

“The Secretary-General may, in appropriate cases, arrange for the coverage of staff members who are locally recruited under an applicable national social security scheme, in which case the provisions of these rules shall not apply to such staff members.”

It appears from the above text that the Secretary-General has the option to arrange for coverage of locally recruited staff members under applicable national social security schemes and exclude such staff members from the application of Appendix D to the Staff Rules. It is clear from the proceedings that Appendix D to the Staff Rules has been applied to the Applicant and that no alternative arrangement under a national social security scheme has been made. The Tribunal therefore considers that the provision quoted above has no relevance to the case.

VII. The Tribunal observes that in any event no new material or evidence has been submitted by the Applicant which had not been taken into account by the Medical Board in August 1973.

VIII. For the foregoing reasons, the Tribunal concludes that the recommendation of the Advisory Board on Compensation Claims dated 8 July 1975 is not vitiated by any irregularity of procedure and that the Secretary-General's decision dated 4 September 1975 approving that recommendation was within his discretionary authority.

IX. The application is therefore rejected.

*(Signatures)*

R. VENKATARAMAN  
*President*

Francis T. P. PLIMPTON  
*Vice-President*

Francisco A. FORTEZA  
*Member*

*New York, 5 October 1976*

Roger STEVENS  
*Alternate Member*  
Jean HARDY  
*Executive Secretary*

## Judgement No. 212

*(Original: French)*

**Case No. 207:**  
**Ayah**

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

*Request for rescission of a decision refusing to award a UNITAR fellowship.*

*Objection based on irreceivability.—The Respondent is in fact contesting the competence of the Tribunal by invoking article 2, paragraphs 1 and 2, of the Statute of the Tribunal.—Information Note of the UNITAR Attachment Programme.—Steps taken by the Applicant to submit his candidature.—Letter from the Applicant showing that he did not consider that a promise binding on UNITAR had been made to him orally by one of its officials.—The Applicant could not reasonably think that the Respondent was legally bound by information given orally by one of his officials.—Conclusion of the Tribunal that the application does not fulfil the requirements of article 2, paragraphs 1 and 2, of its Statute.—Allegations of the Applicant that he had been the victim of racial bias.—Refutation of those allegations*

*by the Director-General of UNITAR.—Criticism of the way in which UNITAR handled the case.—The Tribunal is not competent to consider the application.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 30 June 1976, Simon Okolonkwo Ayah filed an application which 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 25 August 1976;

Whereas, in the pleas of his application, the Applicant

“... respectfully submits that he is entitled to a judgement as a matter of law pursuant to article 9 (1) of the Statute of the Tribunal as follows:

“(a) Because of the questionable nature of the letter of Mr. Hawkins on 21 January 1975 the decision embodied therein is unauthorized, arbitrary and illegal, and the Tribunal should declare the said decision a nullity.

“(b) A compensation in the sum of \$3,300 representing the total sum of salary for January to June, 1975 at \$550 per month as salary due the Plaintiff in the Internship programme.

“(c) And that Plaintiff recover the costs and disbursements of this action and that Plaintiff have such other and further relief as may be proper and just”.

Whereas the Respondent filed his answer on 14 September 1976 and provided additional information at the request of the Tribunal on 28 September 1976;

Whereas the Applicant filed written observations on the Respondent's answer on 4 October 1976;

Whereas at the request of the Tribunal the Respondent submitted comments on those observations on 5 October 1976;

Whereas the facts in the case are as follows:

In August 1974, the Applicant had an interview with Mr. Millar-Craig, Fellow and Bursar of UNITAR (United Nations Institute for Training and Research), to whom he expressed a desire to participate in a UNITAR training programme. On 28 December 1974, he wrote to the Executive Director of UNITAR to inquire about the status of his application and confirm his desire to participate in the programme. On 20 January 1975, he met with Mr. Hawkins, Director of Training of UNITAR, who on the following day sent him a letter in which, referring to their conversation of the previous day, he stated:

“As I promised, I have checked with Mr. Millar-Craig and with the files and, while we continue to be interested in your work and would like to stay in touch, it is clear that there was very little likelihood at the time of your first visit that a position in our internship programme could have been offered to you. I am afraid that that remains the situation now with our present commitments. . . .”

On 28 January 1975, the Applicant replied, stating, among other things:

“... .”

