

Judgement No. 103*(Original : French)***Case No. 100 :****Azzu****Against : The Secretary-General
of the United Nations**

Request for rescission of a decision taken by the Secretary-General on the recommendation of the Advisory Board on Compensation Claims, on the grounds that the procedure did not meet the requirements of due process.

Subsidiary request aimed at securing from the Tribunal an interpretation of a text which is not necessary to the solution of the issue before it.—Not within the Tribunal's competence.

Subsidiary request for a declaration by the Tribunal that the disclosure of medical reports of the Applicant to a third party was illegal.—Request not receivable as it relates to an issue different from the subject-matter of the case.

Principal request.—Procedure followed by the Advisory Board on Compensation Claims.—Applicant had no opportunity to explain his position on the issues which were to serve as a basis for the Board's decision.—Duty of the Respondent to respect the general principle that the requirements of due process must be observed.—Procedure followed failed to meet the requirements of due process.—Remand of the case for correction of procedure.

Request for compensation for the loss caused by the procedural delay.—Request rejected, as the Applicant suffered no loss.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed as follows : Mrs. Paul Bastid, President ; Mr. Héctor Gros Espiell ; the Hon. Francis T. P. Plimpton ; Mr. Louis Ignacio-Pinto, alternate member ;

Whereas, on 21 July 1965, Majid Albert Azzu, a former staff member of the United Nations and the Applicant in the present case, requested the President of the Tribunal to designate a counsel to assist him in drafting and presenting an application to the Tribunal ;

Whereas, on 26 July 1965, in pursuance of Administrative Circular ST/AI/163, the President designated as counsel Mrs. Airlie A. Blake, a staff member of the United Nations ;

Whereas, on 4 August 1965, the President, with the agreement of the Respondent, extended to 19 September 1965 the time-limit for the submission of an application ;

Whereas, on 17 September 1965, the Applicant submitted an application whose pleas he amended in written observations submitted on 1 August 1966 ;

Whereas, in their amended form, the pleas contained in the Application read as follows :

*“ Pleas Addressed to the President under article 10 of the
Rules of the Tribunal*

- “ I. “ (i) The Applicant requests the President to agree to the holding of oral proceedings and to the hearing by the Tribunal of the following witnesses :

- “ (a) The Applicant ;
 - “ (b) The Secretary of the Advisory Board on Compensation Claims [hereafter referred to as ABCC], because the Respondent has submitted, as part of his case, the letter dated 5 January 1966 in which the Secretary has given his account of certain events.
- “ (ii) The Applicant wishes to be called as a witness to present evidence on the following points :
 - “ (a) The manner in which his accident of November 1966 occurred ;
 - “ (b) The evidence given by him on trial of his action in the case arising out of the car accident of 1959 ;
 - “ (c) His conversations with the Secretary of the ABCC with special reference to the memorandum of the Secretary dated 5 January 1966 ;
 - “ (d) The extent of the disability suffered by him after the accident of 1959 and of that suffered by him after the accident of 1960.
- “ (iii) The Applicant wishes to examine the Secretary of the ABCC on the following points :
 - “ (a) The circumstances surrounding the transmission to the defendant in the Applicant's car accident case information relating to the Applicant's claim for compensation ;
 - “ (b) His conversations with the Applicant with special reference to his memorandum to Counsel for the Respondent.
- “ II. The Applicant also requests the President, pursuant to article 10 of the Rules of the Tribunal, to call upon the Respondent :
 - (a) To produce documents communicated to the attorney for the defendant in the motor car accident as appearing in list 1 of [the letter dated 25 November 1964 from the Secretary of the ABCC], and not produced by the Respondent in this case ;
 - (b) To produce the correspondence (other than medical reports already produced) between [the Medical Director of the United Nations Health Service] and Dr. Graham and between [the Medical Director] and Dr. Gold, relating to the case of the Applicant ;
 - (c) To produce the record of the electro-encephalograms performed at St.-Luke's Hospital in February 1961 ;
 - (d) To produce all memoranda passing between the Medical Director and the Advisory Board relating to the case of the Applicant.
- “ III. Since the Applicant has, at the Respondent's request, authorized Dr. Graham and Dr. Torre to disclose to the Respondent all their medical records concerning the Applicant, the Applicant also requests the President to call upon the Respondent to submit an additional written statement, based (*inter alia*) upon enquiries to

be addressed to Dr. Graham and Dr. Torre, as to whether Dr. Graham and Dr. Torre or either of them have or has at any time been informed by any agent of the Respondent, whether orally or in writing,

- “ (i) That payments of compensation to the Applicant have been discontinued ;
- “ (ii) Of the reasons for the discontinuance of such payments ;
- “ (iii) Of the proceedings in the car accident case, or of any matter relating thereto.

If any such information has been given to Dr. Graham and Dr. Torre or either of them, to submit with or in such additional written statement

- “ (iv) Any writing in which such information was conveyed ;
- “ (v) Any reply to any such writing ;
- “ (vi) Particulars of the occasion upon which any such writing was made ;
- “ (vii) Particulars of any oral statement made to Dr. Graham or Dr. Torre or either of them with respect to any such information ;
- “ (viii) Particulars of the date and occasion upon which any oral statements above referred to were made.

“ IV. Counsel requests that she be allowed to submit comments on the above documents when they become available.”

“ Pleas Addressed to the Tribunal

“ The Applicant requests the Tribunal

- “ (a) To rule that for the purposes of Appendix D of the Staff Rules total incapacity means such a degree of incapacity as would render engagement in any form of gainful employment detrimental to a staff member’s physical or mental health ;
- “ (b) To rule that the disclosure by the Respondent of medical reports of the Applicant to a third party without the consent of the Applicant was illegal ;
- “ (c) To rule that by adopting procedures which denied due process and contravened fundamental principles of natural justice the Board acted *ultra vires* article 16 (c) of the Appendix D of the Staff Rules ;
- “ (d) To rule that, by failing to inform the Applicant of the issues to be presented at the 117th meeting of the Board and by refusing the Applicant an opportunity to present his case, personally or by his representatives, the Respondent and the Board failed to observe the conditions of the Applicant’s contract of employment and conditions of employment, which include a requirement that due process be accorded him in the determination of his rights under such contract and conditions ;
- “ (e) To rescind the decision of the Secretary-General to approve the recommendations made on 12 February 1965 by the Board, pur-

suant to article 9, paragraph 1 of the Statute of the Administrative Tribunal ;

