

XIII. Accordingly, the Tribunal orders the rescinding of the decision of the Respondent but if the Respondent decides that, in the interest of the Organization, no further action shall be taken in the Applicant's case, the Tribunal orders the Respondent to pay to the Applicant six months' net base salary at the time of his dismissal.

XIV. All other pleas are rejected.

(Signatures)

Arnold KEAN  
*Vice-President, presiding*

Herbert REIS  
*Member*

2 November 1984

Luis de POSADAS MONTERO  
*Member*

R. Maria VICIEN-MILBURN  
*Acting Executive Secretary*

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## Judgement No. 341

(Original: English)

Case No. 324:  
Paveskovic

Against: The Secretary-General  
of the United Nations

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*Request by a former staff member of the United Nations to rescind the decision not to extend his appointment for two years beyond retirement age; request for indemnification of injuries sustained as a result of this decision.*

*Conclusion of the Joint Appeals Board that the Applicant had no legal right to the extension of his appointment.—Recommendation motivated by personal, human and moral grounds to pay the Applicant equivalent of six weeks' salary.—Recommendation rejected.*

*Applicant's claim that his appointment should have been extended beyond the age of sixty.—Consideration of the circumstances of the case.—The Tribunal finds that the Applicant resigned from the national civil service from which he was seconded in the belief that he would be retained by the Organization for two years beyond sixty.—This belief arose through the assurances given to the Applicant by certain members of the Administration.—The Tribunal finds that these assurances did not go beyond a promise that the Applicant would be recommended for extension.—Consequence of a more restrictive policy with regard to extensions beyond sixty introduced by General Assembly resolution 33/143 setting a maximum period of extension of six months.—Applicant's contention that his acquired rights were not affected by this change of policy.—Contention rejected.—The Tribunal finds that the granting of a three months' extension, reduced later to two months, must have affected the Applicant adversely.—Applicant's allegation that his successor was not fit for his job and was appointed only to refuse him an extension.—The Tribunal holds that in the absence of an infringement of the regulations or of bad faith it is beyond its competence to judge the suitability of a staff member selected by the Administration for a post.—Applicant's allegations of injury suffered as a result of overwork and inhuman treatment.—The Tribunal notes that no proof thereof was presented but holds that the deterioration of the Applicant's health during the last period of his service can be attributed to overwork and strain.*

*Award of compensation of \$US 4,000.—All other pleas rejected.*

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

Whereas on 20 December 1983, Nedo Paveskovic, a former staff member of the United Nations, filed an application which did not fulfil the formal requirements of article 7 of the Rules of the Administrative Tribunal;

Whereas the President of the Tribunal, with the agreement of the Respondent extended the time limits to file a revised application until 1 May 1984;

Whereas on 6 February 1984, the Applicant filed a revised application in which he requested the Tribunal to rule *inter alia* that

*"Part A*

"... the Tribunal order the Respondent to provide the Tribunal and the Applicant with the copies of the following documents . . .

*"Part C*

"... the Applicant invokes the following UN obligations:

"A. Rescinding of the contested decision dated 25 October 1983 . . . as well as the administrative decisions and the JAB [Joint Appeals Board] recommendation on which it is based.

"Consequently, he requests an indemnification for twenty four months of illegally denied service, which represented at the moment of his mandatory retirement an equivalent of the Swiss francs: 154.000 (Hund[red] Fifty Four Thousand[s]) i.e. SFrs 7.000 per month. In addition he requests the payment of the SFrs 42.000 (Forty Two Thousands) as the compensation for the pension loss proportionally to an increased pensionable service during the denied twenty two months service and projected as an increased retirement benefit between his age of 60 and 80, i[n]cluding as well the loss related to his Repatriation Grant.

"B. Rescinding of the Respondent's letter addressed to the Applicant on 20 August 1981 . . .

"C. Indemnification amounting to SFrs 60.000 (Swiss Francs Sixty Thousand[s]) for the injury and the loss suffered by the Applicant as the result of his being overworked and particularly for his being inhumanly treated by his new supervisor.

"Also he requests an interest payment produced by the delay and related to the above requested indemnification amounts totaling themselves to the sum of SFrs 256.000.

"Finally the Applicant requests reimbursement of the expenses caused to him during and by the JAB and the Tribunal's proceedings—the final amount to be specified at the appropriate date."

Whereas the Respondent filed his answer on 4 April 1984;

Whereas the Applicant filed written observations on 10 May 1984;

Whereas the presiding member ruled on 26 September 1984 that no oral proceedings would be held in the case;

Whereas, at the request of the Tribunal, the Respondent submitted additional information on 12, 22 and 26 October 1984;

Whereas the Applicant submitted additional information on 19 and 29 October 1984;

Whereas the facts in the case are as follows:

The Applicant, a national of Canada, was seconded to the United Nations from the Public Archives of Canada under a two-year fixed-term appointment that commenced on 31 March 1971, at the P-3 level as Chief of Registry, Mailing and Records Retirement Section, at the Department of Conference and General Services, in the United Nations Office at Geneva. On the expiration of his appointment, it was extended for a further fixed-term of five years until 31 March 1978, with the Canadian Government's agreement.

