

Judgement No. 331

(Original: English)

Case No. 316:
Large

Against: **The United Nations Relief and
 Works Agency for Palestine
 Refugees in the Near East**

Request by a former staff member of UNRWA to rescind the decision not to extend his fixed-term contract and to order the conversion of his appointment to an indefinite appointment; request for compensation and for reimbursement of secretarial costs.

Conclusion of the International Staff Joint Appeals Board of UNRWA that the Administration had every right not to extend the Applicant's fixed-term contract and that there was no evidence that the decision was motivated by prejudice or by some other extraneous factor.

Request for an oral hearing and for examination of witnesses rejected.

Applicant's allegation of prejudice and irregularities in the assessment of his work.—Consideration of the circumstances of the case.—Finding of the Tribunal that no evidence of prejudice against the Applicant could be established.—Applicant's contention that all relevant rules were not observed and that his right to be properly heard was curtailed.—Consideration of the course of events leading to the decision of non-renewal.—Finding of the Tribunal that the rebuttal procedure was not sufficiently pursued and that the decision was taken with undue haste.—The Tribunal reiterates the relevance and significance of performance reports.—Technical shortcomings do not detract from the conclusions to be drawn from these reports provided there is no prejudice or bad faith and the staff member was given an opportunity to rebut them.—Finding of the Tribunal that the Applicant's right of the rebuttal procedure was not fully respected.—Conclusion of the Tribunal that the Respondent exercised his discretion properly but the procedure followed was unsatisfactory.—Observation of the Tribunal that the case brought to light many weaknesses in the administrative machinery of UNRWA.—Applicant's request for compensation on the ground of delays in the disposal of his case by the Joint Appeals Board.—Finding of the Tribunal that these delays were not unusually or unnecessarily long.

Award of compensation of \$US 2,000 on account of procedural defects and deficiencies.—Award of \$US 500 for secretarial costs.—All other pleas rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
 Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Herbert Reis;
 Mr. Luis M. de Posadas Montero;

Whereas at the request of Robert W. Large, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter called UNRWA, the President of the Tribunal, with the agreement of the Respondent, extended from 90 to 120 days the time-limit for the filing of an application to the Tribunal;

Whereas, on 5 October 1983, the Applicant filed an application in which he requested the Tribunal to order various preliminary measures and, on substance,

“(i) To order the rescinding of the decisions of 22 October 1982, confirmed on 7 December 1982 [transferring the Applicant from Beirut to Vienna and not extending the Applicant's two-year fixed-term contract, . . . ‘in view of somewhat less than satisfactory reports’ . . .], and

“(ii) To order the conversion of the Applicant’s two-year fixed-term appointment to an indefinite appointment, to take effect from the expiry of the Applicant’s two-year fixed-term contract on 7 August 1983, by giving the Applicant an indefinite Contract, effective from 8 August 1983, on the following grounds:

“ . . .

“Should the Tribunal not order the reinstatement of the Applicant as requested by the Applicant, the Tribunal is requested to award him on the exceptional foregoing grounds, and because of the serious moral damage, and damage to his career, the continuation of his basic, annual, pay, together with pension contributions to the United Nations Joint Staff Pension Fund, from the date of the expiry of his fixed-term contract on 7 August 1983 until he reaches retirement age, at 60, on 12.4.1987, provided that UNRWA’s Mandate is renewed by the General Assembly to cover such period up to 12.4.1987.

“Alternatively, he asks for a lump sum equivalent to FIVE YEARS basic Salary, to take into account the way in which the Administration has acted and the pressures that this exceptional case has placed upon the Applicant and on members of his family, and, for his loss of expected, possible, pension rights.

“(iii) The Applicant requests the Tribunal to award him:

“Two months basic pay for procedural delays by the Administration in dealing with his Appeal, submitted on the 23 December 1982, and, reported on by the ISJAB on 25 May 1983.

“(iv) The Applicant requests the Tribunal to order the reimbursement to him of secretarial expenses incurred in the preparation of this submission, in September, after the Applicant’s return to the UK, and the Reimbursement of postage, and any telex, or other charges involved in the despatch of this submission.

