not appear in the extracts from the memorandum which the Respondent communicated to the Joint Appeals Board after the Applicant had taken his case to the Board on 7 May 1965. On 30 June 1965, the Director of the Division of Narcotic Drugs requested “ as a matter of urgency ” that the Applicant's appointment should be extended “ by at least one month ”. That request was rejected on 7 July 1965. On 26 July 1965, the Applicant signed a periodic report rating him as “ an exceptionally competent staff member of unusual merit ”. On the following day, the Joint Appeals Board completed its consideration of the case and submitted a report to the Secretary-General. The concluding paragraphs of the report read as follows :

“ 25. First, the Board wishes to record its firm opinion that the Appellant's allegations, subsequently withdrawn, concerning possible attempts by a person or persons outside the Secretariat to influence the Secretary-General unduly and improperly against the Appellant are to be regarded as completely unsubstantiated, the Appellant, on whom lies the *onus probandi*, having failed to produce any evidence in support of his allegations and there being no evidence to that effect on his Personal file.

“ 26. The Board concludes that Dr. Fort's appeal must fail on legal grounds for the reasons stated in the three next paragraphs.

“ 27. The Secretary-General was under no obligation to grant a contract on the terms stipulated by the Appellant—or, for that matter, on any other terms—and the Appellant was free either to accept unreservedly or to refuse the contract offered to him, but it was not open to him to accept it with reservations.

“ 28. The exceptions to the Staff Rules that were made within the discretion granted to the Secretary-General under Staff Rule 112.2 (b) in favour of the Appellant were intended as compensation for the consequences flowing from the delay suffered by the latter, delay admitted by the Administration ; they cannot be interpreted as justifying the argument that the Appellant's six-months fixed-term contract ought properly to have been of one year's duration including six months retroactive effect.

“ 29. Under Staff Regulation 11.1, to succeed in his appeal an appellant must allege and prove non-observance of his terms of appointment. In the present case, there has clearly been no violation of the Appellant's actual terms of appointment ; what he is in fact appealing against is the Secretary-General's refusal to grant him the alternative terms he had requested.

#### “ RECOMMENDATIONS

“ 30. The Board accordingly holds unanimously that there is no *legal*

justification for recommending that the Appellant's Letter of Appointment dated 18/19 March 1965 be amended in either of the alternative senses requested by him or that he consequentially be paid the difference between the total emoluments claimed by him under either alternative and those he has actually received.

" 31. But notwithstanding the fact that in its opinion the subject appeal has no *legal* basis, the Board unanimously agrees that, given the established circumstances of the case, the United Nations has some *moral* duty towards the Appellant in addition to what has already been recognized, more particularly with respect to the protracted delay admitted by the Administration and the fact that 'certain expectations may have been raised' (Statement of rebuttal by the Representative of the Secretary-General, para. 12). It accordingly suggests that this might be discharged adequately by an *ex gratia* payment of 1,250 (One thousand two hundred and fifty) US dollars. "

At the expiration of his appointment on 31 July 1965, the Applicant left the service of the United Nations. He was paid a repatriation grant in conformity with Staff Regulation 9.4 and Annex IV thereto. On 20 October 1965, the Chief of the Personnel Division addressed the following letter to the Applicant :

" I am instructed to inform you that the Secretary-General has decided to accept the conclusion of the Joint Appeals Board that your requests were not legally justified and to confirm the Administration's decision against which the appeal was filed. I am further to inform you that the Secretary-General has not accepted the Board's recommendation for an *ex gratia* payment to be made to you.

" In accordance with paragraph (1) of Staff Rule 111.3, I attach herewith a copy of the Report of the Joint Appeals Board to the Secretary-General for your information. "

On 25 January 1966, the Applicant filed the application to the Tribunal referred to earlier.

