(Signatures)

Suzanne BASTID
Vice-President, presiding

MUTUALE TSHIKANKIE
Alternate Member

Zenon ROSSIDES
Member

Jean HARDY
Executive Secretary

Francisco A. FORTEZA
Member

New York, 10 October 1975

Judgement No. 207

(Original: English)

Case No. 199: Squadrilli

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

Request of an American staff member for reimbursement of the difference between the amount he paid in United States federal income tax and the amount which he would have paid if his United Nations earnings had been exempted.

Section 18 (b) *of the Convention on the Privileges and Immunities of the United Nations.—Reservation made by the United States of America when acceding to the Convention.—Staff Regulation 3.3* (f).*—Procedure set forth in circular ST/ADM/SER.A/1741 for the reimbursement to American staff members of the federal income tax paid on United Nations earnings.—Unusually large capital gain realized by the Applicant from sources other than the United Nations.—Income-averaging method.—Use of that method by the Applicant in his notional tax return.—Contention of the Respondent that the income-averaging method may be used for notional tax return purposes provided that the United Nations income is included in the calculations.—Argument based on section 1302 of the Internal Revenue Code.—That section contains no provision as to including income from the United Nations in the averaging process.—Argument of the Respondent that if the United States had acceded to the Convention without reservation it would have provided that income from the United Nations would have to be included in income averaging.—Conjectural character of the argument and its irrelevance to the Applicant.—Analogy with interest on the obligations of United States states and municipalities.—Legal position of the United States if it were to accede to the Convention without reservation.—Memorandum of the Legal Counsel of the United Nations.—Argument of the Respondent that the method used by the Applicant would give him a "double benefit".—Inherent characteristics of any averaging formula.—Rejection of the arguments of the Respondent and decision of the Tribunal that the Applicant is entitled to reimbursement of the amount in dispute.—Award to the Applicant of interest at the rates applicable under the Internal Revenue Code.—Award to the Applicant of the amount in dispute plus interest thereon at the rates specified.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza;

Whereas, on 11 July 1975, Alexander E. Squadrilli, a staff member of the United

Nations specifically recruited for the United Nations Children's Fund, hereinafter called UNICEF, filed an application the pleas of which read:

"1. The Applicant requests reimbursement of United States Federal Income Tax for 1973 in the amount of $9,304.30, representing the difference between the amount he actually paid of $22,234.86, and the amount which he would have paid of $12,930.56 had he been a staff member whose Government had acceded to Section 18 *(b)* of the Convention on the Privileges and Immunities of the United Nations. (See Annex 26.) (See original request dated 1 April 1974, Annex 1.)

"*Note:* (A provisional reimbursement of $3,363.37 was made on 14 January 1975, without prejudice to any decision to the contrary which may be received at a later date, leaving the balance claimed of $5,940.93; see Annex 16.)

"2. The decisions denying this request are contained in

"*(a)* the last paragraph of the letter of 20 May 1974 from Mr. William Vaccaro, Deputy Chief, Payroll Section, Accounts Division, Office of Financial Services (see Annex 6);

"*(b)* the penultimate paragraph of the letter from Mr. M. H. Gherab, Assistant Secretary-General, Personnel Services, of 10 April 1975 (Ref. PRU 75); (see Annex 22);

"*(c)* the last paragraph of the letter from Mr. M. H. Gherab, Assistant Secretary-General, Personnel Services, of 19 May 1975, Ref. PRU 75, confirming the previous decision (see Annex 24).

". . .

"4. The obligation of the Administration which the Applicant is invoking and whose specific performance he is requesting is stated in paragraph 4 of Information Circular ST/ADM/SER.A/1741, 4 January 1974 (see Annex 2). The Applicant, being a staff member who is subject to taxation by his Government on United Nations earnings, in particular requests performance of the last sentence in the aforementioned paragraph 4 whose stated purpose is, in the calculation of taxes relating to United Nations earnings, to place him in the position that he would be in if his Government had acceded to Section 18 *(b)* of the Convention on the Privileges and Immunities of the United Nations (see Annex 26) i.e.: his tax liability would be calculated as if his earnings from the United Nations were not subject to taxation and he would be reimbursed the difference between the sum of that calculation and that which he has been obliged to pay with the inclusion of United Nations earnings as taxable income.

