information officer he was paid $375 per month at a time when his colleagues performing equivalent duties were receiving more than four times as much''.

X. In the view of the Tribunal, the Applicant could not claim that he and his colleagues were treated unequally unless there were special service agreements providing that they would perform the same duties but receive different remunerations.

XI. There are thus no grounds for accepting the Applicant's claims concerning the inequality between his remuneration and that of his colleagues, or those concerning his right to rest and to social security: the Applicant derives those claims from a hypothetical situation which he alleges to have been his, but such claims are not grounded in law for the reasons set forth above.

XII. However, in view of the length of the period during which the Applicant worked for ECLA and the Administration's ratings of the quality of his work, as are contained in the dossier, the Tribunal considers that, although his contracts contained no provisions to that effect, the Applicant could count on receiving a termination indemnity from the Respondent. Given the circumstances of the case, the Tribunal decides that he was entitled to such an indemnity and fixes the amount thereof at $3,000.

XIII. All other pleas are rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Francis T. P. PLIMPTON
Vice-President, Alternate Member

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

T. MUTUALE
Member

New York, 13 October 1978

Judgement No. 234

(Original: French)

Case No. 203: Johnson — *Against:* **The Secretary-General of the United Nations**

Application for an interpretation of Judgement No. 213.

Co-application for an interpretation of the provisions of the Judgement concerning the payment of compensation to the Applicant.—Dispute concerning the meaning of the term ''two years' net base salary''.—The Applicant's salary, established in dollars, is paid in Swiss francs.—Changes in the exchange rate of the dollar in Geneva.—In order to calculate in Swiss francs the compensation awarded by the

Tribunal, the Respondent used the exchange rate prevailing on the date of payment.—Assertion of the Applicant that the exchange rate used should be that prevailing on the date on which the injury was sustained, namely, the date of termination.—As the amount due to the Applicant was determined by the judgement, the exchange rate which must be used is the rate prevailing on the date of the judgement.—The Tribunal therefore orders the Respondent to recalculate the amount of the compensation due to the Applicant.—In calculating the compensation, the Respondent deducted an amount of $950 to cover partial reimbursement of education grant by the Applicant.—Staff Rule 103.20 (g).—The Respondent's discretionary powers in the matter.—Circumstances of the Respondent's having initially interpreted that provision in a manner favourable to the Applicant.—The Tribunal orders the Respondent to refund the sum of $950 to the Applicant.—The Applicant requests the payment of compensatory interest and costs.—Requests rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Endre Ustor;

Whereas, on 17 February 1976, Ruth June Johnson, a former staff member of the United Nations Conference on Trade and Development, hereinafter called UNCTAD, filed an application against the termination of her probationary appointment;

Whereas, in Judgement No. 213 delivered on 14 October 1976, the Tribunal decided that the Respondent had not carried out the obligations which he had assumed in granting a probationary appointment to the Applicant and concluded that the Applicant had been denied the opportunity of obtaining permanent employment with the United Nations by reason of the Respondent's failure to carry out the obligations incumbent upon him in that regard;

Whereas paragraph XXI of Judgement No. 213 read as follows:

> "In the present case, the Applicant could have expected to remain in service until superannuation on 30 September 1983, that is, for approximately 105 months from the date on which her employment was terminated. In Judgement No. 132 (*Dale*), the Tribunal decided that, in the absence of the effective performance of duties during the period under consideration, the situation might be assimilated to the case of a fixed-term contract which is terminated immediately after renewal. In such a case the person concerned would have been entitled to a termination indemnity of one week's salary for each month of uncompleted service. In Judgement No. 142 (*Bhattacharyya*), the Tribunal held that the person concerned could have anticipated continuation in service until superannuation, and, by analogy with Judgement No. 132, it also held that the situation might be assimilated to a case where services were terminated immediately after renewal of the contract, and it awarded a termination indemnity of one week's salary for each month of uncompleted service. Relying on those precedents, the Tribunal awards the Applicant compensation equal to the amount of two years' net base salary, less the amount of the *ex gratia* payment already received following the recommendations of the Joint Appeals Board. This compensation will be payable in a manner to be agreed upon by the parties."

