

that practice as improper. The Tribunal concludes that, in his application for a revision, the Applicant has not established the existence of any fact of such a nature as to be a decisive factor, which fact was unknown to the Tribunal when the Judgement was given; this request by the Applicant should therefore be denied.

V. With regard to the Applicant's request that the Tribunal should declare that violations of the national laws of States Members of the United Nations "normally will be violations also of the independent standards of integrity developed by, and proper to, the United Nations", the Tribunal considers that this request has, in effect, already been considered in Judgement No. 233 and does not refer to any new fact.

VI. Lastly, the Applicant requests the Tribunal to direct the Respondent "to seek a settlement whereby the grave injuries sustained by the Applicant and his family during this period may be redressed". The Tribunal notes that this request is in the nature of an appeal against the Tribunal's Judgement and does not constitute an application for revision under article 12 of the Statute. The Tribunal also notes that, in its Judgement No. 233, "in view of the length of the period during which the Applicant worked for ECLA" and "given the circumstances of the case", it decided that the Applicant was entitled to an indemnity. The Tribunal fixed the amount of the indemnity to be paid to the Applicant at \$3,000, and in that connexion the Applicant is not invoking any clerical or arithmetical mistake which might warrant a correction of the Judgement.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

Suzanne BASTID
President

Francisco A. FORTEZA
Member

T. MUTUALE
Member

Geneva, 24 April 1980

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

Jean HARDY
Executive Secretary

Judgement No. 256

(Original: English)

Case No. 243:
Willems

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

Request for reimbursement of the cost of transporting an automobile from a staff member's home country to his duty station.

Administrative Instruction ST/AI/176/Rev.1 and Staff Rules 107.279(d) (v) and 103.15.—The Secretary-General's discretionary power in the matter.—Question whether he has used that discretionary power arbitrarily.—Paragraph 2(a) of Administrative Instruction ST/AI/176/Rev.1.—The Applicant's claim does not conform to the requirements relating to length of assignment.—Paragraph 2(c) of Administrative Instruction ST/AI/176/Rev.1.—Competence of the Secretary-General to decide that the car did not fulfil the necessary conditions for reimbursement of the cost of transporting it.—Staff Rule 103.15.—Failure of the Applicant to comply with the rule requiring him to file his claim within 12 months.—The Tribunal decides that the Respondent used his discretion properly in dismissing the Applicant's claim for reimbursement.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Mr. Samar Sen; Mr. Francisco A. Forteza, alternate member;

Whereas at the request of Willy Willems, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 24 August 1979 the time-limit for the filing of an application to the Tribunal;

Whereas, on 27 August 1979, the Applicant filed an application in which he requested the Tribunal:

“(a) to set aside the recommendations of the Joint Appeals Board in this case,

“(b) to direct that the Applicant be reimbursed for the cost of transporting his automobile from Belgium to Israel, the country of his duty station,

“(c) to grant the Applicant costs, interest on his claim and such other and further relief as the Tribunal considers fit.”;

Whereas the Respondent filed his answer on 28 September 1979;

Whereas the Applicant filed written observations on 16 November 1979;

Whereas . . .

Whereas the facts in the case are as follows:

The Applicant, a Field Service Officer since 1960, was serving with the United Nations Relief Office in Bangladesh (UNROB). Upon completion of his assignment in April 1974, he took his home leave in Belgium before taking up new duties with the United Nations Truce Supervision Organization (UNTSO) in Jerusalem. While on home leave the Applicant arranged to have his automobile shipped from Belgium to Israel. The automobile, a 1962 Opel Kapitän “L”, was shipped from Antwerp on 13 May 1974 and arrived at Ashdod on 10 June 1974 at a cost of 19,629 Belgian francs. The Applicant had arrived at his new duty station on 6 May 1974. On 13 August 1975 he requested reimbursement of the cost of transportation of his automobile in a P.101 form, submitted to UNTSO, where, asked to state the reasons for requesting transportation if the age of the automobile was three years or more, he stated:

“Notwithstanding the vehicle is 13 years old and has 104,000 km on the teller, it is in perfect condition and passes every year the technical tests in the countries where I am/was stationed and I am not in a financial position to purchase a new vehicle, and see no need, since above.”

On 19 September 1975 UNTSO forwarded the form to Headquarters with the statement that “the mission supports staff member's claim and recommends approval”. On 2

October 1975 Headquarters replied that the Office of Personnel Services was unable to give an *ex post facto* approval for payment of the cost of transportation of the Applicant's automobile on the following grounds:

“*Firstly*, prior clearance should have been obtained from OPS before shipment.

“*Secondly*, it deems that the age of the car does not justify transportation at UN expense.

“*Thirdly*, in accordance with Staff Rule 103.15, the application should have been submitted within one year of the shipment.”

On 6 October 1975 the Applicant was informed accordingly. On 25 October 1975 he was reassigned to the United Nations Emergency Force (UNEF) in Egypt. On 25 February 1976 the Applicant asked the Office of Personnel Services to reconsider its decision, pointing out that he had not deemed it necessary to obtain prior approval for the shipment of his automobile since he had found from Administrative Instruction ST/AI/176/Rev.1 and Amend.1 that he fulfilled all the requirements; that it was not stated anywhere that such prior authorization was necessary; that upon his arrival at Jerusalem he had inquired of the personnel and finance officers of UNTSO as to how to proceed but that his was the first case of its kind at UNTSO and that no one knew the procedure; that when he accidentally came across the P.101 form he immediately filled it out but that he thereafter became so busy with his work that he lost track of time while the various UNTSO services discussed what to do with his request and that before he realized it the one-year period for filing a claim had passed; and that it was unfair to apply criteria based on the age of a car in determining whether transportation costs would be reimbursed since he should not be punished for having so low a salary as to not permit him to buy a new car every three years nor should he be punished for having bought a car which was so reliable as to have remained in perfect working condition after more than 13 years. On 11 March 1976 the Office of Personnel Services replied:

“In determining whether the transportation of a POV [privately owned vehicle] is justified the age and the mileage of the car is a most important factor. Under normal circumstances it can be assumed that a 13 year old car with a mileage of 104,000 is not likely to serve its owner for a substantial period ahead, and that, therefore, the transportation over a distance of 4,000 miles is not reasonable from an economical point of view. There may be exceptions to this rule. However, the Organization obviously has no means to ascertain whether in a specific case there are grounds for such an exception.

“Independently from this point, your request had to be denied for two further reasons. I would like to draw your attention to Para. 2(a) of Administrative Instruction ST/AI/176 according to which one condition for the approval is the staff member being expected to remain for at least 2 years at the duty station to which the vehicle is to be taken. There is no evidence that your reassignment to Jerusalem in June 1974 was expected to be for 2 years or more. As a matter of fact, you spent only 16 months with UNTSO, until your further reassignment.

“Finally, I note that your request on the relevant P.101 form carries the date of 13 August 1975. Provided that your claim had been founded in all other respects, it should have been submitted in June 1975 at the latest. The one year period for the submission of the claim, as set forth under Staff Rule 103.15, applies to any kind of payments and you could reasonably be expected to be aware of this provision

have exercised its discretion in favour of the Applicant.

2. The Board erred in its construction as to when an expectancy of two years' service at the Applicant's duty station could have reasonably arisen. The Applicant could not have reasonably expected to serve at his duty station for a period of two years until he had served for at least one year. His reassignment elsewhere after 16 months' service in Jerusalem was unexpected.

3. A staff member has a basic right to the car of his preference, new or old, and no evidence has been adduced on the absence of potential loss on resale. The relative