Whereas the Applicant's principal contentions are :

1. The duration of the Applicant's continuous service with the United Nations was one year and twenty-seven days. Since he was granted a fixed-term appointment for the last six months of that period, he was entitled to receive an installation grant under Staff Rule 107.20. Furthermore, under Staff Rules 103.20, 103.22, 103.23, 103.7 and 109.5, an education grant, assignment allowance, dependency allowance, post adjustment and repatriation grant should have been paid to the Applicant for the whole duration of his service, irrespective of the nature of his initial appointment. Actually, no installation grant was given to the Applicant, the last twenty-seven days of service were omitted in the calculation of his repatriation grant, and his education grant, assignment allowance, dependency allowance and post adjustment were paid only for the period covered by the six-month fixed-term appointment.

2. The Applicant's entitlement to the installation grant and to the other benefits for the whole period of his service is also based on an expectancy created in his favour by the Respondent.

3. There is no requirement that an expectancy should be recorded in a formal instrument and its existence may be established on the basis of the conduct and correspondence of the parties.

4. The Respondent appears to have believed that Staff Rules 103.20, 103.22, 103.23, 103.7 and 107.20 applied only to periods of service covered by fixed-term appointments. That should not have prevented him from paying to the Applicant the benefits referred to in those Rules for the entire period of service, in fulfilment of the expectancy he had created in favour of the Applicant. Indeed, he could have granted the Applicant a one-year fixed-term appointment with retroactive effect to the date of entry into service or he could have made an exception to the Staff Rules in question under Rule 112.2. He chose neither of the courses open to him. By a decision communicated to the Applicant on 25 February 1965, the Respondent granted him a six-month fixed-term appointment, refused the installation grant and limited to the period covered by that appointment the payment of the education grant, the post adjustment and the assignment and dependency allowances. However, as regards the benefits governed by Staff Rules 107.3 and 109.5, the Respondent appears to have taken into account the whole duration of the Applicant's service since he ordered the reimbursement of the dependants' travel expenses and the payment of the repatriation grant for one year of service.

5. The decision communicated to the Applicant on 25 February 1965 was arbitrary since the Respondent did not apply the same criterion to all the benefits to which the Applicant was entitled. It was, furthermore, improperly motivated since the Respondent subsequently revealed that it had been taken on the grounds that the Organization had received from outside sources adverse references concerning the Applicant.

6. By concealing those grounds from the Applicant at the time of the decision, the Respondent violated his obligation to disclose material facts and deprived the Applicant of due process.

7. The decision was taken after a considerable delay which aggravated the prejudice suffered by the Applicant and which was due to procrastination on the part of the Respondent, and in particular to the fact that he referred the matter without necessity to the Appointment and Promotion Board.

8. The subsequent ruling by the Director of Personnel that the Applicant was ineligible for employment by the United Nations beyond the expiration of his six-month fixed-term appointment violated Staff Regulations 4.2 and 4.3, Articles 1.3, 55 (c) and 101.3 of the Charter and Articles 2, 5, 7, 12, 19, 21, 22, 23 (1), 28, 29 (2) and (3) of the Universal Declaration of Human Rights.

Whereas the Respondent's principal contentions are :

1. The short-term appointments held by the Applicant were governed by Staff Rules 301.1 to 312.6 relating to conference and other short-term service. These Rules are explicit in strictly limiting entitlements to those contained expressly or by reference in the letters of appointment. They include no provision for the payment of installation, education or repatriation grants, post adjustments and dependency or assignment allowances.

2. Staff Rule 304.4 provides that a short-term appointment does not carry any expectancy of renewal or conversion to any other type of appointment. With respect to service beyond the expiry date of his short-term appointments, the Applicant had no greater right than any other candidate under consideration for a post in the United Nations Secretariat.

3. An expectancy with the legal consequences sought by the Applicant would constitute a substantial modification of essential terms of the contract of employment. Such an expectancy is not to be equated with hopes or anticipations



which may arise under various circumstances falling very far short of necessary contractual elements. Any purported commitment on the part of the Organization would have to be explicit, in writing, and undertaken by an authorized official in order to supersede specific provisions of the letter of appointment and Staff Rules. There is no support in the application for the inference of any legal obligation or commitment superseding the original short-term contract with respect either to conversion of the short-term appointment or with respect to the conditions or type of any subsequent appointment.