Whereas, on 10 November 1976, the Applicant requested that the compensation awarded to her by Judgement No. 213 be paid in Swiss francs at the exchange rate prevailing on 4 December 1974, the date of her termination, namely 2.88 Swiss francs to the dollar;

Whereas, on 30 November 1976, the Chief of the Payments Section of the Finance Division of the United Nations Office at Geneva sent her a cheque of 48,228.55 Swiss francs together with the following payment voucher:

"Being payment of compensation awarded to you in Administrative Tribunal Judgement No. 213 as follows:

"(*a*) *Two years net base salary at P2-6 C.O.B. 4.12.74*

Gross annual salary $17,330.00 × 2 =	$34,660.00
Less staff assessment $4,265.50 × 2 =	8,531.00
	$26,129.00

"(*b*) *Balance to be paid*

Two years net base salary as above	$26,129.00
Less: 4 months salary already paid in November 1975	4,355.00
Less: Amount paid at your request to Mr. Harpignies [the Applicant's counsel] (ie SF 4900.00 at 2.44) as per copy of payment voucher attached	$ 2,008.20
Balance to be paid at 2.44	$19,765.80
	SF 48,228.55";

Whereas, on 9 December 1976, the Applicant returned the cheque to the Chief of the Payments Section and insisted that payment should be made in Swiss Francs at the rate of exchange of 2.88, adding that if this was not possible she would like to have a cheque in dollars;

Whereas, on 13 December 1976, the Applicant's counsel supported her claim in a letter to the Chief of the Payments Section reading in part:

"1. The request made by me and my client that the compensation be paid in s.f. clearly indicated that the rate of exchange to be applied was the one obtaining as of 4-12-1974, date of her separation, i.e. 2,88 s.f. per US $.

"2. You have deducted from the compensation awarded by the Tribunal 4 months salary paid in Nov. 75. That prior compensation was paid in s.f. not in $. The amount of the sum to be deducted must be exactly the same as that paid in Nov. 75.

"3. It is immaterial that the scales of salaries are established in US$. In matters of reparation of injury, the damage is determined as of the date when it occurs. Compensation must realize 'restitutio in integrum'. . . .";

Whereas, on 6 January 1977, the Chief of the Payments Section sent to the Applicant a cheque in dollars from which, however, he had deducted an amount of 950 dollars to cover "a refund due from [the Applicant] in respect of an overpayment of Education Grant Advance" for her son for the 1974-1975 school year;

Whereas, on 13 January 1977, the Applicant, in acknowledging the cheque sent to her on 6 January 1977, stated that she accepted the cheque subject to her rights and as an advance payment;

Whereas it appears from letters of 11 January 1977, 14 and 23 February 1977, 4 and 26 April 1977, 22 June 1977, 26 July 1977 and 31 August 1977 exchanged between the parties that they agreed to request an interpretation of Judgement No. 213 from the Tribunal;

Whereas, on 16 November 1977, the Applicant filed an application in the pleas of which she requested that the Tribunal:

"1. Decide, by interpretation or by any other means, that the amount of the compensation which it awarded to the Applicant by its Judgement No. 213 of 14-10-76 and which the Respondent was to pay to Applicant 'in a manner to be agreed upon by the parties' should have been calculated on the basis of the exchange rate between the dollar and the Swiss franc prevailing on the date on which the injury resulting from the irregular termination of the Applicant's appointment arose, namely, 4-12-1974 (the rate then being 2.88 Swiss francs to the dollar) and not on the basis of the dollar rate on the date of payment, 30-11-1976, which was 2.44 Swiss francs to the dollar; that a balance of 11,496.76 Swiss francs is still owing to the Applicant on this account; and therefore order the Respondent to pay to the Applicant the aforementioned sum of 11,496.76 Swiss francs;

