

However, considering the lapse of time, the tortuousness of further prolonging this litigation and the detailed examination of the contested periodic report made by the Joint Appeals Board and by the Tribunal, the Tribunal concludes that the ends of justice will be met if the Tribunal, rather than remanding the case for further proceedings, orders that this Judgement be incorporated in the Applicant's dossier and service record and be attached to, and regarded as supplementary to and corrective of, the contested periodic report.

The Tribunal accordingly so orders.

XIII. The Tribunal regards the second sentence of article 9, paragraph 1 of its Statute providing for the fixing of compensation as an alternative to specific performance as inapplicable to this case.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Francis T. P. PLIMPTON
Vice-President

Geneva, 26 April 1977

Endre USTOR
Alternate member

Jean HARDY
Executive Secretary

Judgement No. 224

(Original: English)

Case No. 208:
Aouad

**Against: The United Nations
Joint Staff Pension
Board**

Request of a former staff member of WHO for payment of a disability benefit.

Limitation of the jurisdiction of the Tribunal to the allegations of non-observance of the Pension Fund Regulations.—Competence of the ILO Administrative Tribunal when the dispute relates mainly to the interpretation of the Applicant's contract and of the Staff Regulations and Rules applicable to him.

—Irrelevance of the Applicant's averments relating to his claim for reinstatement in WHO.—The Tribunal cannot entertain the Applicant's compensation claim against WHO for alleged service-incurred illness.

Article 34 (a) of the Pension Fund Regulations.—An affirmative ruling on the Applicant's claim for a disability benefit would amount to a finding that he was incapacitated for further service.—Request for reinstatement pending before the ILO Administrative Tribunal.—Need to avoid the situation which would arise if the Tribunal found the claim for a disability benefit in the Applicant's favour and the ILO Administrative Tribunal found the claim for reinstatement in the Applicant's favour.—Plea of the Applicant that the Tribunal grant him the disability benefit temporarily and immediately.—Such relief cannot be granted.—Decision of the Tribunal to defer its consideration of the case and to direct that the judgement be brought to the notice of the ILO Administrative Tribunal.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francisco A. Forteza;

Whereas, on 12 October 1976, René Aouad, a former staff member of the World Health Organization, hereinafter called WHO, filed an application the pleas of which read as follows:

"1. I request the Tribunal to dismiss purely and solely the decision taken by the Standing Committee at its July [1976] session (the exact date was never notified to me) because the communication of that decision was made after the 60-day statutory delay, and to confirm the decision taken by the WHO Staff Pension Committee at its January [1976] session.

"2. I request the Tribunal to order the Pension Fund to pay me forthwith all the arrears of the disability benefit due to me since my separation from service on 31 March 1975, plus the interests on these arrears starting from January 1976, because of the deliberate obstruction by the Secretary of the Board since that date of January 1976 when the decision of the WHO Pension Committee to grant me an invalidity pension was communicated to him.

"3. If the Tribunal decides to examine the substance of the matter, I request that he orders the Pension Board to submit to him my complete file, including all the medical certificates and statements and the accompanying documentation.

"4. In view of my material hardship, my physical condition and my mental health, I request the Tribunal, in the event that he decides to examine at length the substance of the matter, to grant me temporarily and immediately that disability benefit, on the understanding that I will refund it if the International Labour Organisation Administrative Tribunal reinstates me in my functions with WHO.

"5. I request the Tribunal to take particular consideration of my mental condition, which results directly of my last period of service and which is steadily worsening due to the lack of solution.