“(f) Since the restoration of the *status quo ante* is no longer possible,
Either to award the Applicant

“(i) Compensation in the amount of \$890 for total disability for the period from 1 March 1963 to 17 June 1963 ; and

“(ii) Compensation the equivalent of two years’ net base salary of the Applicant for the continuing damage, being a loss of function ;

or to order that

“(iii) With a view to determining the extent of the Applicant’s incapacity between 1 March 1963 and 17 June 1963, the Applicant’s medical records be examined by a panel of doctors, none of whom have previously furnished reports on the Applicant’s condition, one doctor being appointed by the Applicant, one by the Respondent, and a third nominated by those two doctors in accordance with the medical procedure approved by the Tribunal in its Judgement No. 91 ; and

“(iv) Such panel of doctors examine the Applicant with a view to determining whether he is still suffering from effects of the concussion sustained in the accident of November 1960 ;

and

“(v) In the event of such panel of doctors determining that the Applicant was suffering from total incapacity during the period 1 March 1963 to 17 June 1963, to award compensation in the amount of \$890 ;

“(vi) In the event of such panel of doctors determining that the Applicant was suffering from some lesser degree of incapacity, to award such proportion of the amount of \$890 as corresponds with the degree of the staff member’s incapacity ; and

“(vii) In the event of such panel of doctors determining that the Applicant is still suffering from the effects of the concussion sustained on 2 November 1960, to award compensation the equivalent of two years’ net base salary of the Applicant in relation to his continuing damage, being a loss of function.

“(g) To award the Applicant compensation for the delay in the determination of his claim resulting from the Respondent’s failure to review his case when requested and from the delay of the Respondent in answering his Application in the sum of \$5,000.”

Whereas the Respondent produced his reply on 16 April 1966 ;

Whereas the Respondent produced a number of documents following requests made by the Applicant on 21 June and 18 July 1966 ;

Whereas, on 1 August 1966, the Applicant submitted the written observations referred to above ;

Whereas, on 12 August 1966, the Respondent produced comments on the

pleas addressed by the Applicant to the President in pursuance of article 10 of the Rules ;

Whereas, on 29 August 1966, the Executive Secretary of the Tribunal sent the parties the following memorandum informing them of the decisions taken by the President of the Tribunal on the pleas addressed to her :

“ I. The Tribunal will hold oral proceedings under article 15 of its Rules.

“ II. It is not the practice of the Tribunal to hear applicants in the capacity of witnesses in the meaning of article 16 of the Rules. However, in accordance with article 13, applicants may appear in person at oral proceedings in order to present their case or, if they have the assistance of counsel, to supplement counsel's statements with additional information. Applicants appearing before the Tribunal may be called upon to answer questions put to them by the Tribunal or by counsel of either party, under the control of the President.

“ It is for the Applicant and his counsel to choose the points to which they intend to refer in the course of the oral proceedings, taking into account any instructions which the Tribunal may wish to give them on the matter before the opening of the proceedings.

“ III. The Tribunal will examine and decide upon the Applicant's request that the Secretary of the Advisory Board on Compensation Claims should be heard as a witness.

“ IV. As regards the request to produce additional documents, the President notes that the Respondent has already produced more than sixty documents from the Advisory Board's file on the case. She also notes that the Respondent states in paragraph 7 of the comments he submitted on 10 August 1966 that

“ ‘ Should it be determined by the President of the Tribunal that the documents, memoranda and records which have been requested by the Applicant might prove to be relevant to the issues at hand and therefore of assistance to the Tribunal in its deliberations the Respondent would have no objection to producing them. ’

“ In these circumstances, the President believes that an examination of the Advisory Board's entire file on the case would assist the Tribunal in its deliberations. She notes that under standing arrangements, the files of the Joint Appeals Board are submitted to the Tribunal. It would be desirable, in the present case, that the file of the Advisory Board should similarly be put at disposal of the Tribunal.

“ V. The President requests the Respondent to file a written statement before 15 September 1966 indicating whether any United Nations official connected with the case gave Dr. Graham or Dr. Torre, orally or in writing, any of the information referred to under (i), (ii), (iii) of paragraph III of the amended pleas. ”

Whereas, on 9 September 1966, the Respondent transmitted to the Tribunal the file opened on the case by the Advisory Board on Compensation Claims ;

Whereas, after examining the file, the Applicant informed the Tribunal that he had found in it all the documents which he had asked to be produced ;

Whereas, on 16 September 1966, the Respondent made the statement referred to in paragraph V of the decisions of the President of the Tribunal transmitted to the parties on 29 August 1966 ;

Whereas, on 22 September 1966, the Tribunal decided that the Secretary of the Advisory Board on Compensation Claims would be heard as a witness on the conversations he had had with the Applicant ;

Whereas, further, the Tribunal informed the parties that it considered it unnecessary for the Applicant to explain how the accident he sustained in November 1960 in the United Nations building occurred ;

Whereas, on 23 September 1966, the Respondent submitted an additional document ;

Whereas during oral proceedings held on 26 September 1966, the Tribunal heard the Applicant, counsel for the parties and the Secretary of the Advisory Board on Compensation Claims as a witness ;

Whereas, furthermore, during the oral proceedings, the Respondent submitted a letter sent to him on 23 September 1966 by Dr. Graham ;

Whereas, on 27 September 1966, the Tribunal informed the parties, pursuant to article 18 of its Rules, that it was considering the possibility of 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 29 September 1966, the Respondent requested that the case be remanded in accordance with article 9, paragraph 2, of the Statute of the Tribunal ;

Whereas, in written statements produced on 3 October 1966, the parties expressed their views on the question whether the delay attributable to the procedure followed by the Respondent had caused damage to the Applicant ;

Whereas the facts of the case are the following :

The Applicant is a former statistical clerk of the United Nations who, after three previous terms of employment, re-entered the service of the United Nations on 12 August 1960 with a short-term contract expiring on 11 November 1960. On 2 November 1960, he fell in the Secretariat building in New York and was hospitalized for injuries to the legs and chest. No concussion appears to have been found at the time. He resumed his duties on 19 December 1960 and the same day received a probationary appointment with effect from 12 November 1960. In January 1961, he was hospitalized again, this time " because of constant headaches which may be caused by a concussion as a result of his injuries on 2 November 1960 ". On 9 February 1961, the Secretary of the Advisory Board on Compensation Claims advised the Applicant that at its 88th meeting, held on 2 February 1961, the Board had approved his claim for reimbursement of " medical and related expenses incurred as a result of [his] accident on 2 November 1960 ". The Applicant resumed his duties on 1 June 1961 but fell sick shortly afterwards. On 3 November 1961, he was informed by the Director of Personnel that " it had been decided to terminate [his] probationary appointment... in accordance with the provisions of Staff Regulation 9.1 (c) ". The same day, the Applicant submitted a claim to the Secretary of the Advisory Board on Compensation Claims " under article 11.1 of Appendix D [to the Staff Rules] ". By a letter dated 20 November 1961, the Director of the United Nations Health Service informed the Secretary of the Board that :

" We consider that Mr. Azzu has been totally incapacitated since 3 August 1961.