"2. Order the Respondent to repay the Applicant the sum of 2,736 Swiss francs, i.e. the equivalent of $950 at the rate of 2.88 Swiss francs to the dollar, which the Respondent wrongfully deducted from the compensation awarded to the Applicant by the Tribunal, as reimbursement by the Applicant of an amount that she allegedly owed in respect of an advance payment received by her as an education grant for one of her sons;

"3. Further order the Respondent to pay the Applicant, as compensatory interests, 8 per cent per year on the amounts of 11,496.76 Swiss francs and 2,736 Swiss francs as from the date of the inadequate payment made by the Respondent, namely 30-11-76;

"4. Order the Respondent to pay the Applicant a sum of 1,800 Swiss francs in respect of the judicial costs incurred by her as a result of the refusal of the Respondent to pay the aforementioned sums.";

Whereas, on 24 January 1978, the Respondent filed in the form of answer a co-application for interpretation of Judgement No. 213 concluding with the following pleas:

"*(a)* That the Tribunal instruct the parties as to the meaning which the Tribunal intended the parties to take from its decision regarding the award of compensation, the parties having been unable to agree upon a manner in which the compensation was to be paid and further, that the Tribunal instruct the parties as to any course of action which may now be necessary to give effect to the interpretation of Judgement No. 213;

"*(b)* That the Tribunal affirm the action taken by the Respondent in deducting from the compensation payment made by him an amount equal to the share of an education grant to which the Applicant ceased to be entitled as a result of the termination of her service;

"*(c)* That the Tribunal reject *in toto* the pleas of the Applicant in respect of compensatory interest and judicial costs, it being clear from the proceedings themselves that any such award would be unfair and prejudicial to the Respondent, who, at all times in the course of the proceedings regarding the interpretation of Judgement No. 213, has acted in good faith;

"*(d)* That the Tribunal grant any and all additional relief to the Respondent, consistent with his pleas, which it may determine to be appropriate in this case.";

Whereas, on 11 October 1978, the Respondent submitted at the request of the Tribunal an additional written statement concerning the established policy of the United Nations regarding the rate of exchange to be used for payments made in currencies other

than the U.S. dollar to staff members upon separation from service;

Whereas the Applicant's principal contentions are:

1. The injured party is entitled to just and full compensation for the injury sustained. The entitlement to reparation exists from the moment when the injury materializes. The judge must evaluate the injury at the moment when he gives his ruling, which is the moment closest to the reparation to be made. It is in pursuance of this rule that the courts and tribunals take into account, in their evaluation of the injury, the possible devaluation of the legal monetary unit or its depreciation owing to a rise in prices between the time when the injury materialized and the passing of the judgement.

2. The system applied by the United Nations in the matter of termination indemnities overlooks the rule of full and just reparation for the injury sustained by the staff member whose appointment is terminated.

3. Since the Respondent was expressly called upon to pay compensation to the Applicant because of the irregular termination of her appointment, it would be abnormal and inequitable not to constrain the Respondent to pay compensatory interests to the Applicant at least from the date when he made an inadequate payment.

4. According to the jurisprudence of the Tribunal and of the ILO Administrative Tribunal, the moment when a debt becomes due is the one to be selected to determine the rate of conversion applicable to the debt. In the present case, therefore, the calculation has to be based on the exchange rate in effect on 4 December 1974, the date of the action generating entitlement to reparation and likewise the date on which compensation became due.

5. It is obvious that the Applicant would not have entered into a commitment in respect of school fees if she had foreseen the termination action to which she was unfairly subjected on 4 December 1974. It is likewise undeniable that the Applicant's son, who continued to attend the International School at Geneva until the end of the scholastic year 1974-1975, would not have attended that school had not his mother been stationed at Geneva. Moreover, it would have been prejudicial to the interests of her son and herself if the Applicant had withdrawn him from his school in the middle of the scholastic year. Liability for the Applicant's separation from service lies solely with the Respondent. He is required to make reparation for the injury which the Applicant sustained as a direct result thereof and this injury includes the school fees paid by her.

