3. Any requests for payment made in accordance with paragraph XV above shall be submitted, together with the necessary supporting evidence, by the Applicant to the Respondent within a period of two months from the date of this judgement;

4. The other requests are rejected.

(*Signatures*)

Suzanne BASTID
Vice-President, presiding

MUTUALE-TSHIKANTSHE Vincent
Member

R. VENKATARAMAN
President

Jean HARDY
Executive Secretary

Geneva, 28 April 1972

STATEMENT BY MR. R. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

(*Signature*)
R. VENKATARAMAN

Geneva, 28 April 1972

Judgement No. 159

(*Original: French*)

Case No. 157: Grangeon

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

Request by a former technical assistance expert for miscellaneous compensation.

Report of the Joint Appeals Board declaring that the appeal was not receivable for non-observation of time limits, adding obiter *that, except possibly for one claim, the Applicant's claims were unfounded and indeed frivolous.*

Question of the receivability of the appeal by the Board.—Consideration of the correspondence exchanged between the Applicant and the Administration.—In respect of certain claims the Administration offered the Applicant the option of appealing to the Board within a time-limit which was an exception to the Staff Rules.—Finding that the Board was bound to receive those claims.

Question of the receivability of the application by the Tribunal.—Considering the unanimous declaration by the Board that most of the Applicant's claims were frivolous, the Tribunal can only receive the claim concerning the installation grant.—Since a review of the decision in question was not requested within the statutory time-limit, that claim is unreceivable.

The application is not receivable.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Mr. Mutuale-Tshikantshe;

Whereas on 29 December 1971 Gérard Grangeon, a former technical assistance expert of the United Nations, filed an application with the Tribunal concerning various financial claims;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 15 February 1972;

Whereas the conclusions of the application are as follows:

"(*a*) Firstly, it should be pointed out that, if the Administrative Tribunal of the United Nations does not feel that it has sufficient information to rule on the case submitted to it, the Applicant requests the Tribunal to initiate any inquiry or order any expert investigation it may deem useful in order to determine the Applicant's conditions of employment, his performance on mission and the alleged non-observance.

"The exact damage suffered by the Applicant might be assessed by the expert investigation.

"(*b*) With regard to the contested decisions, the rescission of which the Applicant is requesting in accordance with article 9, paragraph 1, of the Statute, it should be pointed out that he personally was not notified of any decision rejecting all his claims.

"A copious correspondence was exchanged between the Applicant and the United Nations services, in the course of which the latter informed Mr. Grangeon on several occasions that his case was to be reviewed.

"In that connexion, the letter dated 17 [10?] December 1967 addressed to Mr. Cherif by the Applicant, in which the latter described the abnormal conditions of his mission, should be taken into consideration.

"The Tribunal will also note Mr. Cherif's reply of 16 January 1968 and the later letters from Mr. Avalone, dated 14 July 1970, and Mr. Doos, dated 7 October 1970.

"These letters prove that on several occasions the United Nations informed the Applicant that it would review his situation.

"Consequently the United Nations had never taken an official decision rejecting the claims as a whole prior to the decision of the Joint Appeals Board of 29 September 1971.

"In the circumstances, the Applicant is appealing for the rescission of that decision.

"(*c*) Mr. Grangeon's claim is based on non-fulfilment of the contract of employment and non-compliance with the conditions of employment set forth in Staff Rules 200.1 to 212.7 concerning Technical Assistance Project Personnel.

"(*d*) The Applicant assesses the amount of compensation due to him at $6,037.

"As for the various damages and compensations which cannot be calculated, the Applicant will rely on justice being done and particularly on the expert investigation which might be ordered";

Whereas, on 15 March 1972, the Respondent filed his answer, in which he concluded that the application was not receivable by virtue of article 7 of the Statute of the Tribunal;

Whereas, on 13 September and 2 October 1972, the Respondent provided additional information at the request of the Tribunal;

Whereas the facts in the case are as follows:

