

(d) In view of the terms of subparagraph (b) above, there is no occasion to fix any compensation pursuant to article 9.1 of the Statute of the Tribunal.

(Signatures)

Endre USTOR  
President

Arnold KEAN  
Alternate member

Suzanne BASTID  
Vice-President

Nicholas TESLENKO  
Acting Executive Secretary

Herbert REIS  
Member

New York, 7 October 1982

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## Judgement No. 297

(Original: English)

Case No. 285:  
Panis

Against: The Secretary-General  
of the United Nations

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*Non-renewal of the fixed-term appointment of a staff member of the Office for the Caribbean of ECLA (Economic Commission for Latin America).*

*Request to provide a certification of the Applicant's satisfactory service.—By providing an appropriate testimonial, the Administration has given satisfaction to that plea.*

*The issue whether the Administration gave the Applicant ground for an expectancy that his appointment would be renewed.—Responsibility of the Administration for the failure of the Chief of the ECLA Office for the Caribbean to inform the Applicant of the substantial changes recommended concerning future employment.—Serious irregularities in the preparation of the Applicant's Performance Evaluation Report discovered by an investigative panel.—Refusal by the Applicant to accept a post offered him at Addis Ababa by the United Nations Industrial Development Organization.—Different legal position which the Applicant would have been in if he had decided to accept that offer.—Payment of three-months' net base salary to the Applicant by the Secretary-General.—Decision of the Tribunal not to make an additional award.—New pleas presented by the Applicant in the course of the proceedings are not receivable.—Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Herbert Reis;  
Mr. Luis de Posadas Montero;

Whereas on 11 February 1982, the Applicant filed an application which did not comply with the formal requirements of Article 7 of the Rules of the Tribunal;

Whereas on 17 February 1982 the application was returned to the Applicant for correction;

Whereas on 28 April 1982, the Applicant filed a corrected application the pleas of which read as follows:

“... the Applicant requests the Tribunal to proceed as provided by Article 7, paragraph 3, of its Rules:

“(a) The preliminary and interlocutory measures requested are:

“—to have from his confidential file the strictly personal and confidential letter dated 17 May 1977 from Miss Wollstein [Administrative Officer, ECLA Office for the Caribbean] to Mr. St. S. A. Clarke [Director, ECLA Office for the Caribbean], declassified and communicated to the Tribunal;

“—to have Mr. St. S. A. Clarke's memorandum to Mr. El Haj [Chief, Division of Administration, ECLA] (date of which, as shown on page 25 of the report of an investigating Panel into the rebuttal of the applicant's PER [Performance Evaluation Report] would be 5 May 1978) also declassified and communicated to the Tribunal. In his memorandum, according to the Panel, the Director, without any attempt to verify them, supported the confidential letter of 17 May and asked for retraction of the statement made by the staff member to Mr. El Haj on 9 January 1978. Such a retraction has never been requested while a full examination of the matter never occurred. The Panel admitted that it could not with conviction say that the staff member's comments were without foundation.

“—to find out (by recourse to the legal proceedings appropriate to the case) to what extent these two damaging accusations against the past staff member:

“(i) have marred his professional reputation;

“(ii) have brought about a discriminatory attitude towards him;

“(iii) have caused the preparation of prejudiced Performance Evaluation Report concocted according to a highly irregular procedure with in view the eviction from the Secretariat of a staff member whose services had been well regarded;

“(iv) have made from the staff member such a poor misrepresentation to New York and Santiago Headquarters that the Administration has been led to lose interest and forego an indepth investigation of the case (denial of reviewing the rebuttal of the Performance Evaluation Report and abandonment of the staff member after ten years service without even accepting to refer in his certification of service to the quality of his work and official conduct as provided by Staff Rule 109.11).

“(b) The applicant requests that:

“—his professional standing and reputation be rehabilitated not only by expunging from his official status file any criticism of his performance but also by a positive attitude of the Administration which should recognize that it has been abused and show eagerness to redress the wrong done;

“—the decision taken on 30 November 1981 be rescinded to be replaced by a fairer compensation for the damages caused by actions of the Administration which resulted in the decision not to extend the staff member's fixed-term appointment beyond 30 September 1978.

“(c)—besides being reinstated in the aforementioned rights the applicant re-

quests from the Administration to be re-employed within the shortest possible time span and, in the meantime, to receive the assurance of active action taken towards that end;

“—the Administration will send him certification of service stating the nature of his duties, the length of service and the quality of his work and official conduct;

“—the Administration will pay him a compensation commensurate with the real damage incurred.

“(d)—The amount of the compensation expected should be fixed to a minimum of two years' salary in case of his immediate re-employment. This request is justified by the facts that since 16 October 1978 until the presentation of this request to the Tribunal the past staff member has been sent on technical assistance missions so having the possibility of making a living for ten months only, remaining idle for the other thirty-two months. In case re-employment within the UN family does not materialize, in view of the fact that, because of assumed bad records with the UN, the applicant has been unable to find employment elsewhere, his request for compensation should be put to four years. The rationale for this is that the past staff member, out of work because of slanderous and pernicious action in the ECLA sub-regional office, will reach the age of 55 and be entitled to early retirement benefit from the UNJSPF [United Nations Joint Staff Pension Fund] on 23 July 1983 only.

“From 16 October 1978 to this date almost five years will have elapsed during which, because of what happened in Port-of-Spain, he will have been deprived of financial support for four years. This request appears to be reasonable and moderate. It does not take into account the strains, distress and misery his family had to endure when at the age of fifty he lost his employment with three children attending schools and universities.