“As far as I can recall, when I met with Mr. Millar-Craig last August I was told that four positions in your internship programme were available and that four candidates were in the process of being considered. It was made clear to me that my application would be number one on the waiting list and this information was

repeated to the secretary of Mr. Millar-Craig. I was then told to check back on this in December 1974 which was how I came in contact with you. I also spoke with the Executive Director of the Agency on this on 17 December 1974, and he advised me to send him a letter (you have this letter).

"Therefore, I do not understand what you mean by 'very little likelihood' when you told me on 20 January 1975 that five internees are currently on the programme.

"I would ask you to discuss this matter with the Executive Director; and I have forwarded a copy of this letter to him for this purpose. Also, should you require a letter of recommendation from my home government I will be glad to request it."

On 1 May 1975, the Applicant informed the Executive Director of UNITAR that he intended to file with the Tribunal an application for compensation in the amount of \$3,300 for failure to perform contractual obligations and for compensation for indeterminate damages on the basis of the Staff Rules and Article 101, paragraph 3, of the United Nations Charter, taking into consideration the following factors:

"1. That a promise made in good faith should be respected.

"2. That Mr. Gordon Hawkins acted *ultra vires* his functions in making the decision in the name of UNITAR without proper consultation.

"3. That Mr. Gordon Hawkins demonstrated during our meeting of 20 January 1975, a strong racial resentment and bigotry.

"4. And that I had suffered extensive damages because of your failure to perform contractual obligation."

In a reply dated 20 May 1975, the Executive Director of UNITAR informed the Applicant that his application had been given careful and sympathetic consideration but that it had not been possible to include him in the training programme because the number of posts was very limited and there were other candidates whose claims had been stronger than his; the Executive Director added:

"In March, before I left on a business trip, there were six intern fellows of whom three were West African and one was from Nigeria. Although this is accidental, yet I think you would agree that it shows that I would definitely not allow any racial discrimination in the Institute.

"Mr. Millar-Craig has assured me that he did no more than inform you that he regarded you as a good candidate, whose claims would be favourably considered. He has always been careful to inform all candidates that he was not in a position to make any firm promises, and I am sorry if his desire to be sympathetic when he met you led to a misunderstanding on your part that you could count on being awarded a fellowship. He is particularly interested in West African scholars as he served for over twenty years in that region."

On 1 June 1975, in a further letter to the Executive Director of UNITAR, the Applicant stated that even if a UNITAR training fellowship were to be offered to him in the current circumstances he would not accept it, but that he would insist that the injuries he had sustained as a result of the failure of UNITAR to perform its contractual obligations should be rectified. In letters dated 1 and 30 June 1975, the Applicant requested the Secretary-General to consent that his application should be submitted directly to the Tribunal. On 21 July 1975, the Officer-in-Charge of Personnel Services informed the Applicant that the Secretary-General saw no ground for waiving the condition stipulated in article 7, paragraph 1, of the Statute of the Tribunal. On 8 August 1975, the Applicant informed that official that he would submit his case to the Joint Appeals Board before 1 October 1975. On 19 January 1976, the Applicant filed an appeal with the Joint Appeals Board, which submitted

its report on 31 March 1976. The considerations and conclusions of that report read as follows:

*“Considerations*

“12. The Board convened on 11 March 1976 and again on 22 March 1976 to consider the receivability of the appeal in view of the question as to its competence in the case. As provided in Staff Rule 111.1 (c), ‘where its competence is in doubt, the Joint Appeals Board itself shall decide’.

“13. The Board notes that it is established under Staff Regulation 11.1 to advise the Secretary-General ‘in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment including all pertinent regulations and rules, or against disciplinary action.’ Thus, by its terms of reference and by its nature, the Board’s jurisdiction is limited to staff members only. The question remains whether the appellant can be considered to be a staff member to whom the Board is open.

“14. For the purpose of determining the appellant’s standing before it the Board has carefully reviewed his record as an applicant for an internship with UNITAR. The Board took note of the fact that he met with an interviewer for the internship programme of UNITAR who may have expressed some interest. An appointment was, however, never made. Moreover, the Board finds no evidence of any commitment for acceptance in the internship programme on the part of UNITAR. Even if an oral promise had been made, the Board notes that such a promise which did not emanate from the authority competent to conclude the contract and of which, moreover, no minute or record was kept, was not sufficient to constitute a contractual obligation which is binding on the respondent. The appellant remained no more than an applicant for an internship until he was advised that it could not be offered to him. The Board finds nothing in this process that gave rise to a contractual relationship with the Organization in such a way as would confer upon him the status of a staff member.

