

VII. Similarly the Tribunal finds no merit in the Applicant's allegation that the rules in force at the time of the contested decision (1981) gave no indication of the restrictiveness of the policy regarding the waiver of privileges and immunities, a prerequisite for obtaining permanent residence in the United States which in turn is needed for applying for United States nationality. At that time the Applicant had been in service for 14 years and must have known Information Circular ST/AFS/SER.A/238 of 19 January 1954 with stated *inter alia* that

"The decision of a staff member to remain on or acquire permanent residence status in . . . [the] country [of their duty station] in no way represents an interest of the United Nations. On the contrary, this decision may adversely affect the interests of the United Nations in the case of internationally recruited staff members in the Professional category . . .".

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

(Signatures)

Endre USTOR  
President

Samar SEN  
Vice-President

Geneva, 17 May 1984

Luis M. de POSADAS MONTERO  
Member

Jean HARDY  
Executive Secretary

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## Judgement No. 327

(Original: English)

Case No. 319:  
Ridler

Against: The Secretary-General  
of the United Nations

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*Request by a former staff member of UNCTAD to find that the conditions of employment imposed on him by the Respondent impaired his ability to perform his duties in accordance with his contract of employment, that he had a reasonable expectancy of renewal of contract and that the procedural delays in the consideration of his appeal caused him injury; request for appropriate compensation.*

*Conclusion of the Joint Appeals Board that the Applicant did not establish that the changes in the scope of his official duties resulted from improper or extraneous motivations and that no expectancy of renewal could be inferred from the Respondent's acts.—Recommendation to pay to the Applicant \$US 2,500 on the ground of the Respondent's negligence in his dealings with the Applicant.*

*Question of the existence of a legal expectancy of renewal of the Applicant's fixed-term appointment.—Consideration of the circumstances of the case.—Circumstances of the Applicant's move from the International Monetary Fund to UNCTAD.—Alleged existence of "verbal assurances".—Finding of the Tribunal that no expectancy was created.—Application of staff rules 104.12 (b) and 109.7 (a).—Applicant's complaint of injury caused by successive changes in his responsibilities and the absence of a meaningful job description.—Application of staff regulation 1.2.—Finding of the Tribunal that there were many serious instances of poor administration but that the Applicant failed to prove that the treatment of which he complained was prompted by improper or extraneous motivation.*

*Finding of the Tribunal that successive delays caused by the Respondent were abusive and bordering on denying due process.—The Tribunal reiterates that the Respondent is bound as a matter of law to respect the institution of the Joint Appeals Board.—Failure to do so may result in denial of due process entailing the Respondent's legal and financial responsibility.*

*Award of compensation equal to three months' net base salary at the rate effective on the date of judgement.—All other pleas rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Arnold Kean, Vice-President; Mr. Herbert Reis;

Whereas, on 30 November 1983, Duncan Ridler, a former staff member of the United Nations Conference on Trade and Development, hereinafter called UNCTAD, filed an application in which he requested the Tribunal to order various preliminary measures and, on substance:

“(1) To find that conditions of employment imposed on the Applicant, as Deputy Director of the UNCTAD Commodities Division, between August 1977 and August 1978, following on the Director's statement to the Applicant on 15 August 1977 that he did not want a Deputy Director, the decision to re-organize the Commodities Division in August 1977, and the failure of the Director to provide a revised job description requested by the Applicant in January 1978, violated administrative norms, were not in accordance with Article 101 (3) of the United Nations Charter, and impaired the Applicant's ability to perform his duties in accordance with his terms of appointment, with the consequence for the Applicant of damaging his career prospects, including extension of his appointment, injuring his professional competence, and causing him humiliation and suffering.

“(2) To find that the Applicant had valid reasons to expect renewal of contract for four months in August 1978, and that UNCTAD officials disregarded the principle of good faith and were negligent in not concluding such extension of contract, thus depriving the Applicant of continued employment, impairing his prospects of further employment beyond the proposed contract, and causing the Applicant material hardship and unnecessary mental stress.

“(3) To find that the Applicant had a reasonable expectancy, at the time of his separation, of renewal of contract from August 1978, or alternatively from January 1979, until March 1980, and that non-renewal of his contract resulted from lack of due and fair consideration and caused loss of employment, material hardship and unnecessary mental suffering.