In a memorandum dated 11 February 1977 addressed to Mr. G. de Warlincourt, Chief of Documents Division at the Geneva Office, the Applicant stated that he:

"would be pleased to continue to serve the Organization until [his] retirement, and would be very much grateful if [his] case could be taken into consideration so that [his] government could be informed in the appropriate time about the Organization's and [his] decision concerning [his] employment.

" . . . "

On 16 February 1977 the Chief of Documents Division notified Mr. Abdou Ciss, Chief of Personnel Division at Geneva, of the Applicant's request and noted:

"Although Mr. Paveskovic[s] fixed-term appointment is due to expire next year, he would appreciate it if the necessary steps could be taken at an early date to settle the matter of his future.

"Mr. Paveskovic has advised me that he would resign his post with the Canadian Government if a new appointment were offered to him until retirement age."

On 9 March 1977 the Chief of Personnel Division at Geneva informed the Chief of Staff Services at Headquarters of the Applicant's request and added that the request was supported by the Personnel Division of Geneva. On 7 April 1977 a Personnel Officer at Headquarters informed the Chief of Personnel at Geneva that the Assistant Secretary-General for Personnel Services had approved an extension of the Applicant's fixed-term appointment until 31 May 1981. However, the extension would be processed only after the Canadian Government's acceptance of his resignation.

On 21 June 1977 the Applicant informed the Chief of Personnel Administration Section at Geneva that he had consulted the Public Archives of Canada—his former employer—and understood that since a request for a further extension of his secondment could still be entertained, his "resignation might not be necessary" and he would not lose certain "life and death benefits and some other insurances" he had in Canada and which would be difficult to obtain anywhere else because of his age. Accordingly, on 18 July 1977 the Assistant Secretary-General for Personnel Services requested the Canadian Government's consent to the extension of the Applicant's secondment until 31 May 1981. On 22 November 1977 the Canadian authorities informed the Assistant Secretary-General for Personnel Services that "after careful consideration" the Canadian Government had concluded that the Applicant's leave of absence could not be extended if he wished to continue to be employed by the United Nations. The Chief of Personnel Division at Geneva was so informed.

On 12 December 1977 the Applicant addressed a further memorandum to the Chief of Personnel at Geneva on the subject of the extension of his appointment. The memorandum read in part as follows:

"At sixty, which is the normal retirement age for UN staff, I shall have had only a little more than 18 years of pensionable service in all, both with the Canadian Government and the United Nations. In this context the revenue from my pension at sixty will be far below that necessary for the material needs of my wife, myself and two members of my family who do not live with us but who depend almost entirely on my financial aid. If I were to have at least twenty years of service at retirement age it would be a great help. This would imply a continuation of my service after sixty. In Canada this continuation would be guaranteed whereas I understand that the UN granting of a maximum extension of two years depends upon a directive from the Secretary-General. In this case secondment from the Canadian Government would have given me more security.

"I have nevertheless decided to remain with the UN for the following reasons: 1) Out of a sense of loyalty to my commitments; 2) Because of a natural desire to close the circle of operations which I have undertaken to reorganize and enlarge the Registry, to introduce microfilm techniques and to establish the (Historical) Archives recommended by the AMS [Administration and Management Service] and which have been under my direction since 1971. . . . I am the only professional staff member and the only qualified archivist called upon to do scholarly work in my Section.

"I have therefore decided to retain my post in the Organization as long as possible. I am now in contact with my government and should there be no change in their decision not to extend my secondment I shall retire from Canadian Public Service."

On 15 December 1977 the Applicant was informed by the Canadian authorities that after seven years of absence, the basic purpose of a secondment was perhaps not valid and the United Nations should consider to offer him permanent employment. On 13 February 1978 the Applicant resigned from his post at the Public Archives of Canada and his contract with the United Nations was extended for a further three years and two months until 31 May 1981.

On 20 December 1978 the General Assembly, at its thirty-third session, requested the Secretary-General in Resolution 33/143, Section II, paragraph 3:

"to apply the regulations regarding the age of retirement and not grant extensions beyond the established age of retirement except for the minimum time required to find a suitable replacement which shall be initially until the end of 1979 and thereafter not normally for more than six months after the established age of retirement;"

On 4 October 1979 the Applicant sent a letter to Mr. Abdou Ciss, who in the meantime has been appointed Director, Division of Administration at Geneva. At Mr. Ciss's request, and after meeting with him, the Applicant attached copies of his letter of resignation from the Canadian Public Archives, the Applicant's performance evaluation report and the Applicant's memorandum of 12 December 1977 to Mr. Ciss setting forth the reasons for his decision to stay with the United Nations.