“15. In view of the above, the Board notes that the question of possible application of the provisions of the Staff Regulations and Rules governing the appointment procedure does not arise. In its opinion, therefore, the case also affords no basis for adjudication in terms of non-observance of the pertinent Staff Regulations and Rules.

*“Conclusions*

“16. In accordance with Staff Rule 111.1, the Board unanimously finds that it has no competence in this case and that the appeal of appellant is non-receivable on the ground of his lack of *locus standi* before the Board.”

On 30 June 1976, the Applicant filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The application is receivable pursuant to article 7, paragraph 1, of the Statute of the Tribunal. Moreover, the Tribunal is competent to receive the application on the basis of article 2, paragraphs 1 and 2 (b), of that Statute.

2. The Secretary-General had no genuine basis for refusing to consent that the application should be submitted directly to the Tribunal and thus require that it should be first submitted to the Joint Appeals Board. Since the Board is an instrument created by the authority of the Secretary-General, the Applicant relied on the advice of the Secretary-General, believing that his intention was that the dispute would be remanded to the Joint Appeals Board for settlement.

3. The Applicant was not present and was not invited to be present at any stage

of the proceedings before the Joint Appeals Board, and was not provided with details of the proceedings before the Board took a vote on his appeal.

4. The letter of Mr. Hawkins dated 21 January 1975 is not an administrative decision within the terms of the Staff Regulations and Rules. It is only a decision intended primarily to interfere with the application of Staff Regulation 4.3, which stipulates that "selection shall be made on a competitive basis". Such interference by Mr. Hawkins with the application of that regulation forms the basis of the present dispute.

5. The decision of Mr. Hawkins was motivated largely by racial bias.

6. The Applicant has been discriminated against by the Respondent by virtue of the latter's failure to conform with the established procedures regarding appointment, in clear violation of the provisions of the United Nations Charter, specifically Articles 8, 101, paragraph 1, and 101, paragraph 3.

7. The Applicant was illegally deprived of his rightful participation in the UNITAR programme, and of stipends relating to such participation to which he is entitled by law, and has suffered indignity as a result.

Whereas the Respondent's principal contentions are:

1. As to the receivability of the application:

(a) The application does not fulfil the conditions laid down in article 2, paragraph 2, of the Statute of the Tribunal in so far as the Applicant, as he recognizes himself, is not and has never been a staff member of the United Nations Secretariat;

(b) As no contractual or employment relationship has ever been established between the Applicant and the United Nations, the subject-matter of the application is likewise outside the competence of the Tribunal: article 2, paragraph 1, of the Statute of the Tribunal confirms that the application is not receivable inasmuch as the Applicant's claim for damages alleging arbitrary denial of his application for an internship with UNITAR is clearly unrelated to the breach of a contractual or statutory obligation, which are the only matters which may be brought before the Tribunal.

2. As to the merits:

(a) The basis of the claim for damages brought by the Applicant is a groundless and irresponsible allegation of racial bias which should be qualified as frivolous. Since the Applicant is clearly not the holder of a contract of employment or the beneficiary of a contractual promise, he cannot invoke a breach of the Staff Regulations and Rules applicable to staff members of the United Nations;

(b) Since UNITAR does not pay any sort of stipend to interns, the conditions attaching to the awarding of internships provide no basis for a claim for damages.

The Tribunal, having deliberated from 27 September to 11 October 1976, now pronounces the following judgement:

I. Although the Respondent requests the Tribunal "to decide that the application is not receivable" and adduces many arguments concerning the non-receivability of the application, he is in fact contesting the competence of the Tribunal, which is a different issue. The Respondent bases his argument on article 2, paragraphs 1 and 2, of the Statute of the Tribunal. There is thus disagreement between the parties concerning the competence of the Tribunal in this case and it is for the Tribunal to settle the matter by virtue of article 2, paragraph 3, of its Statute. At the same time, the Tribunal notes that the formal conditions for receivability set forth in article 7 of its Statute have been fulfilled.

II. Article 2, paragraphs 1 and 2, of the Statute of the Tribunal provides:

"1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members

of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.

"2. The Tribunal shall be open:

"(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;

"(b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied."

In order to contest the competence of the Tribunal, the Respondent invokes these two paragraphs, claiming that the Applicant is not a person having access to the Tribunal by virtue of paragraph 2 and that the case is not one of those covered by paragraph 1.