“ Mr. Azzu has been able to carry out his duties only for short periods since his accident on 2 November 1960, because of the complication of post-concussion organic brain damage, and as his response to intensive treatment has not been satisfactory, it is reasonable to state that the prognosis for recovery is uncertain, at best, and further rehabilitation is probably unlikely. ”

At its 93rd meeting, held on 29 November 1961, the Board decided to secure the opinion of three doctors on the Applicant's condition. It accordingly designated the Medical Director and Dr. Graham, the Applicant's attending physician, and he asked them to select the third doctor. They chose Dr. Torre, who had already treated the Applicant. After the three doctors had submitted their report, the Board, at its 94th meeting, on 20 December 1961, adopted the following recommendation :

“ *The Advisory Board on Compensation Claims,*

“ *Having considered* at its 93rd and 94th meetings the claim submitted by Mr. [name left in blank in the text of the recommendation] in respect of the injury sustained to his head on 2 November 1960,

“ *Recalling* its decision on 2 February 1961 that the accident on 2 November 1960 was attributable to the performance of official duties on behalf of the United Nations,

“ *Noting* the determination by the Medical Director, supported by reports from two practitioners, that the head injury diagnosed as organic brain damage syndrome is :

“ (i) Causally related to the accident of 2 November 1960 ;

“ (ii) Causing total incapacity as from 3 August 1961, with no prognosis of anticipated duration :

Recommends to the Secretary-General to determine that

“ (i) The head injury is attributable to the performance of official duties on behalf of the United Nations ;

“ (ii) The head injury has brought about total incapacity effective 3 August 1961 ;

“ (iii) For the period of his total incapacity claimant is entitled to salary and allowances for one year effective 3 August 1961 amounting to \$3,820 and thereafter 66-2/3 per cent of his pensionable remuneration, amounting to \$2,633.34 annually ;

“ (iv) Claimant be examined, in order to verify the period of entitlements under (iii), in conjunction with the medical examination which he is to undergo in pursuance of article IX of the Regulations of the Joint Staff Pension Fund ;

“ (v) The Secretary of the Board is authorized to continue paying medical expenses certified by the Medical Director as reasonable and related to the accident of 2 November 1960. ”

On 29 December 1961, the Applicant was advised that the Secretary-General had approved the Board's recommendation. Soon afterwards, in accordance with the suggestions of Dr. Torre and Dr. Graham, he went to Baghdad, which is his place of origin. The United Nations paid his travel expenses. At Baghdad, he was under

the care of Dr. Attisha, who sent a report to the United Nations Health Service dated 14 September 1962 reading as follows :

" Mr. Majid A. Azzu has been under my medical care since his arrival from N.Y. in the early part of Jan. It is unfortunate that Mr. Azzu has made little progress since that time. The residual symptoms are still persisting and troublesome. They are mostly characterized by dizziness, insomnia, inability to concentrate and at times unsteadiness.

" It is my belief that Mr. Azzu suffered a great deal due to our hot summer spell and the new changes in the environment. Now that those factors have almost stabilized, it is hoped that he would take a turn for the better."

On 6 November 1962, Dr. Subhiyah, who had been asked by the Health Service to have the Applicant examined by two specialists, wrote from Baghdad to the Medical Director :

" Mr. Azzu repeatedly failed to keep his appointments with both Dr. Ali Kamal and Dr. A. D. Kantarjian. I suspect that was because he sensed that their report will not be in his favour. Mr. Azzu's brother contacted me last week to say that Mr. Azzu has left Iraq for the U.S.A.

" Both Dr. Kamal and Dr. Kantarjian were reluctant to report on Mr. Azzu without further observation on him. But when I pressed for a report after receiving your telegram, they gave me the following reports :

" Dr. Ali Kamal :

' The patient shows no evidence of any abnormal neurological signs. In my opinion the prolongation of his compensation case will only help to create a condition of compensation neurosis. I suggest closing the case completely by discontinuing his disability payments forthwith. '

" Dr. Kantarjian :

' My clinical observation during the period of Mr. Azzu's stay in Baghdad revealed that the patient was suffering from a state of post-traumatic neurosis and in my opinion there is no evidence of any organic lesion in his nervous system. During this period there has not been any appreciable improvement in his state. '

On 22 November 1962, Dr. Rabbath, who had examined the Applicant at Beirut where he had gone in the meantime, sent the following report to the Health Service :

" Mr. Majid Azzu was seen in my clinic since his arrival from Baghdad. When first seen he appeared to be suffering from exhaustion. Headache and insomnia were persistent and high blood pressure is indicative of these.

" He is using the same medication originally suggested by his physicians Dr. Attisha and Dr. Graham. No change in medication is prescribed since he is leaving to the States to be under the care of his physician Dr. R. Graham.

" Mr. Azzu is getting married very soon. This could help but there is definitely no reason to believe that Mr. Azzu will feel free from those residual effects caused by his brain injury. A thing of this nature can take years and is possible to have after-effect. "

On 24 December 1962, the Applicant returned to New York where he was examined by Dr. Graham, who concluded, in a letter written on 3 January 1963 to the Medical Director, that :

" ... Mr. Azzu has markedly improved during the past year but still

retains some impairment of concentration which interferes with reading and abstract thinking and he still is subject to headaches which while less severe and less frequent than in the past are still incapacitating. I am much encouraged by his progress and hope that in the year 1963 he will experience complete recovery."

