

IX. Consequently, the Tribunal considers that the conditions laid down by article 12 of its Statute for an application for revision are not fulfilled in this case and that for that reason the application must be rejected.

X. The Applicant raises in his application for revision a question concerning a certificate of service which he had not raised previously in his pleas to the Tribunal. As this question is unrelated to the revision proceedings, the Tribunal confines itself to taking note of the Respondent's statement, in his answer dated 19 September 1973, that he is prepared to issue to the Applicant an appropriate certificate of service under Staff Rule 109.11.

XI. For the reasons stated in paragraphs VI and IX above, the Tribunal rejects the application for revision.

(Signatures):

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

New York, 12 October 1973

MUTUALE-TSHIKANTSHE
Member

Jean HARDY
Executive Secretary

Judgement No. 178

(Original: French)

Case No. 175:
Surina

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

Non-renewal of the fixed-term appointment of a technical co-operation associate expert.

Clause in the letter of appointment stating that the appointment does not carry any expectation of renewal or of conversion to any other type of appointment.—No legal foundation for the Applicant's claim that according to United Nations practice his appointment should have been extended.—Conclusion of the Tribunal that the Applicant had no legal expectation that his contract would be renewed.

The Applicant had been given reason to believe that his contract might in fact be extended.—Contract extended by one month.—For about one month, the Applicant could have expected that his contract would be renewed.—The expectation thus created extended after the expiration of the initial period of appointment.—Creation in the Applicant of a state of mind approaching a legal expectation.—Compensation to which the Applicant would have been entitled if his appointment had in fact been extended for one year as the assisted Government had originally requested and if he had been terminated at the end of one month.—Right of the Applicant to equivalent compensation because of the behaviour of the Respondent.—Award to the Applicant of an indemnity equal to his net base salary for a total of 55 days.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Zenon Ros-
sides; Sir Roger Stevens;

Whereas, on 29 March 1973, at the request of Zdeslav Antony Surina, a former technical co-operation associate expert of the United Nations, the Tribunal decided, pursuant to article 7, paragraph 5, of its Statute, to extend until 1 June 1973 the time-limit for the filing of an application;

Whereas, on 29 March 1973, the Applicant filed his application, whose pleas read as follows:

“... I am requesting you to review my entire case. The Joint Appeals Board has continuously avoided answering the main questions and mentioning the other members of the United Nations Physical Planning Team in Trinidad, who were involved in this case. . . .

“I hope that you, contrary to the Joint Appeals Board, are going to compare the presented documents and the *important dates*, and then, if not in the interest of justice . . . , at least in the interest of the United Nations, admit that incorrect ‘methods’ were used against me. *Following the United Nations procedure my assignment should have been extended.*

“Because of these circumstances and because of waiting for the promised new assignment . . . , which was probably the quiet way of dismissing me, I remained unemployed for over half a year. Therefore, I claim an indemnity equivalent to 12 months of my base net salary as compensation for the loss in income incurred by the administrative failure.

“However, whatever your decision is going to be, one question shall remain open: ‘How and why has the name of Mr. . . . —head of the United Nations Physical Planning Team in Trinidad—remained unmentioned?’ ”;

Whereas the Respondent filed his answer on 20 June 1973;

Whereas the Applicant filed written observations on 23 July 1973 and an additional statement on 26 August 1973;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 2 March 1970 under a one-year contract as a technical co-operation associate expert provided to the Organization by the Swedish Government. He was assigned as an architect planner to a planning and development mission in Trinidad and Tobago; the mission was composed of a senior expert and two associate experts, including the Applicant. In a cable of 14 January 1971, the Chief of the Latin American Section of the Office for Technical Co-operation asked the UNDP (United Nations Development Programme) Regional Representative in the Caribbean to inform him whether the Government of Trinidad and Tobago was requesting an extension of the Applicant’s contract. On 9 March 1971, the Regional Representative replied to him in a cable reading as follows:

“... (A) Government Trinidad Tobago not requesting extension physical planning associate expert Antony Surina. (B) Furthermore, due to over-all ‘change in plans’ Government will no longer require services of second associate expert. . . . (C) Replacement for associates not required. (D) Since we received earlier indication from Government for extending Surina which subsequently now withdrawn, suggest appropriate extension of his appointment which expired 1 March enabling settlement personal affairs prior to departure. . . .”