"6. I also ask the Tribunal to consider that at my age and in my condition, I have absolutely no alternative for a livelihood than a disability benefit (unless the ILO Tribunal orders my reinstatement in my former functions).";

Whereas the Respondent filed his answer on 14 January 1977;

Whereas the Applicant filed written observations and submitted additional documents at the request of the Tribunal on 15 February 1977;

Whereas additional documents were filed at the request of the Applicant by WHO on 16 and 24 February 1977 and by the United Nations on 1 March 1977;

Whereas the Applicant filed additional written observations on 22 February and 12 April 1977;

Whereas, on 19 April 1977, the Respondent filed at the request of the Tribunal additional information regarding action taken by the WHO Staff Pension Committee subsequent to a letter dated 16 October 1975 from the Director of the Medical Service of WHO to the Applicant requesting him to submit medical reports;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 20 September 1959 and was transferred to WHO in May 1970 under a five-year appointment as Senior Translator at the P-4 level in the WHO Regional Office for the Western Pacific at Manila, Philippines. In August 1974 his appointment was extended up to retirement age (August 1978). On 23 December 1974 the Applicant addressed to the Director-

General of WHO a memorandum entitled "Compensation for service-incurred illnesses" which read in part as follows:

"In accordance with the provisions of Rule 380 of the WHO Manual, please find hereafter my claims for compensation for service-incurred illnesses.

"On 16 August 1974, while performing my duties in my office, I was struck suddenly with an attack of Bell's Palsy on my right side. I had suffered a similar attack four years ago during my official functions, that time on the left side.

"I was hospitalized the same day and the days thereafter, and was submitted to complete tests and treatment. After my discharge that treatment continued daily during two months, and included several drugs, injections, infrared, sound-waves, electrotherapy, physiotherapy and acupuncture. There being no improvement, I was sent to the Massachusetts General Hospital in Boston, under the care of Dr. Raymond Adams, a foremost neurologist. There I was submitted to exhaustive tests, which revealed no organic cause of my condition, and Dr. Adams told me that there was no remedy and that the only thing to do was to wait for a possible improvement after a number of months. He added that in any case there would be probably permanent after-effects developing thereafter, as it happened on my left side starting six months after the apparent recovery, and he confirmed the diagnosis given by Dr. Lopez of Manila, Dr. Johnson of Vancouver, and Drs. Sterkers and Davaine of Paris, throughout the years, that my condition on the left side has become irremediable.

". . .

"Upon my return to Manila at the beginning of December, and due to the persistent blurring of my right eye and tear running, the medical referee sent me to Dr. Espiritu for a complete eye examination, which revealed the softening of the eyeball and the impairment of the retina and the optic nerve, with a consequent partial loss of vision. I was given several drugs and am under treatment, with no result to date. . . .

"My condition has particularly serious implications in the discharging of my duties as a translator-interpreter, which put constant strain on the eyes and speech. My affected right eye is normally twice as good as my left eye.

"I believe that the air-conditioner in my office is responsible of both my bouts of Bells' Palsy. Several persons had already told me so on the first instance four years ago, but as the consensus of the WPRO [Western Pacific Regional Office] doctors was that my condition would recover completely if slowly, I did not press the matter. I had absolutely no idea that my apparent recovery, six months after the onset of the illness, would be followed by a progressive after-shock, whose permanency was only established after several years, and I am not sure that it is not worsening. This fact is of prime importance when considering the notice delay mentioned in Section IV.26 of Annex E of the WHO Manual.

". . .

"I am in my 57th year and my age makes an improvement of my condition problematic. As mentioned above, there are already permanent and serious impairments. As a result of a particular hazard consequent to my assignment by the Organization (article 4.a of Annex E of WHO Manual), I have been affected with continuous invalidity affecting my professional ability, I have been permanently disfigured and I have incurred a loss of enjoyment of life. I therefore claim an invalidity pension, the refund of all medical, surgical, pharmaceutical, hospitalization and convalescence expenses, past and future, not refunded by the insurance, and a lump-sum to be determined.

"Some doctors believe that there might be an unknown virus responsible for Bell's Palsy. Even if it is so, it would be no more the direct cause than the viruses of flu and pneumonia, for instance, which are in the air but strike only certain persons predisposed by certain conditions, notably draft. The latter is universally recognized as the leading cause of Bell's Palsy, when there is no hidden disease, operating after-shock, child delivery or accident. As for the importance of stress, it has been well established for all illnesses, and is not conducive of health according to the definition of WHO Constitution, i.e. a state of complete physical, mental and social well-being."