The Applicant, who had been a United Nations technical assistance expert for two periods during 1962-1964, rejoined the Organization on 27 March 1965 as a mining engineering expert in Kigali (Rwanda) on a one year's appointment which was renewed twice and then extended retroactively for three months through 26 June 1968 for the purpose of enabling him to utilize his sick leave entitlement. During and after his last year of service, the Applicant submitted to the Administration various financial claims which his lawyer reiterated on 14 May 1970 in a letter erroneously addressed to the Secretary of the Advisory Board on Compensation Claims. The lawyer ended his letter by stating that, in the absence of a settlement by the Organization before 10 June 1970, his client would institute proceedings to secure payment of the amounts due to him. In a reply dated 27 May 1970, the Chief of the Financial and Administrative Management Division of the Office of Technical Co-operation informed the lawyer of the action which had been taken on the Applicant's claims and advised him of the recourse procedure laid down in the Staff Rules. On 23 June 1970, the lawyer stated that the decisions so far taken on the disputed matters were only partially satisfactory and he would forthwith institute proceedings on the grounds of non-compliance with the conditions of employment if the Organization refused to pay full compensation to the Applicant. On 14 July 1970 the competent services replied that they were reviewing the questions raised in his letter and would contact him as soon as possible. By a letter of 8 September 1970, the lawyer informed those services that, if the Organization did not accede to his claims before 18 September 1970, he would institute proceedings. On 18 September 1970 the lawyer was advised by cable that a reply to his letter would shortly be sent. On 30 September 1970 he requested the Secretary-General to review the case, stating that, if he did not receive a reply within two weeks, he would take it to the Joint Appeals Board. On 7 October 1970 the Chief of the Technical Assistance Recruitment Service informed him that the contested points would be reviewed. On 16 October 1970 the Director of Personnel informed the lawyer that, in accordance with Staff Rule 111.3, the points raised by him had been reviewed, and he indicated the results in respect of each of the Applicant's claims; the Director of Personnel pointed out that the time-limit for appeals, as laid down by Staff Rule 111.3, had expired in respect of some of those claims. On 21 October 1970, the lawyer filed an appeal with the Joint Appeals Board which the Applicant confirmed on 18 December 1970. On 29 September 1971 the Board submitted its report, whose conclusions read as follows:

". . .

"11. The Board considered that in view of the dates of the notification of the various decisions appealed against to the appellant, and in particular in view of the letter of 27 May 1970 referred to above, containing rejection of all his present claims, the request for administrative review made on 30 September 1970 was not within the time-limit of one month prescribed by Staff Rule 111.3 (*a*).

"12. Having reviewed all aspects of the case, the Board found no exceptional circumstances which, under Staff Rule 111.3 (*d*), would warrant a

waiver of the time-limits prescribed for the procedure of appeal. Accordingly, the Board decides not to entertain the appeal, on the ground that it is not receivable.

"13. The Board wishes to add, *obiter,* that its consideration of the merits of the case led it at the same time to the conclusion that, except possibly for the item summarized under paragraph 4 (*f*) above,[1] the claims made are unfounded and, indeed, frivolous. In respect of that item, however, the Board considers that while no statutory entitlement to an installation grant could exist in the circumstances, considering that there was no change in the duty station, and technically no interruption in the appellant's service, a belief that he was being repatriated definitively to France in December 1966 may, nevertheless, have caused the appellant to take dispositions which obliged him to incur extraordinary expenses (of the kind normally compensated by the installation grant) on his return to Kigali in June 1967. To the extent, only, that he may be able to substantiate such extraordinary expenses, the Board believes that compensation on an *ex gratia* basis would be warranted."

On 29 December 1971 the Applicant filed the above-mentioned application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. As to the receivability of the application:

(*a*) The time-limit provided for by Rule 111.3 (*a*) is not applicable in this instance. On the one hand, since the Applicant had not been notified of any official refusal—the letter of 27 May 1970 in particular cannot be construed as a rejection of the Applicant's claims—there could be no starting point for the time-limit. Furthermore, the time-limit can be invoked only by the Secretary-General. However, far from stating this time-limit, the Administration replied to the Applicant that his situation was being reviewed and it continued to correspond with him without raising this objection;

(*b*) The time-limit referred to in Staff Rule 212.5 relates only to appeals relating to retroactivity of payments and does not apply to disputes. Furthermore, the Applicant has continually written to claim the sums due to him.

2. As to the merits of the case:

(*a*) The Applicant's claims are based on non-compliance with the conditions of employment relating to his mission;

(*b*) The Respondent's faults of commission and omission have caused the Applicant certain prejudice which entitles him to compensation.

Whereas the Respondent's principal contentions are:

1. The Joint Appeals Board correctly applied Staff Rule 111.3 (*a*) and (*d*) in declaring the appeal not receivable. As the first step of the appeal was not taken within the time-limit prescribed in paragraph (*a*), the appeal was not receivable under paragraph (*d*). There is no basis for interpreting "the above time-limits" referred to in paragraph (*d*) as excluding the time-limit prescribed above in paragraph (*a*). The correspondence does not indicate that the Secretary-General waived this time-limit; besides, it is well established that only the Board can waive time-limits.

[1] "(*f*) Considering his third year as a new appointment the appellant contends that he is entitled to an installation grant under Staff Rule 203.10. By the same letter of 28 July 1969 he was informed of the rejection of this claim."

