

therefore does not need to examine the merits of the question whether there has been a breach of any obligation of the United Nations.

II. The Tribunal cannot, within its competence under its Statute, give binding force to a recommendation of the Joint Appeals Board which would require action by the Respondent which is solely within his discretionary power (Judgement No. 123 (*Roy*), para. I).

III. The Tribunal likewise cannot order the making by the Respondent of the additional *ex gratia* payment referred to in paragraph I above.

IV. For this reason, the Applicant's pleas are rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding

Luis M. de POSADAS MONTERO
Member

New York, 23 October 1984

Roger PINTO
Member

Jean HARDY
Executive-Secretary

Judgement No. 336

(Original: English)

Case No. 323:
Maqueda Sánchez

Against: The Secretary-General
of the United Nations

Request by a former staff member of the United Nations Centre for Human Settlements to find that there was a non-observance of her contract of employment and to order various corrective actions, in particular reclassification.

Conclusion of the Joint Appeals Board that there was no non-observance of the terms of appointment and no discrimination or unfair treatment, that the Applicant did not acquire any entitlement to a special post allowance and that she had no case for reinstatement.—Recommendation to reject the application.

Applicant's challenge of the impartiality of the Joint Appeals Board.—Finding of the Tribunal that the Applicant produced no evidence of prejudice on the part of the Board.—Applicant's plea that the Respondent failed to observe her terms of appointment.—Consideration of the circumstances of the Applicant's recruitment.—Finding of the Tribunal that the Applicant voluntarily accepted the offer of employment made to her.—Applicant's plea that she was wrongly denied a special post allowance.—Application of staff rule 103.11 (a).—The Tribunal finds no evidence of prejudice or of violation of staff rules in the refusal to grant the allowance in this case.

Applicant's request to order the Secretary-General to revive a settlement offer which was made to her.—The Tribunal holds that it is not involved in settlement negotiations between the parties to a case before it and that, where a settlement has not been mutually agreed upon, questions concerning the desirability of settlement, its possible terms and changes of positions do not warrant judicial review.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President;
Mr. Herbert Reis;

Whereas at the request of Carmen Maqueda Sánchez, a former staff member of the United Nations Centre for Human Settlements (UNCHS), the President of the Tribunal, with the agreement of the Respondent, successively extended to 12 December 1983, 24 December 1983, 6 January 1984 and 20 January 1984 the time-limit for the filing of an application to the Tribunal;

Whereas, on 25 January 1984, the Applicant filed an application in which she requested the Tribunal:

“(a) To order a new Joint Appeals Board hearing composed of non-involved nationals

“(b) To find that the use of ex-personnel officers as secretaries of the Joint Appeals Board panels is prejudicial to an independent unbiased review of alleged discrimination

“(c) To recommend to the Secretary-General that the Secretariat of the Joint Appeals Board be administratively separated from the Office of Personnel Services

“(d) To order the Secretary-General to accept the settlement offer made by Habitat [UNCHS] (SPA [special post allowance] from 1 June 1981 to 4 September 1981)

“(e) To order the Secretary-General to reclassify the Applicant at level G-8, step VIII, as from 1 October 1980 and provide the appropriate international recruitment entitlements

“(f) To order the Secretary-General to recognize that the Applicant was performing professional duties and reflect that fact on her periodic report and UN personnel records

“(g) To hold oral proceedings”;

Whereas the Respondent filed his answer on 21 February 1984;

Whereas, on 3 April 1984, the Applicant filed written observations in which she modified her pleas by adding the following:

“In conclusion, the Applicant respectfully asks the Tribunal to find that there was a *non-observance of her contract of employment*. She was given a General Service appointment but in fact right from the beginning she was expected to perform Professional duties. This conclusion is confirmed by her immediate supervisor and the fact that she was succeeded by a professional and that instructions were issued subsequently not to use General Service Staff for professional functions after her protest. No other programme management assistants were subsequently recruited at UNCHS. In order to compensate for this misuse of the Applicant, an award equivalent to difference between P-1 and GS-7 recruitment level with an SPA to P-2 from June to September 1981 would be fair and appropriate.”;

Whereas the President ruled on 11 September 1984 that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

In March 1980 the Applicant, who was serving with the International Coffee Organization in London as an Administrative Assistant at the G-7, step 7 level, travelled to Nairobi, Kenya, to discuss employment opportunities with UNCHS as her husband was being reassigned to Nairobi. On 25 June 1980 the