“(e)—It is expected that the Tribunal will permit more staff members from the ECLA Port-of-Spain Office to intervene in this case if their rights should be affected by the judgement to be given. A Committee from Headquarters with inquisitorial powers to make an in-depth study of the affairs of the ECLA office in Port-of-Spain should be appointed. Disciplinary measures should be taken against the UN staff members who took advantage of their position in a small duty station (less than ten professionals in 1978) far away from Headquarters to oppress their colleagues. By doing so they did not discharge their functions and regulate their conduct solely with the interests of the United Nations in view. An exemplary judgement should be given to the benefit of all past, present and future staff.”;

Whereas the Respondent filed his answer on 26 May 1982;

Whereas the Applicant filed written observations on 8 July 1982;

Whereas on 19 August 1982 the President of the Tribunal denied the Applicant's request for oral proceedings;

Whereas the Tribunal has received from and on behalf of the Applicant additional communications;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 17 October 1968. He was offered an initial one year intermediate term appointment at the P-4 Step II level, as an expert in development administration in the Department of Economic and Social

Affairs. His duty station was Bogotá, Colombia. Subsequently, the Applicant was offered a series of successive fixed-term appointments of short periods of time, for a number of different assignments at different duty stations including Panamaribo, Suriname, and New York. On 1 February 1971 he entered the service of UNIDO at the P-4 Step IV level, also on a fixed term appointment of eleven months that was subsequently extended until 30 June 1975. However, on 1 February 1975 he was transferred from the Joint UNIDO/ECA Industry Section to the Economic Commission for Africa, hereinafter referred to as ECA, in Addis Ababa, Ethiopia, as an Economic Affairs Officer at the P-4 Step VIII level. On 1 July 1975 he was offered a two-year appointment at that duty station, but effective 15 November 1976 and with the agreement of UNIDO, ECA and the Economic Commission for Latin America, hereinafter referred to as ECLA, he was transferred, before the expiration of his assignment to ECA, to ECLA's Caribbean Office at Port-of-Spain, Trinidad, as an Economic Affairs Officer. On 1 July 1977 his appointment was extended by ECLA for one year until 30 June 1978 at the P-4 step XI level. On 1 July 1978, this appointment was renewed for a further three months until 30 September 1978 at the P-4 step XII level and then finally for a further sixteen days until 16 October 1978 when the Applicant was separated from service under the circumstances described forthwith.

In a memorandum dated 13 April 1977, addressed to the Chief of the Port-of-Spain Office, the Acting Chief of the Personnel Section of ECLA requested that a Performance Evaluation Report be prepared for the Applicant. The request was reiterated on 14 November 1977 in a standard mimeographed sheet and in two cables of 12 and 31 January 1978 from the Chief of Administration in ECLA.

The Performance Evaluation Report which when finalized categorized the Applicant's performance as "adequate" became subject of major controversy. The Applicant instituted a rebuttal procedure and subsequently an investigation was conducted. The Performance Evaluation Report evidences that discussions were held with the Applicant on 5 and 8 December 1977; the Deputy Chief of the ECLA Office signed the first part of the report on 2 February 1978 and the Director of the ECLA Office for the Caribbean signed it on 3 February 1978.

The Applicant signed the report only on 11 May 1978, that is three months later and thereafter on 5 June 1978 instituted a rebuttal procedure in a letter to the Chief of Administration. Pursuant to this letter, on 18 August 1978 ECLA Santiago notified to him five names from which he was invited to choose an investigative Panel of three members in accordance with ST/AI/240. The Panel submitted its findings to the Executive Secretary of ECLA on 30 March 1979. They apologized for the delay and stated that it was their "common view that serious matters of principle [were] involved [there] and in discharging their mandate [they had] acted accordingly." The summary, conclusions and recommendations of the Panel read as follows:

"The Panel conducted interviews in excess of 5 hours with the Director and the Deputy Director respectively. It has also examined all relevant files and held many discussions on the subject under consideration. It has come to the following conclusions from the available evidence:

"(1) The evaluation exercise does not represent a fair, objective and unbiased appraisal of the staff member's performance.

"(2) The sequence of events surrounding the preparation of the evaluation report leave the Panel in grave doubt as to the amount of objectivity with which the exercise was conducted.

“(3) It is quite obvious that by May 1977 there was much tension between staff member and at least two members of the professional staff. How this originated is not clear, but both the Director and the Deputy Director knew about it and took no action to discover its root cause.

“(4) The Deputy Director found the staff member a difficult person to talk with and this certainly affected the extent to which he could have performed a supervisory function. The Panel is, in fact, inclined to the view that he did not perform such a function at all, and if he did, then he did not do it well.

“(5) The Director seems to have acted as the staff member’s only supervisor, and he seems to have been far more involved with the staff member’s work than the Deputy Director. It is difficult to conclude that he dealt with the staff member with complete objectivity, for his treatment of the damaging memo of 17 May 1977 from the Administrative Officer, and his reference to the contents of that memo in his memo to Mr. El Haj of 5 May 1978 suggests that he entertained the Administrative Officer’s accusations without any attempt to verify them. As he said, he “Noted” the memo but took no action.

“The Panel finds it somewhat difficult to know what recommendations to make with respect to the staff member. For though it feels that the staff member has been wronged, it appears outside of its terms of reference to advise the Executive Secretary on a course of action. It feels, however, that the staff member’s career in the office was marred by administrative attitudes based on discriminatory rather than professional considerations, and that this should be taken into account in any review of the events which led to the termination of his assignment. For the Panel can understand the intense emotional strain which anyone would experience who did not fit into behavior patterns acceptable to the Directorate and the staff member who was Administrative Officer during the review period.

“A far more sensitive issue is what should be recommended following the Panel’s insight into management and administration in CEPAL (Port-of-Spain). The members of the Panel had to ask very probing questions of the Director and the Deputy Director, and were at times highly embarrassed by the kinds of queries they had to raise to get to the root of the matter. The Panel gave serious consideration to advising the Executive Secretary to appoint a Committee from Headquarters with inquisitorial powers to make an in-depth study of the affairs of CEPAL (Port-of-Spain), but it concluded that such a recommendation would reveal a reluctance of the Panel to accept the logic of its own enquiry.