"5. The Applicant believes that there exists a further obligation upon the Administration to deal expeditiously with the reimbursement to the staff member of taxes disbursed by him and to which he may be entitled. In his case, the Request for Settlement was submitted on 1 April 1974 (see Annex 1) and despite several reminders and interim replies (see Annexes 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21) a provisional reimbursement was not effected until 14 January 1975 (see Annex 16), and a final decision was not rendered until 10 April 1975 (see Annex 22).

"The Applicant petitions the Tribunal to establish what it would consider to have been a reasonable period of time for a reimbursement to be effected or a decision to be rendered, and to order such relief as it may deem approrpiate in respect of interest which might have been earned on the sums due during the time they will have been in suspense."

Whereas, on 11 August 1975, the Respondent filed his answer, paragraph 11 of which read:

"After the Application had been filed, a re-examination of Applicant's claim showed that a notional return based on Schedule G (as Applicant desires), but including his gross UN emoluments for 1971 and 1972 (the propriety of which he disputes), results in a notional tax on his outside income of only $16,298.54, entitling him to a refund of $5,936.32. Consequently an additional amount of $2,572.95 has been paid to Applicant (see annex 36), leaving only $3,367.98 still in dispute."

Whereas the Applicant filed written observations on 9 September 1975;

Whereas the facts in the case are as follows:

On 1 April 1974 the Applicant, a United States citizen in the service of UNICEF at Geneva, Switzerland, addressed the following memorandum to the Chief of the Finance Section of UNICEF in New York:

"In accordance with Information Circular ST/ADM/SER.A/1741 of 4 January 1974, I am pleased to submit herewith a "Request for Settlement" of US Federal Income Tax for 1973, with attached forms 1040, 2555 and Schedule G.

"As will be noted from Form 2555, the salary and emoluments I have received from the United Nations during 1973 amount to $31,345.99. Being entitled to the exemption of $25,000 for Bona Fide Residents Abroad, the amount reported on Form 1040 as taxable income is consequently $6,345.99.

"Including the reported United Nations income, my total taxable income for 1973 is $59,877.11, on which I have paid a tax of $22,234.86. Excluding the United Nations income, my tax would have been computed by the Income Averaging method as shown in the attached Schedule G, which would have resulted in a tax liability of $12,930.56. As indicated in paragraph 4 of the above-mentioned Circular, I presume that I am consequently entitled to reimbursement of the difference between the tax I have paid and that which I would have paid if income from the United Nations had been excluded, i.e. $9,304.30.

". . ."

On 20 May 1974 the Deputy Chief of the Payroll Section of the United Nations, to whom the Applicant's request had been transmitted, replied as follows:

". . .

"A review of your tax return has been made and it appears that your 1973 US income tax liability would be lower if you calculated the tax using the income averaging method by filing Schedule G. Enclosed is a draft of Schedule G indicating an income tax of $16,982.92 instead of $22,234.86 as shown on your tax form. Our calculations may not be accurate since we do not have copy of your 1972 tax return in our files and therefore we will await your comments before any tax payment will be made in respect of United Nations earnings.

"I would also like to point out that the tax payment will be based on the difference in your 1973 tax with the United Nations earnings included and the United Nations excluded. United Nations earnings will not be excluded from the preceding base period years for the purpose of income averaging."

On 31 May 1974 the Applicant wrote the following letter to the Deputy Chief of the Payroll Section:

". . .