Chief of the Division of Administration of UNCHS offered her by cable a one-year fixed-term appointment as a Programme Management Assistant in the General Service category on an annual net salary of 61,370 Kenya shillings under conditions applicable to local recruits. On 3 July 1980 the Applicant replied:

“REF. YOUR OFFER PROGRAMME MANAGEMENT ASSISTANT IN UNCHS RECEIVED BY CABLE. PLEASE LET ME KNOW GRADE AND STEP AS THE SALARY OF 61.370 KN. SH. INDICATED IN YOUR CABLE DOES NOT SEEM TO CORRESPOND TO THE G-8 POSITION DISCUSSED DURING OUR MEETING IN MARCH. MY PRESENT POST IS G-7.7 (MAXIMUM GRADE IN LONDON G-8.) AND I WOULD LIKE YOU TO RECONSIDER ANY OFFER BELOW THAT. LOCAL RECRUITMENT IS ACCEPTABLE. . . .”

On 9 July 1980 the Chief of the Division of Administration advised the Applicant that the grade offered was G-7, step 4, which was almost equal to G-8, step 1, that the salary scales from different duty stations could not be compared, that the G-7 level in Nairobi corresponded to the duties of the post offered, and that the Applicant should undergo full medical examination if she accepted the offer. On 10 July 1980 the Applicant accepted the offer. On 1 October 1980 she accordingly entered the service of UNCHS as a locally recruited Programme Management Assistant on a fixed-term appointment for one year at the G-7, step 4 level. On 27 July 1981, in a memorandum to the Executive Director of UNCHS, the Applicant complained that she had been unfairly treated; she requested the following:

“(1) To be given a Special Post Allowance (SPA) at P.2 level as from June 1981, the date from which I was officially made fully responsible for the half of the programme management of the Section for AEAP [Americas, Europe, Asia and Pacific], and in accordance with Rule 103.11, paragraphs (c) and (d) of the Staff Rules, and considering not only my duties and performance but also the wrong entry level and unfair treatment of my recruitment.

“(2) As from October 1981, I request a new contract (I do not want an extension of General Service contract and SPA) at level P.2 for 11 months, in order to avoid the bureaucratic problems involved in the processing of a longer contract. Also, according to Rule 104.6, paragraph (ii) (a) of the Staff Rules, international status would automatically be given with a P. contract avoiding in this way my official request for it to the Administration.”

On 31 July 1981 two Human Settlements Officers with whom the Applicant worked wrote to the Deputy Director of UNCHS that, as she was unhappy with the terms of her contract which seemed to be at variance with the responsibilities assigned to her, they were worried at the prospect of losing her and asked support in finding a solution compatible with both the Programme Management needs of the section and the Applicant's personal requirements. On 3 August 1981 the Deputy Director transmitted the views of the two staff members to the Executive Director and suggested that the Applicant's case could be solved by revising her contract, giving her international status and granting her a special post allowance. On the same day the Chief of the Division of Administration, replying to the Applicant's memorandum of 27 July 1981, informed her that there was no possibility of giving her a special post allowance to the P-2 level but that the question of her promotion within her category would be considered at the earliest opportunity in accordance with the existing guidelines. On 6 August 1981 the Applicant submitted her resignation effective 4 September

1981. On the same day she wrote to the Secretary-General, complaining of discriminatory and unfair treatment and requesting that she

“Be reinstated in UNCHS in the same activities within the Technical Co-operation Division, with the status and entitlement appropriate to her responsibilities as detailed below.

“(i) Be reclassified at level G-8 Step 8 as from 1 October 1980

“(ii) Be given international status to be granted as from 1 October 1980 as if recruited from London (Permanent address of Appellant.)

“(iii) Be granted Special Post Allowance corresponding to the work and responsibilities carried out by Ms. Maqueda-Sánchez as from 1 June 1981, the date from which she was officially made fully responsible for the half of the programme management of the Section for Americas, Europe, Asia and the Pacific of Technical Co-operation Division.”

On 20 November 1981 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General could not accede to any of her requests and on 8 February 1982 the Applicant lodged an appeal with the Joint Appeals Board. The Board submitted its report on 13 July 1983. The Board's conclusions and recommendation read as follows:

“Conclusions and Recommendation

“50. The Board concludes that there was no non-observance by the Organization of the terms and conditions of appointment as offered to and accepted by the appellant or of any other pertinent Staff Rule governing her appointment. The Board does not find any evidence that the appellant was put to discriminatory or unfair treatment in the matter of her recruitment.

“51. The Board finds that the appellant did not acquire any entitlement under Staff Rule 103.11 relating to the grant of special post allowance.

“52. The question of the appellant's reinstatement does not arise as she was not terminated by the Organization. On the other hand she had resigned her appointment of her own volition.

“53. Accordingly, the Board makes no recommendation in support of the appeal.”

On 24 August 1983 the Assistant Secretary-General for Personnel Services informed the Applicant that, having re-examined her case in the light of the Board's report, the Secretary-General had decided to maintain the contested decision and to take no further action on the case. On 25 January 1984 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The proceedings of the Joint Appeals Board were discriminatory.
2. The Applicant has been unfairly treated in that (a) her status and salary at the International Coffee Organization were not recognized (she suffered a 50% reduction in salary); (b) the other Programme Management Assistant was recruited at G-8 level (and later given a special post allowance to P-2); (c) other newly recruited General Service staff members at UNCHS were given international status; (d) staff members at UNCHS were routinely given special post allowances. Moreover, her reclassification and the granting of a special post allowance were supported by her supervisor and colleagues.
3. Unlike Judgements Nos. 155 (Belaineh) and 133 (Frias) with respect to the granting of a special post allowance, prejudice has been established. In

addition, the proceedings of the Joint Appeals Board were conducted in a prejudicial manner. Moreover, the Applicant was in fact recruited to perform professional duties.

Whereas the Respondent's principal contentions are:

1. An appeal to the Tribunal lies only in cases of non-observance of contracts of employment and not in cases of dissatisfaction with agreed terms. Refusal to raise the level of an appointment voluntarily accepted cannot constitute non-observance of the terms of that appointment.

2. Allegations of racial and other prejudice against the Joint Appeals Board do not warrant consideration by the Tribunal.

3. The Respondent's failure to pay the Applicant a special post allowance does not constitute a non-observance of her contract of employment.

4. Settlement negotiations during the course of an appeal do not constitute a term and condition of employment, enforceable by the Tribunal, until an agreement acceptable to both parties is finalized.

The Tribunal, having deliberated from 11 to 25 October 1984, now pronounces the following judgement:

I. The Applicant challenges the impartiality of the Joint Appeals Board, whose recommendations, contained in a report dated 13 July 1983 and negative to the Applicant's claims, were accepted by the Secretary-General. The partiality of the Board is assertedly shown by the facts that (a) the nationality of its Alternate Secretary was the same as that of the Executive Director of UNCHS, the latter having been "unresponsive" to the Applicant's claims; (b) the Alternate Secretary had formerly been employed as a personnel officer in the Office of Personnel Services and thus could not reasonably be expected to take an unbiased position; (c) the Alternate Secretary improperly "advised" the Board and is "believed" to have had contacts, possibly of an improper kind, with the UNCHS liaison office at Headquarters; and (d) the Alternate Member of the Board elected by the Staff was also of the same nationality as the Executive Director of UNCHS and is said to have exhibited hostility to counsel for the Applicant during the Board's proceedings in asking why this case had been brought.

II. The Tribunal considers these challenges to be entirely lacking in foundation. The Applicant has produced no evidence of prejudice on the part of the Board, any of its Members or its Alternate Secretary. Even when alleging "extreme hostility toward the appellant's case and toward her counsel" on the part of the Alternate Member elected by the staff, no factual material of any kind has been produced to support the allegation. The mere allegations of "inappropriate" nationality, when not accompanied by reliable evidence, cannot be regarded as demonstrating the existence of bias. In order to be considered, such allegations must be "substantiated by . . . evidence" (Judgement No. 181: *Nath*, para. VIII).

III. The revised central plea of the application asks the Tribunal to find that the Respondent failed to observe the Applicant's terms of appointment in that, although hired locally as a Programme Management Assistant with special competence in Spanish at General Service level 7, step 4, UNCHS from the beginning expected her to perform professional-level work. It is further contended that, notwithstanding the admittedly excellent discharge of those duties, she was denied a special post allowance, which she had requested on the ground that her professional work was not being fairly compensated.

IV. With regard to her employment with UNCHS, the record shows that the Applicant, who had been employed by the International Coffee Organization in London, initiated the process of seeking employment in Nairobi where she wished for personal reasons to settle; that she travelled to Nairobi seeking employment with UNCHS; that UNCHS offered her a position as a local Nairobi recruit, that is, without international status, as a Programme Management Assistant at the G-7, step 4 level; that she raised questions concerning the offer and that, on receiving a reiteration of the offer with a further explanation, she decided voluntarily to accept it. In view of these facts, the Applicant would have to bear a heavy burden in showing that her initiative in seeking UNCHS employment and her full assent to the terms of appointment should be treated as nugatory because of a wrongful intent on the part of the Respondent, presumably to obtain professional services at General Service level salary expense. The record does not support such an intention on the part of UNCHS. The Applicant was hired at approximately the same level and salary at which she had been employed in London and without having to enter into the process that would have been necessary had she been considered for appointment at a professional grade, for which, in any event, she is said to have lacked the required academic qualifications.

V. Staff employed by the United Nations are often asked to render services of a character and at a level superior to those for which they have been appointed or employed. This is evidenced by Staff Rule 103.11 (a), "Special Post Allowance", which states that "Staff members shall be expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts." The challenge of such services, together with the consequent possibilities of appropriate recognition, is usually accepted without hesitation and may be compensated in material terms, following a suitable period of time, by the grant of a special post allowance. The record in this case suggests that UNCHS declined to make a grant in this instance because the Applicant had worked only some 10 months and not the year that UNCHS in most circumstances appears to have required as conditional to the grant of the special post allowance. However, on 28 July 1981, the Chief of the UNCHS Personnel Section informed the Chief of the Division of Administration of the former's view that "If after joining the Centre Mrs. Sánchez has demonstrated the ability and assumed higher level responsibility, then in accordance with the Staff Rules she fulfils the requirements for promotion (perhaps even on an accelerated basis) to the next higher level." On 3 August 1981, in response to the Applicant's appeal to the Executive Director, she was informed by the Chief of the Division of Administration that, although there was "no possibility" of giving her a special post allowance to the P-2 level, "the question of your promotion within your category will be considered at the earliest opportunity in accordance with the existing guidelines". Shortly thereafter she resigned.

VI. The jurisprudence of the Tribunal treats the grant of a special post allowance as lying entirely within the discretion of the executive head of the concerned agency. Thus, in such cases as *Belaineh* (Judgement No. 155, paras. III, IV and VI), the Tribunal has taken note of the fact that Staff Rule 103.11 (b) explicitly provides for the exercise of discretion, rather than entitlement as a matter of right, in stating that if the necessary conditions are present, a staff member "may, in exceptional cases", be granted a special post allowance as from the seventh month. Conceding that the grant of a special post allowance is discretionary, the Applicant argues that it cannot be denied arbitrarily.

Although UNCHS in a number of other instances made such grants, the Tribunal cannot find in the record sufficient evidence to warrant a finding of prejudice or violation of the Staff Rules by its refusal to grant the allowance in this case. The fact that grants have been made to others does not, in the absence of the presentation of careful documentation showing similarity of circumstances and unequal treatment, suffice to establish bias. Having said that, the Tribunal expresses the hope that UNCHS will review its practice in order that the grant of special post allowances be not harmful to good administration.

VII. The application also requests the Tribunal to order the Secretary-General to revive a settlement offer which he made during the proceedings before the Joint Appeals Board. As a general matter, the Tribunal does not become involved in settlement negotiations between the parties in a case before it. Nor, in this instance, is it appropriate for the Tribunal to pronounce itself on the character of a possible settlement. Since, however, the Applicant has expressly requested the Tribunal to rule on this matter, the Tribunal observes that the Applicant was informed by her counsel on 25 March 1983 of a settlement offer by the representative of the Secretary-General and that, on 6 July 1983, at the commencement of the Board's hearings, the counsel informed the Board that the Respondent's offer would be accepted by the Applicant "provided that her original periodic report be re-instated and given her to sign and that her personnel records reflect that she was performing professional duties during this period". The Respondent then withdrew his offer, apparently treating the Applicant's response as a counter-offer which the Respondent was under no obligation to accept. The Tribunal considers that where a settlement has not been mutually agreed upon, questions concerning the desirability of a settlement, possible terms and changes of position do not warrant judicial review.

VIII. For these reasons, all of the pleas put forward by the Applicant are rejected.

(Signatures)

Endre USTOR
President

Samar SEN
Vice-President

New York, 25 October 1984

Herbert REIS
Member

Jean HARDY
Executive Secretary

Judgement No. 337

(Original: English)

Case No. 333:
Cordovez

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

Request by a staff member of the United Nations for reimbursement of travel expenses in connection with his son's attendance at Stanford University, for which the Applicant is entitled to the payment of an education grant.