“The Panel feels that if the careers of staff members are dealt with in this cavalier fashion, doubts must be cast on all evaluation reports, and officers’ careers are likely to be prejudiced even by reports of outstanding performances, for motivations can be justifiably queried.”

On 10 February 1981, the Deputy Executive Secretary for Cooperation and Support Services addressed a memorandum to the Acting Chief of the Division of Administration on “Appraisal of Performance Evaluation Report of Mr. Jean-Claude Panis.” This memorandum read in part as follows:

“11. The panel report was reviewed by the Office of the Executive Secretary and by the Personnel Section of CEPAL, who found that the report did not make any recommendations regarding proposed changes in specific ratings or comments

included in the PER of Mr. Panis. On 13 June 1979, CEPAL Headquarters requested the three panel members to make specific recommendations, as this information would be necessary before the Executive Secretary could make his final appraisal. On 18 August 1979 a follow-up telex was sent to the panel urging it to respond to the 13 June memorandum.

"12. On 30 August 1979 the Panel replied stating that it considered the request 'for ranking of Mr. Jean-Claude Panis' performance to be outside the terms of reference of its first assignment, and as such to constitute a new assignment. In order to fulfil this new assignment, the Panel is of the opinion that it will need to personally interview Mr. Jean-Claude Panis'.

"13. On 26 September 1979 CEPAL Headquarters insisted that the Panel comply with ST/AI/240 and requested that it complete its report. In its reply dated 30 October 1979, the Panel stated: 'On the specific question of amendments to ratings and comments given to staff member in section 3, the Panel was aware at the time of its investigation that it was unable to confer with the staff member, because of differences in geographical location. This was a limiting factor. The Panel felt that it could not do justice to the staff member in this regard without discussing his programme of work. The Panel is still of the opinion that it can only do this by interviewing him, and should like arrangements to be made for such an interview at the earliest possible opportunity.' CEPAL Headquarters replied to the Panel on 9 January 1980 stating: 'As regards interviewing Panis, please note paragraph 12 of ST/AI/240 of 3 January 1977 on Performance Evaluation Report system as regards impracticability of interviews when there are differences in geographical location.' Nevertheless, the Panel took no further action and during 1980 two of the Panel members retired from the United Nations.

"14. We have now reviewed again both Mr. Panis' rebuttal of his PER and the report of the Panel named to investigate the case. While many of the points raised by Mr. Panis and analysed by the Panel are relevant to the ratings and comments contained in his PER, they do not provide sufficient basis to make specific changes in them. For this reason, the PER as originally prepared and signed by the first and second reporting officers in Port-of-Spain in February 1978 is reaffirmed."

On 1 March 1978, the Chief of the ECLA Office for the Caribbean recommended to the Executive Secretary of the Commission that the Applicant's fixed-term contract, due to expire on 30 June 1978, be renewed for a further period of two years commencing 1 July 1978, that is, until 1 July 1980.

Before the Applicant had signed his report and instituted a rebuttal procedure, on 12 April 1978 the Chief of the Division of Administration at the ECLA Office in Santiago addressed a memorandum to the Chief of Staff Services at Headquarters New York, stating, *inter alia*:

"1. The Executive Secretary of CEPAL recommends that Mr. Jean-Claude Panis' current fixed-term appointment, which expires on 30 June 1978, be extended for one year through 30 June 1979.

"2. Mr. Panis has served with the United Nations since 17 October 1968. He was transferred from ECA to the CEPAL Port-of-Spain Office on 15 November 1976 to serve as Economic Affairs Officer (P-4) in the field of industrial development.

"3. A periodic report covering the staff member's performance during the

period November 1976-November 1977 has been prepared but it has only just been returned to Port-of-Spain for the staff member's signature. Although it is unusual for us to send you a copy of a periodic report before it has been signed by the staff member, I am doing so on this occasion to give you a clear picture of the reasons which have prompted us to request only a one-year extension of Mr. Panis' fixed-term appointment.

"4. While the Executive Secretary had originally intended to recommend Mr. Panis for a two-year extension, we have now received a cable from the Chief of CEPAL's Port-of-Spain Office stating that: 'After very careful reflection, I amend my recommendation to one-year extension of fixed-term contract. Evidently staff member not very happy and most probably would perform better in another environment. Also in view duration of service in UN best to assist him in deciding on a different assignment. One-year extension would put him on par with other staff members who took up duties at Port-of-Spain about same period.'

"5. In view of the above, I would greatly appreciate you consulting with Mr. Paul McCusker to explore the possibility of a post for Mr. Panis elsewhere. In the meantime, we would be grateful to receive Headquarters' concurrence to extend Mr. Panis' fixed-term appointment until 30 June 1979.

"6. Enclosed is a copy of Mr. Panis' job description. As soon as we receive the periodic report signed by the staff member we shall send you a copy for his file at Headquarters."

On 20 April 1978, the Applicant sent a memorandum to the Director of the ECLA Caribbean Office stating that:

"With reference to your request to Santiago Headquarters for a two-year extension, I wish to remind you that my current contract comes to an end on 30 June 1978.

"May I suggest that you send a reminder by telex to Santiago requesting them, in case the new contract is not ready yet, to advise whether they intend or not to issue a new two-year contract.

"One of the reasons why I request your swift intervention is that in case I have to leave Port-of-Spain I must, according to my lease, give a two-month notice to my landlord (i.e. by 30 April 1978)".

The Director of the ECLA Caribbean Office replied on 23 April that he had discussed the matter with the Executive Secretary at Belize and he had promised he would give it his early attention.