4. A decision taken within the Secretary-General's discretion on appointments may be vitiated only if a specific improper motive is established as the reason for the decision ; the burden is on the Applicant to show the decision to have been an abuse of authority and not on the Respondent affirmatively to justify its validity.

5. The Applicant's allegations about outside influences do not support any inferences of improper motive for the contested decision. Reference checks with prior employers are entirely normal and indeed necessary to the determination of the suitability of candidates to posts in the United Nations Secretariat.

6. No candidate for an appointment has any entitlement to receive an offer by any particular time. Whether or not reference to the Appointment and Promotion Board was mandatory in the present case does not concern the observance of the Applicant's contractual rights. Any delay caused by such a reference cannot give rise to entitlement to compensation.

7. The decision of the Director of Personnel relating to future employment of the Applicant was not referred to the Joint Appeals Board and cannot therefore be considered by the Tribunal under article 7 of its Statute.

The Tribunal, having deliberated until 10 October 1966, now pronounces the following judgement :

I. The essential question before the Tribunal is whether the Applicant was entitled to receive a one-year fixed-term appointment retroactive to the date of his entry into service (4 July 1964) or to receive at least the benefits and allowances which would have flowed from such an appointment.

The Applicant joined the service of the United Nations on a short-term appointment effective 4 July 1964 to 2 January 1965, subsequently extended to 28 February 1965, and left the service at the expiry of a fixed-term appointment effective 1 February 1965 to 31 July 1965. The matter for the decision of the Tribunal, as was set out in the pleas of the Applicant, stems from the events surrounding his contractual position within the Organization, which events the Tribunal has examined, noting as follows.

II. On 31 May 1964, prior to the receipt of his formal notification of appointment, the Applicant wrote to the United Nations Office at Geneva stating that he was " now in the process of terminating " his " professional responsibilities " in California ; that he would be accompanied by his wife and three children when he journeyed to Geneva, as to whose fares he asked for payment by, or assistance to payment by, the United Nations. He was informed by letter of 5 June 1964 that the rules of the United Nations did not permit of the payment of travel of dependants where the contract was for less than one year's duration. The Applicant did bring his wife and children to Geneva at his own expense.

III. On 16 September 1964 the Applicant submitted a letter to the Director,

Division of Narcotic Drugs, referring to his conversations with the Director in which, he said, he had indicated in about mid-August that he was prepared to stay for one year and perhaps longer, providing that his contract was "rewritten for a fixed term of one year", and at a higher salary—such a contract to be "effective as of 4 July 1964, when I joined the Division or at the latest 1 September 1964, which was some days after we reached verbal agreement on this matter." This letter was forwarded by the Director, Division of Narcotic Drugs, to the Chief, Administrative and Financial Services of the Geneva Office, on 17 September 1964, with a statement: "I therefore recommend strongly that you give favourable consideration to his appointment for a longer period and on the basis indicated in his memorandum to me". The Tribunal assumes that this recommendation was forwarded by the Chief of the Personnel Division to Headquarters by a letter dated 13 October 1964, not available to the Tribunal, to which reference is made in paragraph IV below.

IV. On 30 October 1964 the Applicant addressed a letter to the Director, Division of Narcotic Drugs, headed "One year contract 6 July 1964-5 July 1965", stating that unless he received word "by Wednesday, 4 November 1964 that the above contract has been approved, I must leave the U.N.". On 5 November 1964 the Director, Division of Narcotic Drugs, sent a cable to the Under-Secretary, Chef de Cabinet, at Headquarters, referring to "favourable references and recommendation for six months extension" pouched on 4 November 1964 by the Personnel Division at Geneva to the Office of Personnel at Headquarters. By way of response, the Office of Personnel at Headquarters cabled on 11 November 1964 to the Chief of Personnel Division in Geneva, indicating that while the Director of the Division of Narcotic Drugs was cabling to the Chef de Cabinet recommending "six months extension", a letter under consideration in New York from the Chief of the Personnel Division dated 13 October [1964] had referred to "one year". The cable indicated that the Office of Personnel was "prepared propose one year fixed term".