Whereas the Respondent's principal contentions are:

1. According to the United Nations rules and procedures and without a specific directive by the Tribunal to the contrary, the rate of compensation has to be keyed to the rate of exchange in effect as of the date of payment.

2. The Respondent acted properly in applying Staff Rule 103.20 (*g*) when making payment under the award of compensation to the Applicant.

3. The Applicant's requests for payment of compensatory interests at the rate of 8 per cent per year on the amounts claimed by her and for payment of a sum of 1,800 Swiss francs in respect of judicial costs allegedly incurred by her as a result of the proceedings subsequent to Judgement No. 213 must necessarily be based on the presumption of fault on the part of the Respondent in his actions in carrying out the execution of the award of the Tribunal. This implied fault alleged by the Applicant is inconsistent both with the wording of Judgement No. 213 and with the actions and conduct of the Applicant. Even if the Tribunal, in clarification of its award in its earlier judgement, were

to order certain adjustments in the execution of the award, such order should not be made as to penalize the Respondent for his demonstrated good faith and spirit of co-operation in his dealings with the Applicant.

The Tribunal, having deliberated from 27 September to 18 October 1978, now pronounces the following judgement:

I. The Applicant in whose favour Judgement No. 213 was rendered and the Respondent have agreed to request the Tribunal to interpret the operative part of the judgement concerning the award of compensation to the Applicant. On that occasion both parties submitted additional pleas relating directly to the principal application for interpretation and on which the Tribunal must therefore likewise rule.

II. The passage of the operative part of Judgement No. 213 on which the dispute centres reads as follows . . . the Tribunal awards the Applicant compensation equal to the amount of two years' net base salary, less the amount of the *ex gratia* payment already received following the recommendation of the Joint Appeals Board. This compensation will be payable in a manner to be agreed upon by the parties.

The terms in dispute are two years' net base salary. The annual amount in dollars of the net base salary of a staff member at the P-2, step 6, level was not discussed. The parties agree that the amount in question is 13,064.50 dollars. The dispute arose from the changes in the exchange rate of the dollar in Geneva.

III. In his letter of 18 May 1971, in which he offered the Applicant a probationary appointment, the Chief of the UNCTAD Personnel Section, after indicating the amounts of the salary, deductions and allowances in dollars, added: "Payments will be made in Swiss francs". Thus the Respondent, in an express provision brought to the attention of the Applicant at the time of her appointment, made an exchange operation necessary for each payment. The Applicant's salary, established in dollars, was thus actually paid to her in Swiss francs.

The Tribunal notes that the Respondent proceeded in the same way when he was required to make an *ex gratia* payment following the recommendation of the Joint Appeals Board: a sum of 11,584.30 Swiss francs, at the rate of 2.66 Swiss francs to the dollar, was paid to the Applicant on 5 December 1975. Lastly, the Respondent raised no objection when the Applicant requested that she receive the compensation awarded by the Tribunal as a result of her termination in Swiss francs.

IV. Pursuant to Judgement No. 213 and in order to calculate the compensation in Swiss francs, the Respondent states that in the absence of any directive to the contrary by the Tribunal, he applied the United Nations rules and procedures, that is to say, he used the exchange rate prevailing on the date of payment, that is, 2.44 Swiss francs to the dollar on 30 November 1976.

The Applicant has contested that procedure, arguing that since the compensation was intended to constitute reparation for the injury sustained, it was the date of the termination, that is, the date of the injury, that must be taken into account in determining the exchange rate applicable in calculating the compensation payable in Swiss francs. The exchange rate at that time was 2.88 Swiss francs to the dollar.

V. The Tribunal observes that although the injury occurred on the date of termination, the sum due to the Applicant was determined by the judgement. It was thus on the date of the judgement that the debt owing to the Applicant was determined with binding force. Her rights in Swiss francs must therefore be established on the date of the

judgement and according to the exchange rate prevailing on that date.