On 31 December 1974 the Applicant submitted his resignation on the following grounds:

"Inasmuch as no action has been taken on my repeated requests to remove an insubordinate secretary from my Unit, I am forced to present hereby my resignation, to take effect at the statutory date and taking into full account my claim for compensation made on 23 December 1974.

"My health does not allow me to carry on in a situation unbearable to any supervisor."

The Applicant reported on his state of health in three communications to the Director-General dated 22 January, 31 March and 10 June 1975 respectively. The second of those communications, sent on the day of the Applicant's departure from WHO, concluded as follows:

"The tremendous and increasing stress to which I have been submitted, and which finally forced me to resignation, is without precedent at the United Nations. It is an ugly case of favoritism which not only wrecked my nerves but deprived me of my livelihood. I hereby claim compensation for loss of earnings from that day of 31 March till the day of settlement of my invalidity pension claim."

On 25 June 1975 the Applicant sent to Mr. van Pernis, Insurance Officer of WHO and Secretary of the WHO Staff Pension Committee, a reminder concerning his claim for compensation for service-incurred illnesses, noting that this claim included an invalidity pension. On 2 July 1975 Mr. van Pernis replied that the Applicant's claim for compensation for service-incurred illness was under discussion and that if he felt that he was incapacitated within the meaning of article 34 (a) of the Pension Fund Regulations his case would be presented to the WHO Staff Pension Committee for consideration at its next meeting scheduled to take place in January 1976. In a further letter to the Director-General on the subject of compensation for service-incurred illnesses, dated 12 July 1975, the Applicant stressed that he had been incapacitated in his function of supervisor and forced to resign and that if he was not granted an invalidity pension the Regional Office for the Western Pacific would be obligated to reinstate him in his functions or to arrange for his transfer at the same grade. That letter was sent under cover of a letter of the same date to the Secretary of the WHO Staff Pension Committee in which the Applicant, noting that in his letter of 23 December 1974 to the Director-General he had mentioned as his first claim an invalidity pension, expressed his surprise that the examination of that claim had been postponed till January 1976. On 22 July 1975 Mr. van Pernis informed the Applicant that his letters and the documentation he had submitted earlier had been passed to the Advisory Committee on Compensation Claims. On 19 August 1975 Mr. van Pernis advised the Applicant that the Director-General had disallowed his claim upon the recommendation of the Advisory Committee on Compensation Claims. On 26 August 1975 the Applicant enquired of the Secretary of the WHO Staff Pension Committee concerning the status of his request for a disability benefit under the Pension Fund Regulations. On 4 September 1975 Mr. van Pernis confirmed to him that his case would be presented to the WHO Staff Pension Committee in January 1976. On 28 September 1975 the

Applicant filed with the Board of Inquiry and Appeal of WHO an appeal for his reinstatement. On 16 October 1975 the Director of the Medical Service of WHO wrote to the Applicant the following letter:

"We have been informed that you wish to be put forward for an invalidity pension. In order to do this we need to prepare a report for the Pension Fund Board and require fresh reports on your present health.

"Please would you therefore see a consultant physician or neurologist to obtain a full report on your present state with regard to the Bell's palsy? A report from an ophthalmologist concerning the state of your vision is also required."

On 24 November 1975 the Applicant sent a copy of his appeal to the Chairman of the WHO Staff Pension Committee with this explanation:

"... despite my condition, I am ready to be reinstated in my job, with my full rights, since WPRO is willing to ignore my impairments. In this respect, when the regional medical referee declared that I was fit for work, he was actually protecting me. He had no idea of the ugly situation imposed upon me and which altered radically the whole picture. Without that situation, I would never have left before a disability pension being granted to me; because of that situation, I had to leave immediately, at the least favorable moment in every respect, not because of my facial paralysis but because of the total paralysis of my function of supervisor, of the intolerable stress which would have aggravated any illness, particularly one of the nerves. But to seek now another job would be an entirely different matter: nobody else will accept me in my speech, eye and mental conditions, even without consideration of my age. If I had been able to stay on in my job up to now, I would have had not only a continuous income but also, afterwards, a substantially higher pension—of any kind."