V. The Applicant's short-term appointment was extended from 3 January 1965 to 31 January 1965, and then again from 1 February 1965 to 28 February 1965. When signing the acceptance of the extension of 1 February, the Applicant wrote comments including *inter alia*: "It is understood that this contract in no way replaces or substitutes for the pending fixed-term contract which is to be retroactive for the months since I joined the Division". Following this, the Applicant wrote a lengthy letter, dated 8 February 1965, to the Director, Division of Narcotic Drugs, in the course of which, having set out an account of what he considered to be the position during the preceding five months and having referred to financial hardship which he said he had suffered as a result of the administrative delays, he accused the Administration of "general incompetence, secretiveness, and lack of common courtesy". The letter concluded by saying that "more effort should have been exerted at an earlier point and certainly must be exerted now in order to bring this matter to a successful conclusion", and indicating that he was considering making formal complaints to the Director of the United Nations Office at Geneva, the Director of Personnel in New York, the Secretary-General, the Staff Association of the United Nations, the United States Missions in Geneva and New York, and to several United States Congressmen and Senators.

VI. On 19 February 1965 the Applicant addressed a memorandum to the Chief, Personnel Division, stating that "despite repeated requests for prompt

action", the conversion of his contract to a one-year fixed-term appointment "has now been delayed more than five months". In this memorandum he posed certain questions, including one as to whether the delay was "entirely attributable to the bureaucratic processes of the United Nations" or whether there were "other factors involved behind the scenes", such as opposition from the United States Bureau of Narcotics, or the controversy created by his successful litigation in California in 1964 which established his right, as a county government employee, to engage in political activity in his own time. To this memorandum no reply was made, since the Head of Administrative and Financial Services returned it to the Applicant stating:

"I would not myself take action on a memo written in the terms of your memo of 19 February 1965 and neither would I expect a member of my staff to do so. I am therefore returning it to you."

VII. Finally, on 25 February 1965, the Chief, Personnel Division, wrote offering a six-month fixed-term appointment which would be achieved by converting the existing short-term contract to a fixed-term appointment from 1 February 1965 to 31 July 1965. The letter indicated that this fixed-term appointment would provide, as from 1 February 1965, for the payment of dependency allowances in respect of wife and children, entitlement to education grant and assignment allowance, and also provide for reimbursement of the cost of travel of wife and children from California.

VIII. To this offer of appointment the Applicant replied on 3 March 1965 stating that the offer represented "only a portion of the one-year fixed-term appointment (July 1964 to June 1965)" which he claimed was promised him when he agreed to remain for a year or longer in September 1964. The letter went on to ask various questions about further entitlements. On the following day (4 March 1965) the Chief, Personnel Division, informed the Applicant, through the Director, Division of Narcotic Drugs, with regard to the point as to a fixed-term appointment for one year as follows:

"no promise that such an appointment would be forthcoming was ever made, neither would we, incidentally, be in a position to do so, as the Secretary-General alone has this authority, and has finally approved a fixed-term appointment of six months."

IX. On 11 March 1965 the Applicant indicated that he would accept the appointment subject to certain reservations; to which, on the following day (12 March), the Chief, Personnel Division, stated: "... the administrative practice of the United Nations cannot admit of reservations in the acceptance of an offer of contract for personal services. The offer is either accepted or it is not accepted, and in the latter event the offer must be withdrawn". On 19 March 1965 the Applicant signed the acceptance of the appointment in the usual form.

X. On 11 April 1965 the Applicant addressed a lengthy letter to the Secretary-General requesting a review of the administrative decision to offer him a six-month instead of a one-year fixed-term appointment and from this there followed, in due course, proceedings before the Joint Appeals Board culminating in the case now before this Tribunal.