On 14 January 1980 Mr. Gely Dneprovsky, the Chief of Personnel Division at Geneva addressed a memorandum to all Chiefs of Sections on "*Recommendations for extension beyond 60 years of age*". The memorandum read in part as follows:

“(a) All requests for extension beyond 60 years of age should be submitted or endorsed by the Head of the Department or Office;

“(b) Requests should specify the date action to replace the staff member was initiated and the status of the replacement process;

“(c) The interests of the Organization in terms of costs or production delays should be specified in each recommendation.”

On 5 August 1980 the Applicant requested the Director of the Division of Administration and the Director of Conference and General Services at Geneva that his appointment be extended for two years beyond age sixty, the statutory age of separation from service set forth in the Staff Regulations and Rules. On 29 August 1980 the Office-in-Charge of Personnel Division at Geneva informed the Director of Conference and General Services that the Personnel Division had reviewed the Applicant's request but was unable to support it in view of the strict criteria imposed by General Assembly resolution 33/143 and because they believed that “there should be no difficulty whatsoever in finding a suitable replacement” between then and May 1981, when the Applicant would reach age sixty. On 29 September 1980, the Applicant was so informed.

On 24 October 1980, in memoranda addressed to the Director of the Division of Administration, the Director of Conference and General Services, and the Chief of Personnel Division at Geneva, the Applicant contested the administrative decision of 29 August 1980. In addition, in a letter dated 31 October 1980 to the Assistant Secretary-General for Personnel Services, the Applicant explained the circumstances in which his request for an extension beyond retirement age had been denied and asked for his advice.

On 7 November 1980 the Director of the Division of Administration at Geneva addressed a memorandum to the Assistant Secretary-General for Personnel Services which read as follows:

“1. I wish to refer to Mr. Paveskovic's letter to you dated 31 October 1980 on the above subject and in particular to his request for a review of the decision not to extend him. As you will notice, mention has been made of ‘commitment made by me in 1977’ in my previous capacity as Chief of Personnel, United Nations Office at Geneva. I need not recall that I had no power to commit the Organization to extend Mr. Paveskovic for two years; and nothing in his file would indicate any such commitment.

“2. However, when in 1977 Mr. Paveskovic was faced with the dilemma of having to choose between staying with the Secretariat or going back to his Government—Canada—after a maximum period of secondment, I had a long discussion with him and his then Chief, Mr. de Warlincourt. The latter and I believed that while we could not guarantee any extension beyond retirement we would be prepared to recommend to the Assistant Secretary-General, Office of Personnel Services, to grant an extension of one year or two. Mr. de Warlincourt felt that should Mr. Paveskovic leave the Secretariat at that time that would create serious problems to the Archives, Registry and Mailing Section. It was also, frankly, at a time when extension beyond retirement was granted without much difficulty.

“3. It is clear that extension beyond retirement age has now been made difficult by virtue of the General Assembly resolution. Nevertheless, given the background of Mr. Paveskovic's case, had I *remained as Chief of Personnel I would have recommended an extension for six months.*

“4. I thought I should provide the above information for the record.”

On 12 November 1980 Mr. Robert Webb, Director of the Division of Personnel Administration at Headquarters informed the Applicant that

"As regards your request for an extension beyond 31 May 1981, the Office of Personnel Services is required to adhere strictly to the provisions of General Assembly Resolution No. 33/143 . . .

"As the United Nations Office at Geneva does not anticipate any difficulty in locating a suitable replacement for your post between now and the anticipated date of your retirement, I regret to have to advise you that we are not in a position to recommend an extension of your appointment beyond your retirement age. Please be assured that such a policy is followed in all cases where the selection of a suitable replacement, either internally or by outside recruitment, does not pose any serious problems."

On 13 November 1980 the Chief of Personnel Services at Geneva cabled the Assistant Secretary-General for Personnel Services as follows:

". . . REFERENCE PAVESKOVIC'S LETTER OF 31 OCTOBER REQUESTING EXTENSION HIS APPOINTMENT BEYOND RETIREMENT AND CISS'S MEMORAND[UM] 7 NOVEMBER SAME SUBJECT. APPRECIATE YOU DEFER YOUR FINAL DECISI[ON] UNTIL YOU RECEIVE RECOMMENDATION FROM THIS OFFICE. . . ."