“(4) To find that the delay in the procedures of appeal against the decisions involved in the foregoing pleas constituted non-observance of the Secretary-General's obligations with respect to Chapter XI of the Staff Rules, causing injury to the Applicant by eliminating the possibility of further employment with the United Nations and imposing unnecessary suffering.

“(5) To award appropriate compensation:

*under (1) above, of three months of his net base salary;*

*under (2) above*, a sum equivalent to the salary, in Swiss francs, he would have received during continued employment from 11 August 1978 to 31 December 1978 at grade D-1 step VII;

*under (3) above*, a sum equivalent to fifteen months of net base salary at grade D-1 step VII, at the salary for that grade on 31 December 1978, in US dollars;

further, *under (2) and (3) above*, an amount of \$US 28,824 in compensation for the Applicant's loss of pension benefits;

*under (4) above*, an amount equivalent to three months of the Applicant's net base salary;

for *costs* of the application, an amount of \$US 350.”;

Whereas the Respondent filed his answer on 3 February 1984;

Whereas the Applicant filed written observations on 24 February 1984;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNCTAD on 8 August 1974 as Deputy Director of the Commodities Division under a fixed-term appointment for two years which was extended for another two years on 8 August 1976.

In the summer of 1977, the Director of the Commodities Division, Mr. B. Chidzero, was promoted to Deputy Secretary-General of UNCTAD and Mr. A. McIntyre was appointed to replace him. On 16 July 1977, one month before assuming his duties as Director of the Commodities Division, Mr. McIntyre proposed a restructuring of the Division in a memorandum to the Secretary-General of UNCTAD which read:

“Further to my conversation with you about the need for re-organizing the structure of the Division, I attach herewith a copy of my proposal. It represents the results of conversations I have had with Mr. Chidzero and several senior members of the Division. While I am aware that some persons have difficulty with certain aspects of the proposal, my understanding is that the broad thrust of it commands a substantial measure of agreement.

“There are a few details which require further refinement and I intend to deal with them after I assume duties in mid-August. In the meanwhile, I shall be glad to learn whether there are any further changes which you consider necessary. I hope also that the other persons to whom this memorandum is being copied will also favour me with their views.

“It is necessary to explain certain features of the proposal as it stands:

“(a) It is designed to create a flexible structure which will be capable of easy adjustment as the work priorities of the Division change in response to the momentum of the negotiating process. As such, therefore, it is intended to supplement and not replace the present branch structure.

“(b) Branches will continue to be the main operating organs providing necessary staff support to the different task forces as circumstances require. It must therefore be emphasized that Branch Chiefs will continue to control the allocation of staff to different activities on the basis of the usual consultations with task force co-ordinators, and where necessary, myself.

“(c) The staff shown in the attached chart against individual task forces represents purely an indicative exercise. It is not intended to be a

firm proposal which Branch Chiefs will proceed to implement without further discussion with all affected parties.

“(d) It is hoped that this structure will facilitate a more effective integration of the consultative work being done by Advisers with the technical work being undertaken by the staff. It is envisaged that each adviser would associate himself with some aspect of the Common Fund as well as with one or two commodities. Likewise, task force co-ordinators will be expected to assume responsibilities for some consultative work on the Common Fund.

“(e) An element of the proposal not shown on the chart is my intention to create a Policy Review Committee consisting of Branch Chiefs, task force co-ordinators, other appropriate staff and myself. The Committee will serve as the principal monitoring and co-ordinating mechanism.