XI. The Tribunal has carefully reviewed the facts which have been recounted in the preceding paragraphs in order to discover whether the Applicant had the right to expect that he should receive a retroactive fixed-term appointment for twelve months or more, or the allowances and other benefits which would have

flowed from such an appointment. From such facts it is clear that on a number of occasions the Applicant knew that his superior, the Director, Division of Narcotic Drugs, desired to secure for him a fixed-term appointment for twelve months, and that he knew of the recommendations to that end which had been made by the Director. Thus the Applicant had personal hopes and anticipations that the short-term appointment for six months that he had accepted, effective in July 1964, might be converted to a fixed-term appointment for a period of one year or more, thus solving a number of his difficulties—such as the cost of bringing his wife and children to Geneva (which he had done upon taking up appointment, notwithstanding the knowledge that his appointment carried no provision for payment in that regard). But at no time did the Applicant receive from any authorized official any communication promising or holding out any hopes that his requests would be satisfied. Accordingly the Tribunal finds that the Applicant had no legal right to receive a fixed-term appointment for one year and the Respondent's grant of a six-month fixed-term appointment was within his discretion.

XII. The Tribunal finds that it was also within the discretion of the Respondent not to disclose to the Applicant the existence of adverse references or the references themselves. The Tribunal accordingly rejects the Applicant's pleas for the production of the documents containing adverse references and, in particular, the letter alleged to have been written by the United States Commissioner of Narcotics.

XIII. Without doubt the Respondent's delay in arriving at a decision on the Applicant's requests for another type of appointment may have raised or encouraged expectations. The necessity for checking the Applicant's references was doubtless responsible for some of the delay. Other reasons for delay were the confusion as to what further appointment was being sought for the Applicant and the subsequent delay in the convening of the Appointment and Promotion Board for 1965 until February 1965.

XIV. The fact that the responsibility for delay in reaching a decision rested mainly upon the United Nations Organization was recognized by the Administration, by giving the Applicant the fixed-term appointment effective 1 February 1965, at step VI instead of step IV in the grade P-4, and also specifically providing that he would be reimbursed for the expenses he had incurred in bringing his wife and children to Geneva the preceding summer, although such reimbursement was not required under Staff Rule 107.2 (i) in that his appointment was not for a period of one year or longer.

XV. In paragraph XI above, the Tribunal reached the conclusion that the Applicant was not legally entitled to a fixed-term appointment for one year. By the same token, the Applicant was not entitled to the allowances and other benefits which would have resulted from the granting of such one-year fixed-term appointment. However, the Applicant makes the further contention that, under Staff Rules 101.1 to 112.8, he should have been granted full allowances and other benefits for the entire period of his service in the United Nations of one year and twenty-seven days. That service consisted of his short-term appointment from 4 July 1964 to 2 January 1965, the extensions for January and February 1965, and his fixed-term six-month appointment from 1 February 1965 to 31 July 1965.

XVI. The Respondent, applying Staff Rules 101.1 to 112.8 only to the six-month period of his fixed-term appointment, denied him any installation allowance

under Staff Rule 107.20 (a), since his fixed-term appointment was not for at least one year's duration, and granted him post adjustment, assignment allowance, dependency allowance and education grant only for the fixed-term six-month period, 1 February 1965 to 31 July 1965.

XVII. The Applicant contends that he should have received an installation allowance under Staff Rule 107.20 (a) and that he should have received post adjustment, assignment allowance, dependency allowance and education grant under Staff Rules 103.7 (a) and 103.22 (a), Staff Regulation 3.4 (a) and Staff Rule 103.20, respectively, for the period 4 July 1964 to 31 January 1965, while he was under short-term appointments.

XVIII. By the express terms of Staff Rule 101.1, Staff Rules 101.1 through 112.8 are not applicable to staff members engaged for short-term service. Accordingly, the Respondent was correct in not granting, under those Staff Rules, the allowances and other benefits in respect of the period of the Applicant's short-term service. The Applicant contends, however, that once he had entered into a fixed-term appointment as on 1 February 1965, such Staff Rules became applicable, and that the terms of such Staff Rules must be read to apply to all prior periods of service even though under short-term appointment. An examination of the Staff Rules does not support this contention.

XIX. As to installation allowance, the grant is applicable, under Staff Rule 107.20 (a), only when the staff member goes to a new duty station on an assignment, expected to be of at least one year's duration and is made in respect of the initial extraordinary living costs incurred by the staff member and his eligible dependants immediately following their arrival at the duty station. The arrival of the Applicant and his dependants (who came at his expense, he having been informed that the Organization would not provide therefor) was prior to or during the period of his short-term appointment with no expectation of one year's duration; the grant was therefore not applicable.