The Applicant does not claim to be or ever to have been a staff member of the United Nations. He simply states that, having visited UNITAR on 22 August 1974, he expressed the desire to participate in the UNITAR Attachment Programme and that Mr. Millar-Craig, a UNITAR official, informed him on that occasion that four candidates were being considered and that the Applicant's name would be number one on the waiting list.

III. The Respondent has provided the Tribunal with an "Information Note on the UNITAR Attachment Programme", which is reproduced below *in extenso*:

"1. The United Nations Institute for Training and Research (UNITAR) operates an Officer Attachment and Internship Programme. Under this programme visiting scholars and interns will be enabled to carry out research or be associated with training or administration within UNITAR.

"2. The United Nations Institute for Training and Research is established by the Secretary-General as an autonomous institution within the framework of the United Nations for the purpose of enhancing, by the performance of the functions described hereafter, the effectiveness of the United Nations in achieving the major objectives of the Organization, in particular the maintenance of peace and security and the promotion of economic and social development.

*"Range of UNITAR activities"*

"3. The Institute carries out research and provides training related to the functions of the United Nations and to the above objectives.

"4. UNITAR's current research is mainly in the areas of: United Nations structures and procedures, conflict resolution (peaceful settlement of disputes), international economic co-operation, communications and information, international law, the implications of developments in science and technology for international organizations, environmental problems and studies on future developments which have implications for the organizations in the United Nations system. UNITAR's training, meant primarily for diplomats and national and international officials, consists, *inter alia*, of training in diplomacy, international law and international economic co-operation and procedures. UNITAR's administrative activities include project administration, finance and personnel.

*"Duration and extent of the Programme"*

"5. The period of attachment is generally between two months and one year. It is flexible and varies depending on the type of attachment, the subject selected and other relevant considerations.

"6. In view of the need to ensure adequate professional guidance and the limited office space at UNITAR's disposal, only a limited number of applicants can be accepted.

*"Financial aspects*

"7. UNITAR does not pay any stipend or allowance whatsoever to those accepted under this programme. Stipends, travel costs and living expenses, including unexpected expenses such as for medical or hospital services, will be the responsibility of the individual scholar or intern and/or the sponsoring institution or Government.

*"Eligibility for participation*

"8. Visiting scholars should be post-doctoral scholars and academics with an interest in the subjects dealt with by UNITAR. Interns are normally expected to be graduate students with an outstanding academic record in such fields as international relations and law, government, and economic and social sciences. Persons possessing a good degree in the same or other disciplines are acceptable for administrative and training internships.

"9. In order to be considered for selection as a visiting scholar or intern, a candidate should be sponsored either by his Government or by a university or other institution with which he is connected.

*"Procedures for application*

"10. Applications under the Programme should be made on the prescribed application form. Application forms are obtainable from the Training Department, UNITAR, 801 United Nations Plaza, New York, N.Y. 10017. They should be completed in triplicate and submitted through the Government or the sponsoring university or institute to the Executive Director of UNITAR.

"11. An applicant should indicate as specifically as possible the work he intends doing at UNITAR. The applications should be accompanied by the applicant's curriculum vitae and particulars of publications and other scholarly achievements which might be useful in determining the merits of the candidature. (Copies of publications should be sent together with the application, if possible).

"12. The communication from the Government, university or institute sponsoring a candidate should include a specific statement to the effect that no financial responsibility will devolve upon UNITAR.

*"Conditions governing awards*

"13. Every award under the Officer Attachment Programme is subject to the applicant being medically cleared by the United Nations Health Service. It is also subject to his agreeing to abide by the normal conditions of work applicable to visiting scholars or interns as determined by UNITAR.

*"General*

"14. While, in general, interns and visiting scholars will be attached to UNITAR Headquarters in New York, a few may be attached, from time to time, to UNITAR's European Office in Geneva.

"15. This programme is in no way connected with recruitment for employment at the Institute or the United Nations."

In his written observations, the Applicant states that he was not informed of that note and assumes that it was not released until 1976. On the other hand, the Respondent, in his comments of 5 October 1976, states that that note had in substance been in effect since 1970 at least.

IV. The Applicant states in his application that during his first visit to UNITAR

he was given an application form to complete and return. He does not claim to have completed or returned that form, and according to the Respondent UNITAR has no record of an application form having been submitted by Mr. Ayah. On the other hand, according to the information provided to the Tribunal by the Respondent, the only application form received from Mr. Ayah is one submitted by him on 15 October 1974 with a view to obtaining employment with the United Nations.