"I have noted your suggestion that my tax liability for 1973 would have been lower if I had calculated the tax by using the Income Averaging Method with Schedule G. Unfortunately, if the Averaging Method is chosen one loses the entitlement to exemption for income earned abroad under the provisions of Section 911 of the Internal Revenue Code (see Chapter B in the General Instruction

attached to Schedule G). This factor has been overlooked in your proposed calculation with the effect that the income for 1973 is understated by $25,000. A correct averaging of my 1973 income, taking all income into account as required for 1973 and the base period years, would result in a tax of $29,679.96 instead of the $22,234.86 which I have paid by taking the exemption of $25,000 and filing a joint return by the normal method.

"The crux of the matter now is your statement that 'United Nations earnings will not be excluded from the preceding base period years for the purpose of income averaging'. Such a position appears to contradict the principle defined in Paragraph 4 of Information Circular ST/ADM/SER.A/1741 of 4 January 1974, which is intended to '. . . place a staff member who is subject to taxation in the position that he would be in if his Government had acceded to section 18 *(b)* of the Convention on the Privileges and Immunities of the United Nations'. There is no time limitation in the enunciation of this principle, and, to be consistent, it would be logical that it should apply to the United Nations earnings during any period of time which may have a bearing on the staff member's tax liability.

"The simple fact is that if I were a staff member whose Government had acceded to Section 18 *(b)* of the Convention on the Privileges and Immunities of the United Nations, my tax return for 1973 would have been made by the Averaging Method as shown in the Schedule G already submitted to you, and the tax payable would have been $12,930.56. In the circumstances, I feel that the declared principle entitles me to reimbursement of the difference between the amount of tax which I have paid and that which I would have paid had my United Nations income not been subject to taxation, i.e.: $9,304.30.

"I presume that there exists an appeal or review body for such matters to which my case could be referred in the event you disagree with my position. I should be grateful for your advice as to the procedure to be followed in such event.

". . ."

On 17 January 1975 the Applicant was informed that reimbursement of his 1973 income tax had been made in accordance with the interpretation of the Payroll Section without prejudice to any decision to the contrary which might be received at a later date and on 21 January 1975 he accordingly accepted a cheque for $3,363.37 conditionally. On 18 February 1975 the Applicant asked the Secretary-General's agreement to submit an application directly to the Tribunal. On 10 April 1975 the Assistant Secretary-General for Personnel Services sent him the following reply:

"This is in reply to your letter of 18 February addressed to the Secretary-General concerning your claim for reimbursement of United States federal income tax for 1973.

"As you know, various services of the Secretariat have given lengthy and detailed consideration to your request that reimbursement be calculated as the difference between the amount of tax that you actually paid in accordance with the return attached to your request for settlement dated 1 April 1974 and the amount that would be payable on a notional return based on income-averaging (provided for in 26 US Code Secs. 1301–1305 and calculated on Schedule G to IRS Form 1040) in which your United Nations income would be set as zero for the 'computation year' (1973), as well as for the 'base period' years (1969–72). Using that computation you arrived at a reimbursement claim of $9,304.30. By computing reimbursement from a notional return prepared on the same basis as your actual return (i.e., one that does not use income-averaging), we arrived at the figure of $3,363.37, which was paid to you on 14 January 1975 and which you accepted without prejudice to your claim for the difference between the above two amounts.

"We consider that an income-averaging computation setting, as you claim, United Nations emoluments at zero for both the computation and the base period years would, in effect, permit you to benefit twice with respect to each of these base years: when you received reimbursement for taxes paid in respect to those years, and again in the computation year through the income-averaging formula; a result that would not follow if that formula were used without deducting United Nations emoluments for the base years but only for the computation year. The approach you wish to use would thus result not in placing you equitably into a position as close as possible to that of a national of a country that does not tax United Nations emoluments at all, but would actually give you an inequitable advantage over such staff members, as well as over other American staff members without outside income, or with outside income that is more evenly distributed. Indeed it can be shown that your reimbursement formula would generally give an advantage to American staff members whose outside income peaks during a single year over those whose income is evenly distributed, even though the income-averaging provision was included in the federal law merely to reduce the disadvantage suffered by those whose income is lumped in a single year and to set them more or less equal to those whose income is evenly distributed. For this very reason, and to avoid the anomalous result discussed above, the Internal Revenue Code specifically requires that for purposes of income-averaging certain incomes exempted during the base years (in particular 'Section 911 income') must be added back in making the computation outlined in Schedule G.