“(v) The Applicant requests the Tribunal to recommend that the Joint Inspection Unit, or some other appropriate United Nations organ, enquires into the Administration’s actions detailed in the Applicant’s Explanatory Statement, so that other Area, or International, Staff of UNRWA may be less likely to suffer as the Applicant has suffered.

“(vi) The Applicant requests the Tribunal to award exemplary damages against Mr. John Defrates for defamation, in writing that the Applicant had given a false account of the circumstances of his evacuation from West Beirut . . . and in other actions detailed in the Applicant’s Explanatory Statement.

“The Applicant requests that any such Award, made by the Tribunal, should be paid to a Refugee Charity or to UNRWA, in whatever way the Tribunal considers most appropriate.

“(vii) The Applicant requests the Tribunal to order UNRWA to place a copy of these proceedings in his personal record file to show the Tribunal’s judgement on this case.

“(viii) The Applicant requests the Tribunal to order that he be given an amended Certificate of Service, if he is not given an indefinite contract, by UNRWA, since the Certificate issued to him on 11 August 1983 is not a fair, reasonable, and complete Certificate. . . .”

Whereas the Applicant requested oral proceedings if appropriate;

Whereas the Respondent filed his answer on 12 January 1984;

Whereas the Applicant filed written observations on 22 February 1984;

Whereas the Applicant submitted additional documents or written statements on 17 March, 16 April, 2 May and 9 May 1984;

Whereas the Respondent submitted an additional written statement on 27 March and an additional document on 17 April 1984;

Whereas, on 28 March 1984, the presiding member ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 8 August 1981 under a fixed-term appointment of one year at the P-5 level with an initial assignment as Deputy Director of UNRWA Affairs and Field Administrative Officer in Lebanon. The appointment provided that after the completion of six months of satisfactory service it would automatically be extended to two years with an expiry date of 7 August 1983, if not converted to an indefinite appointment. On 12 February 1982 the Director of Personnel and Administration informed the Applicant that his appointment had been extended to 7 August 1983. On 3 June 1982 the Chief of the Personnel Services Division, noting that the Applicant was due for consideration for salary increment on 1 August 1982, asked the Director of UNRWA Affairs in Lebanon, Mr. R. Prévot, to complete a performance evaluation report form for the period 8 August 1981–31 May 1982 in accordance with Annex I B of Personnel Directive I/112.6/15. On 4 August 1982 he reiterated his request. In the meantime, the Applicant's salary increment had been granted. On 10 August 1982 Mr. Prévot, who was about to leave the service of UNRWA, completed the evaluation report, in which he described the Applicant's performance as "adequate." On 24 August 1982 the Director of Personnel and Administration sent the following memorandum to the Acting Director of UNRWA Affairs in Lebanon, Mr. J. F. Debrates:

"1. I am enclosing the performance evaluation report on Robert Large which has been completed by Robert Prévot. Due to circumstances beyond their control, the discussion required by Section II, Part B, para. 3, did not take place. Mr. Large has not yet received a copy of the report but should now do so and should sign the original for review by PRRC. [Periodic Reports Review Committee].

"2. Before giving him his report, I should be grateful if you would have a discussion with him giving your own views concerning his performance. Based on what Mr. Prévot has said to me and other members of the PRRC about Mr. Large, it appears that he has been generous in completing the report. As Mr. Large is still on a fixed-term appointment a decision must be made in the coming months whether to let his appointment expire, whether to extend it, or whether to offer him an indefinite appointment.

"3. The impression I have been given by Mr. Prévot (though his report indicates otherwise) and by yourself is that Mr. Large is not a satisfactory Deputy Field Director and is not potential Field Director material. If that is the case, he should be told and the Agency should give him as much advance notice as possible that his present fixed-term appointment will be allowed to expire on 7 August 1983. For this reason, I would be grateful if you would make a note for the record of your discussion with him. One copy should be given to him and the other should

be attached to the original copy of his performance evaluation report which should be returned to me for review by PRRC.