On 3 May 1978 the Applicant himself and the Director of the Caribbean Office on his behalf, cabled Santiago enquiring about his contractual status.

On 8 May 1978, the Chief of Administration at ECLA cabled the Director of the Caribbean Office and stated:

"AWAITING HEADQUARTERS DECISION ON PANIS CONTRACTUAL STATUS BEYOND 30 JUNE 1978. PLEASE RETURN PERIODIC REPORT SENT TO MOHAMMED 5 APRIL FOR PANIS SIGNATURE IN ORDER SUBMIT HEADQUARTERS SINCE THIS IS PROBABLY DELAYING THEIR DECISION."

Apparently, the change of position with respect to the extension of the Applicant's

contract was not conveyed to the Applicant who continued under the impression that authority for the original extension was being sought. But pursuant to the memorandum of 12 April 1978, Headquarters cabled UNIDO and ECA on 11 May 1978 with respect to the possibility of placing the Applicant within UNIDO and ECA.

On or about 19 May 1978 and for a few days thereafter, the Chief of the Programming Office at ECLA Santiago took advantage of a mission to the Caribbean Office to discuss the Applicant's situation there with the Director, the upshot of which was a joint cable from the Director of the ECLA office for the Caribbean and himself to the Chief of Administration of ECLA and the Executive Secretary in the following terms:

“AFTER DETAILED CONSIDERATION AND CONSULTATION WITH PANIS NOW ADVISE BEST EFFECT TRANSFER AS EARLY AS POSSIBLE. EXTENSION OF CONTRACT THEREFORE SHOULD BE ONLY FOR THE PURPOSE OF ALLOWING PLACEMENT OFFICES HEADQUARTERS TIME TO MAKE REASSIGNMENT AND IN ANY EVENT NOT BEYOND 31 [DECEMBER 1978]”

The Chief of Administration of ECLA cabled the above verbatim to Headquarters on 24 May 1978 and asked for an immediate decision. The record does not show, however, that the Applicant was advised of it.

The immediate Headquarters reaction was to reiterate on 26 May 1978 its earlier cabled inquiry to UNIDO and ECA and cabled a copy to the Chief of the Division of Administration in ECLA. On 6 June 1978 UNIDO replied and copied the cable to the Applicant indicating that:

“EXDIR [EXECUTIVE DIRECTOR] HAS APPROVED TRANSFER JEAN CLAUDE PANIS TO UNIDO P-4 POST IN OFFICE OF DIRECTOR, ICIS TO BE OUTPOSTED TO ECA ADDIS ABABA EFFECTIVE ONE JULY 1978 AND REQUESTS TWO YEAR EXTENSION PANIS APPOINTMENT. GRATEFUL YOU OBTAIN AND CABLE APPROVAL ASG PERSERV [ASSISTANT SECRETARY-GENERAL PERSONNEL SERVICES] FOR BOTH TRANSFER AND EXTENSION.”

On 13 June 1978, the Director of the ECLA Office for the Caribbean informed the Chief of Administration at ECLA that after receipt of the above mentioned cable, the Applicant wished to convey to them that (a) he had not been consulted about his willingness to transfer to ECA, (b) he could not accept such a transfer for family reasons, (c) he could not move “overnight” from Port-of-Spain, (d) he wished for a transfer elsewhere, (e) he was willing to work in Port-of-Spain for another three months in order to be able to give notice on his house and sell his car, and (f) he could not be held responsible for, and be obliged to pay the cost of, the late ECLA decision not to extend his contract there. The Director added to the cable that, considering only seventeen days remained of the Applicant's current contract, he would much appreciate urgent action with respect to its extension, in the interest of the staff member. The content of these cables was not communicated to ECLA in Santiago.

On 15 June 1978 United Nations Headquarters, unaware of the Applicant's views on the proposed transfer, cabled the Director of the Division of Administration at ECLA that stated:

“PLEASED ADVISE ASG PERSERVICES [ASSISTANT SECRETARY-



GENERAL, PERSONNEL SERVICES] HAS APPROVED TRANSFER CLAUDE PANIS TO UNIDO TO FILL ICIS P-4 POST OUTPOSTED TO ECA ADDIS ABABA. ASG PERSERVICES HAS ALSO APPROVED TWO YEAR EXTENSION FT [FIXED-TERM] APPOINTMENT. EL HAJ. PLEASE INFORM S/M [STAFF MEMBER] AND COORDINATE REPORTING DATE ADDIS ABABA WITH UNIDO/ECA”

On 21 June 1978 the Chief of Administration transmitted the text of the Headquarters cable referred to above to the Chief of the ECLA Caribbean office with copy to Headquarters and added:

“... PANIS MUST BEAR IN MIND PROVISIONS OF STAFF REGULATION 1.2 AS RECENTLY EMPHASIZED SECGEN [SECRETARY-GENERAL] BULLETIN ST/SGB/165 24 APRIL 1978 STAFF MEMBERS ARE SUBJECT TO AUTHORITY OF SECGEN AND TO ASSIGNMENT BY HIM TO ANY OF ACTIVITIES OF OFFICES OF UNATIONS. SINCE APPROVAL TWO YEARS EXTENSION PANIS CURRENT FIXEDTERM APPOINTMENT WILL ONLY BE GRANTED IF HE ACCEPTS TRANSFER TO UNIDO WHICH ONLY POSSIBILITY FOR HIM AT PRESENT BELIEVE HE HAS NO ALTERNATIVE BUT TO ACCEPT TRANSFER OR ELSE ACCEPT ONLY THREE MONTHS EXTENSION UNTIL 30 SEPTEMBER 1978 WHICH WOULD GIVE HIM TIME MAKE PERSONAL ARRANGEMENTS AND BE REPATRIATED FROM POS [PORT OF SPAIN] UPON SEPARATION FROM SERVICE. PLEASE CABLE ADVISE PANIS FINAL DECISION AND ADVISE HIM THAT UNDER TERMS REGULATION 11.1 HE MAY WISH AVAIL HIMSELF OF AN APPEAL AS OUTLINED IN SR [STAFF REGULATION] 111.3(A) AND 111.4(B)”