"As a result we are unable to agree, consistently with Staff Regulation 3.3 *(f)*, to any reimbursement to you in addition to the amount you have already received.

"Should you wish to challenge this decision of the Secretary-General, we agree, in accordance with paragraph 1 of Article 7 of the Statute of the Administrative Tribunal, that you may, as you requested, submit an Application directly to the Tribunal."

On 29 April 1975 the Applicant asked the Assistant Secretary-General for Personnel Services to review the decision in the light of the following observations:

". . .

"From the first part of the second paragraph of your letter, it appears that the rejection of my claim is based on the contention that I would 'benefit twice' in respect of the base period years of my income-averaging computation because of the 'reimbursement of taxes paid (to me) in respect of those years'. I should wish to point out that this is an erroneous premise inasmuch as no reimbursements of taxes were paid to me for any of the years in question, all United Nations income for those years having benefited from the exemption entitlement under Section 911 of the US Revenue Code because of bona-fide residence abroad. A situation of double benefit therefore does not exist.

"Before referring the matter to the Tribunal, I have thought to enquire if the decision would be subject to being changed in the light of the evident misapprehension on which it has been based, or if you wish it to stand as it is.

". . ."

On 19 May 1975 the Assistant Secretary-General for Personnel Services confirmed the decision to the Applicant in a letter reading:

". . .

"We, of course, understood that in your particular case you would not actually receive a double reimbursement payment from the United Nations in respect of any of the base period years in which you were able (and thus required) to take

a Section 911 exemption in respect of foreign-earned income. However, you would indeed benefit twice in respect of such years: once, by not having to pay tax for the year in question because of the exemption (which, from your point of view, has the same effect as if tax had been payable and had been reimbursed by the United Nations) and once again in the computation year through the income-averaging formula—if you were permitted to set your UN emoluments for the base year at zero. It was precisely this sort of double benefit that the Tax Code sought to eliminate by requiring that income exempted in a base year under Section 911 (and similar provisions) be added back in when making an income-averaging computation.

"For this reason the decision communicated to you in my letter of 10 April must stand."

On 11 July 1975 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant made his "Request for Settlement of US Federal Income Tax for 1973" in due form, in due time, and in accordance with the prescribed procedure.

2. His computation of the tax reimbursement due him by the United Nations was based on the principle of non-taxability of earnings from the United Nations as prescribed in section 18 *(b)* of the relevant Convention.

3. The aforementioned prescription does not bar the application of the principle of non-taxability of earnings from the United Nations to any period of time which may have a bearing on the computation of tax reimbursements due by the United Nations to staff members.

4. The negation by the Administration of this principle as a factor in the aforementioned computation is arbitrary and without legal foundation.

5. In consequence, he is entitled to the reimbursement by the United Nations of U.S. Federal Income Tax paid by him for the year 1973 in an amount representing the difference between the tax paid and that which he would have paid had he been in the position of a staff member whose Government had acceded to section 18 *(b)* of the Convention on the Privileges and Immunities of the United Nations.

Whereas the Respondent's principal contentions are:

1. The rule that the notional tax on outside income is calculated as "if United Nations earnings were excluded" cannot be applied indiscriminately to all situations arising under many different tax systems. A particular example of an existing formula in respect of which it would be inappropiate to use it is that providing for income-averaging since the principle on which income-averaging is based implies that the income in the base years should be genuinely lower than that in the computation year, so that the latter should correspond to a real peak.