On 18 March 1971, the Applicant’s contract was extended by one month as from 2 March 1971. On 1 April 1971, the Applicant was separated from service. The Organization subsequently made inquiries with a view to finding the Applicant another post. Those inquiries were unsuccessful. On 5 August 1971, in a letter addressed to the Secretary-General, the Applicant protested against the way in which he had been separated and asked for a review of his case. On 25 August 1971, the Director of the Division of Recruitment of the Office of Personnel sent him the following reply:

“Your letter of 5 August 1971, addressed to the Secretary-General, was referred to me for administrative review regarding the non-extension of your assignment in Trinidad and Tobago.

“On behalf of the Secretary-General, I am replying to your letter and I wish to assure you that your case was carefully reviewed.

“While you were at Headquarters for debriefing following the completion of your assignment in Trinidad and Tobago in April 1971, TARS [Technical Assistance Recruitment Service], OTC [Office for Technical Co-operation] and the Substantive Department had indeed the genuine intention to find you another assignment as associate expert in our programme of Technical Assistance. Unfortunately, at the time there was no opening in sight for which you could be considered immediately. Only during the month of June were we able to locate a suitable post in Uganda for you.

“On 24 June, Mr. Döös, Chief of the Technical Assistance Recruitment Service, cabled SIDA [Swedish International Development Authority] inquiring about your interest and availability for UGA-630-044-FT. On the 29th of the same month, following SIDA's reply of your positive availability for this assignment, TARS immediately proposed your name formally to the Government of Uganda on 30 June 1971. On 14 July 1971, Mr. Döös sent a follow-up cable to the Resident Representative in Uganda pressing for the Government's early decision on your candidature. On the same date, he also sent a cable to SIDA informing them of his action and stating that it was unlikely that the Government response would be received that week. The Resident Representative in Uganda on 15 July advised SIDA and Headquarters, simultaneously, that owing to the revision of the project, the post of associate expert (Architect-Planner) was no longer required and therefore your candidature was no longer considered.

“With regard to the non-extension of your assignment in Trinidad and Tobago, OTC advised you during your visit to New York in April that the Government did not request your extension. Unfortunately, there was no way by which we could influence the Government to revise its decision.

“I wish to refer you to paragraph 11 of the Letter of Appointment which you signed on 3 March 1970. This paragraph states and I quote, ‘This appointment does not carry any expectation of renewal or of conversion to any other type of appointment in the United Nations Secretariat. The conditions of service applicable to this appointment are set out in this Letter of Appointment, and the Associate Expert shall not be entitled to any benefit except as provided in this Letter of Appointment.’

“Your 13 months assignment in no way implies that the Organization is obligated to continue your employment following its expiration date.

“However, the submission of your name to the Government of Uganda is a clear indication that we made a serious effort to utilize your service in another assignment but that this unfortunately did not materialize.

“You may not have received adequate information regarding your candidature for the post in Uganda, but I would assume that SIDA informed you about the cancellation of this post on the basis of the Resident Representative's cable of 15 July 1971.

“In view of the above, I regret that there is nothing further that we can do for you at the present time.”

On 7 September 1971, the Applicant took his case to the Joint Appeals Board, which submitted its report on 10 May 1972. The Board's conclusions and recommendations read as follows:

“Conclusions and recommendations

“20. The Board finds that the claims of the appellant are unfounded. The Board therefore makes no recommendation in support of the appeal.