On 22 June 1978 the Applicant enquired by a cable to the Chief of the ECA Division of Administration:

“WHETHER THREE MONTHS RESPITE TO MAKE PERSONAL ARRANGEMENTS APPLIES BOTH REPATRIATION AND UNIDO PROPOSALS. STOP IF CONTRACT NOT EXTEND BEYOND 30 JUNE WISH TO CALL YOUR ATTENTION TO AAA MATERIAL IMPOSSIBILITY TO LEAVE 1 JULY BBB THE IMPOSSIBILITY FOR ME TO RAISE AROUND HALF A YEAR SALARY TO PAY TAXES ON CAR PLUS TWO MONTHS’ RENT PLUS REIMBURSEMENT EDUCATION GRANT AND SHIPMENT FROM BRUSSELS TO PORT-OF-SPAIN PLUS MISCELLANEOUS DUE TO ABRUPT ECLA DECISION NOT TO EXTEND CONTRACT”.

The Chief of administration division replied to this cable on 23 June 1978 with copy to New York stating:

“SUGGEST YOU COMMUNICATE DIRECTLY WITH MCCUSKER HQS. SINCE ANY RPT DELAY HAS TO BE MADE WITH CONCURRENCE OF RECEIVING ORGANIZATION. THEREFORE SUGGEST YOUR COORDINATION WITH UNIDO THROUGH MCCUSKER BBB SINCE YOUR REPLY NOT RPT CLEAR WHETHER OR NOT YOU ACCEPTED TRANSFER UNIDO OR WISH TO BE REPATRIATED COB 30 JUNE. ECLA NOT IN POSITION TO DISCUSS OTHER POINTS RAISED ...”

The Applicant replied by a cable of 27 June 1978, also copied to New York which stated:

“PANIS WISHES TO STATE THAT . . . AAA HE IS UNLIKELY TO RECEIVE ECA AND UNIDO AGREEMENT FOR THREE MONTHS DELAY ETA [ESTIMATED TIME OF ARRIVAL] BEFORE 30 JUNE BBB EVEN IF ACCEPTABLE TO RECEIVING ORGANIZATION UNDERSTANDS HE WOULD NO LONGER BE ON ECLA PAYROLL BEYOND END PRESENT CONTRACT IF UNIDO/ECA ALTERNATIVE CHOSEN CCC HENCE HE WOULD NOT BE PAID BEFORE REPORTING ADDISABABA DDD IF ASSUMPTION CORRECT SINCE IT IS IMPOSSIBLE FOR HIM IN BOTH CASES REPATRIATION OR TRANSFER TO LEAVE AT SHORT NOTICE WITHOUT EXTREME HEAVY LOSS FOR HIM THERE IS NO CHOICE WHATSOEVER EEE THEREFORE PANIS FORCED BY ECLA TO ACCEPT THREE MONTH EXTENSION SINCE THERE IS NO OTHER TRUE ALTERNATIVE OFFERED FFF PANIS FILES AN APPEAL AGAINST THIS ECLA UNILATERAL DECISION”

At this point, on 30 June 1978 the Chief of Staff Services at Headquarters informed the Applicant by cable that:

“YOUR TWOYEAR EXTENSION BEYOND 30 JUNE 1978 AND YOUR TRANSFER TO UNIDO POST AT ADDISABABA WERE APPROVED BY ASG PERSERV [ASSISTANT SECRETARY-GENERAL FOR PERSONNEL SERVICES] ON UNDERSTANDING THAT YOU REPORT FOR DUTY AT ADDIS ABABA ON 1 JULY 1978 ON UNIDO ASSIGNMENT. IF 1 JULY 1978 IS INCONVENIENT WE WILL REQUEST UNIDO TO CONSIDER REASONABLE DELAY IN YOUR REPORTING DATE TO ENABLE WIND UP YOUR PERSONAL MATTERS IN PORT-OF-SPAIN. YOU MUST CLEARLY ACCEPT ASSIGNMENT SO AS NOT TO JEOPARDIZE YOUR CONTRACTUAL STATUS. WE WILL INFORM YOU WHAT DELAY UNIDO CONSIDERS REASONABLE. FOR YOUR INFORMATION AN APPEAL UNDER STAFFRULE 111.3 DOES NOT HAVE THE EFFECT OF SUSPENDING ACTION ON THE ADMINISTRATIVE DECISION TAKEN BY ASG PERSERV”

On 5 July 1978, the Applicant addressed a letter to the Secretary-General requesting him to review the decision to transfer him to ECA as of 1 July 1978. The letter cited the interchange of cables noted in the previous paragraphs above and concluded with the statement that the Applicant was “*in a quandary*” and felt “*seriously wronged*”. The reasons given for this were, *inter alia*, that he was still working at Port-of-Spain but was without a contract and did not even know whether ECLA intended to pay him; he could not at short notice dispose of his car and other belongings, and extricate himself from his lease; it was unfair to send him back, with his family, to the disturbed conditions prevailing in Addis Ababa when other, more suitable, colleagues were available for such an arduous assignment; he had been exposed to such stress at ECLA that his heart condition had worsened, so that to send him to an altitude of 2300 metres was “*simple irresponsible*”; and, in its context, he considered the transfer as a punitive measure against him, designed, *inter alia*, to impede investigation of the serious charges made by him in the rebuttal to his periodic report on 5 June 1978. The Applicant finished by saying that, if no other alternative were offered, he would be out of the United Nations Secretariat on 30 September 1978, and would feel deeply victimized.