2. It is clear that a taxpayer would benefit twice if permitted to reduce his taxable income both in his base years, and in respect of the same years in an income-averaging formula applied to a computation year. That the Applicant's approach leads to an unfair cumulation of benefits is equally clear when considered in the context of a refund calculation.

3. Acceptance of the Applicant's formula would lead to serious anomalies.

4. Nothing in the Applicant's individual situation justifies any departure from general principles in order to afford him special relief.

5. The delays in handling the Applicant's claim were caused by the novelty of his

assertions and by the complexity of the American tax legislation and of the issues of principle involved.

The Tribunal, having deliberated from 22 September to 10 October 1975, now pronounces the following judgement:

I. The Convention on the Privileges and Immunities of the United Nations (the "Immunities Convention"), adopted by the General Assembly on 13 February 1946 (United Nations, *Treaty Series,* vol. 1, p. 15), provides in section 18 *(b)* that "Officials of the United Nations shall . . . be exempt from taxation on the salaries and emoluments paid to them by the United Nations". However, when the United States of America acceded to the Immunities Convention on 29 April 1970, it made the following reservation:

> "Paragraph *(b)* of section 18 regarding immunity from taxation . . . shall not apply with respect to United States nationals and aliens admitted for permanent residence." (United Nations, *Treaty Series,* vol. 725, p. 362)

II. In order to place United Nations staff members whose United Nations salaries and emoluments (collectively, "income") are subject to national taxation in the same position as if the tax authorities to which they are subject were bound by section 18 *(b)* of the Immunities Convention, Staff Regulation 3.3 *(f)* authorizes refunds by the Secretary-General to such staff members. The procedure as to staff members subject to United States taxation in respect of 1973 is set forth in Information Circular ST/ADM/SER.A/1741, dated 4 January 1974, (the "1973 Information Circular"). In essence, the procedure is as follows: a staff member subject to United States federal income tax prepares a United States income tax return just as any ordinary person subject to United States tax would do (i.e., including all income whether United Nations or non-United Nations) and calculates and pays the tax to the United States Government. Such staff member then prepares a so-called "notional tax return", in which he excludes all United Nations income and calculates the United States tax that would be payable on such basis. The United Nations then reimburses such staff member for

> ". . . the difference between the total tax payable for the year with United Nations earnings included and the tax payable if United Nations earnings were excluded. *This will place a staff member who is subject to taxation in the position that he would be in if his Government had acceded to section 18* (b) *of the Convention on the Privileges and Immunities of the United Nations.*" (1973 Information Circular, para. 4.) (Emphasis supplied.)

III. During the period involved in this case the Applicant, a United States citizen, was a bona fide resident of Switzerland; in each of the years 1971 and 1972 his income from the United Nations was less than $25,000 and, since that amount of income earned abroad by a bona fide resident abroad is excluded from United States taxable income by Internal Revenue Code section 911, he was entitled to no reimbursement from the United Nations and applied for none. In the tax year 1973 the Applicant realized an unusually large capital gain from sources other than the United Nations and paid a United States federal income tax of $22,234.86 on taxable income of $59,877.11.

IV. In the case of a taxpayer realizing an unusually large amount of taxable income in one year (the "computation year"), sections 1301–1305 of the Internal Revenue Code and regulations 1.1302–1.1304 permit the taxpayer to compute his tax under the "income averaging method". Under this method his tax for the "computation year" is in effect based, subject to various adjustments, on an averaging of his taxable income for the "computation year" with his taxable income for the four preceding years (the "base period years").