“21. The Board takes note of the statement of the Director, Centre for Housing, Building and Planning, that the non-extension of the appellant’s appointment is no reflection of the Centre’s view on his ability and performance and that, with the assistance of TARS, it will make every effort in their power to secure for him an appointment should a suitable vacancy occur.”

On 23 June 1972, the Director of the Division of Personnel Administration and Officer-in-Charge of the Office of Personnel informed the Applicant that having reviewed the case in the light of the Board’s report, the Secretary-General had decided to maintain the decision not to extend the Applicant’s fixed-term appointment. On 29 May 1973, the Applicant filed the above-mentioned application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The job description for the Applicant’s assignment to Trinidad and Tobago specified that the duration of the appointment would be for one year with a possibility of extension. Before the expiration of his appointment, the Applicant learned from the Assistant Regional Representative, on 10 February 1971, that the Government of Trinidad and Tobago was requesting the extension of the Applicant’s assignment. That request for extension never reached New York, while the subsequent request for the two associate experts to be recalled was forwarded to New York on the same day it was received—more than three weeks after the Applicant had been informed of the request for the extension of his assignment.

2. The recall of the two associate experts came about following a request to that effect addressed to the Government of Trinidad and Tobago by the senior expert; it did not reflect the opinion of the Government authorities concerned.

Whereas the Respondent’s principal contentions are:

1. The Applicant’s fixed-term appointment, as stipulated in his letter of appointment, carried no expectation of renewal or of conversion to any other type of appointment in the United Nations, and the Applicant’s job description did not give him any additional rights.

2. Appointments of technical assistance experts and associate experts can only be granted or extended on previous request by the host Government. In this case, the Government had made a request for extension but had withdrawn it before the Respondent had offered the Applicant an extension of his contract, so that the Applicant had no legal expectation that his contract would be extended. The Applicant’s allegation that the Respondent had influenced the host Government’s final decision is unfounded.

The Tribunal, having deliberated from 2 to 16 October 1973, now pronounces the following judgement:

I. The Applicant was appointed to a post of associate expert in Trinidad and Tobago for a period of one year as from 2 March 1970. His letter of appointment stated explicitly that the appointment he held did not carry any expectation of renewal or of conversion to any other type of appointment in the United Nations Secretariat.

The Applicant’s claim that according to United Nations practice his appointment should have been extended has no legal foundation. The Tribunal concludes that the Applicant had no legal expectation that his contract would be renewed.

II. It is true, however, that the Applicant had been given reason to believe that his contract might in fact be extended. On 14 January 1971, the Chief of the Latin American Section of the United Nations Office for Technical Co-operation cabled the UNDP Regional Representative in Trinidad and Tobago to find out whether the

Government of Trinidad and Tobago was requesting an extension of the contract. The possibility of an extension was thus contemplated by the United Nations Office for Technical Co-operation in New York. At some date which is not indicated in the file but which was certainly around the beginning of February, the Government of Trinidad and Tobago requested that the Applicant's employment should be extended; he was informed verbally of this request on 10 February 1971 by the UNDP Assistant Regional Representative in the Caribbean. According to a statement by the Applicant which is not disputed by the Respondent, it was not until 8 March 1971 that the Applicant was informed that the Government of Trinidad and Tobago had changed its mind and requested his departure. His appointment was subsequently extended by one month until 1 April 1971, in part retroactively, so as to enable him to settle his personal affairs.

III. The Tribunal considers that for about one month the Applicant, knowing that the United Nations had asked whether his appointment should be extended and that the Government of Trinidad and Tobago had replied affirmatively, could have expected that his contract would be renewed. The Respondent points out in his answer that "appointments of . . . associate experts . . . can only be granted or extended by the Secretary-General if the host Government had previously requested such an appointment or extension. Only after the extension had been requested by the host Government and the Secretary-General had made the offer of an appointment can there arise any legal expectation that an appointment would thus be extended". But it is precisely because he knew that the host Government had requested an extension in his case that the Applicant could expect an extension; moreover, knowing of the request from New York for information, he could reasonably suppose that the extension of his contract was no more than a formality and that the Secretary-General would be making him an offer shortly.

