

his obligation in the present case or that his decision was tainted by prejudice or by any other vitiating factor.

VII. It is in this connexion that the Applicant requests the Tribunal to order the Respondent to produce copies of all documents stating advice or recommendations on which the Respondent relied when he made his decision to reject the recommendation of the Joint Appeals Board that the Applicant receive an *ex gratia* payment.

The Tribunal has held that "rules of equity and justice do require access to documents and information within the exclusive possession of the Administration in so far as it relates to the staff member concerned and is relevant to the proceedings under consideration. Unless access is given to 'relevant' documents to the Applicant, it would amount to lack of due process in the preparation and presentation of his case" (Judgement No. 74, *Bang-Jensen*, par. 9).

In the present case, however, production of the documents requested by the Applicant is not "relevant" to the proceedings inasmuch as the Secretary-General enjoys complete freedom to seek or act on the advice of either the Office of Personnel Services or the Department in which the Applicant served or both. Such a procedure cannot be considered an illegal delegation of authority or responsibility as the Applicant argues.

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

(Signatures)

Endre USTOR
Vice-President, presiding

Samar SEN
Member

New York, 5 October 1981

Arnold KEAN
Member

Jean HARDY
Executive Secretary

Judgement No. 276

(Original: French)

Case No. 260:
Badr

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

Request by a staff member that his period of service as a judge in the Republic of the Congo be counted as part of his contributory service for the purposes of the Pension Fund.

Arbitration procedure prescribed in the "judiciary contract".—Competence of the Tribunal in accordance with the precedent set in Judgement No. 176.

The Applicant's claim that his contractual status in the Congo was that of a technical assistance expert.—Principle according to which an Applicant cannot use his factual status as an argument to claim a legal status different from his contractual status.—Consideration of the relevant terms of the "judiciary contract".—Nature of the functions performed by the Applicant in the Congo.—The Applicant's claim is

member of the United Nations Secretariat.—Documents excluding the right to participate in the Pension Fund.—The Applicant's contention is rejected.—The Tribunal finds that the Applicant is not entitled to any benefit and hence cannot avail himself of the provisions of article 24 (b) of the Pension Fund Regulations.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Francisco A. Forteza, Vice-President; Mr. T. Mutuale; Mr. Samar Sen, alternate member;

Whereas, on 19 March 1981, Gamal Moursi Badr, a staff member of the United Nations, filed an application in which he named the Secretary-General of the United Nations as first Respondent and the United Nations Joint Staff Pension Board as second Respondent;

Whereas, in the pleas of his application, the Applicant requests:

“A. That the first Respondent be enjoined to:

“(a) Recognize the true nature of the Applicant's appointment covering the period from 17 January 1963 to 16 January 1965 as that of a technical assistance expert entitled to participation in the Pension Fund, and,

“(b) Advise the UNJSPF Secretariat accordingly, under rule B.1 of the Administrative Rules of the Fund, so that it may take action for giving effect to the provision of article 24 (b) of the Regulations; and

“B. That the second Respondent be enjoined to restore the Applicant's service from 17 January 1963 to 16 January 1965 under the provision of article 24 (b) of the Regulations of the Fund, so that the said period would be taken into consideration for the purpose of calculating the Applicant's retirement benefit.

“The second Respondent's decision not to take any action at this time (as reflected in his memo of 21 October 1980, annex 12) will have to be rescinded in the process.

“Subsidiarily, in case the first Respondent avails himself of the option provided him in article 9, paragraph 1, of the Statute of the Tribunal, it is requested that the Tribunal fix the amount of compensation to be paid to the Applicant at a monthly sum equal to the additional monthly retirement benefit which the Applicant would have been entitled to under the Regulations of the Pension Fund as a result of the restoration of his prior contributory service, to be paid to the Applicant as long as he is in receipt of a retirement benefit and thereafter to his widow as long as she is in receipt of a widow's benefit.”

Whereas the first Respondent filed his answer on 1 July 1981;

Whereas the Applicant filed written observations on that answer on 7 July 1981;

Whereas the second Respondent filed his answer on 15 July 1981;

Whereas the Applicant filed written observations on that answer on 17 July 1981;

Whereas the second Respondent submitted additional written statements on 22 and 29 July 1981;