On 21 July 1978, a cable was addressed to United Nations Headquarters, UNIDO, to the Chief of Administration at ECLA from Addis Ababa, as follows:

“ECA EXECUTIVE SECRETARY JUST RETURNED FROM ECOSOC

MEETINGS GENEVA AND STRONGLY OBJECTS TRANSFER JEAN CLAUDE PANIS TO P-4 POST OUTPOSTED TO ECA ADDIS ABABA. THEREFORE REGRET UNABLE ACCEPT PANIS ADDIS ABABA."

In the light of this last-minute objection by ECA, the Chief of the Division of Administration cabled New York on 26 July 1978 for new instructions, indicating that while the Executive Secretary of ECLA could not recommend the Applicant's continuation there, ECLA was nevertheless prepared to extend his current fixed-term appointment which had expired on 30 June 1978 for an additional period of three months, to enable him to resolve his personal problems, provided no further extension was granted. In this cable the Chief of the Division of Administration quoted the Applicant's reply to a request by the Administrative Officer of the ECLA Office for the Caribbean with respect to the Applicant's intentions and expressed the view that, since the former had objected to re-assignment—and that alternative was now no longer available—the Organization had no further commitment to him. Accordingly, on 26 July 1978, the Chief of the Division for Administration at ECLA cabled New York for further instructions as follows:

"KINDLY ADVISE ACTION TO BE TAKEN WITH REGARD TO PANIS IN-VIEW THIS DEVELOPMENT EXSEC CANNOT RECOMMEND PANIS CONTINUATION WITH ECLA. WE HOWEVER PREPARED EXTEND HIS CURRENT FIXED-TERM APPOINTMENT WHICH EXPIRED 30 JUNE 1978 FOR ADDITIONAL PERIOD THROUGH 30 SEP FOR STAFF MEMBER TO RESOLVE PERSONAL PROBLEMS WHICH HE HAS ALLEGED PROVIDED NO FURTHER EXTENSION GRANTED. FYI AM POUCHING LENGTHY CABLE WHICH NOW SUPERSEDED BY EVENTS SENT BY PANIS IN REPLY TO OUR REQUEST TO HIM TO CONFIRM ACCEPTANCE OF REASSIGNMENT. PANIS STATED QUOTE I HAVE NOTHING TO CONFIRM HERE BUT TO SAY THAT AN APPEAL HAS BEEN FILED WITH THE SECRETARY GENERAL ON 6 JULY AGAINST THE ECLA DECISION UNDER THE MENACE TO LOSE MY JOB TO HAVE TO GO BACK TO ADDISABABA TO BE OUTPOSTED THERE BY UNIDO UNQUOTE AS PANIS OBJECTED TO REASSIGNMENT AND THAT ALTERNATIVE IS NOT NOW AVAILABLE BELIEVE THERE IS NO FURTHER COMMITMENT TO STAFF MEMBER."

In a cable to ECLA Santiago and to the Director of the ECLA Office for the Caribbean on 8 August 1978 United Nations Headquarters stated:

"THREE MONTHS FINAL REPEAT FINAL EXTENSION OF JEAN CLAUDE PANIS APPOINTMENT THROUGH 30 SEPTEMBER 1978 APPROVED. PLEASE PROCESS AND INFORM PANIS OF ABOVE APPROVAL IN WRITING."

On 10 August 1978 the Applicant was informed that a final extension of his appointment through 30 September 1978 had been approved. This appointment was subsequently extended for sixteen days to permit the Applicant to complete ten years of service with the Organization.

On 1 September 1978, the Applicant filed an appeal in the Joint Appeals Board against the decision to require him to accept transfer to a UNIDO post outposted to the ECA as of 1 July 1978 or to accept a final extension of his fixed-term appointment to 30 September 1978. Subsequent to 16 October 1978, the Applicant was engaged by the United Nations under a Special Service Agreement for the period 22 February 1979 to

11 March 1979 as a "Consultant en Planification" for a Project in the Comoros Islands. He was subsequently granted a two-year fixed-term project personnel appointment as a "Conseiller technique principal, expert en économie générale et planification", at the L-5 level, in the Comoros Islands for the period 4 June 1979 to 3 June 1981. This post was abolished effective 11 March 1980 and the Applicant received termination indemnities as provided under the Staff Regulations for his separation from service.

On 26 June 1981 the Joint Appeals Board concluded and recommended the following:

"46. While the Board acknowledges that the Respondent had not entered into a legal commitment of continuing service for the appellant, the Board stresses that a staff member should be able to expect to be treated in good faith and fairness while employed by the Organization.

"47. The Board finds that the report of the Panel constituted to investigate the appellant's rebuttal to his contested periodic report indicated that the periodic report was not a fair, objective and unbiased appraisal of the appellant's performance.

"48. The Board finds further that this investigation was not taken into consideration by the Deputy Executive Secretary in his appraisal of the rebuttal. Accordingly, the Board concludes that the appellant was denied due process in the appraisal of his rebuttal. The Board concludes that as the contested periodic report was not properly appraised it is an incomplete document.

"49. In the light of this conclusion and of the Board's finding regarding the irregularities in the preparation and use made of the appellant's performance evaluation report, the Board recommends that the professional standing and reputation of the appellant should be rehabilitated by expunging from his official status file any criticism of his performance which might have been based on the performance report, and by attaching to that report the conclusions and recommendations of the Board so as to facilitate active consideration of the appellant for further employment within the Organization under the 100 or 200 series of the Staff Rules.

"50. The Board finds that the timing and conditions under which the reassignment was offered placed harsh financial and other strains on the appellant which could have affected his acceptance of such an offer. Moreover, the Board believes that if no other alternative could be found, such as an extension of his assignment, to provide sufficient time to identify another post or even clarify the availability of the post which had been offered, it was due to the existence of the erroneous performance report.