XX. As to post adjustment, assignment allowance, dependency allowance and education grant, each of the applicable Staff Rules specifically relates to appointments or assignments of one or more years. The Applicant was never assigned or appointed for a period of one year or more, and such Staff Rules are accordingly not applicable.

XXI. The Applicant argues that the fact that the Respondent subsequently granted him reimbursement of the travel expenses of his wife and children must mean that the Respondent concedes that the Applicant was entitled to the benefits of a one-year appointment, since Staff Rule 107.2 (a) is, by its terms, only applicable where the staff member has received an appointment for a period of one year or longer. However, the payment was obviously a special condition within the Respondent's discretion. The Applicant's contention that such a payment would be contrary to Staff Rule 112.2 (b), relating to exceptions to the Rules, is without merit; the payment was accepted by the Applicant, and he cannot be said not to have agreed to it.

XXII. The Applicant contends that the Respondent's making him a repatriation grant under Staff Regulations 9.4, Annex IV, for one year's service away from his home country means that the Respondent is recognizing that the Applicant is entitled to all of the allowances and other benefits in respect of one year's continuing service. However, Staff Regulation 9.4, Annex IV, specifically deals with "length of service" regardless of terms of appointment, whereas, as pointed

out in paragraph XX above, the other benefits claimed by the Applicant are conditional on appointments or assignments of one year or more.

XXIII. The Tribunal sees no significance in the fact, referred to by the Applicant, that the Respondent chose in February 1965 to refer the proposed fixed-term appointment of the Applicant to the Appointment and Promotion Board, whose function under Staff Rule 104.14 (f) (i) is to make recommendations in respect of proposed appointments of a probable duration of one year or more.

XXIV. There remains the Applicant's claim that the Respondent erred in giving him a repatriation grant, in respect of his one-year and twenty-seven days of continuous service away from home country, covering only one year and giving no credit for the twenty-seven days. The Tribunal finds that the Respondent was correct since general United Nations administrative practice, as evidenced in Personnel Directive 6/57/Add.1 is to disregard periods of less than one month.

XXV. The Tribunal accordingly rejects the plea to order the rescission of the Respondent's contested decision and his alternative plea to order the payment of the allowances and benefits referred to above.

XXVI. In further pleas the Applicant requested the Tribunal :

(a) To rescind "Respondent's directive dated 22 April 1965 whereby Applicant was 'ruled ineligible for re-employment beyond the expiration of his present contract'" and to order the Respondent to produce any document in which mention is made of such a directive ;

(b) To pay him "a sum of \$3,000 as compensation for the prejudice suffered by him as a consequence of the abnormal delays imputable to Respondent and of the unlawful prohibition of employment hereabove mentioned."

XXVII. With regard to the pleas relating to the ruling of ineligibility, the Tribunal notes that the Joint Appeals Board has not communicated to the Respondent any opinion with respect to the dispute to this matter. Accordingly the application in that regard is not, by reason of article 7 of the Statute, receivable by the Tribunal. The Tribunal therefore makes no order with respect to those pleas. The Tribunal notes, however, that the question of suitability for further employment is usually regarded as within the discretion of the Respondent. On the refusal by the Tribunal to make an order, it follows that any question of compensation in respect of alleged "prohibition of employment" does not arise.

XXVIII. With regard to the plea concerning compensation for "abnormal delays" the Tribunal notes that the Respondent took the delays into account, as indicated in paragraph XIV, in determining the conditions of the six-month fixed-term appointment of the Applicant and, in the light of its finding in paragraph XXV, rejects the plea.

XXIX. For the foregoing considerations, the Tribunal rejects the application as a whole.

*(Signatures)*

Suzanne BASTID  
*President*

CROOK  
*Vice-President*

Francis T. P. PLIMPTON  
*Member*

N. TESLENKO  
*Executive Secretary*

*New York, 10 October 1966.*