The Tribunal has been informed that the exchange rate applied on 14 October 1976 by the United Nations in Geneva was 2.48 Swiss francs to the dollar. The Applicant having accepted a payment in dollars subject to the reservation of her rights by virtue of the present judgement, the Respondent must recalculate the amount of the compensation on the basis of the rate of 2.48 Swiss francs to the dollar and pay the Applicant the difference between the amount resulting from this new calculation and the amount of 48,228.55 Swiss francs established on the basis of the exchange rate of 2.44 Swiss francs to the dollar as set forth in the payment voucher of 30 November 1976.

VI. In Judgement No. 213, the Tribunal ruled that the amount of the *ex gratia* payment received by the Applicant following the recommendation of the Joint Appeals Board accepted by the Respondent should be deducted from the compensation awarded.

However, in calculating the compensation due in application of Judgement No. 213, the Respondent saw fit to deduct in addition an amount of 950 dollars which, according to him, represented reimbursement by the Applicant of part of the education grant for which she was said to be liable in accordance with Staff Rule 103.20 (*g*). The application for interpretation contests the validity of that deduction, contending that the reimbursement of the school fees paid by reason of the presence of the Applicant in Geneva cannot be reduced because of her termination, the illegality of which was recognized in Judgement No. 213. The Respondent, while stating that he is bound to apply the rules, requests a decision on that point from the Tribunal.

The Tribunal observes that if it were to affirm the validity of the deduction, it would receive an additional plea from the Respondent, since his right to repayment was not affirmed at the time of the termination of the Applicant or claimed in the main proceedings before the Tribunal.

VII. The Tribunal observes that, since the relevant provision of the Staff Rules reads as follows:

> "Where the period of service of the staff member does not cover the full scholastic year, the amount of the grant for that year shall normally be that proportion of the grant otherwise payable which the period of service bears to the full scholastic years.",

it follows that the principle of proportionality set forth therein leaves the Respondent a large measure of discretion.

The Tribunal observes that it was not until 4 August 1976 that the Respondent formulated a specific request for reimbursement, which was reflected in the deduction of 950 dollars from the amounts paid in dollars pursuant to Judgement No. 213. Thus, in the course of the financial settlements which followed the termination of the Applicant and at the time of the payment of the *ex gratia* indemnity, the Respondent, by not claiming the reimbursement of 950 dollars, interpreted Staff Rule 103.20 (*g*) in a manner favourable to the Applicant and considered that reimbursement would not be "normal". That interpretation cannot be modified following Judgement No. 213.

In conclusion, the Tribunal decides that the Respondent was not entitled to deduct 950 dollars from the compensation awarded by Judgement No. 213. The Respondent must therefore refund that sum to the Applicant.

VIII. The Applicant requests compensatory interest on the basis of considerations

derived from the civil law of certain countries. However, Judgement No. 213 is based on the termination indemnity system established by the Staff Regulations. Furthermore, the Respondent cannot be held responsible for any abnormal procedural delays. That being so, the plea must be rejected.

IX. Having rejected the Applicant's principal plea that the compensation awarded by the Tribunal should be calculated at the exchange rate prevailing on the date of her termination, the Tribunal rejects the plea concerning a contribution to her judicial costs.

X. For these reasons the Tribunal:

(1) Orders the Respondent to recalculate the amount of the compensation due to the Applicant in accordance with paragraph V above;

(2) Orders the Respondent to refund to the Applicant the sum of 950 dollars; and

(3) Rejects all other pleas.

(Signatures)

R. VENKATARAMAN
President

Endre USTOR
Member

Suzanne BASTID
Vice-President

Jean HARDY
Executive Secretary

New York, 18 October 1978

STATEMENT BY MR. R. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

(Signature)
R. VENKATARAMAN

New York, 18 October 1978

Judgement No. 235

(Original: English)

Case No. 220:
Mathur

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

Request that the procedure and report of a Board of Inquiry be declared null and void.

Decision of the Joint Appeals Board that the appeal was not receivable owing to non-observance of the prescribed time-limits.—Scope of the appeal to the Board and the application to the Tribunal.—