"4. As his annual increment was due on 1 August 1982 and as the only basis on which PRRC could act was the report completed by Mr. Prévot, PRRC at its last meeting authorized his increment. For this reason it is all the more important that matters be brought to a head as soon as possible. I have asked for a side meeting during the September General Cabinet to consider what action we should now take."

Mr. Defrates discussed the performance evaluation report with the Applicant on 11 September 1982 and succeeded Mr. Prévot as Director of UNRWA Affairs in Lebanon on 12 September 1982. In a note for the record dated 13 September 1982 and copied to the Applicant, he stated *inter alia*:

"I told Mr. Large that whereas the report was generally 'satisfactory' as far as the ratings in Section III were concerned (except for paragraphs 12, 13 and 17), the praise was faint and left the distinct impression that he was not a potential Field Office Director. Indeed, Mr. Prévot had gone to considerable pains to ensure that he (Mr. Large) was not left in charge of the Field in the Field Office Director's planned absence on home leave in June/July 1982. As Deputy Directors' posts were meant to be held by persons considered to be capable eventually of succeeding Field Office Directors, the report placed in doubt an extension of his contract beyond 7 August 1983.

"...
"My conclusions from my interpretation of the report, my own observations and from the discussion on 11 September are that Mr. Large has been performing adequately at the P-4 level. It is possible that he might be happier in a post in more settled conditions than Lebanon can offer for some time to come. My conclusions necessarily raise a question mark over Mr. Large's future with UNRWA but he has now had fair warning and it is for him to demonstrate the effectiveness expected of a United Nations Officer of Senior Officer (P-5) grade in the months ahead. . . ."

On 30 September 1982 the Chairman of the Periodic Reports Review Committee informed the Commissioner-General of UNRWA that the Committee had reviewed the Applicant's performance the day before in the presence of Mr. Defrates and had concluded that the Applicant

"had not been performing at the P-5 level and could not be regarded as potential Field Office Director material, an essential attribute looked for in new staff appointed to Senior Officer posts. . . . Accordingly, it is PRRC's view that the only outlet is to transfer Mr. Large to the Corps of supplemental Officers as a relieving officer until the expiry of his present appointment, or earlier should he in the meantime find alternative employment outside UNRWA. . . ."

On 7 October 1982 the Applicant submitted a statement in rebuttal of the performance evaluation report under paragraph 13 of Personnel Directive I/112.6/15. By a letter dated 22 October 1982 the Director of Personnel and Administration informed the Applicant that "in view of the somewhat less than satisfactory reports on [his] performance received from [his] former and present supervisors", the Agency had decided not to extend his two-year fixed-term appointment; the letter continued:

"Accordingly and necessarily, therefore, I am taking this opportunity of giving you formal notice of the Agency's intention to allow your fixed-

term appointment to expire on 7 August 1983. Pending this date you will be transferred to Vienna to the post of Senior Administrative Officer (Relieving), Corps of Supplemental Officers. Your grade will remain at P-5 level. The effective date of your transfer to Vienna will be determined when your successor in Lebanon has been selected.

"Your present post is not being advertised. Should you not wish to accept this transfer, or wish to separate from the Agency at a date earlier than 7 August 1983, the Agency will be prepared exceptionally to offer you termination indemnity in accordance with the provisions of Staff Regulation 9.4. Would you please let me know your preference?"

On 29 October 1982 the Applicant accepted the transfer to Vienna. On 12 November 1982 the Chief of the Personnel Services Division advised the Applicant that the Periodic Reports Review Committee had reviewed his rebuttal and had concluded that the performance evaluation report "was not unfair". On 19 November 1982, in a letter addressed to the Commissioner-General, the Applicant requested a review of the administrative decisions communicated to him on 22 October 1982. On 7 December 1982 the Commissioner-General replied that he was unable to agree to reverse the contested decisions and on 23 December 1982 the Applicant lodged an appeal with the International Staff Joint Appeals Board of UNRWA. The Board submitted its report on 25 May 1983. The Board's conclusions read as follows:

"Conclusions of the Joint Appeals Board"

"The Joint Appeals Board was agreed that its obligation under the International Staff Regulations and Rules required it to advise the Commissioner-General on two points:

"—whether the terms of the Appellant's appointment had been properly observed; and

"—whether the administrative decision not to convert the fixed-term appointment to an indefinite appointment had been motivated by prejudice or some other extraneous factor.