2. The application is not receivable under article 7, paragraph 1, of the Tribunal's Statute. Even if the Tribunal should vitiate the Joint Appeals Board's decision on unreceivability, that article would still preclude it from receiving the application without either giving effect to the Joint Appeals Board's *obiter dicta* on the frivolous nature of all but one of the claims or alternatively remanding the appeal to the Board for the Board's consideration of the merits.

The Tribunal, having deliberated from 25 September to 4 October 1972, now pronounces the following judgement:

I. The Joint Appeals Board unanimously declared the Applicant's appeal not receivable for non-observation of time-limits, adding *obiter* that its consideration of the merits of the case led it to the conclusion that, except possibly for the claim concerning an installation grant under Staff Rule 203.10, the Applicant's claims were unfounded and indeed frivolous.

II. With regard to the time-limits laid down for the appeal to be receivable by the Joint Appeals Board, the Tribunal notes from the Board's report that the latter declared the Applicant's claims not receivable in view of the dates of the notification of the various decisions to the Applicant—and in particular in view of the letter of 27 May 1970 containing rejection of all claims subsequently submitted to the Board—and in view of the date on which the request for administrative review of those decisions was made, i.e. 30 September 1970.

The Tribunal considered the copious correspondence exchanged between the Applicant and the Administration. It notes that on several occasions the latter informed the Applicant that his claims would be reviewed. The last letter from the Administration to that effect is dated 7 October 1970. Subsequently, the Administration did indeed undertake such a review, specifying that, by so doing, it was acting in accordance with Staff Rule 111.3, as can be seen from its letter of 16 October 1970.

The Administration thus made it quite clear that, in its opinion, the letter of 16 October 1970 constituted the Secretary-General's answer for the purposes of any appeal to be made to the Joint Appeals Board under Rule 111.3 (*b*).

Bearing in mind these actions of the Administration and Staff Rule 112.2 (*b*), under which the Secretary-General may make exceptions to the Rules, the Tribunal considers that, at least in respect of certain claims, the Administration offered the Applicant, and the latter moreover exercised, the option of appealing to the Joint Appeals Board within a time-limit which began to run from the date on which the Applicant received the letter of 16 October 1970.

With regard to the claims in question, the Tribunal therefore considers that, since the appeal was made on 21 October 1970, it was within the time-limit prescribed by Staff Rule 111.3 (*b*) and that accordingly the Joint Appeals Board was bound to receive it.

III. With regard to the receivability of the application by the Tribunal, the latter notes that, as is stated above, the Joint Appeals Board unanimously felt that the Applicant's claims were unfounded and indeed frivolous, except possibly for the claim concerning an installation grant. Considering this unanimous declaration that the Applicant's claims were frivolous and in application of article 7.3 of the Statute, of all the claims contained in the application, the Tribunal can only receive the one concerning the installation grant.

With regard to this claim, the Tribunal notes that the Administration had decided to reject the claim and had so notified the Applicant by letter of 28 July

1969. Thus, since the request for a review for the purpose of appeal was submitted to the Administration on 30 September 1970, it is clear that a review of the claim in question was not requested within the time-limit laid down in Staff Rule 111.3 (*a*), as moreover is emphasized by the letter of 16 October 1970.

The Tribunal accordingly declares the claim unreceivable. It further notes that paragraph (*c*) of Staff Rule 203.10, invoked by the Applicant, was added to that rule in April 1968 and was thus not in force at the time of the events.

IV. Concerning the claim for payment of a fourth month's sick leave as a result of the Applicant's mission, the Tribunal notes the terms of the letter of 16 October 1970 whereby the Director of Personnel offered the Applicant the option of applying for an extension of his contract by producing a medical certificate and a certificate issued by the French Administration.

V. For the above reasons the Tribunal rules that the application is not receivable.

(*Signatures*)

Suzanne BASTID
Vice-President, presiding

MUTUALE-TSHIKANTSHE
Member

F. A. FORTEZA
Member

Jean HARDY
Executive Secretary

New York, 4 October 1972

Judgement No. 160

(*Original: English*)

Case No. 162: Acinapura

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

Request for the payment of post adjustment at the dependency rate.

Staff Rule 103.7 (b) (*i*).*—Definition of "child" appearing in Staff Rule 103.24* (b). *—Applicability of that definition to the entire Staff Regulations and Rules, including Staff Rule 103.7* (b) (*i*) *which admits of no exceptions like those appearing in Staff Rules 103.20 and 107.5* (b).*—Absurd result to which the Applicant's claim would lead.—As the Applicant's daughter is not a "child" according to the above-mentioned definition, the claim fails.*

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Mutuale-Tshikantshe; Sir Roger Stevens;

Whereas, at the request of Frank L. Acinapura, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Re-