One might have expected the Applicant to have utilized the income averaging method for 1973, since his taxable income for 1973, $59,877.11, greatly exceeded his taxable income for each of the base period years; thus:

1969	$ 4,264.24	(excluding $8,307.81 non-United Nations income earned abroad)
1970	4,965.54	(excluding $11,671.91 non-United Nations income earned abroad)
1971	8,469.15	(excluding $9,016.93 United Nations income, and $7,247.63 non-United Nations income, all earned abroad)
1972	4,498.31	(excluding $23,645.74 United Nations income earned abroad)
1973	59,877.11	(excluding $25,000 United Nations income earned abroad—his total United Nations income earned abroad was $31,345.99, but only $25,000 was excludable, the $6,345.99 being taxable)

However, Internal Revenue Code sections 1304 *(b)* (2) and 1302 *(b)* (2) (A) (i) require, in case a taxpayer uses the income averaging method, that he include, in the taxable income of *each* of the five years, *all* the income earned by him abroad which is ordinarily excluded from taxable income by section 911. If the Applicant had used the income averaging method for 1973 he would thus have had to include, as to each of the five years 1969–1973, inclusive, the very substantial amounts of excluded income which he had earned abroad during those years, and his tax for 1973 would have exceeded the $22,234.86 he actually paid for that year. Quite naturally, therefore, he did not apply the income averaging method; indeed, a United Nations official claiming a refund is under an obligation to minimize his actual tax to be paid. In the form for "Request for Reimbursement", the official must certify that "I have minimized my income tax for the year [applicable] and have utilized all exemptions and deductions to which I am entitled and joint returns when such would result in lower taxes" (*see, e.g.,* Form of Request for Reimbursement, F.65/A(1–70), para. 2).

However, in his notional tax return for 1973, which of course omitted all United Nations income, the Applicant did use the income averaging method, which resulted in a notional United States income tax of $12,930.56 (lower than would have been the case if he had not used the method) or $9,304.30 less than the $22,234.86 he actually paid in respect of 1973. He accordingly claims a refund of $9,304.30.

V. The Respondent concedes that income averaging may be used for notional tax return purposes but contends that United Nations income must be included in the income averaging calculations. According to the Respondent the Applicant's notional tax would on such basis be $16,298.54 (instead of the $12,930.56 figured by the Applicant), entitling him to a refund from the United Nations of $5,936.32 instead of the $9,304.30 the Applicant claims). This amount has been paid by the Respondent to the Applicant, leaving $3,367.98 still in dispute.

The Respondent's contention that United Nations income must be included in a notional return using the income averaging method is based on the provisions of section 1302 *(b)* (2) (A) (i) of the Internal Revenue Code, mentioned above, which provide that in income averaging there must be included, in the income of the years involved, foreign earned income which by section 911 is ordinarily excluded (up to $25,000 a year for a bona fide non-resident such as the Applicant) from taxable income.

Needless to say, section 1302 contains no such provision as to including income from the United Nations in the averaging process, and the Applicant's notional income averaging return was compiled in strict accordance with paragraph 4 of the 1973 Information Circular quoted in II above ("the tax payable if United Nations earnings were excluded") and in strict accordance with the Internal Revenue Code as applied to his non-United Nations income.

The Respondent argues in effect that the purpose of the United Nations refunding

procedure is to place a United States citizen in the same position he would be in if the United States had acceded to the Immunities Convention, thereby exempting income from the United Nations from taxation, and that if the United States had so acceded it would have provided that income from the United Nations would have to be included in income averaging. This is pure conjecture, and irrelevant as regards a notional return which precisely complies with the 1973 Information Circular, prepared by the Respondent and binding upon him.

Also, the closest analogy is with respect to interest on the obligations of United States states and municipalities, which, by decision of the Supreme Court of the United States, are constitutionally (and by statute specifically) exempt from taxation by the Federal Government. The Internal Revenue Code does *not* provide that income from such interest must be included in income averaging.