"51. The Board concludes that the handling of the case of the appellant, who had ten years of continuing service, and his eventual loss of employment were directly influenced by the report. The Board also believes that, while the appellant has since been considered for technical assistance assignments, one of which, in the Comoros Islands, was accepted by him, the possibility of continuing him in further regular employment under the 100 series, particularly in the ECLA region, was made difficult because of the report.

"52. The Board further concludes that the appellant's career has in fact been adversely affected as a result of the deficiencies and irregularities in the administration of the Office where he was assigned and recommends, with the expurgation of his official status file mentioned above, in equity that an *ex-gratia* payment be made to him in an amount equivalent to eight months of net base salary for the period 1

October 1978 to 3 June 1979 during which the appellant was unemployed prior to his assignment in the Comoros Islands.”

On 30 November 1981, the Assistant Secretary-General for Personnel Services notified the Applicant of the Joint Appeals Board’s report and informed him that the Secretary-General had decided

“(a) to accept the Board’s recommendation contained in paragraph 49 of its report, and

“(b) to grant you an *ex gratia* payment in an amount equivalent to three months’ net base salary at the rate in effect on 30 September 1978.”

The decision to grant him an *ex gratia* payment in the above-mentioned amount was based on the Secretary-General’s conclusion that, considering all the circumstances of the case, such a payment would amply fulfil any moral obligations which may have arisen in his respect on the part of the Administration.

On 28 April 1982 the Applicant filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The dispute is not about the renewal of a fixed-term contract that was not extended beyond 30 June 1978. The Applicant is cognizant of the provisions inserted in fixed-term appointments to the effect that they carry no expectancy of renewal or conversion to another type of appointment. Notwithstanding this provision, the Applicant had no reason to fear that his career would be interrupted unless his post within the Secretariat would have been abolished and/or the quality of his work would have been unsatisfactory. Since the Applicant had been employed by the United Nations on a series of fixed-term appointments for a period of about ten years and the quality of his services had been well regarded, in accordance with the Administrative Tribunal’s jurisprudence “the Organization could find itself bound to a renewal if it either expressly or implicitly created in the mind of the holder of such fixed-term contract expectation that the appointment would be renewed.”

2. The procedures relating to the Applicant’s rebuttal of his periodic report were not completed in time, and they further indicated that certain staff members of the Caribbean Offices had acted with prejudice with respect to the Applicant during the formulation of the report and thereafter.

3. The United Nations Administration did not act in good faith during the period in which the Applicant’s contract was in the process of being extended, neither during the period in which extensive efforts were being made to replace him.

4. The Applicant’s individual rights have been violated by a blatant, arbitrary and overbearing administrative decision.

Whereas the Respondent’s principal contentions are:

1. The Applicant has no legally cognizable expectancy of continued employment with the Organization beyond the expiry date of his fixed-term appointment and is therefore not entitled to any damages for the non-renewal of the fixed-term appointment which expired on 16 October 1978.

2. Irregularities in preparing the Applicant’s Performance Evaluation Report did not entitle the Applicant to punitive or exemplary damages or investigations into ECLA management practices.

The Tribunal, having deliberated from 21 September to 6 October 1982, now pronounces the following judgement:

I. A principal plea by the Applicant in this case, which has a voluminous record, has been for the Administration to provide a certification of his satisfactory service with the United Nations as an Expert in Development Administration. He had earlier been given a statement reciting service in this capacity from 1968 to 1980 but it contained no characterization of the quality of his work. Following the delivery of Joint Appeals Board Report No. 371 of 26 June 1981 and the decision thereon of the Secretary-General of 30 November 1981, the Chief of Staff Services of the Office of Personnel Services wrote to the Applicant on 28 June 1982 and transmitted a new, signed "To Whom It May Concern" certification of service. This statement described the Applicant's services and characterized them as being those of "an efficient staff member giving complete satisfaction". Consequently, the Tribunal considers that by providing an appropriate testimonial, the Administration has given adequate satisfaction of the plea of the Applicant on this ground. The Tribunal further notes that the Secretary-General accepted the recommendation of the Joint Appeals Board calling for the rehabilitation of the Applicant's professional standing and reputation by including in his personnel file the Board's conclusions and recommendations and removing from the file any criticism that might have been based on a contested Performance Evaluation Report.

II. A second principal issue in this proceeding is whether the Administration gave the Applicant, who was serving under a fixed-term appointment that was to end on 30 June 1978, ground for an expectancy that his appointment would be renewed such that the failure to renew it gives rise to a right to compensation. The record shows that early in 1978, the Applicant was told by his superior, the Chief of the ECLA Office for the Caribbean at Port-of-Spain, that he was recommending a two-year renewal of the Applicant's contract, to commence 1 July 1978, to the Executive Secretary of ECLA in Santiago. In fact, the Chief of the Port-of Spain Office sent a memorandum requesting the two-year extension to ECLA in Santiago on 1 March 1978. However, by 12 April 1978 an ECLA memorandum to the Chief of Staff Services at Headquarters New York stated that the Chief of the Port-of-Spain Office had amended his recommendation to a one-year extension citing various factors including the assertion that the Applicant "was not very happy and most probably would perform better in another environment." It is noteworthy that the Chief of the Port-of-Spain Office did not inform the Applicant of this significant change of recommendation, and the Applicant for some time continued his work in ignorance of this change in the months immediately preceeding the termination of his then current appointment. Likewise, the Applicant was apparently unaware that on 19 May 1978 his Chief again changed his recommendation by participating in a recommendation of that date to the ECLA Executive Secretary that the Applicant should be transferred "as early as possible" and asserting, evidently without any basis, that this new recommendation followed "detailed consideration and consultation" with the Applicant. There can be no doubt that the failure of the Chief of the Port-of-Spain Office to inform the Applicant of the substantial changes recommended concerning future employment was not in good faith and gives rise to responsibility on the part of the Administration.