At its 100th meeting on 23 January 1963 the Advisory Board on Compensation Claims discussed whether disability benefits should continue to be paid to the Applicant. The Board had before it a note from its Secretary recalling the text of the recommendation adopted at the 94th meeting and quoting the following opinion of the Medical Director :

"As there no longer appears to be evidence of abnormal neurological signs according to the reports of the two psychiatrists who examined Mr. Azzu, I believe there is a basis for suspending his benefits both under Pension disability and Compensation and we are notifying the Secretary of the Pension Committee accordingly."

The Secretary's note was accompanied by the letter from Dr. Subhiyah dated 6 November 1962, which was quoted above. The note did not mention the reports of Dr. Attisha and Dr. Rabbath or the letter from Dr. Graham quoted above. After deliberation, the Board decided to recommend unanimously "that further compensation benefits be discontinued, effective end-February 1963". On 14 March and 3 June 1963, Dr. Graham sent two further letters to the Medical Director. Whereas in the first, he concluded that "for practical purposes Mr. Azzu can be considered recovered from his post-traumatic cerebral syndrome", in the second, he said that "Mr. Azzu had a mild recurrence of symptomatology last month". Dr. Graham added however :

"Outside of the fairly mild symptoms of brief duration which I think were due to situational adjustment rather than to actual recurrence of his problems due to cerebral trauma, he has done quite well and I believe he is making a reasonable adjustment back to regular living."

On 2 April 1963, after an exchange of correspondence with the Applicant, the Secretary of the Advisory Board on Compensation Claims informed him of the recommendation which the Board had adopted at its 100th meeting and which had been approved in the meantime by the Secretary-General. The Secretary's letter read as follows :

"I regret to inform you that the Secretary-General approved the following recommendation of the Advisory Board on Compensation Claims regarding your claim for future entitlement to compensation payments for total disability in respect of your injury of 2 November 1960 :

"The Advisory Board on Compensation Claims,

"Having reviewed at its 100th meeting Mr. Majid Azzu's entitlement to compensation payments for total disability ;

"Noting the Medical Director's concurrence with the medical opinion of Dr. Ali Kamal and Dr. A. D. Kantarjian that there no longer appears to be evidence of abnormal neurological signs ;

"Recommends unanimously to the Secretary-General to decide that further compensation benefits be discontinued, effective end-February 1963."

"Accordingly, your compensation payment for February 1963 in the amount of \$250.00 will be made under separate cover."

On 29 April 1963, the Applicant sent the Secretary of the Board the following letter requesting reconsideration of his case :

"I am very sorry to hear about the recommendation of the Board and its approval in your letter of 2 April. It failed completely to take into account recent developments of my case, even the report of Dr. Graham.

"I do appeal a reconsideration of this matter. I am still under medical care. Recent medical report will follow."

On 17 June 1963, the Applicant found gainful employment in private industry, an employment which he still held when he brought his case to the Tribunal. From 20 September 1963 onwards the Applicant was under treatment by Dr. Gold, who issued several certificates. On 25 February 1964, the Secretary of the Advisory Board on Compensation Claims sent the Applicant the following letter :

"Further to our conversations in my office and the numerous telephone calls, allow me to confirm again that the Advisory Board on Compensation Claims, in order to have a basis for considering your claim for continued disability, should not only have a supporting statement from a physician—which I received on 21 December 1963—but also a written statement from you on what you earned since February 1963 and what your employment status has since been. Furthermore, please note that the report by Dr. Max Gold of 21 December 1963 refers only to subjective complaints by you but does not contain any objective or clinical conclusions.

"As indicated many times before, I am at your disposal to assist in the preparation of the statement on your earnings and employment status."

On 20 March 1964, the Secretary repeated his request for a written statement concerning his employment status. By letter dated 20 May 1964, the Secretary asked Dr. Gold to send him "an exposé, for consideration by the Advisory Board on Compensation Claims, setting out the medical aspects of Mr. Azzu's present condition, present symptoms, degree and duration of disability if any, as well as the possible or probable relationship between the present subjective complaints and the clinical findings made in 1961 by St. Luke's Hospital". On 27 May 1964, Dr. Gold submitted an exposé which concluded :

"In view of Mr. Azzu's prolonged illness following his injury, it is my opinion that his prognosis is unfavourable. It is further my opinion that he is totally disabled for the type of work he has pursued."

On 15 September 1964, Dr. Gold submitted a further report on the Applicant's condition. On 9 October 1964, Dr. Graham sent the Health Service the following letter concerning an electro-encephalogram which he had had made at its request :

"I arranged for Mr. Azzu to have an electro-encephalogram made at St. Luke's Hospital on 30 September 1964. This was then compared with his record of January 1961.

"The current record was interpreted as showing a mild generalized abnormality without any essential change from the record of 1961. It is of importance that no focal abnormalities were present.

"There is no evidence from either the current electro-encephalogram or that completed in 1961 of brain damage due to trauma. Indeed the changes described in the photostat of the record which I am enclosing are not uncom-

monly found in individuals who have no neurological history and neurological disease. That is so-called 'normals'."

Shortly afterwards, the United Nations Office of Personnel was informed that the Applicant had brought suit before the Supreme Court of New York against an insurance company for physical injury he had suffered in an automobile accident which occurred more than a year before his fall in the United Nations building. It was indicated, moreover, that the physical injury claimed appeared to be similar to that which provided the basis for the disability benefit paid to the Applicant by the United Nations. This information was contained in a letter written on 30 October 1964 to the Director of Personnel by the Atlantic National Insurance Company. The letter read as follows :

"We are the insurance carriers for Spielman Motor Sales. Mr. Azzu Majid has an action pending against us in Supreme Court, New York State, County of Rensselaer for an automobile accident that occurred on 3 September 1959. It has come to our attention that Mr. Azzu Majid has a claim pending against the United Nations for an accident of 2 November 1960, in which the injuries alleged are very similar, if not exact, to the injuries alleged in our action.

"In view of the similar aspects involved, I would appreciate your help in securing a waiver of immunity privileges from the Secretary-General so that we may view your file and obtain any information which would prove useful to us in defence of our action.

"Our file will be available to any of your representatives for view, at any time.

"I feel quite sure that we will mutually benefit by this exchange of information."