“ . . . ”

In the organization chart attached to the memorandum, the Applicant was shown as the Co-ordinator of the Task Force on Compensatory Financing but the post of Deputy Director had been eliminated. The Applicant received a copy of the memorandum and of the chart. On 30 August 1977 all staff members of the Commodities Division were officially informed of the reorganization of the Division, as outlined above, by a memorandum from Mr. McIntyre, who also announced the establishment of a Policy Review Committee “consisting of the Director, Deputy Director, Branch Chiefs, Task Force Co-ordinators and other staff as appropriate”. The Applicant having asked for a revised job description of his post, Mr. McIntyre sent him a draft job description on 24 February 1978, offering to discuss it with him at his convenience. This draft retained the functional title of Deputy Director and described his duties as providing “required technical and/or administrative support to the Director in the over-all management of the Division” and acting “for the Director in his absence” and representing “him at meetings and related activities whenever requested to do so”. On 14 June 1978 the Applicant reiterated his request for a job description. On 27 June 1978 Mr. McIntyre sent him the following memorandum:

“1. As you know your fixed-term appointment expires on 7 August 1978. I have reviewed the matter with the Secretary-General who is agreeable to my suggestion that we recommend that your appointment be extended to the end of 1978 and that during the period from now until the end of the year you would be primarily if not exclusively engaged in preparatory work for UNCTAD V.

“2. I would not wish to have your current functional title of Deputy Director changed, unless you would like to propose a change, but apart from deputising for me in my absence, I would intend to make *ad hoc* arrangements for the coverage of your functions which are not related to the preparatory work for UNCTAD V. I would also intend to re-define the role and functions of the Deputy Director of the Commodities Division and to advertise the post.

“3. I should be grateful if you would be agreeable to this arrangement and if, under the circumstances, you would accept an extension of your appointment through 31 December 1978 if such an extension were offered to you. As extensions have to be approved in New York I should be grateful for your reply in order to formulate a recommendation to the UNCTAD Administration.

"4. This memorandum is, incidentally, a partial reply to your memorandum of 14 June 1978 to me regarding your job description. I should like to finalize a job description for you along the lines mentioned above, i.e. specific tasks relating to the preparatory work for UNCTAD V, when I have your views regarding the assignment and the extension."

In a reply dated 3 July 1978, the Applicant expressed regret that the question had not been taken up earlier and requested clarification on several points, namely the exact nature of the preparatory work for UNCTAD V, *ad hoc* arrangements for the coverage of his other functions, redefinition of the role and functions of the Deputy Director and advertisement of the post, and deputizing for the Director in his absence. On the same day the Applicant, in a memorandum to the Secretary-General of UNCTAD, expressed his concern over the ambiguity of his position and responsibilities in the Commodities Division during the last year of his contract as well as the intended future use of his services; with regard to the arrangements proposed by Mr. McIntyre for a renewal of contract, the conditions and responsibilities that would be suitable in the Applicant's view were, as to the nature of the work, that it should relate to clearly defined responsibilities of value to the Organization and commensurate with his specialized qualifications and experience and, as to the length of contract, that it should be extended until his retirement age in March 1980. On 11 July 1978 the Applicant wrote to the Secretary-General of the United Nations requesting him to review the decisions on alternative arrangements for the coverage of functions assigned to the post of Deputy Director of the Commodities Division as well as the decision not to extend his appointment until the age of retirement; he also asked the Secretary-General to agree to direct submission of an application to the Tribunal. On 12 July 1978 Mr. McIntyre acknowledged the Applicant's communication of 3 July 1978 but declined to respond to the points raised by him pending the outcome of his submission to the Secretary-General of UNCTAD. On 13 July 1978 the Applicant unsuccessfully pressed for a reply to his request for information on the offer of renewal. In the following weeks, as the expiry of his appointment was imminent, he sent, to no avail, several inquiries to the Administration as to his future status. On 4 August 1978 the Applicant met with the Secretary-General of UNCTAD and on 7 August 1978 he sent him the following memorandum:

"At our meeting at 5 PM on Friday, I noted that I had asked for a meeting about a month ago, but that there was now only one working day before the expiry of my contract. As far as I was aware, no action had been taken to renew my contract, and at the same time, no administrative action on separation had been commenced. This placed me in a very difficult position.

"You enquired why I had not indicated my acceptance of offer of renewal for four months. I informed you that since the proposed appointment differed from my current appointment, I had asked for further information on the nature of the work to be assigned, the functions of the post, and the period of the contract. Mr. McIntyre had declined to answer. I asked you to ensure, even at this late date, that I was given this information. You agreed to do so. I then said that if it were possible to agree on the terms of the contract, I would expect some assurance from you or on your behalf of a decision to recommend extension before the close of business on August 7. You informed me that you would not be at the office on that day.