On 3 February 1976 Mr. van Pernis advised the Applicant that the WHO Staff Pension Committee had decided at its January session that his request for a disability benefit should be accepted, and that this decision had been communicated to the Secretary of the Pension Board in New York, whose approval had to be obtained before the award could be finally confirmed. On 3 April 1976 the Applicant enquired about the outcome of the matter in a letter to the Secretary of the Pension Board who informed him on 13 April 1976 that, since the WHO Staff Pension Committee was handling his case, a copy of his letter was being sent to that office for direct reply to him. On 28 April 1976 Mr. van Pernis replied to the Applicant that before the Secretary of the Pension Board could finalize the matter it had to be determined whether or not the Applicant, on the last day of his service with WHO, was incapacitated for further service in accordance with article 34 of the Pension Fund Regulations and that, if the Secretary concluded that this was not the case, he might have to submit the claim to the Pension Board for consideration. On 14 May 1976 Mr. van Pernis advised the Applicant as follows:

"..."

"The Secretary of the [Pension Board] informed us that he is not in a position to certify the benefit as being properly payable under the Regulations of the Fund on the grounds that this medical evidence [i.e. the medical evidence submitted to the WHO Staff Pension Committee] showed that on your last day of service with the World Health Organization, 31 March 1975, you were *not* incapacitated for further service with the Organization. The condition of being 'incapacitated for further service in a member organization reasonably compatible with his abilities, ...' is a basic one and must be met in order to qualify for a disability benefit.

"The Secretary proposes two ways to proceed:

"(a) in the interest of a speedy settlement of this affair, you could withdraw

your application for a disability benefit in which case you could be paid an early retirement pension, including the option to commute part of it into a lump sum.

“(b) you maintain your claim, in which case the matter will be re-examined by the WHO Staff Pension Committee, which then might reverse its decision or refer the claim to the Pension Board.

“The WHO Staff Pension Committee will meet again in January 1977 and this procedure will thus delay payment of a benefit even further. . . .”

In a letter to the Secretary of the Pension Board dated 23 May 1976 the Applicant contended that the Regulations and Rules of the Pension Fund had been flouted, on the following grounds:

“Under Administrative Rule H.1, the determination of incapacity is made by the staff pension committee of the organization by which the participant is employed. It is ONLY when that committee cannot reach a decision that the matter is referred to the Standing Committee of the Pension [Board] (and not to the secretary of the Pension [Board]) for decision. In his letters of 3 February . . . , of 28 April and of 14 May, the Secretary of the WHO Committee constantly refers to the Secretary of the Pension [Board] as if he were the final authority in the matter of a disability benefit. This does not conform with the Regulations and Rules; . . . And how can he, a non doctor, decide against medical evidence which had already been accepted by the group of doctors of the Staff Pension Committee? These doctors, including the Director of Medical Service, knew perfectly well, through the voluminous documentation I had submitted to them, that I was incapacitated by the dual fact of my paralysis and of the intolerable conditions imposed upon me during the same period in my functions of supervisor of my unit, conditions which would have certainly aggravated my state of health if I had stayed. It is obvious that in normal conditions it would have been against my interest to leave before a decision on my claim for a disability benefit. Therefore, speaking repeatedly of ‘your last day of service’ (a mention that does NOT exist in Art. 34 of the Regulations) is just playing on words. Another eventuality which is never considered in the Regulations and Rules is the sending back to the Staff Pension Committee of its decision, for re-examination (and reversal!) a whole year after that decision. . . .”

The Secretary of the Pension Board replied on 1 June 1976 with the following explanation:

“Action was taken by the Secretary of the Board under Administrative Rule I.2 which obliges him to certify for payment only those benefits where he considers that the conditions for their payment have been fulfilled. In your particular case, the Secretary, on the basis of the information he received subsequent to the action of the WHO Pension Committee, did not consider that the conditions had been met. One of the elements on which he had to seek clarification was whether on your last day of service, i.e. on the date of your separation from service the requirements for the award of a disability benefit were met. This is necessary under the Administrative Rules and especially under Rule H.4.