Following an exchange of letters, the Secretary of the Advisory Board transmitted to Mr. Ruslander, counsel for the insurance company, ninety-five documents concerning the Applicant, divided into three groups. The documents were accompanied by the following letter dated 25 November 1964 :

"Further to our telephone conversation of 24 November and in reply to your letter of 20 November addressed to Mrs. Alice Weil of the Office of the Legal Counsel, I have pleasure in forwarding herewith :

"(a) Original memoranda, doctors' reports and correspondence in connexion with Mr. Azzu's compensation claim against the United Nations—*Attached List No. 1* ;

"(b) Original doctors' and hospital bills in connexion with the case—*Attached List No. 2* ;

"(c) Pharmacy bills submitted by Mr. Azzu for reimbursement. This includes one bill for optometry—*Attached List No. 3*.

"As indicated to you previously, these documents form part of the United Nations Advisory Board on Compensation Claims' file concerning Mr. Azzu and are being provided to assist you in connexion with Mr. Azzu's claim against your principals.

"It is understood that these documents will be returned to this office intact at the conclusion of the Court hearing.

"If there is anything further that I may do to assist you in this matter, please feel free to call upon me."

In return, Mr. Ruslander gave the Secretary of the Board information concerning the legal action brought by the Applicant and sent him the stenographic record of a pre-trial examination held on 1 February 1963. By letter dated 8 January 1965, the Secretary of the Board informed the Applicant that :

"...I expect, in the near future, to present your appeal, dated 29 April 1963, of the decision of the Secretary-General, as conveyed in Mr. Schumacher's letter [former Secretary of the Board] of 2 April 1963, to the Advisory Board on Compensation Claims for final disposition. At that time, the Board will be advised of your recent trial in the Supreme Court in Troy, New York on 17 and 18 December last."

On 6 February 1965, the Applicant requested the Secretary to let him know when his case would be considered so that he could be present, with his physician, at the Board's meeting. He also informed the Secretary that he had been "forced to work to stay alive". With regard to the automobile accident, the Applicant observed :

"The accident you mentioned happened in September 1959, 16 months before the U.N. accident. In August of 1960 I started working for the U.N. My record of attendance was excellent (in your possession) my work and ability were excellent and I was registered at night school with C.C.N.Y. for an M.S. degree in Electrical Engineering. I have received \$940.00 only for the car and related damage. (Do you want a copy ?)"

On 15 February 1965, the Secretary wrote to the Applicant as follows :

"In reply to your letter of 6 February, of which copies were also addressed to the members of the Advisory Board on Compensation Claims, I am asked to advise you that the Board does not wish to hold a meeting at which you and your physician would be present.

"The Board will in due course be making a recommendation to the Secretary-General, and, when his decision is known, this will be sent to you.

"In regard to the St. Luke's Hospital bill for the electro-encephalogram done on 30 September last, we are arranging to effect payment.

"Dr. Graham's bill, however, was incurred by you, and no reimbursement will be made."

The Advisory Board on Compensation Claims considered the Applicant's claim at its 117th meeting held on 12 February 1965. The Board had before it a note from its Secretary reading as follows :

"1. This case was first heard by the Advisory Board on Compensation Claims at its 88th meeting and involved claims arising out of a fall from the 31st to the 30th floor at Headquarters on 2 November 1960. It was again dealt with at the 93rd meeting due to alleged total incapacity and at the 94th meeting the claim was accepted and annual compensation authorized in addition to continuing medical expenses. This award was reviewed at the 100th meeting on 23 January 1963, with a recommendation that further compensation benefits be discontinued, effective end-February 1963, subsequently confirmed by the Secretary-General.

"2. Claimant appealed this decision by letter of 29 April 1963, stating that 'it failed completely to take into account recent developments of my case...'. "

"3. While no medical board, under article 17, was convened, the Secre-

tary continued to receive medical reports, etc. from the claimant's attending physician as well as bills for drugs. These were paid up to July of 1964.

" 4. In September and October 1964, further tests were undertaken at the request of the Medical Director. These tests, while perhaps not conclusive, tended to support the decision of the 100th meeting.

" 5. Shortly thereafter, the Secretary became aware of a pending law suit before the New York State Supreme Court in Troy, New York, in which the claimant was suing for damages for an automobile accident of September 1959. When asked about this case, claimant refused to divulge any information whatsoever about the suit and in particular, denied any knowledge of the nature of his claim before the Court.

" 6. A copy of the pre-trial examination of 1 February 1963 was obtained, which showed that, having been duly sworn, claimant attributed his condition to the car accident, listed the same symptoms and injuries as had been used in his claim against the United Nations and denied that he had any head injury subsequent to the car accident in September 1959. He made no mention of his accident at the United Nations and, while still under oath, suggested that the whole of his medical treatment (paid by United Nations), including his repatriation to Iraq was attributable to this car accident.

" 7. It should also be noted here that the claimant continued to state to the Secretary, as recently as mid-December last, that he was completely incapacitated and unable to work. However, from information provided by the defendant in the law suit, it developed that the claimant had been employed by the Consumers' Union of the United States, Incorporated in Mt. Vernon, New York, in a full-time capacity since 17 June 1963 at a salary of \$150.00 per week. He was also attending evening classes at the City College of New York.

" 8. A detailed perusal of these papers brings to light other false statements and misrepresentations of fact. It might also be noted that certificates or reports from his private physician were being used to support both his law suit and his claim against the United Nations.

" 9. The law suit was heard in the Supreme Court on 17 and 18 December 1964. The relevant extract of a letter [dated 22 December 1964] from the defense attorney [Mr. Ruslander] to the Secretary follows :

" " We have concluded the claim of Mr. Azzu against our principal.

" " We might point out that the case was settled after a day and a half of trial in Rensselaer County Supreme Court in Troy, New York. Mr. Azzu admitted on the stand the fact that he had an accident at the United Nations in November of 1960. He was completely evasive as to his alleged injury and on the stand would indicate that the only injury that he sustained was a broken leg. When confronted with a great deal of the information that you were so kind to forward us, he became evasive and non-responsive.

" " However, with this development, we were able to dispose of our case for its true value and without his claiming any head injury as indicated in your files and from which he collected compensation from the United Nations.

" " Relative to Mr. Azzu's claim for compensation from the United Nations, please be advised that any information that we may have in our file that you would want for any action you wish to take relative to Mr. Azzu's

claim would be available from our office or from the office of our principal should you request the same.

“ ‘Again, I should like to take this opportunity to express our extreme thanks for your co-operation extended in this matter. By this co-operation, we were able to dispose of this matter in its true perspective.’ ”

“ 10. This appeal had not been brought before the Board previously, pending clarification of the appeal and the outcome of medical treatment, etc. However, in view of the current developments, the Board may wish to dispose of this case. ”

The Board's deliberations are summarized as follows in the minutes of the 117th meeting :

“ *Case No. 1240 - AZZU* ”

“ At the request of the Chairman, the Secretary gave a verbal summary of the case. ”

“ The Board agreed that the case should be reviewed under Article 9 of Appendix D rather than Article 17, in view of the new information available, thus making it unnecessary to convene the medical board required under an appeal procedure. ”

“ The Board agreed that in view of new information disclosing that the claimant had claimed head injuries resulting from a previous automobile accident, listing the same identical symptoms, some 14 months prior to the accident at the United Nations, and further, had stated under oath (on 1 February 1963) that he had not sustained any injury to his head subsequent to the vehicle accident of September 1959, a serious question of doubt had arisen as to whether the injuries alleged to have been sustained in the accident of 2 November 1960 (United Nations) had in fact resulted from the latter accident. ”

“ It was further agreed that the Secretary-General should be informed that the recommendations made by the Board at its 94th meeting had been made without knowledge of the previous accident. Had this information not been withheld by the claimant, the recommendations for the payment of compensation might have been different. ”

“ Under these circumstances, the Board would recommend that no further compensation payments of any kind be made, with the exception of expenses resulting from medical tests requested by United Nations Health Service. ”

“ Any further action would be at the discretion of the Secretary-General who could obtain the advice of the Legal Counsel and the Office of Personnel. ”

“ In regard to the claimant's request to appear before the Board with his physician, it was agreed that no such hearing would be held. ”

On 15 March 1965, the Secretary of the Board sent the Applicant the following letter :

“ Further to my letter of 8 January 1965, I would advise you that the Advisory Board on Compensation Claims recently made a review of your claim and made the following recommendation to the Secretary-General :

“ *The Advisory Board on Compensation Claims,* ”

“ *Having considered* new information available to it, at its 117th meeting, unanimously recommends that no further compensation payments of any kind

be made to Mr. Majid Azzu, with the exception of expenses resulting from medical tests requested by the United Nations Health Service.

"This recommendation has been approved by the Secretary-General on 10 March 1965.

"The expenses referred to in the recommendation concern the billing from St. Luke's Hospital for the electro-encephalogram on 28 September 1964. This has now been paid.

"In regard to Dr. Robert S. Graham's billing, you should know that Dr. Graham has advised that he did not charge any fee in connexion with this test so that the United Nations has no responsibility in that connexion.

"I trust that we may now consider the matter as closed."

On 1 April 1965, the Applicant requested the Secretary to have his case reconsidered. When that request was denied, the Applicant expressed the intention of bringing the case before the Tribunal. On 19 May 1965, the Under-Secretary, Legal Counsel of the United Nations, informed the Tribunal that :

"...the Secretary-General agrees that Mr. Azzu may submit his Application directly to the Tribunal without prior consideration by the Joint Appeals Board. This waiver relates only to Article 7, paragraph 1 of the Statute of the Tribunal and is without prejudice to any other issue bearing upon the receivability of the Application or the competence of the Tribunal or the question of the exhaustion of the appeals procedures provided for in Appendix D of the Staff Rules."

On 17 September 1965, the Applicant submitted the Application referred to above.

Whereas the Applicant's principal arguments are as follows :

1. The Applicant's fall on 2 November 1960 in the Secretariat building resulted in total disability beginning on 3 August 1961. Since he had a probationary appointment at that time, his case came under article 1 (a) of Appendix D of the Staff Rules then in force. Under that provision, he was entitled to all the benefits provided in Appendix D.

2. Within the meaning of Appendix D, the term "total disability" should be interpreted to mean the condition of a person who is unable to engage in gainful employment of any kind without injury to his physical or mental health.

3. The Advisory Board on Compensation Claims had wrongly considered that organic damage was the only ground for entitlement to a disability pension and had therefore recommended at its 100th meeting withdrawal of the pension it had granted the Applicant one year earlier.

4. In considering, at its 117th meeting, the Applicant's appeal against the recommendation for withdrawal of the disability pension, the Board had approached the question from the point of view of article 9 of Appendix D whereas it was obligated to apply the procedure established in article 17.

5. The procedure followed by the Board in considering the Applicant's case was *ultra vires* and did not meet the requirements of due process. The Board had sat in the absence of the Applicant and his medical adviser, but in the presence of the Medical Director, who had expressed unfavourable opinions on the Applicant's claim. Although those opinions had played an important part in its deliberations, the Board had not given the Applicant an opportunity to refute them

orally or in writing. Lastly, the Applicant was not informed in good time and with sufficient precision of the questions which the Board intended to settle at its 117th meeting. He had thus been prevented from defending his interests.

6. The Board had deliberated and adopted its recommendations on the basis of incomplete or tendentious information provided in notes prepared by the Secretariat. For example, the note prepared by the Secretariat for the Board's 117th meeting did not mention the medical reports of Dr. Attisha, Dr. Rabbath and Dr. Gold. Without giving details and without producing the text of the relevant documents, it stated that medical analyses and tests tended to support the recommendation adopted by the Board at its 100th meeting. Furthermore, the note gave tendentious information on a law suit brought by the Applicant against an insurance company as a result of an automobile accident suffered in September 1959. The object of the note was to create the impression that the Applicant had tried to obtain double indemnity for the same injury by telling the insurance company that he had suffered an injury to the head in an automobile accident which had occurred in Brooklyn in September 1959 at the same time as he was claiming, in the competent organs of the United Nations, that the same injury had been caused by his fall in the Secretariat building in Manhattan in November 1960. The Respondent was obligated to substantiate those serious charges directed against the Applicant.

7. During the trial of his case against the insurance company, the Applicant stated in good faith that he had not received any injury to the head after his accident of September 1959. It had been his impression, thinking in his mother tongue, that the concussion caused by the fall of November 1960 did not constitute an injury because it had not been accompanied by bleeding and the skin had not been broken.

8. The medical reports and certificates concerning the Applicant indicate that the adverse effects from which he is still suffering at the present time and which may have assumed the form of a compensation neurosis are the result of the concussion caused by the fall of November 1960 attributable to the performance of his official duties and not of the car accident of September 1959. Up to 17 June 1963, those adverse effects had resulted in total disability entitling him to the payment of compensation under article 11.1 of Appendix D to the Staff Rules. Moreover, they had resulted in "a permanent loss of function" entitling him to lump-sum compensation under article 11.3 of that Appendix.