"Apart from your agreement to have the information provided, as above, you did not indicate to me whether you proposed to continue my services or to separate me."

Also on 7 August 1978 the Secretary-General of UNCTAD communicated to the Applicant, as a basis for discussion, the draft outline of a background paper which he would be expected to prepare if he accepted an extension of contract, indicating that Mr. McIntyre had been asked to follow the matter up. On the same day the Applicant replied that:

"the study outlined could serve as a basis for discussion, though you seem to imply that I should accept the extension before such discussion. As it appears to be a major study, it merits careful consideration of the scope, purpose and research assistance available. For example, the basic data called for are not at present available in UNCTAD. I have not at this point, mid-afternoon, had the opportunity of any discussion of the project with the Director.

"Moreover, I would like again to stress the point that I would like to have further information on the other matters raised in my request to the Director, including the role of the Deputy Director as such within the Division.

"Under the circumstances, and because of personal commitments outside Geneva already entered into, I would like to leave it that discussion of the project and other aspects of the appointment could be discussed during 4-7 September, if you decided to obtain a one month extension of my contract for that purpose, and with leave granted for the interim period. This may also allow for the completion of the review of my contractual status currently being undertaken by the UN Secretary-General. In the event that these questions were not satisfactorily resolved, time would then be available for the proper completion of administrative action on separation."

On the same day also, the Applicant sent the following memorandum to the Chief of the Administrative Service of UNCTAD:

"Despite my earlier request, I have no answer from you with regard to my contractual status after today, the last day of my current contract. At the same time, no administrative action for separation has been commenced. This places me in a very difficult position.

"In my view, this is bad administration. I can only assume that my services have been *de facto* terminated with effect from today. I am enclosing as required my *laisser-passer*, *carte de légitimation*, and petrol card. I shall be grateful for the return of the cancelled *laisser-passer*. This action is subject to any decision taken on the attached memorandum to Mr. Corea [the Secretary-General of UNCTAD]."

On 8 August 1978 the Chief of the Administrative Service authorized a one-month extension of the Applicant's appointment in the absence of the Secretary-General of UNCTAD and on 10 August 1978 he advised the Applicant accordingly, pointing out that the extension was authorized without prejudice to any views the Secretary-General of UNCTAD might have or action he might wish to take on the items raised in the Applicant's memorandum to him of 7 August 1978. On 1 September 1978 the Applicant replied:

". . .

"I wish to make it absolutely clear that I do not intend to accept any retroactive extension of appointment by one month for administrative convenience and unless a sincere effort is made by or on behalf of the Secretary-General to clarify the conditions for an extension of appointment, as is the normal practice for consideration of any offer of employment. You should not therefore take it that I have accepted your 'authorization' of extension for one month. The salary payment that has been made to my account for August will therefore require reimbursement or adjustment to the final settlement of payments from the United Nations.

"With regard to the nature of my continued employment, this should be dealt with by the Secretary-General or the Director of the Commodities Division. Both of these officials have so far avoided or declined clarification. You are aware that it is normal practice and obvious that a post description should be provided for each post, and that the staff member should be informed in some detail what he is expected to do. The Secretary-General, meeting me on the penultimate day of my contract, said that he expected me to work on compensatory financing. On the following working day he sent me a proposal to work on a quite different background study, evidently hastily written as an outline by someone with little experience, and presumably without critical evaluation by the Director or the Secretary-General. I find it difficult to believe that this is a serious effort to continue my services.

"However, it is now eight months since I requested a job description, and about two months since I asked for information essential to the description of the post and its functions on being offered a four-month extension. No response has been made. An outline of a background study is not sufficient basis for a decision on an appointment as Deputy Director of the Commodities Division.

"I should therefore require, as a basis for further discussion with the Secretary-General, or his representatives, that there be a post description for the appointment dealing with the functions and responsibilities of the Deputy Director as well as with any special assignment proposed. In the light of experience, I cannot see that any purely oral assurances on the post and its functions will be adequate. I should be glad to meet either the Secretary-General or you and Mr. McIntyre when you are ready to provide such a job description, with particular reference to the questions raised with Mr. Corea and Mr. McIntyre at the beginning of July.