“He therefore was bound under the above Rules to withhold certification and to refer the case to the Standing Committee for decision unless the causes for his inability to certify were removed prior thereto.

“In order to determine whether or not this was possible, he asked for clarification from the WHO Pension Committee. However, in view of the fact that a meeting of that Committee is not to be held before January 1977, the Secretary of the Board will now submit the case to the Standing Committee at its next meeting in July under Rule I.2, in order to avoid such a lengthy delay.”

On 7 September 1976 the Applicant complained to the Chairman of the Standing Committee of the Pension Board that he had received no communication of the decision taken by the Standing Committee at its session of July. On 24 September 1976 the Secretary of the Pension Board informed the Applicant that the Standing Committee had decided that he had not in fact been incapacitated for further service within the meaning of article 34 of the Pension Fund Regulations and that he was therefore not entitled to a disability benefit. On 12 October 1976 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The whole procedure concerning the Applicant's claim for an invalidity pension is vitiated by the deliberate delays and stalling on the part of the responsible officials. The delay in communicating the decision of the Standing Committee, in particular, must be equated to a deliberate non-communication and makes the decision null and void.

2. It is absolutely unjustified to ignore the role, in the Applicant's incapacitation, of the intolerable conditions imposed upon him during his last period of service. The two issues are inextricably linked. The "last day of service" is therefore an artifice of language. It is preposterous to ignore the four medical certificates which point clearly to the Applicant's disability, just because they came after his last day of service. It would be unthinkable to give more weight to the report of the regional medical referee than to the four subsequent medical certificates, all the more so since the regional medical referee is part and parcel of the WHO Manila Office.

3. The role of the Secretary of the Pension Board under Administrative Rule I.2 is strictly procedural, i.e. to see to it that the pension committee of the organization concerned follows the proper procedure. The Secretary of the Pension Board, a non-physician, is certainly not qualified to judge on the substance of a medical case. In accordance with Administrative Rule H.1, the staff pension committee of the organization by which the Applicant was employed has unanimously determined his incapacity for the purpose of a disability benefit, and this decision is final. A subsequent, unmotivated decision by the Secretary of the Pension Board and the Standing Committee must be considered null and void.

Whereas the Respondent's principal contentions are:

1. Since none of the conditions referred to in Administrative Rule H.4 were present in the Applicant's case, the question of a disability benefit was raised at the instance of the Applicant himself under Administrative Rule H.5, paragraph (b), which requires a determination to be made whenever a participant alleges that he was incapacitated *on the date of separation*. If former participants could become entitled to a disability benefit where their incapacitation occurred subsequent to their separation, a large proportion of former participants would at some time become entitled to such a benefit.

2. The Applicant's correspondence with WHO (commencing with his letter of 23 December 1974) could not have constituted a claim for a disability benefit under the Pension Fund Regulations since he had not then been separated from service, he was performing and able to perform his duties and he still had untaken paid leave due to him.

3. As the documentation on the case showed that, at the time of his resignation, the Applicant had not been incapacitated within the meaning of article 34 (a) of the Pension Fund Regulations, the Secretary of the Pension Board could not have certified for payment the disability benefit recommended by the WHO Staff Pension Committee without knowingly violating his obligations under those Regulations. Before taking a definitive position, however, he suggested to WHO the possibility of putting back the

date of resignation through a retroactive grant of sick leave, a possibility which proved unfeasible.

4. Since there can be no issue before the Tribunal in this case other than allegations of non-observance of the Pension Fund Regulations, all other matters contained in the application are extraneous to the case.