These events took place during a period immediately following lengthy discussions between the Applicant and the Deputy Chief of the Port-of-Spain Office concerning the Applicant's Performance Evaluation Report. The Applicant eventually signed the Report

on 11 May 1978 and, on 5 June of the same year, formally instituted a rebuttal procedure. This procedure culminated in a report by an investigative panel to the ECLA Executive Secretary, dated 30 March 1979, which largely vindicated the Applicant's rebuttal of the Performance Evaluation Report. The investigative panel found a number of serious irregularities in the preparation of the Performance Evaluation Report at the Port-of-Spain Office. These reflect badly on that Office.

III. On 6 June 1978 UNIDO informed Headquarters and the Applicant that the Executive Director of UNIDO had approved transfer of the Applicant to a UNIDO P-4 post at ECA in Addis Ababa with an extension of his appointment for a period of two years commencing 1 July 1978. There followed various communications between the Applicant, the Chief of the Port-of-Spain Office, ECLA, Headquarters New York and ECA concerning UNIDO's offer of the Addis Ababa post. These communications show that the Applicant repeatedly raised a number of questions and objections tantamount to a refusal with regard to the Addis Ababa post and concerning the short time remaining before the proposed transfer was to take effect. On 30 June the Applicant was informed by Headquarters that he "must clearly accept assignment so as not to jeopardize your contractual status" and offering to ask UNIDO to consider a short delay to facilitate the Applicant's transfer to Addis Ababa. The Applicant nevertheless continued during this period to raise objections to and questions concerning the ECA post. On 21 July Headquarters was informed by a UNIDO cable that the ECA Executive Director declined to accept the Applicant. Shortly thereafter Headquarters approved a "final extension" of the Applicant's appointment until 16 October 1978, as had been requested on his behalf by the Port-of-Spain Office and ECLA.

The Tribunal cannot escape the conclusion that the Applicant made a conscious decision against accepting the offer of the UNIDO post at Addis Ababa, where he served in 1975 and 1976. Given his dissatisfaction with his Performance Evaluation Report and the bad relations within the Port-of Spain Office, there may be a certain measure of appreciation for the Applicant's impression that the proposed transfer contained a punitive element. However, the Applicant has not adduced evidence which the Tribunal can regard as justifying a finding of prejudice in this regard. The approval of the proposed transfer by the Assistant Secretary-General for Personnel Services and the stated willingness of the Administration to obtain a reasonable delay in the transfer are inconsistent with such an assertion of prejudice.

Moreover, with his two-year contract about to expire at the end of June 1978, the Applicant had, by that month, become aware that he was unlikely to receive a two-year or other substantial extension of his contract unless he accepted the Addis Ababa post. The 30 June cable from Headquarters, quoted above, states clearly that he had no other option.

The Tribunal considers that the Applicant would have been in a different legal position if he had decided in a timely manner to accept the UNIDO offer, with or without a delay in the date he was to report for duty. While, as noted earlier, the ECA Executive Director cabled on 21 July his refusal to agree to the Applicant's transfer, an acceptance of that transfer by the Applicant between 6 June and 20 July would have placed the burden on the Administration of finding a suitable alternative post for the two-year period commencing 1 July 1978. Had the Administration in those circumstances failed to find an appropriate alternative post, and declined to extend the appointment, the Tribunal would have had no difficulty in concluding that such a failure resulted in a duty on the part of

the Administration to pay compensation for the injury that the Applicant would have suffered.

IV. The Joint Appeals Board concluded that, taking into account such factors as the unjustified Performance Evaluation Report and the uncommunicated changes in future employment recommendations, the Administration should make an *ex gratia* payment to the Applicant of an amount equivalent to eight months of net base salary. In turn, the Secretary-General decided to make an *ex gratia* payment equivalent to three months of net base salary at the time of separation from service. The Tribunal is unable to find any grounds advanced by the Applicant that would enable it to make an additional award.

V. The Applicant has also sought production of two documents originating in the Port-of-Spain Office during the period of his service there. These documents were produced by the Respondent in the course of this proceeding. The Tribunal does not consider that they have any relevance to the issues raised in this case.

VI. Included in the documentation submitted by the Applicant during the course of the proceedings is a telegram with new pleas. Even if these pleas had been properly presented to the Joint Appeals Board, the Board expressed no opinion thereon and, therefore, these pleas are not receivable by the Tribunal under Article 7, paragraph 1, of the Statute.

VII. For these reasons, the Tribunal rejects the application.

(Signatures)

Suzanne BASTID  
*Vice-President, presiding*

Herbert REIS  
*Member*

*New York, 6 October 1982*

Luis de POSADAS MONTERO  
*Member*

Nicholas TESLENKO  
*Acting Executive Secretary*

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## Judgement No. 298

(Original: English)

Case No. 276:  
Délano de Stiven

Against: The Secretary-General  
of the United Nations

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*Non-renewal of the fixed-term appointment of a staff member of the Latin American Institute for Economic and Social Planning (ILPES).*

*Precarious contractual position of the Applicant in ILPES.—Facts which encouraged the Applicant to believe that some solution would be found for her continued employment in the United Nations system.—Judgement No. 142.—The Applicant could reasonably expect continued employment.—Allegations by the Applicant that she was subject to discrimination and prejudice on the part of the Respondent.—Allegations rejected by the Joint Appeals Board and the Tribunal.—Acceptance by the Respondent of the recommendation of the Joint Appeals Board to make renewed efforts during a period of 6 months to find a post for*