"It will be appreciated if you will convey these views to the Secretary-General.

" . . . "

On the same day the Assistant Secretary-General for Personnel Services, replying to the Applicant's communication of 11 July 1978, informed him that the Secretary-General of the United Nations had decided to maintain the contested decisions. On 5 September 1978 the Applicant, Mr. McIntyre and the Chief of the Administrative Service had a meeting during which the Applicant was given a job description describing the duties of "Deputy Director, Commodities Division" as follows:

"1. To prepare a survey of developments in the world commodity economy in the 1970s, as indicated in the attached outline

"2. To act for the Director in his absence."

On 8 September 1978 the Applicant, who had not yet received the reply to his request for review, lodged an appeal with the Joint Appeals Board at Geneva. The Board submitted its report on 9 August 1983. The considerations, conclusions and recommendations of the Board read as follows:

*"Changes in the scope of the Appellant's official duties*

"61. In his Appeal No. 73 *bis* the Appellant claims that he was not allowed to perform his functions, that another staff member was appointed as *de facto* Deputy Director of his Division, and that he was not given any material assignment over a considerable period of time.

"62. In this connection, the Board recalls that in accordance with Staff Regulation 1.2, all staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations. In addition, the United Nations Administrative Tribunal has confirmed on several occasions that the Secretary-General is vested with broad discretion to exercise these prerogatives; thus, in its Judgement No. 165 (Kahale) the Tribunal stated: 'It is obvious that the Secretary-General may relieve a staff member of certain duties or invest the staff member with other duties according to the exigencies of the service, of which he is the sole judge. This power may be exercised by supervisory officers in the normal course of administration.'

"63. On the other hand, the Board notes that in her submissions, the Representative of the Secretary-General suggested that the Appellant's performance was not entirely satisfactory; the Appellant categorically denied this charge and produced evidence to the contrary. The Board recalls, however, that this particular issue lies outside the scope of its competence, since Staff Rule 111.1 (b) provides specifically that 'in case of termination or other action on grounds of inefficiency or relative efficiency, the Board shall not consider the substantive question of efficiency but only evidence that the decision has been motivated by prejudice or by some other extraneous factor.'

"64. On the basis of written evidence presented to the Board by the parties and the detailed explanations received during the hearing, the Board concludes, taking into account all the circumstances of the case, that the Appellant has not met the requirement of establishing by positive evidence that the changes in the scope of his official duties resulted from improper or extraneous motivations. Consequently, despite all its sympathy for the Appellant's case, the Board feels unable to sustain the appeal on this particular issue.

*"Refusal to extend the Appellant's appointment until the age of retirement*

"65. Concerning the non-extension of the Appellant's fixed-term appointment, the Board first observes that in accordance with current staff rules and the Appellant's letter of appointment, the Secretary-General has wide discretion to decide whether a staff member should be retained in service on the expiry of his contract. In addition, it has been constant jurisprudence of the Administrative Tribunal that considerations such as age, length of service or competence to occupy a particular post do not in themselves create a legal expectancy imposing on the Secretary-General an obligation to renew or extend a fixed-term appointment. In the present case, the Board finds that no such expectancy could have been inferred by the Appellant from words or deeds of the Respondent. In particular, no evidence was presented to the Board that any such expectancy had been



created in the Appellant's mind at the time of his transfer from IMF [International Monetary Fund] to UNCTAD, and the Board observes that UNCTAD's offers of a renewal of his appointment were rejected by the Appellant who, in the absence of a much longer extension, was willing to retire at the earliest possible date in order to avoid further losses due to the declining purchasing power of the US dollar (annex 40).

"66. In these circumstances, the Board finds that the charges of violation of the Appellant's terms of appointment contained in both his appeals have not been established and cannot give rise to payment of any damages.

"67. The Board observes, however, that towards the end of his period of service with UNCTAD the Appellant, through no fault of his own, was on several occasions unfairly and improperly treated, and the situation with which he was faced was not dissimilar to that described in paragraph XXV of the Administrative Tribunal's Judgement No. 165 (Kahale) quoted above. In addition, the Board finds that several actions undertaken within UNCTAD appear to constitute cases of mismanagement, and in particular that the procedure followed in the preparation of the contested Performance Evaluation Report (Appeal No. 73) was irregular.