9. The fact that the 1960 fall may have been due partly to dizziness and that the dizziness might have been an after-effect of the 1959 car accident did not alter the fact that the fall was an accident attributable to the performance of official duties.

Whereas the principal arguments of the Respondent are as follows :

1. On 2 November 1960, the date of his fall in the Secretariat building, the Applicant was serving under a short-term appointment. His situation therefore was governed by article 1 (c) of Appendix D to the Staff Rules in force at the time. Under that provision, personnel engaged for short-term service were entitled only to the compensation payments specifically stated in the article, i.e. medical, hospital and funeral expenses. Payment of the other benefits provided in Appendix D to such personnel was left to the discretion of the Secretary-General.

2. The Applicant has not established that he was totally incapacitated until 17 June 1963 and that he suffered a permanent loss of function. The fact that he

accepted gainful employment on 17 June 1963—a fact which he concealed from the United Nations for a long time—was by itself no evidence that total incapacity existed until then. His general conduct in 1962 and 1963 and most of the medical reports on him indicate that he was not disabled at that time. Dr. Gold's reports cannot be regarded as carrying weight because the doctor states that the Applicant was unable to carry on his day-to-day activities whereas he was already engaged in full-time employment.

3. There was nothing irregular about the procedure followed by the Advisory Board on Compensation Claims. In virtue of the powers conferred upon it under article 16 (c) of Appendix D, the Board decided, from the beginning, that it would not permit adversary-type proceedings and that it would hold its meetings, in principle, in the absence of claimants or their counsel. It also decided that the Medical Director should attend its meetings. His function, in so doing, is that of an adviser and not of a witness or representative of either party. Moreover, the Applicant always had opportunity to submit all the documentary evidence he considered to be of value to the defence of his interests and he was informed in advance that the question of his court action against an insurance company would be brought to the Board's attention.

4. All the information in the Secretariat's possession was made available to the Board. It is true that the note prepared by the Secretariat for the 117th meeting did not refer to Dr. Gold's reports, but those reports, together with those of Dr. Attisha and Dr. Rabbath and the rest of the documentation on the case, were in a file which was available to the members of the Board. Furthermore, the reasons for the recommendation adopted by the Board at its 117th meeting did not relate to the medical aspects of the case. The Secretary's note, on the other hand, gave an accurate and objective account of the court action brought by the Applicant against an insurance company.

5. The Applicant never requested the Board to convene the medical board referred to in article 17 of Appendix D. Moreover, that provision clearly could not apply to the situation disclosed by the information received by the Board with respect to the Applicant's court action. The Board had accordingly examined the case at its 117th meeting in application of article 9 of Appendix D, not article 17. Although it took into account the medical information at its disposal, the Board primarily weighed other factors.

6. During the hearing and trial of his court action against the insurance company, the Applicant stated under oath :

(a) That he had suffered no injury to his head after his car accident of September 1959 ;

(b) That he had suffered only a leg injury as a result of his fall of November 1960 ;

(c) That he had practically recovered in February 1963 ;

(d) That the fall of November 1960 had been the result of dizziness, an after-effect of the accident of September 1959.

Those statements justified the reopening of the case in application of article 9 of Appendix D and the decision on the substance taken by the Secretary-General on the recommendation of the Advisory Board on Compensation Claims adopted at its 117th meeting.

The Tribunal, having deliberated until 11 October 1966, renders the following judgement :

I. The Applicant requests the Tribunal first to rule that "for the purposes of Appendix D of the Staff Rules, total incapacity means such a degree of incapacity as would render engagement in any form of gainful employment detrimental to a staff member's physical or mental health".

The Tribunal notes that no plea of the Applicant requires a ruling on the question whether or not he suffered total incapacity. In the circumstances, the aforesaid request is aimed at securing from the Tribunal an interpretation of text which is not necessary to the solution of the issue before it, as regards the particular situation of the Applicant.

The ruling requested is therefore not within the competence of the Tribunal which, under article 2 of its Statute, is competent only to pass judgement on specific cases of non-observance of contracts of employment or of the terms of appointment of staff members of the Secretariat.

II. The Applicant further requests the Tribunal to declare illegal "the disclosure by the Respondent of medical reports of the Applicant to a third party without the consent of the Applicant".

The communication of medical documents concerning a staff member to third parties by the United Nations Secretariat without the consent of the Staff member concerned is an act which raises delicate legal issues. In the present case, the Tribunal notes that having been informed of the possibility of fraud, the Secretariat communicated the documents in question to counsel for an insurance company against which the Applicant had brought a court action. The Applicant was informed of that situation only by the documents which the Respondent annexed to his answer. Consequently, he could only raise the issue during the proceedings instituted before the Tribunal. The issue is different from the subject-matter of the case for which the Secretary-General had given his consent to a direct appeal to the Tribunal in application of article 7, paragraph 1, of the Statute. For that reason, the Tribunal declares that the aforesaid request is not receivable.

III. The Applicant's principal request is that the Tribunal should rescind the decision of 10 March 1965 whereby the Secretary-General approved the recommendations made by the Advisory Board on Compensation Claims on 12 February 1965, on the grounds that the procedure followed by the Board did not meet the requirements of due process.

The Tribunal notes that the Applicant, on 29 April 1963, appealed the decision of the Secretary-General on 2 April 1963 to approve the recommendation made by the Advisory Board at its 100th meeting held on 23 January 1963. That appeal was made within the time-limit prescribed in article 17 (a) of Appendix D to the Staff Rules, but, although the appeal was based on medical reasons, the Applicant did not indicate, as required in article 17 (a), the name of the medical practitioner he had chosen to represent him on the medical board provided for under article 17 (b). However, the existence of the appeal was not contested and the Applicant was informed by letter dated 8 January 1965 from the Secretary of the Advisory Board, that his appeal would shortly be discussed by the Board.

IV. The Tribunal notes that the Board never made a determination with respect to that appeal. It decided at its 117th meeting held on 12 February 1965

that "the case should be reviewed under article 9 of Appendix D rather than article 17,... thus making it unnecessary to convene the medical board required under an appeal procedure". Thus, the recommendation which served as a basis for the contested decision was established in application of article 9 of Appendix D which reads :

" Reopening of cases

" The Secretary-General, on his own initiative or upon the request of a person entitled to or claiming to be entitled to compensation under these rules, may reopen any case under these rules, and may, where the circumstances so warrant, amend in accordance with these rules any previous award with respect to future payments. " *

Article 9 gives the Respondent wide power to reopen a case and consequently to the Board to recommend that it be reopened. Since the new decision of the Respondent is taken on the recommendation of the Board, the latter must observe the requirements of due process in arriving at that recommendation.