"The Board concluded that the Administration had every right to decide to let the Appellant's fixed-term contract expire on 7 August 1983 and that there was no evidence to prove that the Administration's decision had been motivated by prejudice or by some other extraneous factor."

"However, in coming to the above conclusion, the Members of the Board felt it their duty to bring to the attention of the Commissioner-General the following points:

"(a) The Board agreed that the Administration was under no contractual obligation to extend or convert the Appellant's fixed-term contract, but noted that the Agency had not, in this case, given the Appellant any chance to improve his performance following the first and only occasion this was discussed with him.

"(b) The Board was not able to resolve the problem of differing reports made by the Appellant and his supervisor on the circumstances of the Appellant's evacuation from Beirut in June 1982. Other than the memorandum of 21 March 1983 written by the Appellant's supervisor (at the time of evacuation), the Board could find no evidence to show that the Appellant had requested his own evacuation. On the contrary, the evidence submitted to the Board by the Appellant, by the witness, and from the relevant Notes for the Record of telephone conversations between the

Lebanon Field Office and Headquarters, would appear to support the Appellant's statement that he was asked to leave Beirut against his will.

"(c) The Board appreciates that the situation in Lebanon perhaps precluded the possibility of giving the Appellant further time to demonstrate an improvement in his performance. However, the situation in Lebanon not being the fault of the Appellant, and noting that the policy of the Administration in the past has been to give staff members every opportunity to demonstrate improved performance, the Board wonders why such an opportunity was not given to the Appellant in this case."

On 3 June 1983 the Commissioner-General informed the Applicant that he accepted the Board's conclusions and on 5 October 1983 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was denied protection against arbitrary assessment of his efficiency or performance. In particular, the right of rebuttal of any part of the evaluation report prepared on him by Mr. Prévot should have provided the Applicant with valuable protection against arbitrary or prejudicial assessment by Mr. Prévot. This was not provided, because the Periodic Reports Review Committee deprived the Applicant of his right of rebuttal. The Applicant was also denied rights of rebuttal on comments made about his performance by Mr. Defrates. The Applicant was therefore denied due process of law.

2. The Applicant was also denied due administrative procedures. The usual procedures raised by the Administration in considering appropriate action before the expiry of a fixed-term appointment were not followed in the Applicant's case.

3. There has been abuse, or misuse, of power by the Administration.

4. The Administration has accepted contradictory written statements.

5. The Applicant has been denied fair and reasonable treatment by the Administration.

Whereas the Respondent's principal contentions are:

The administrative decision separating the Applicant from service as a result of the expiry of his fixed-term appointment was neither improperly motivated (by prejudice or some other extraneous factor) nor procedurally defective:

- (a) The Respondent observed the procedural requirements within the performance evaluation procedure. In particular, the discussion the Applicant had with Mr. Defrates constituted, under the special circumstances of the case, a legitimate substitute for the discussion with the reporting officer required in Personnel Directive I/112.6/15, and the rebuttal procedure established therein has been used *in extenso* by the Applicant and scrupulously applied by the Periodic Reports Review Committee;

- (b) There have been on the part of the Administration no irregularities, prejudice towards the Applicant or other extraneous factors which might have violated the Applicant's rights or caused him any damage.

The Tribunal, having deliberated from 4 to 28 May 1984, now pronounces the following judgement:

- I. The Applicant has asked for an oral hearing which has been refused as the available material is ample for reaching definite conclusions. He further asks that the Tribunal should question a number of people to ascertain the truth on various matters he has extensively covered in his submissions. The Tribunal,

after having gone through the considerable material before it, has concluded that the Applicant's request for interrogating the persons mentioned by him cannot be entertained. In all important aspects the records are adequate and an examination (and cross-examination) of witnesses on details of what happened two or three years ago is neither necessary nor desirable.