"68. Although the Board has concluded that there was no evidence concerning any improper or extraneous motivation which could have prompted the reorganization of the Commodities Division, the Board nevertheless finds that the way in which this reorganization was undertaken is subject to criticism. In particular, as evidenced by the documentation made available to the Board, the new Director had actually discussed the proposed changes with several senior members of the Division, but not with the Appellant, who would be considerably affected by them. Following the reorganization, the Appellant was given little responsibility: for example, the task force assigned to him was the only one which was not supported by an existing branch, he was given no new job description, and he had difficulty even in meeting with his supervisors.

"69. Consequently, the Board finds that UNCTAD administrative and substantive services failed to act in accordance with recognized standards and procedures. At the same time, however, the Board considers that the Appellant himself, a senior staff member with long experience, does not appear to have acted in a perspicacious and vigorous way, in particular when the envisaged reorganization was under discussion. For example, he does not appear to have seized the opportunity of presenting his objections in writing (annex 8, para. 2, *in fine*). Indeed, for nearly one year, the Appellant appeared to keep a surprisingly low profile and undertook vigorous action through official channels only a few weeks before his separation from the Organization.

"70. The Board also finds that the Appellant has not discharged the burden of proving that there was any actual link between the subjects of both his appeals.

"71. Nevertheless, as mentioned above, the Board finds that on a number of occasions administrative and substantive services of UNCTAD have been negligent in their dealings with the Appellant, and as a consequence the Appellant has unnecessarily suffered. The Board therefore considers that in accordance with principles embodied in several judgements of the Tribunal, e.g. Nos. 92 (Higgins), 215 (Ogley) and 305

(Jabbour), the Appellant is entitled to compensation, and consequently recommends to the Secretary-General that the Appellant be awarded compensation in the amount of \$US 2,500."

On 21 September 1983 the Applicant received, at his request, communication of the report of the Joint Appeals Board and on 30 November 1983 he filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The actions of the Director of the Commodities Division towards the Applicant in changing his conditions of employment from August 1977, at least in part acquiesced in by the UNCTAD Secretary-General and Administrative Service, were not in accordance with Article 101, paragraph 3, of the Charter; they constituted an improper use of the delegation of the Secretary-General's right under Staff Regulation 1.2 regarding the assignment of staff, and were in prejudice towards the Applicant.

2. With regard to the failure to extend the Applicant's fixed-term appointment to December 1978, in August 1978 the Applicant had an expectancy of renewal of contract, induced in his mind from correspondence and the surrounding facts and circumstances, and this expectancy was not realized because the Director of the Commodities Division and the UNCTAD Secretary-General and Administrative Service disregarded the principle of good faith in their relations with the Applicant.

3. With regard to the failure to extend the Applicant's appointment until March 1980, it appears from the totality of circumstances existing at the time of his separation that renewal of his contract did not receive fair consideration. At the time of separation, the Applicant had a reasonable expectancy of renewal of contract for a period of one year and seven months; alternatively, if his contract had been renewed for four months, he had a reasonable expectancy of further renewal for the remaining period of one year and three months.

Whereas the Respondent's principal contentions are:

1. A fixed-term appointment expires automatically on the date stated in the letter of appointment and since no legal expectancy of renewal was created by the conduct of the Administration, the Applicant's separation from service at the expiry of his fixed-term appointment did not violate his rights. There can be no disregard of the principle of good faith concerning non-renewal where there is no legal expectancy of renewal or a legal obligation to renew a fixed-term appointment upon its expiry. The Applicant might reasonably have expected or anticipated that he would stay in international organizations' service until retirement, but such subjective expectations do not constitute "legal expectancy" or provide a basis for a claim as of right.

2. The assignment, pursuant to Staff Regulation 1.2, of new duties to the Applicant was a valid exercise of administrative discretion which did not violate the Applicant's terms of appointment or any of his rights. The reorganization of the Commodities Division was neither an abuse of the authority reposed in the Secretary-General by Staff Regulation 1.2 nor a misuse of any administrative powers.

