

XII. The application is therefore rejected.

(Signatures)

Endre USTOR
Vice-President, presiding

Samar SEN
Member

New York, 6 November 1980

Arnold KEAN
Member

Jean HARDY
Executive Secretary

Judgement No. 259

(Original: English)

Case No. 250:
Hoppenbrouwer

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

Claim of a former technical assistance expert for payment of compensation for loss of personal effects.

Staff Rule 206.6 and article 3 (a) of Administrative Instruction ST/AI/149.—Question whether, at the time of a burglary in his hotel, the Applicant was "travelling" within the meaning of the Administrative Instruction and whether the burglary was the direct result of the travelling.—Conclusion in the affirmative.—Question whether the travel was in connexion with the performance of official duties within the meaning of the Administrative Instruction.—Conclusion in the affirmative.—Respondent's contention that the liability of the Organization is restricted to cases where a common carrier or innkeeper is liable is rejected.—Respondent's contention based on the policy of the Claims Board is rejected.—Irrelevance of Judgement No. 209.—Absence of negligence or misconduct on the part of the Applicant.—Rescission of the decision of the Secretary-General denying the claim for compensation.—Payment to the Applicant, as compensation, of an amount to be assessed by the Claims Board.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Mr. Arnold Kean;

Whereas, on 3 April 1980, Laurentius M. A. Hoppenbrouwer, a former associate expert of the United Nations, filed an application the pleas of which read as follows:

“ . . .

“I contest the decision of the Secretary-General . . . to maintain the decision of the Claims Board to deny my claim for compensation of personal effects under Staff Rule 206.6.

“I request that the above-mentioned decision of the Secretary-General be rescinded and that the Secretary-General be obliged to carry out the recommendation,

contained in para 44 of Report No. 332 [of the Joint Appeals Board] . . . , that 'the Secretary-General request the Claims Board to calculate the compensation due to the appellant and that he pay the appellant the appropriate amount of compensation'.

"I wish to claim an amount of compensation under article 9, para 1 of the Statute of the United Nations Administrative Tribunal which is equal to the present replacement value of the personal effects lost by me, due to theft, in the course of performance of official duties. This value is US\$900.00".

Whereas the Respondent filed his answer on 3 June 1980 and submitted an additional document on 3 November 1980;

Whereas the facts in the case are as follows:

The Applicant was serving as an Associate Expert in the UNDP office for the Western Pacific Region at Apia, Western Samoa. On 2 April 1973, before his departure for Tiel, Netherlands, on home leave, he wrote to the Deputy Director of the Asia and Middle East Branch, Office of Technical Co-operation (OTC), as follows:

"On 4 April 1973 I am scheduled to go on home-leave. On my way back to Western Samoa I intend to spend some days in New York. I would appreciate if you allowed me to have discussions on my work here with some members of your staff."

On 8 May 1973 the Chief of the Human Resources Projects Section of the Asia and Middle East Branch replied to the Applicant at his Netherlands address:

"We shall be happy to meet with you if you stopover in New York on your way back to Western Samoa."

On his return from home leave the Applicant travelled via Amsterdam and London to New York, arriving on 24 June 1973. After spending two days in consultations with OTC and UNDP officials, he flew to Washington, D.C., on 27 June 1973 and engaged in consultations with officers of the World Bank and the International Monetary Fund. On 29 June 1973 the Applicant left Washington, D.C., by plane and travelled non-stop to Honolulu, Hawaii, arriving there the same day. He checked into the Coral Seas Hotel, 250 Lewers Road, Honolulu, and was booked to leave the following day on a flight from Pago Pago and to continue on a flight from Pago Pago to Apia. At approximately 8 p.m. on 29 June, while the Applicant was away from his hotel room, the room was forcibly entered by thieves who stole travellers cheques, travel documents, and the following items of property: an electronic calculator, a radio-cassette recorder, a movie camera, a photcamera, a flash attachment, two watches, and a lighter. The Applicant reported the loss to the local police at 4 a.m. on 30 June. He obtained a refund of travellers cheques from the American Express office in Honolulu, and on 1 July some of the documents were found and returned to him by the police. On 2 July he left for Pago Pago and on 3 July arrived at Apia. On 16 July 1973 the Applicant submitted, in connexion with his home leave travel, a voucher for reimbursement of expenses in which he requested four days of daily subsistence allowance "for consultations in New York . . . and in Washington" and three days of daily subsistence allowance "for delay in Honolulu" since, because of the loss of his travel documents, he could not leave as planned. On the same day the Applicant sent to the Chief of the Administrative Section of OTC a copy of a statement from the Chief of Police of Honolulu verifying the filing of the report of the burglary, and requested payment of compensation for loss of personal effects under Staff

Rule 206.6. On 16 July 1973 also, the Regional Representative a.i. forwarded the Applicant's travel claim to the Administrative Section, explaining that his stopovers in New York and Washington had been made "with the knowledge of . . . the Regional Representative who felt these visits would be highly useful for the expert". On 14 August 1973 the Administrative Section asked the Applicant to submit a list of items stolen, with values and purchase dates, for presentation to the Claims Board together with his claim for payment of the three days' subsistence, and advised him that the Administrative Section could not approve payment of the four days' subsistence for the New York and Washington stopovers. On 27 August 1973 the Applicant submitted a list of the stolen items. In a memorandum dated 20 September 1973, the Human Resources Projects Section advised the Administrative Section that it had no objection to the payment of two days' per diem for the Applicant's stopover in New York but that it could not recommend any per diem for his stopover in Washington; a copy of that memorandum was forwarded to the Applicant on 31 October 1973. On 27 December 1973 the Secretary of the Claims Board sent to the Administrative Section the following memorandum:

“ . . .
“The case was considered by the Claims Board at its 132nd Meeting on 18 December 1973. The Board found this to be an ordinary hotel burglary which could not be directly attributed to the claimant's performance of official duties. The Board further noted that Mr. Hoppenbrouwer, by keeping the valuables and passports in his hotel room, had not exercised normal care and precaution for his effects. In these circumstances, the Board found the loss not compensable and recommended denial of the claim. That recommendation was approved today by Mr. Ulanchev for Mr. W. H. Ziehl, Acting Head, Office of Financial Services. . . .”

A copy of that memorandum was transmitted to the Applicant on 8 January 1974. In a letter dated 25 January 1974, the Applicant asked the Administrative Section to request the Claims Board to reconsider his claim; his letter read in part:

“I agree that this was a case of ordinary hotel burglary. It occurred however while I was on official travel. After two days of consultations in New York and two days in Washington with IMF and Worldbank (for which incidentally I did not receive D.S.A. despite the recommendation by the UNDP Apia office), I flew to Honolulu on 29 June 1973 to await the first available connection to Pago Pago and Apia. I thus travelled the most direct way to my duty station, with no pleasure travel involved. Certainly this can be considered 'official travel' and therefore would fall under the definition of 'performance of official duties', used in rule 206.6.

“The articles stolen, with the exception of the electronic calculator, were of course for non-official use. Rule 206.6 applies however to personal effects in general.

“With regard to the Board's assertion that normal care and precaution had not been exercised, I only would want to go as far as to admit that I was rather naive to think that I can safely leave travel documents and valuables in a hotel room in an American city.

“I note that the Board's memorandum does not refer at all to the request for D.S.A. for the days I was delayed because of the theft of my travel documents. I arrived in Apia three days later than planned. As in the meantime one day D.S.A. in Pago Pago has already been paid in connection with my travel claim, I hope that an additional two days can be paid in connection with the delay that was caused