The Tribunal, having deliberated from 5 to 28 April 1977, now pronounces the following interim judgement:

I. At the outset, the Tribunal wishes to point out that its jurisdiction in this case is limited to the allegations of non-observance of the United Nations Joint Staff Pension Fund Regulations made by the Applicant. Article 14 of the Statute of the Tribunal provides that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Under a special agreement signed between the United Nations and the World Health Organization on 27 March and 8 April 1961, it was agreed that "the United Nations Administrative Tribunal shall be competent to hear and pass judgement . . . upon applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund" presented by staff members of WHO who are participants in the Fund. Where a specialized agency has concluded an agreement as aforesaid, article 49 of the Pension Fund Regulations empowers a staff member of such a specialized agency to invoke the jurisdiction of the Tribunal in cases of alleged non-observance of the Pension Fund Regulations. However, in disputes relating mainly to the interpretation of the Applicant's contract and of the Staff Regulations and Rules applicable to him, it would appear that the ILO Administrative Tribunal would be the competent jurisdiction. The Tribunal therefore confines itself to the examination of the Applicant's claim for a disability benefit under article 34 (a) of the Pension Fund Regulations which has been denied to him by the Standing Committee of the Joint Staff Pension Board.

II. The Applicant's averments relating to his claim for reinstatement in the service of WHO are not relevant for the purposes of the case before the Tribunal. Nor can the Applicant's compensation claim against WHO for alleged service-incurred illness be entertained by this Tribunal.

III. Article 34 (a) of the Pension Fund Regulations reads as follows:

"A disability benefit shall, subject to article 42, be payable to a participant who is found by the Board to be *incapacitated for further service* in a member organization reasonably compatible with his abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration." [*Emphasis added.*]

It is clear from the article quoted above that the Applicant's eligibility for a disability benefit depends on a finding as to whether he was *incapacitated for further service* reasonably compatible with his abilities, due to injury or illness. Thus, an affirmative ruling on the Applicant's claim for a disability benefit would amount to a finding that he was *incapacitated for further service*.

IV. The Tribunal, however, notes that the Applicant has sought reinstatement in the service of WHO, implying thereby that he is not *incapacitated for further service*, and that his application is pending before the ILO Administrative Tribunal for consideration. The Applicant's state of health at the time of his separation from service with WHO is one of the matters on which the ILO Administrative Tribunal may have to pass.

V. The Tribunal realizes that if the claims for reinstatement and for a disability benefit were before one Tribunal, that Tribunal could treat them as alternative claims and could, if it granted reinstatement, rule that the claim for a disability benefit did

not arise or vice versa, or deny both claims according to the merits of the case. The Tribunal observes that the claim for a disability benefit has come before it for decision while the claim for reinstatement is pending before the ILO Administrative Tribunal. The Tribunal considers that the contingency of this Tribunal finding the claim for a disability benefit in the Applicant's favour, a decision which would be binding on the Pension Board, and of the ILO Administrative Tribunal finding the claim for reinstatement in the Applicant's favour, would lead to contradictory decisions and needs to be avoided. The Tribunal notes that the Applicant's case is listed for consideration during the next session of the ILO Administrative Tribunal in May 1977. This Tribunal therefore considers that it should defer consideration of this case.

VI. The Applicant has stated in his plea No. 4 as follows:

"In view of my material hardship, my physical condition and my mental health, I request the Tribunal, in the event that he decides to examine at length the substance of the matter, to grant me temporarily and immediately that disability benefit, on the understanding that I will refund it if the International Labour Organisation Administrative Tribunal reinstates me in my functions with WHO."

The Tribunal observes that neither article 34 of the Staff Pension Regulations nor section H of the Administrative Rules of the Pension Fund relating to disability benefits authorizes the grant of such relief.

VII. The Tribunal therefore decides to defer its consideration of the case and directs that this interim judgement be brought to the notice of the ILO Administrative Tribunal.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Geneva, 28 April 1977

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Judgement No. 225

(Original: English)

Case No. 217:
Sandys

Against: The Secretary-General
of the United Nations

Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.

Discrepancy between the majority of the Applicant's periodic reports and the information which came to light at the time of the five-year review of her appointment.—Consideration of the conflicting evidence regarding the Applicant's performance by the Working Group and the Appointment and Promotion Board.—Judgement No. 138.—Necessity of ascertaining whether the Board's recommendation was vitiated by inadequate or erroneous information and whether the termination decision is vitiated by lack