3. Award of compensation may properly be based only on some violation of the Applicant's rights and not simply on criticisms of the Administration's dealings with the Applicant or findings of shortcomings which do not violate the Applicant's rights.

The Tribunal, having deliberated from 8 to 21 May 1984, now pronounces the following judgement:

I. The Tribunal has considered the pleas contained in the various requests for preliminary measures made by the Applicant concerning the production of documents. Bearing in mind the extensive material available to it, the Tribunal considers that the records presented by the parties and available to the Tribunal are adequate. The Tribunal therefore denies the preliminary pleas.

II. The Applicant contends he had a legal expectancy that his fixed-term appointment would be renewed until such time as he reached the age of mandatory retirement. Accordingly, in September 1978, some nineteen months before his sixtieth birthday, he declined an offer of a mere four-month renewal and was separated from United Nations service as Deputy Director of the Commodities Division of UNCTAD. The Applicant stresses that when his employment with UNCTAD was initially urged by its Secretary-General and the then Director of the Commodities Division, he was already 54 years old and had 23 years of United Nations service, first with FAO and then, on permanent appointment, with the International Monetary Fund as Chief of the Fund's Commodities Division. He alleges these officials gave "verbal assurances" that if he agreed to move to UNCTAD, the fixed-term appointment they wished to offer him would be renewed until, six years later, he would reach the age of retirement.

III. The files show that, having decided upon his employment, UNCTAD offered the Applicant a fixed-term contract because it was unable to make a permanent appointment as it was already employing an exceptionally large number of staff members of his nationality and as he was over fifty. Although the Applicant has not so informed the Tribunal, a review of the files also reveals that his discussions with UNCTAD first sought to achieve his move to UNCTAD on secondment from the International Monetary Fund; however, this failed, apparently because the Fund wished to fill on a permanent basis the position he was vacating. It was against this background that, on 7 June 1974, the Applicant accepted UNCTAD's formal offer of "a two-year fixed-term appointment" as a D-1, step VII, Deputy Director of the Commodities Division. The corresponding Personnel Action Form, effective 8 August 1974, also reads "Fixed-term appointment for a period of two years".

IV. It is difficult to assess the state of mind of an official on permanent appointment who, not far from retirement, nevertheless accepts the uncertainties of appointment by fixed-term contract with another international organization in the United Nations system. Unfortunately for his case, the Applicant has not brought to the attention of the Tribunal facts or documentation that support his assertion of "verbal assurances" as to renewal on being moved from the International Monetary Fund. He states in his application his understanding that "a written statement [by the most senior UNCTAD officials] to this effect should not be made". He also told the Joint Appeals Board, at its hearing on 26 August 1981, of two conversations which he said assured him that, subject to satisfactory service, his contract would be renewed until he reached retirement age; he explained to the Board that "he realized that no written assurance of renewal could have been given to him at the time, since no one had authority to do so". Although these statements are not free from ambiguity, the Tribunal considers that the Applicant has failed to produce material that would justify overturning the conclusion of the Board that "in particular, no evidence was presented to the Board that any such expectancy had been created in the Appellant's mind at the time of his transfer from IMF to UNCTAD".

V. The Applicant's initial two-year appointment was renewed for a further term of two years in August 1976. But he cannot rest his claim to legal expectancy of subsequent renewal of contract on the events of August and September 1978 when, as stated, he declined as inadequate the offer of a mere four-month renewal. The Applicant's detailed recitation of the sweeping organizational changes begun in the summer of 1977 by the new Director of the Commodities Division demonstrates beyond doubt the existence of a substantial and widening gulf between the Director and the Applicant. According to these organizational changes, the latter was to serve as officer-in-charge during the absence of the Director, but the Director did not consistently answer the question whether the Applicant was to retain the title of Deputy Director. Moreover, the Applicant was experiencing a complete breakdown of communication with the Director, whom he was unable to see for long periods. The Director also prevented him from receiving copies of memoranda addressed by subordinates to the Director. He further proposed that the Applicant should confine himself to research in preparation for UNCTAD V and that the role and functions of the Deputy Director would be redefined and the new post advertised, although the Applicant might continue to deputize for the Director in the latter's absence. These among many other developments made it certain that, as his second two-year appointment approached the end of its term in August 1978, the Applicant could not have expected renewal of his contract for another nineteen months until retirement. He had known for a year of the deep division between the Director and himself.