II. The Applicant makes wide-ranging allegations of prejudice and irregularities in the assessment of his work, and consequently claims that the non-renewal of his fixed-term contract should be considered as *mala fide* and that he is entitled to compensation in one form or another for the injuries suffered. In support of his contentions he has collected and collated numerous documents; the assiduity with which the preparation of this case has been made, with all its minutiae, is indeed remarkable, especially as the conditions of life and work in Lebanon in 1981-1982 were both harassing and difficult. The work of sifting through the details of numerous allegations properly belonged to the International Staff Joint Appeals Board (ISJAB) of UNRWA, but the Tribunal has been obliged to touch upon some of the major allegations of prejudice and irregularities of procedure, because the Applicant later cast considerable doubt on the independence of judgement and the competence of the Board.

III. Nonetheless, and before discussing the accusation of prejudice and irregularities made by the Applicant, the Tribunal should make it clear that it does not wish to pronounce on what the policies and priorities of an international organization such as UNRWA should be. At times the Applicant has referred to them, and his pleas include a suggestion of delving into the working of UNRWA by some appropriate United Nations body. The determination of such matters, within the framework of directives received from the General Assembly and with the proper application of administrative rules and regulations, is entirely within the purview of the Commissioner-General. Similarly, it is his responsibility to ensure that all officials working with him maintain the required standards of service and discipline. The Tribunal has noted that some of the correspondence in the file use intemperate language and yet others raise the question of official propriety.

IV. The prejudice the Applicant complains of can broadly be classified as follows:

(a) He alleges that R. Prévot, Director, UNRWA, Beirut was upset because the Applicant contacted some Palestine Liberation Organization (PLO) leaders, when Prévot himself, according to the Applicant, did not make much headway with them. The Applicant had definite views of what relationship should exist between the PLO and the UNRWA Field Office in Beirut, and there is no evidence to show that the Applicant's brief contact with two PLO leaders—once on 9 April 1982 and the other on 16 April 1982—made any material difference in the day-to-day working of the UNRWA Field Office or that any one took any serious notice of the Applicant's views on how the problem of handling the PLO should be solved. On the other hand there are innumerable references made by the Applicant to opinions held by other people on Prévot's attitudes and usefulness. The Tribunal takes the view that these reactions may well be due to honest differences of opinion and cannot be considered as prejudice.

(b) As to the reaction of J.F. Defrates, who officiated for Prévot when he went on home leave in June-July 1982, the Tribunal concludes from the record that the relationship between Defrates and the Applicant was ambivalent until the proceedings started in the ISJAB.

Although the decision to put Defrates rather than the Applicant in charge during Prévot's absence on leave was against the Applicant's terms of duties and responsibilities and so "disappointed" and "humiliated" him, he apparently accepted it, partly at least in the belief that with Defrates' help he would obtain better results with Prévot regarding PLO's activities. The Applicant makes much of the poor report Defrates sent on his work compared to the pleasant and appreciative letters he wrote to the Applicant from time to time and especially when Defrates eventually left Beirut. In the Tribunal's view, the opinions given by Defrates show a pattern: he had no personal animosity or prejudice but praised the Applicant when he thought praise was deserved and was critical when criticism seemed to him justified. Finally he concluded that the Applicant was not good enough for his job in Beirut. None of these actions and attitudes establishes any prejudice.

(c) The Applicant devotes much space and gives many details in support of his claim that the ISJAB did not or could not discharge its responsibilities adequately. He also suggests that the members of the Periodic Reports Review Committee (PRRC) were hostile to him either because they were all friends of Defrates or because he had views very different from those of the Deputy Commissioner-General (Chairman, PRRC) on the Siblin Training Centre. He also criticizes several other officers for their partisan outlook and is particularly severe on the Legal Adviser for the letter he wrote to the Applicant on the events at the Siblin Training Centre. The Tribunal does not find any dependable evidence of prejudice in these matters of daily working relations and can certainly not discern any motive for hostility against the Applicant by so many people. As regards the ISJAB, the Tribunal also notes that the Applicant accepted its composition.

V. Besides questions of personal prejudice, the Tribunal finds that the first indication of all not being well for the Applicant was on or about 15 April 1982 when, instead of the Applicant, Defrates was asked to be in charge of the Beirut office during Prévot's leave in June-July 1982. This would normally be interpreted as an expression of the Administration's disapproval of the Applicant's performance, especially as he had, on an earlier occasion, worked as an Acting Director (from 27 March to 17 April 1982) when the Director (Prévot) was away. The Applicant was reportedly told by Prévot that he had recommended Defrates to be in charge "as I lacked experience of Field Relief Work, and because . . . there was a strong possibility of an Israeli invasion of South Lebanon". In any event there seems little doubt that Prévot's assessment of the Applicant's potential as Director of the UNRWA office in Beirut was, in the judgement of the Tribunal, greatly influenced by the Applicant's performance during Prévot's short absence in March-April 1982.

Two other matters impinging on the Applicant's allegations of prejudice should be referred to in order to complete the background in which charges of procedural irregularities are to be examined. First, there are several acrimonious letters in the files about the differences between the Applicant and other officers (particularly the deputy Commissioner-General and the Legal Adviser) about certain developments at the Siblin Training Centre sometime before June 1981. Second, there are two different versions of the circumstances in which the Applicant was evacuated from Beirut on 11 June 1982; he returned only two days later and a controversy raged on whether he was sent out at his request or at the initiative of Defrates who was in charge of the Beirut office at the time. The Tribunal shares the ISJAB's difficulties in coming to a clear conclusion, but holds that neither of these incidents betrays prejudice which could be cited as

motivating the Respondent not to renew the Applicant's fixed-term appointment.

Accordingly, the Tribunal finds that neither on the grounds of personal relationship nor on the basis of differences in interpretation can prejudice against the Applicant be judged to have been established.

VI. Apart from the allegations of wide and rooted personal prejudice, the Applicant repeatedly suggests that the Regulations, Rules, Directives and Instructions (RRDI) have not been followed, that at times they have been deliberately flouted to the detriment of his interests, that at other times his access to relief and redress has been denied, and that his right to be properly heard and judged by PRRC in the light of all the factors indicated in RRDI has been severely curtailed if not altogether extinguished. The result of the Tribunal's examination of the course of events from the time of Prévot's return to Beirut about the middle of April 1982 is summarized below.

The first report of Prévot was on time and met the major provisions of RRDI despite the Applicant's complaint that it did not give concrete examples on the basis of which unfavourable comments could be made. On instruction, Defrates showed Prévot's report to the Applicant on 11 September 1982 and obtained his signature on it, but no discussion on it between Prévot and the Applicant, as required under RRDI, took place as Prévot had retired and was living in Paris. Later, on 7 October 1982, the Applicant wrote to the Secretary, PRRC giving his version of certain aspects of the work of the Beirut office in Prévot's time and also asking for substantiation by Prévot himself of the report he had made on the Applicant's work, presumably to decide if he should rebut it.

Meanwhile, Prévot's report had been reviewed by PRRC with the help and presence of Defrates. As a result, the Director of Personnel and Administration informed the Applicant of the Commissioner-General's decisions not to renew his contract and to transfer him to Vienna. The Applicant accepted his transfer but wrote to the Commissioner-General asking for a review of these decisions and questioning the relevance and substance of Defrates' views on his work. The Commissioner-General replied to the Applicant on 7 December 1982 confirming his earlier decisions.

It seems to the Tribunal that so far as Prévot's report was concerned, the Applicant had his first opportunity to rebut it in September 1982 and had a month in which to do so; but before he could question or rebut it, the PRRC had already met in late September 1982 and the Commissioner-General had accepted the finding of PRRC about the Applicant's suitability for further work in Beirut.

Defrates' evaluation of the Applicant originated partly because Prévot was not available for discussing his periodic report with the Applicant himself and partly because Defrates was in charge of the Beirut office at the time. There is indication that an up-to-date assessment was urgently needed as PRRC had recommended (and the Administration accepted) the granting of an annual increment on the basis of Prévot's report and yet there was doubt if the Applicant could be kept beyond his current term due to expire on 7 August 1983. So, the Director of Personnel and Administration asked Defrates to discuss Prévot's report with the Applicant. Defrates recorded the conversation in a note for the record and he gave a copy of it to the Applicant. In the concluding part of the note he stated:

"My conclusions necessarily raise a question mark over Mr. Large's future with UNRWA but he has now had fair warning and it is for him to demonstrate the effectiveness expected of a United Nations Officer of Senior Officer (P-5) grade in the months ahead. Unfortunately I shall be absent from the Lebanon Field for some weeks (probably until end October) but I shall show this note to the A/DUA/L (Mr. Ehrenstrom) so that he can pay particular attention to Mr. Large's performance in the interests both of the Agency and of Mr. Large himself".

This note for the record is not identical with the periodic report prescribed under Personnel Directive I/112.6/15. It would seem to convey an impression that the Applicant had not been found good enough to be Field Office Director in Beirut. The Respondent contends that in the circumstances of Lebanon at the time and in the context of all that was happening then, this note for the record could be treated as an adequate substantive report on the Applicant's work by his supervisor. There is no evidence, however, that the Applicant was aware of this attitude and outlook of the Respondent and that he would consequently not expect that the regular procedure as laid down in RRDI would be followed.

The Tribunal holds that the rebuttal procedure was not sufficiently set in motion or pursued; when the views of PRRC were made known to the Applicant and he asked for a review by the Commissioner-General, his request was turned down. In these circumstances the Tribunal takes the view that, while the Respondent had every right not to renew the Applicant's contract, the haste with which this was decided is open to question. This is more so as the Respondent had enough time between 13 September 1982, when Defrates wrote his note for the record, and the date on which the Applicant's contract was due to expire, i.e. 7 August 1983. This conclusion as to haste is fortified by the statement from the Director of Personnel and Administration that "it is all the more important that matters be brought to a head as soon as possible."

On numerous occasions the Tribunal has dealt with the relevance and significance of reports required to be submitted on a staff member's work by his supervising officer. The Tribunal has held that all efforts must be made to have these reports prepared on time and in proper form, but that technical shortcomings would not detract from the conclusions to be drawn from these reports provided there was no prejudice or bad faith and provided also that the staff member concerned had been given the opportunity to rebut such unfavourable comments as might have been made about his work and conduct.

The Tribunal considers that in the present case, there has been no miscarriage of justice by the failure of the Respondent to observe and carry out all the rules relative to the assessment of the Applicant's ability and suitability, but that the Applicant's right to rebuttal procedure has not been fully respected and that he is therefore entitled to some compensation. The Tribunal notes that when the Commissioner-General wrote to the Applicant his letter of 7 December 1982 and stated in it that he had "gone very carefully into your case . . . as well as . . . all circumstances that are relevant in your case", he was clearly using his discretion in the light of knowledge and information he had gathered from all sources available to him. He not only considered the Applicant's work until then but also judged his capacity to carry out the job for which he was recruited: the Respondent had every right to do so but in the process the Applicant has been denied to some extent his right to have recourse to the full and formal procedure for rebuttal. Nonetheless, the Tribunal considers that the Respondent, having concluded that the Applicant was unsuitable for retention in Beirut as a potential Director and that therefore his

fixed-term contract should not be renewed, was not as meticulous as he should have been in ensuring that the provisions of RRDI were followed to the extent possible.

VII. The Tribunal is aware that in a large organization there are bound to be differences of all kinds and that the Respondent alone could decide whether the Applicant's part in such disputes and disagreements was such as to bring into question his suitability as a potential Director of the Beirut office. In any ordinary interpretation, the fact that the Respondent was trying to accommodate him (i.e. by offering him indemnity for separation earlier than 7 August 1983 or by seeking some other berth for him or by a transfer to Vienna) cannot, in the Tribunal's view, be treated as acts of bad faith, but rather as showing consideration towards a senior officer who had in many respects displayed worthwhile qualities. For whatever reasons, no attempts were made either by the seniormost officers in Vienna to see the Applicant about his future in UNRWA, or by the Applicant to see them.

VIII. In the circumstances, and taking into account all the arguments advanced by the Applicant and the Respondent, the Tribunal concludes that the Respondent exercised properly his discretion in not renewing the Applicant's fixed-term contract, but that the procedure followed was marked with a degree of haste which did not allow the different stages as indicated in RRDI to be gone through. The Applicant was entitled to expect that the procedure would be fully respected, and to the extent that it was not, the Tribunal considers that some compensation is due to him.

IX. This case has brought out many weaknesses in the administrative machinery of UNRWA—some of them have been referred to by ISJAB in its report, a few have been detected by the law officers of UNRWA and still others are imbedded in the voluminous records themselves. The Tribunal expresses its confidence that the present case will enable the Commissioner-General to use his prerogative, and the manpower at his disposal, to remove and reduce as much as possible all detected and suspected faults and deficiencies. In particular, the Tribunal would stress the need for officials to exercise restraint at all levels in discussing administrative matters. An atmosphere of carrying tales from person to person comes in the way of proper judgement and discretion; officers often become aware of the private views of their colleagues and tend to adjust their own official opinions either to please their seniors or at least to increase the chances of having their own way.

X. Since prejudice or fundamental lack of due process have not been established to the satisfaction of the Tribunal, the question of ordering rescission of the decision regarding non-renewal of the Applicant's fixed-term contract or, in the alternative, of awarding damages on that account does not arise. The Applicant has, in addition, asked for compensation because of the delay in disposing of his appeal by ISJAB as also for reimbursement of secretarial expenses. There are also some other requests such as for a revised certificate for service and for an enquiry into the affairs of UNRWA by "the Joint Inspection Unit, or some other appropriate United Nations organ".

XI. The delay in the disposal of the appeal was not, in the opinion of the Tribunal, unusually or unnecessarily long, and at least part of it was at the Applicant's own request; therefore, no compensation on this ground can be allowed.

The Tribunal has already commented on the procedural defects and deficiencies, and decides to award the Applicant \$US 2,000 in view of the

circumstances in which the Respondent took his decision to end the Applicant's services.

As regards secretarial costs, the Applicant received much help from UNRWA itself until mid-August 1983, but since then he has incurred some expenditure and the Tribunal notes that he was not assisted by counsel from the United Nations panel.

XII. In accordance with the above considerations, the Tribunal

(a) does not consider that allegations of prejudice have been established;
(b) considers that procedural difficulties have not deprived the Applicant of due process or vitiated the course of justice, but that his rights of rebuttal have not been fully respected, and so orders the Respondent to pay the Applicant a sum of \$US 2,000;

(c) orders the Respondent to pay the Applicant \$US 500 for secretarial costs, and

(d) dismisses all other pleas.

(Signatures)

Samar SEN
Vice-President, presiding
Herbert REIS
Member
Geneva, 28 May 1984

Luis M. de POSADAS MONTERO
Member
Jean HARDY
Executive Secretary

Judgement No. 332

(Original: English)

Case No. 307:
San José

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

Request by a locally recruited staff member of the United Nations to rescind the decision denying support for the application for a United States G-5 visa for a domestic servant.

Conclusion of the Joint Appeals Board that the practice of the Visa Committee of distinguishing between locally recruited non-United States nationals and internationally recruited staff was flawed from the standpoint of equity and principles of good administration.—Recommendation of the Board that the practice be reviewed and that meanwhile the Applicant's application be considered applying the same standards to all applications.—Recommendation rejected.

Question whether the denial complained of could amount to non-observance of the Applicant's contract of employment or her terms of appointment within the meaning of article 2.1 of the Tribunal's statute.—Conclusion of the Tribunal that the procedure by which requests for a visa application were screened by the Visa Committee was a term of the Applicant's appointment.—Decision of the Tribunal that it is competent.

Respondent's contention that the privileges of the United Nations are granted solely in the interest of the Organization and that no staff member has a right to any of these privileges.—Contention accepted.—Finding of the Tribunal that the revised terms of reference of the Visa Committee, by excluding the consideration of all applications from locally recruited staff who are almost invariably General Service staff, amounted to discrimination and were a denial of due