V. The Tribunal notes that the letter of 8 January 1965 sent to the Applicant by the Secretary of the Board stated that when the Board considered the case it "will be advised of your recent trial in the Supreme Court in Troy, New York on December 17 and 18 last". The Applicant was given no other indication concerning the particular aspects and documents of the trial which would be brought to the Board's attention, or the findings which would be submitted to it in that connexion. Thus, the Applicant had no opportunity to explain his position on the issues which were to serve as a basis for the Board's decision. In the circumstances, it is not surprising that the letter he sent to the Secretary of the Board on 6 February 1965 in which he gave various arguments in support of his contention, did not relate to a number of factors which appear to have played an important part in the Board's deliberations.

VI. As the Tribunal has pointed out in previous judgements and, in particular, in Judgement No. 92, the duty to observe the requirements of due process providing adequate safeguards for the rights of the individuals concerned is a general and universally recognized principle which the Respondent must respect. In the present instance, due process would have required that the Applicant be informed of the specific facts warranting the reopening of the case and be granted the right to give explanations which could be brought to the attention of the organ competent to make a recommendation to the Respondent.

VII. Consequently, the Tribunal finds that the procedure followed by the Advisory Board in arriving at the recommendations approved by the Respondent on 10 March 1965 failed to meet the requirements of due process.

VIII. The Tribunal having taken action under article 18 of its Rules, the Respondent requested that the case should be remanded for correction of the procedure in accordance with paragraph 2 of article 9 of the Statute of the

* The original of the present judgement quotes the French text of article 9 in force in 1963. A drafting amendment to the French text was adopted on 1 January 1966 to make it correspond more exactly to the English text, which remained unchanged.

Tribunal. Without determining the merits, the Tribunal decides to remand the case for correction of the procedure.

IX. Under paragraph 2 of article 9 of the Statute, should the Tribunal order the case remanded for correction of the required procedure, it may order payment to the Applicant of compensation not to exceed the equivalent of three months' net base salary.

Statements were submitted on this point by the parties and the Applicant maintained that he was entitled to compensation because the procedural delay caused him such mental pain and suffering that for two and one-half years he could only find an employment carrying limited responsibilities.

X. The Tribunal notes that in his letter of 29 April 1963, the Applicant stated: "I do appeal a reconsideration of this matter." However, his request was not accompanied, as required in article 17 (a), by the name of the medical practitioner he had chosen to represent him on the medical board referred to in article 17 (b). Beginning on 21 December 1963, Dr. Gold, who was then treating the Applicant, transmitted to the United Nations reports indicating in somewhat vague terms his findings as regards the Applicant's disability, but the only supporting document submitted, which was attached to a report dated 18 April 1964, merely provided information which the Board already had concerning the examination which the Applicant had undergone at St. Luke's Hospital in January 1961. On 30 September 1964, an electro-encephalogram had been taken at the request of the United Nations Health Service by Dr. Graham, who had examined the Applicant several times since 1961. Dr. Graham's conclusions with respect to that examination did not appear to cast doubt on the decision which the Applicant was contesting.

XI. Furthermore, the Applicant did not comply with the request made to him by the Secretary of the Board on 25 February 1964 for a written statement indicating what he had earned since February 1963 and explaining what his employment situation had been since then.

XII. The Tribunal notes that compensation in an amount computed in accordance with Appendix D of the Staff Rules and based on the premise that the Applicant suffered total incapacity was paid to the Applicant by the Respondent until 28 February 1963. At that time, the Applicant had resumed his studies at City College of New York and on 17 June 1963, he took a full-time employment for which he was paid a salary 50 per cent higher than that which he had been receiving in the United Nations at the time of his accident on 2 November 1960. The Applicant was promoted about a year later and continued to work for the same employer up to the present time.

XIII. The Tribunal notes further that, although Dr. Gold, in a report sent to the United Nations on 27 May 1964, indicated that in his opinion the Applicant was "totally disabled for the type of work he has pursued", the Applicant on 28 April 1964 had told a physician appointed by the insurance company against which he brought a court action that he was very happy with his work and was enjoying it.

XIV. In view of the facts outlined above, the Tribunal, in accordance with paragraph 2 of article 9 of its Statute, decides that the Applicant has suffered no loss as a result of the delay attributable to the procedure followed and does not grant him any compensation.

XV. In view of the decisions taken above, the Tribunal finds that it is not necessary for it to pass judgement on the other conclusions of the Applicant.

(Signatures)

Suzanne BASTID

President

H. GROS ESPIELL

Member

Francis T. P. PLIMPTON

Member

New York, 11 October 1966.

L. IGNACIO-PINTO

Alternate Member

N. TESLENKO

Executive Secretary

Judgement No. 104

(Original : English)

**Case No. 107 :
Gillead**

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

Summary dismissal for serious misconduct of a staff member holding a permanent appointment.

Conception of serious misconduct justifying summary dismissal under the terms of Staff Regulation 10.2.—Applicant's conduct examined to determine whether it constituted serious and patent misconduct.—Obligations imposed upon staff members by Staff Regulations 1.2, 1.4, 1.5 and 1.9.—Held that there was patent and serious misconduct.

Consideration of the question whether the Respondent should not have presented the case for the advice of the Joint Disciplinary Committee.—Seeking the advice of that Committee is appropriate in the normal course.—Tribunal unable, in view of the circumstances of the case, to disagree with the summary dismissal.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; the Lord Crook, Vice-President ; Mr. Venkataraman, Vice-President ; Mr. Louis Ignacio-Pinto, alternate member ;

Whereas, on 8 June 1966, Le Roy Foster Gillead, a former staff member of the United Nations and the Applicant herein, requested the President of the Administrative Tribunal to designate a counsel to assist him in drawing up and submitting an application to the Tribunal ;

Whereas, in pursuance of Administrative Instruction ST/AI/163, the President designated as counsel Miss Norma Roth, a staff member of the United Nations ;

Whereas, at the Applicant's request and with the Respondent's agreement,