On 28 December 1974, more than four months after his first visit to UNITAR, the Applicant addressed the following letter to the Executive Director of UNITAR:

"I come humbly to request your decision on my application for a position in your internship programme. This programme, as I was informed will be commencing in January, 1975 and is intended for a period of six months. I am aware that participation in the programme does not oblige the United Nations to provide employment for any of the internees involved.

"I need to participate in your internship programme because it will offer me the practical experience which should complement my present academic programme. I am a Ph.D student in International Relations at the New York University, and my present concentration is on Conflict resolution in the United Nations.

...

"I am eloquent in both English and French. I am a Nigerian citizen.

"In passing, I would like to mention that I was first introduced to you in your office in August, 1974 by your assistant (from Sri Lanka) who is in charge of Internship programme.

"I am further confirming that I am interested in participating in this six-month internship programme. I do sincerely hope you would give this letter your most favourable decision."

This letter shows that when he wrote it the Applicant did not consider that a promise binding on UNITAR had been made to him orally by one of its officials. Only later, in the letters he addressed to UNITAR on 1 May and 1 June 1975 respectively, did the Applicant assert that "a promise made in good faith should be respected" and that "a promise does not necessarily require to be committed in writing; there may be certain implied actions to justify its existence". It was obviously those considerations which prompted the Applicant to file his application.

V. The Tribunal considers that the Applicant could not reasonably think that the Respondent was legally bound by information given orally by one of his officials. In any event, that information could not be interpreted as entitling the Applicant to an internship with UNITAR. The Applicant would be even less justified in interpreting it as entitling him to employment with the United Nations. He was, indeed, fully aware of that fact, since in his letter of 28 December 1974 he stated: "I am aware that participation in the programme does not oblige the United Nations to provide employment for any of the internees involved".

The Tribunal concludes that the application does not fulfil the requirements of article 2, paragraph 1, of the Statute and that, moreover, the Applicant is not "a staff member of the Secretariat of the United Nations" nor "any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied" in the terms of paragraph 2.

VI. The Tribunal also notes that the only provision whose non-observance the Applicant invokes is Staff Regulation 4.3, which provides:

"In accordance with the principles of the Charter, selection of staff members

shall be made without distinction as to race, sex or religion. So far as practicable, selection shall be made on a competitive basis."

The Tribunal, which attaches the greatest importance to this regulation, deems satisfactory the letter of 20 May 1975 in which the Executive Director of UNITAR refuted the allegations of the Applicant, who complained that he had been the victim of racial bias. In his letter the Executive Director wrote, *inter alia*:

"I was also sorry to learn that you considered that Mr. Hawkins had displayed racial bias during your interview. I am quite sure from my knowledge of Mr. Hawkins that this was due to a misunderstanding on both sides; he has been working harmoniously with people of all races since he came to the Institute last year.

"...  
 "In March, before I left on a business trip, there were six intern fellows of whom three were West African and one was from Nigeria. Although this is accidental, yet I think you would agree that it shows that I would definitely not allow any racial discrimination in the Institute.

"Mr. Millar-Craig has assured me that he did no more than inform you that he regarded you as a good candidate, whose claims would be favourably considered. He has always been careful to inform all candidates that he was not in a position to make any firm promises, and I am sorry if his desire to be sympathetic when he met you led to a misunderstanding on your part that you could count on being awarded a fellowship. He is particularly interested in West African scholars as he served for over twenty years in that region."

In his reply of 1 June 1975, the Applicant indeed acknowledged: "I never indicated at any time that racial discrimination is a policy of UNITAR".

VII. The Tribunal must, however, observe that the way in which UNITAR handled the case warrants certain reservations. By failing to insist that the Applicant submit a written application, UNITAR may have given him the impression that candidatures were not subjected to an impartial and systematic examination. Moreover, as a result of uncertainty about UNITAR's practice with regard to the remuneration of interns, the Applicant may have believed that he would receive emoluments if he was accepted as an intern. The Tribunal confines itself to observing that those practices do not affect its competence with regard to the case.

VIII. For the foregoing reasons, the Tribunal declares itself not competent to consider the application.

*(Signatures)*

Suzanne BASTID  
*Vice-President, presiding*

Francisco A. FORTEZA  
*Member*

*New York, 11 October 1976*

Endre USTOR  
*Member*

Jean HARDY  
*Executive Secretary*