VI. There is no doubt that the offer of a four-month renewal of appointment for largely research work was churlish and inconsistent with the Applicant's long career record, but, there being insufficient evidence of legal expectancy, the Tribunal finds no basis for avoiding the application of the clear meaning of Staff Rule 104.12 (b), which states that "The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment." Similarly, the Applicant had long known that his contract was to expire in August 1978 and cannot reasonably claim that he was not fairly on notice or deserved more favourable treatment than that of Staff Rule 109.7 (a), which states that "A temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment."

VII. The Applicant also presents a claim for damages on the ground of successive changes in his responsibilities and the absence of required documentation in the form of a meaningful job description. He asserts, in effect, that substantial changes in the assignment of responsibilities to a staff member must be objective and in good faith, orderly and thoroughly documented in order to conform to Staff Regulation 1.2 providing that "Staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations." The Tribunal observes that the record in the current case is replete with serious instances of poor administration on the part of the Commodities Division, whose Director from 1977 seems to have made no real effort to explain to his Deputy the reasons for the changes in the organization and functioning of the Division or the inevitable impact of such changes on the Deputy. The record shows that the Director removed himself to an extraordinary degree from contacts with his Deputy and treated as insignificant the drafting of an adequate job description for the latter. But the record further demonstrates that the Applicant, who then had been Deputy for three years, made no comment at all when given a copy of the new Director's

memorandum of 16 July 1977, addressed to the Secretary-General of UNCTAD, outlining a radical reorganization of the Commodities Division and asserting that his proposed changes enjoyed general assent.

VIII. The facts come close to demonstrating an intent by the Director to render his Deputy less and less effectual with a view eventually to making him irrelevant. But notwithstanding the record of maladministration, the Tribunal finds that the Applicant has not discharged the burden of proving that the reorganization of the Commodities Division instituted by the Director was prompted by improper or extraneous motivation on the Director's part.

IX. While the report of the Joint Appeals Board in this case is carefully drawn, the Tribunal finds that successive delays caused by the Respondent have been abusive and bordered on denying due process to the Applicant. The Tribunal states, once again, that the Respondent is bound as a matter of law to respect the institution of the Joint Appeals Board, the existence and functioning of which are required by Staff Regulation 11.1 and Staff Rule 111.1. The Tribunal considers, as is obvious, that the denial of adequate human, financial and administrative resources to the various Boards may result in a denial of due process in the cases brought before them. Such a denial will entail the legal responsibility and financial liability of the Respondent and a finding of damages when an Applicant is injured thereby. In this case, twenty-one months elapsed between the filing by the Applicant of his appeal to the Joint Appeals Board in Geneva and the submission of the Respondent's rebuttal. Indeed, sixteen months after the appeal was filed, the relevant senior UNCTAD personnel officer informed the Board that she was unaware that a rebuttal was required and, purporting to recall the Geneva Board's heavy backlog of cases, said she had not intended to prepare a rebuttal until the Board informed her that it was ready to take up the case. Some three months later, now a total of twenty months after the appeal was filed, the Board informed the Respondent that it would proceed by default if a rebuttal was not received within the month. This finally produced a rebuttal.

X. Nor is this all. The Joint Appeals Board appears at first to have acted promptly. However, once the oral hearing had taken place, on 26 August 1981, the Board consumed two full years in the preparation and submission of its report. Whether or not this further twenty-four month delay was attributable to a lack of personnel, financial or administrative resources, the fact is that the process of submission to and examination by the Joint Appeals Board took five years.

XI. For these delays the Applicant seeks damages in an amount equal to three months' net base salary. In view of what has been said above, the Tribunal orders the Respondent to pay damages to the Applicant in an amount equal to three months' net base salary at the rate effective on the date of the judgement for a D-1, step VII level, the Applicant's grade on separation. All other pleas contained in the Application are denied.

*(Signatures)*

Endre USTOR  
*President*

Arnold KEAN  
*Vice-President*

Geneva, 21 May 1984

Herbert REIS  
*Member*

Jean HARDY  
*Executive Secretary*