If the United States were to accede to the Immunities Convention without reservation, income from the United Nations would, by treaty, be completely exempt from United States income tax, and it would presumably be a violation of that treaty if tax exempt income were to be included in any income averaging calculation—since such inclusion would have the effect of increasing the taxpayer's tax. In point is the memorandum of the Legal Counsel of the United Nations, dated 16 October 1969, directed to the Director of the Accounts Division, Office of the Controller (*United Nations Juridical Yearbook* 1969, p. 226), holding that a Member State which is a party to the Immunities Convention may not take income received by a United Nations staff member from the United Nations into account in establishing the rate of tax on the staff member's non-exempt income; to do so would make the exempt income part of the legal base for taxation, which would constitute taxation on United Nations salaries forbidden by the Immunities Convention. The memorandum points out that UNESCO has taken the same position and that the Court of Justice of the European Communities has held likewise with respect to the virtually identical language of the Protocol on the Privileges and Immunities of the European Coal and Steel Community.

The Respondent's conjectures as to what the United States might do if it were to adhere to the Immunities Convention without reservation are therefore not only irrelevant but contrary to what would be the legal position.

VI. The Respondent sees a "double benefit" from the elimination of income from the United Nations from the base period income returns and also in respect of the same years in an income-averaging formula applied to a computation year. One might as well say that there is "double taxation" because an item of income is included in taxable income in the base period income returns and again in respect of the same years in an income-averaging formula applied to a computation year. In fact, in the case of *any* averaging formula, both income exclusions of *every* character and income inclusions of *every* character are involved in two sets of calculations; the first results in actual taxation in respect of the base period year in question, and the second does not affect that base period year but is merely a component in the formula which computes the computation year tax.

VII. For the above reasons, the Tribunal rejects the contentions of the Respondent and finds that the Applicant is entitled to reimbursement in the amount of $3,367.98.

VIII. United States nationals customarily receive reimbursement in respect of United States income taxes on their United Nations salaries *before* those taxes are due in full—in the case of taxpayers on the calendar year base, full reimbursement is normally made before April 15. The Applicant, who is on a calendar year basis, submitted his Request for Settlement of Income Tax 1973 on 1 April 1974. The questions presented were difficult, but the Tribunal sees no reason why interest should not be paid from the date when reimbursement was due, and accordingly awards the

Applicant interest on $3,367.98 at the rate of 6 per cent per year from 15 April 1974 to 30 June 1975, and thereafter at the rate of 9 per cent per year until payment, these being the interest rates applicable under the Internal Revenue Code.

IX. The Tribunal accordingly orders the Respondent to pay the Applicant the sum of $3,367.98, plus interest thereon at the rate of 6 per cent per year from 15 April 1974 to 30 June 1975 and thereafter at the rate of 9 per cent per year until payment.

(Signatures)

R. VENKATARAMAN
President

Francisco A. FORTEZA
Member

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

New York, 10 October 1975

Judgement No. 208

(Original: English)

Case No. 201: Broadhurst

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

Request of a former technical assistance expert for payment of repatriation travel undertaken after he had resigned on the ground of ill-health before completing one year of service.

Fact that the Applicant, contemporaneously with his delivery of his letter of resignation, stated that he was resigning for reasons of ill-health.—Staff Rule 207.24.—Recognition by the Respondent of the entitlement of the Applicant to reimbursement of his travel costs if medical grounds for his departure were established.—Proof of the existence of medical grounds.—Contention of the Respondent that the Applicant should have asked for sick leave instead of resigning on the ground of ill-health.—Irrelevance of the contention.—Conclusion of the Tribunal that the Applicant has established medical grounds for his departure from the duty station.—Rescission of the contested decision and award to the Applicant of his travel expenses according to the Staff Rules.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza, alternate member;

Whereas at the request of Francis Eric Broadhurst, a former technical assistance expert of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 7 February 1975, 7 March 1975, 15 May 1975, 4 July 1975, 30 September 1975, 15 January 1976 and 15 February 1976 the time-limit for the filing of an application to the Tribunal;

Whereas, on 3 February 1976, the Applicant filed an application the pleas of which read as follows: