

**UNITED NATIONS  
ADMINISTRATIVE TRIBUNAL**

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**Judgement No. 231**

*(Original: English)*

**Case No. 221:  
Gaudoin**

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

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*Request by a former General Service staff member of a field office of the United Nations Children's Fund that a revised salary scale be applied retroactively.*

*Question of the receivability of the request.—Decision of the Joint Appeals Board that the application was not receivable on the ground of non-observance of the prescribed time-limit.—Summary of the Board's considerations.—Consideration by the Tribunal of additional information furnished by the Applicant.—The Tribunal finds that the Applicant failed to produce any satisfactory evidence to account for the delay of more than 27 months which elapsed before he filed his appeal.—Conclusion of the Tribunal that the decision of the Joint Appeals Board that the appeal was not receivable was well founded and that, in the absence of a recommendation on merits from the Board, the application is not receivable.—Application rejected.*

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**THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,**

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. T. Mutuale; Sir Roger Stevens; Mr. Francisco A. Forteza, alternate member;

Whereas, on 13 March 1978, Errol H. E. Gaudoin, a former 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:

“(a) It is requested that the UN Office of Financial Services be ordered to state whether or not there was a ruling by it as alleged in UNICEF Headquarters letter dated 20 September 1974 . . . , and if so to produce the said ruling.

“It is also requested that Daw Aye Aye, Administrative Assistant, UNICEF Office, Rangoon, Burma, be asked to give a statement as to whether or not she sent a letter to UNICEF Headquarters, New York, substantially the same as Ms. Moosa's letter of 20 September 1974 and, if so, under what authority.

“(b) The decisions contested by me are—

“(1) The alleged ruling of the UN Office of Financial Services cited in Ms. Moosa's letter.

“(2) The decision of the Secretary-General communicated in letter dated 16 March 1977 . . .—and in particular the words underlined by me—to the effect that: ‘Since you were no longer a staff member of UNICEF when the revised salary was issued, it could not have applied to you even though it was made retroactive to 1 July 1973 *for those who were in service at the time it was issued*’.

“(3) The finding by the joint appeals body that my appeal was time-barred . . . and the Secretary-General’s apparently tacit acceptance of this . . .

“(c) The obligation which I am invoking is the payment to me by UNICEF of the difference in salary due to me under the terms of the cable to the UNDP Office, Rangoon, Burma, for the period from 1 July to 31 October 1973 while I was still in active service as a staff member of UNICEF, and in the two months’ leave salary thereafter, plus the interest since accrued thereon.

“(d) Claim is also made for compensation in the amount of U.S. \$400 representing expenses incurred by me in processing and pursuing this matter.”;

Whereas the Respondent filed his answer on 10 April 1978;

Whereas the Applicant filed written observations on 25 April 1978;

Whereas the Applicant submitted additional statements on 1 May and 16 September 1978;

Whereas the facts in the case are as follows:

The Applicant was employed in the General Service category of the UNICEF Office at Rangoon from 1 March 1968 under a succession of fixed-term appointments, the last of which was due to expire on 31 May 1974. He tendered his resignation, however, effective on 31 October 1973. Some time after the Applicant’s resignation the UNICEF Office at Rangoon announced an upward revision of the salary scales of the General Service category retroactive to 1 July 1973. On 5 July 1974 the Applicant requested payment of arrears of salary in a letter to UNICEF headquarters reading in part:

“Shortly before I left Burma I came to know that salary increases had been authorized for G.S. staff with effect from July 1, 1973. I was not given the benefit of the increase as I had resigned from my appointment from November 1973. As the increase was effective from July 1, when I was still in active service, I am sure that I am entitled to the enhancement of pay for the period from July 1 to October 31, 1973, and corresponding increase in the two months’ leave salary which was paid to me on my release . . .”

On 29 July 1974 a Personnel Officer at UNICEF headquarters advised the UNICEF Office at Rangoon that the Applicant was entitled to the adjustment in salary inasmuch as his separation had become effective after the official notification of a retroactive revision in salaries. On 9 September 1974 however the Personnel Officer, her attention having been drawn by the Rangoon Office on 27 August 1974 to a provision in a General Administrative memorandum on retroactive payment of salary entitlements to separated staff, informed that Office that her prior ruling was incorrect and that the Applicant was not entitled to any retroactive salary payments. On 12 September 1974 the Applicant reiterated his request to UNICEF headquarters. On 20 September 1974 the Personnel Officer informed

him that since the date of official notification of the salary revision had come after his separation his entitlement to retroactive payment was not valid even though the effective date of the salary revision covered a period when he was still in service. On 3 October 1974 the Applicant wrote a letter to the Office of Financial Services of the United Nations requesting precise information on specific points concerning the salary revision. His letter was referred to the Personnel Officer who, by a letter dated 18 October 1974, confirmed the denial of his claim but did not supply the information requested by him. By a letter dated 30 January 1977 the Applicant submitted his claim directly to the Joint Appeals Board. His letter was treated as a request for review under staff rule 111.3 (a) and referred to the Secretary-General on 2 March 1977. The Assistant Secretary-General for Personnel Services reviewed the case on behalf of the Secretary-General and by a letter dated 16 March 1977 advised the Applicant as follows:

“This refers to your request for review of the decision taken by the Administration of UNICEF in 1974 denying you the application of a revised local salary scale issued after the effective date of your resignation, namely 1 November 1973 but made retroactive to 1 July 1973. Since you failed to observe the time limits prescribed for the appeals procedure in staff rule 111.3, this reply is given without prejudice to the non-receivability of any appeal you may nevertheless decide to file before the Joint Appeals Board.

“The revised local salary scale in question, applicable to Burma, was issued only in late November 1973. The specific date when the said scale was issued could not be ascertained. This may explain what you considered to be evasive replies by the Administration of UNICEF on this point. However, agreement on the revised salary scale between the Office of Financial Services at Headquarters and the UNDP Office in Rangoon, which is the surveying agency for this purpose, was reached only on 23 November 1973 as indicated by a cable from the Office of Financial Services to the UNDP office. The revised salary scale could, therefore, have been released only on 24 November 1973 at the earliest. Whatever the actual date may be, it is evident that the revised salary scale was issued after the effective date of your resignation. Since you were no longer a staff member of UNICEF when the revised salary scale was issued, it could not have applied to you even though it was made retroactive to 1 July 1973 for those who were in service at the time it was issued. I hope the above explanation will dispel any doubts you may have regarding the equity of the position taken by the Administration of UNICEF in this matter.

“For the above reasons the Secretary-General, having reviewed your case, has decided to maintain the decision of which you have complained.”

On 6 April 1977 the Applicant lodged an appeal with the Joint Appeals Board. On 10 October 1977 the Board declared that the appeal was not receivable because the Applicant had failed to observe the time-limit laid down in staff rule 111.3 (a) and decided not to entertain it. On 12 December 1977 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board's decision. On 13 March 1978 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. There was no decision as such by UNICEF on the Applicant's claim. There was only an unsubstantiated statement attributed to another agency, the United Nations Office of Financial Services. The Applicant's leading questions to that Office still remain

unanswered. The question of the period of limitation running from 20 September 1974 does not arise. The period of limitation will commence running only when the existence of the ruling of the Office of Financial Services is established. Or if the decision is held to have been given in the letter of 16 March 1977, then the period of limitation can run only from that date and the Applicant's appeal to the Joint Appeals Board was well within time.

2. The Joint Appeals Board did not pause to consider what the Applicant was appealing against, that is, the alleged ruling of the Office of Financial Services. The Applicant's appeal could be considered only when that had been determined.

Whereas the Respondent's principal contentions are:

1. The only administrative decision in issue is the denial of the Applicant's claim, which he originally submitted to UNICEF. The date of that decision was 20 September 1974. The fact that the Applicant addressed a letter on 3 October 1974 to the Office of Financial Services requesting additional information indicates that he had received the letter of 20 September 1974. The Applicant's inquiry in the letter of 3 October 1974 did not extend the time-limit for his appeal. Furthermore, the additional information which he requested was not necessary for his appeal and provided no excuse for his lateness.

2. The Applicant's appeal from a decision taken over two years previously was not rendered timely by virtue of the letter of 16 March 1977 replying to his request for review.

3. The Joint Appeals Board properly refrained from extending the prescribed time-limit.

The Tribunal, having deliberated from 2 to 9 October 1978, now pronounces the following judgement:

I. The Tribunal has, in the first instance, to consider the question of receivability. It is the contention of the Respondent that owing to the long delay which elapsed between the notification of the administrative decision of 20 September 1974 and the submission of the Applicant's claim to the Joint Appeals Board on 30 January 1977, the requirements laid down in staff rule 111.3 (a) were not complied with, and that, the Joint Appeals Board having determined that the appeal was not receivable on this ground, the Tribunal should reject the present application as unreceivable under article 7 of its Statute.

II. The Tribunal observes that the Board, before reaching its conclusion as to receivability, gave careful consideration to the circumstances in which the appeal arose. They found that though there was nothing in the evidence before them to indicate that the Applicant received the Personnel Officer's letter of 20 September 1974, there was no suggestion on his part that he had not done so, and the fact that he addressed an inquiry to the Office of Financial Services on 3 October 1974 led the Board to the conclusion that he must have received notification in writing of the contested decision on or before that date. While it was true that the Applicant did not receive the information from the Office of Financial Services for which he asked, he did get a reply dated 18 October 1974 from the Personnel Officer confirming the contested decision; in the Board's view the additional information requested was not a necessary prerequisite for an appeal under staff rule 111.3 (a) and they pointed out that when the Applicant's appeal was eventually formulated, more than twenty-seven months later, it was made without the requested information having been provided. In addition the Board rejected the Applicant's contention that he was not informed at the time of the contested decision that he could

appeal, and in what manner he could do so. They did so on the ground that there was no reason to suppose that he needed to be reminded of the existence of a United Nations appeals machinery.

III. In addition to the considerations and finding of the Joint Appeals Board summarized in the preceding paragraphs, the Tribunal has to take note of certain documentation mentioned in the Applicant's additional statement of 1 May 1978, but not cited in the Joint Appeals Board report. This documentation comprises: (1) the letter of 29 July 1974 from the Personnel Officer at UNICEF headquarters to the UNICEF Office at Rangoon stating that the Applicant was entitled to an adjustment in salary inasmuch as his separation became effective after the official notification of a retroactive revision in salaries; (2) the reply from the Rangoon Office of UNICEF dated 27 August 1974 pointing out that this alleged entitlement conflicted with a General Administrative Memorandum of 1 November 1973; (3) the text of the relevant passage of this memorandum which reads:

“We have sought a ruling on this matter from the UN Office of Financial Services, and have been informed by them that the official policy is as follows: ‘Staff members who have been separated from service prior to official notification of a retroactive revision of salary scales, shall not benefit from any retroactivity of adjustment’.”

IV. The Tribunal observes that the additional information referred to in paragraph III above indicates that there was some misunderstanding on the part of the Personnel Officer at UNICEF headquarters as to the Applicant's entitlement. This seems to be explained by a letter which this Officer wrote to Rangoon on 9 September 1974 reading in part as follows:

“We have checked with the Office of Financial Services concerning what is meant by ‘official notification’ and now find that our interpretation of this ruling is incorrect. The Office of Financial Services has advised that official notification is the date on which the UN Office of Financial Services published the salary scale under cover of transmittal memo and distributes it to Organizations of the Common System. In view of the above, Mr. Gaudoin is not entitled to any retroactive salary payments.”

V. The Tribunal has examined the evidence submitted by the Applicant with a view to determining whether it contains any material on the basis of which the conclusion reached by the Joint Appeals Board that the appeal was not receivable because of the lapse of time and the absence of special circumstances to justify such lapse, could be called into question.

VI. In the Tribunal's view, the relevant dates in relation to which it must have its decision on receivability are the following:

- 31 October 1973 . . . . . Applicant's resignation becomes effective
- 1 November 1973 . . . . . General Administrative Memorandum quoted at paragraph III above issued at Headquarters
- 19 November 1973 . . . . . General Administrative Memorandum received in Rangoon
- 23 November 1973 . . . . . Cable giving new salary scales effective from 1 July 1973 received in Rangoon
- 24 November 1973 . . . . . Earliest date on which revised salary scales could have been released

5	July 1974	. . . . . Applicant requests payment of arrears of salary
20	September 1974	} . . . . . Personnel Officer informs Applicant he is not entitled to such arrears
18	October 1974	
30	January 1977	. . . . . Applicant appeals to Joint Appeals Board

VII. Bearing in mind the facts set out in paragraphs II, III, IV and VI above, the Tribunal finds that there is no evidence to support the Applicant's contentions that there was no decision as such by UNICEF on his claim, that the period of limitation running from 20 September 1974 does not arise and that the existence of a ruling of the Office of Financial Services needs to be established. The Tribunal considers that the Applicant, neither in his original application nor in his additional submissions, has been able to produce any satisfactory evidence to account for the delay of more than twenty-seven months before formulating his appeal, to which the Joint Appeals Board drew attention, and which caused them to conclude that the appeal was not receivable. In the Tribunal's view, there is no ground whatever for the allegation by which the Applicant attempts to account for the delay that the decision of which he was notified on 20 September 1974 was not a decision by UNICEF. The Tribunal notes moreover that though warned by the Secretary of the Joint Appeals Board on 14 February 1977 that his appeal might not be receivable unless he was able to invoke exceptional circumstances justifying the long delay, he failed throughout and notably in his reply of 16 February 1977 to produce any solid reasons to account for it.

VIII. The Tribunal accordingly concludes that the decision of the Joint Appeals Board that the appeal was not receivable was well founded and that, in the absence of a recommendation on merits from the Board, the application is not receivable under article 7 of the Tribunal's Statute. Consideration of the application on its merits does not therefore arise and in consequence pleas (a) to (d) of the application lapse.

IX. For the foregoing reasons the application is rejected.

*(Signatures)*

Suzanne BASTID  
*Vice-President, presiding*

Francisco A. FORTEZA  
*Alternate Member*

T. MUTUALE  
*Member*

Jean HARDY  
*Executive Secretary*

Roger STEVENS  
*Member*

*New York, 9 October 1978*

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