IV. The Tribunal further notes that the expectation thus created extended after the expiration of the Applicant's initial period of appointment and that from 2 to 8 March 1971 he continued to work as an associate expert exactly as if the procedure for renewing his appointment was under way and, according to the file, without having been officially informed that that was not the case. It seems, however, that it would have been perfectly possible to inform him. The request for extension made by the Government of Trinidad and Tobago was received before 10 February 1971, but the process of securing the Secretary-General's approval of an extension of the appointment, which could be regarded as the natural consequence of the request by the host Government, had not even begun on the date of expiration of the Applicant's initial contract.

V. The Tribunal is in no way concerned with the circumstances underlying this situation. It does not question the validity of the Respondent's argument that he was not legally bound to continue to employ the Applicant, and it therefore does not consider itself bound to take account, in ruling in the present case, of the efforts made to find a new post for the Applicant. On the other hand, the Tribunal cannot fail to note that on the date of expiration of the Applicant's appointment the Applicant had valid reason to believe that his contract would be extended; the fact that he had continued to work for almost a week after the expiration of his contract could only confirm him in that opinion and had created in him a state of mind approaching what the Respondent calls "a legal expectation". The Tribunal further notes that the decision to extend the Applicant's contract for a period of one month was taken for the specific purpose of enabling him to settle his personal affairs and not in consideration of the circumstances accompanying the expiration of his contract. It is the Tribunal's view that these circumstances justify some consideration to the Applicant over and above what was done to enable him to settle his personal affairs.

VI. The Tribunal notes that if the Applicant's appointment had in fact been extended for one year, as the Government of Trinidad and Tobago had originally requested, and if the Applicant had been terminated at the end of one month, he would have been entitled, in accordance with annex III to the Staff Regulations, to an indemnity equivalent to five days' salary for each of the 11 months remaining before the expiration of his contract—a total of 55 days. The Tribunal considers that compensation equivalent to that provided for by annex III should be granted to the Applicant because of the behaviour of the Respondent mentioned above.

VII. For the foregoing reasons, the Tribunal decides that the Respondent shall pay to the Applicant an indemnity equal to his net base salary for a total of 55 days.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Zenon ROSSIDES
Member

New York, 16 October 1973

Roger STEVENS
Member

Jean HARDY
Executive Secretary

Judgement No. 179

(Original: English)

Case No. 174:
Ashton (Compensation for being prevented from requesting validation of non-pensionable service)

Against: **The Secretary-General of the International Civil Aviation Organization**

Claim by a former technical assistance official of ICAO for compensation for the injury caused him as a result of having been deterred from requesting in due time the validation by the Joint Staff Pension Fund of service completed before his participation in the Fund.

Claim for compensation based on the pleas that, as a result of the issue of the circular dated 26 February 1958, the Respondent dissuaded the Applicant from requesting validation within the prescribed time-limit.—Need to examine first of all whether the Applicant's failure to comply with the time-limit prescribed for requesting validation resulted directly from the circular.—The circular construed by the Tribunal in its Judgements Nos. 89 and 152.—Conclusion of the Tribunal that the circular would normally have dissuaded a staff member from applying for validation.—Circumstances related to his own contractual status may have caused the Applicant not to seek validation.—In order that the question of the Respondent's liability may arise, it must be established that the circular was the only reason which motivated the Applicant's abstention.—Impossibility of considering the circular as the only reason for the Applicant's abstention.—Conclusion of the Tribunal that the damage, if any, suffered by the Applicant, is not directly attributable to the Respondent's actions.

Argument of the Applicant that the "omnibus clause" contained in his contracts of employment did not exclude him from participation in the Pension Fund.—Irrelevance of the argument, the question before the Tribunal being whether the Applicant suffered injury as a consequence of the issue of the circular.

Argument of the Applicant based on the fact that the Respondent agreed to validate in the case of