On 25 January 1981 the Applicant requested the Chief of Personnel Services at Geneva "a maximum possible extension". On 9 February 1981 the Chief of Personnel Services at Geneva addressed a further cable to the Deputy Chief of Staff Services at Headquarters which provided as follows:

"CONCERNING FORTHCOMING RETIREMENT OF NEDO PAVESKOVIC . . . HAVING THE POST DEPUTY CHIEF ABOVE SECTION STILL UNFILLED SINCE LAST YEAR WE CONSIDER THAT SIMULTANEOUS APPOINTMENT OF DEPUTY CHIEF AND NEW CHIEF OF SECTION WILL COMPLICATE ALL ACTIVITIES. FURTHERMORE, SUITABLE REPLACEMENT FOR PAVESKOVIC STILL NOT DESIGNATED. THEREFORE, DIRECTOR, CONFERENCE AND GENERAL SERVICES DIVISION REQUESTS SIX-MONTH EXTENSION PAVESKOVIC'S SERVICES BEYOND RETIREMENT AGE THROUGH 30 NOVEMBER 1981. EYE SUPPORT ABOVE REQUEST AND ASK YOUR OBTAINING ASG/OPS [Assistant Secretary-General/Office of Personnel Services] APPROVAL AND SOON ADVICE."

On 11 March 1981 the Applicant was informed by the Chief of Personnel Administration Section at Geneva that the Office of Personnel Services at Headquarters had maintained their position as outlined to him in Mr. Webb's letter of 12 November 1980. In a letter dated 20 March 1981 addressed to the Secretary-General the Applicant requested:

"1. That I be granted a reasonable extension of my contract with the possibility for further contract as a consultant, or failing that,

"2. That my case is immediately passed to the Administrative Tribunal, as the above said procedure has made time too short for regular appeal procedure. . . ."

On 31 March 1981 the Deputy Chief of Staff Services at Headquarters cabled the Chief of Personnel Division at Geneva as follows:

"OFFICE PERSSERV [Personnel Services] HAS RECOMMENDED . . . THREE MONTHS THROUGH END JULY 1981 FOR NEDO PAVESKOVIC . . ."

However, in a further cable to the Chief of Personnel Division at Geneva, the Deputy Chief of Staff Services at Headquarters stated:

" THIS SUPERSEDES MY CAB MAP0078-04 OF 31 MARCH. OFFICE PERSSERV [Personnel Services] HAS RECOMMENDED . . . TWO MONTHS EXTENSION THROUGH END JULY 1981 FOR NEDO PAVESKOVIC . . . "

On 14 April 1981 the Applicant was informed by the Chief of Personnel Administration Section at Geneva that

"In the context of an examination of the overall needs of the Secretariat, the Secretary-General has decided to offer you an extension of service of two months that is, until 31 July 1981."

On 21 April 1981 the Applicant accepted the offer of employment for two months beyond 31 May 1981, but reserved his right to contest the decision not to extend his appointment for a longer period of time. On 4 May 1981 the Applicant's request for direct submission of his appeal to the Administrative Tribunal was denied, and he was asked to observe the procedures set forth in Staff Rule 111.3. On 26 June 1981 he lodged an appeal with the Geneva Joint Appeals Board.

The Geneva Joint Appeals Board adopted its report on 30 May 1983. Its conclusions and recommendations read as follows:

*"Conclusions and Recommendations"*

"49. Whatever sympathy the Board might feel towards Appellant regarding the initial promises which had obviously been made to him, it cannot escape the conclusion that a professional staff member of his standing and experience should have understood how the UN system works. Moreover, he should have realized that the chances of any extension were small when his new supervisor decided not to support his request.

"50. During the oral proceedings, Appellant was asked if he felt that the outcome of his case had been influenced at any time by 'bias, prejudice, or any other extraneous factor'. He replied that he did have this feeling. The Board, however, can find no real evidence to substantiate this, taking account of the completely different circumstances which obtained after the adoption by the General Assembly of Resolution 33/143.

"51. The Board finds that the policy guidelines set out in paragraph 4 of Administrative Instruction ST/AI/213 (Annex 4) could only, to a limited extent, have been applied to Appellant's case and would not have justified any special consideration in granting his request for an extension. Despite some shortcomings pertaining mainly to inadequate coordination, it finds no substantial evidence to show that the Administration acted unfairly or capriciously in deciding to deny the request other than for two months beyond retirement age.

"52. The Board also finds that the Secretary-General, in applying his discretionary authority, did not violate Staff Regulations and Staff Rules, or the terms of Appellant's appointment in denying him a longer extension.

"53. However, despite these conclusions and notwithstanding its opinion that Appellant had no legal right to the extension which he sought, the Board cannot overlook entirely the personal, human and moral issues which are central to his case. The Board is satisfied that a moral obligation did emerge and that the granting of a two-month extension only did not fully meet that obligation. The Board is of the opinion that there had been a lack of concern on the part of the new supervisor and an absence of coordination between Appellant's various superiors in their handling of his case as well as insufficient briefing of successors concerning the situation

that had been created, particularly as Appellant seems to have had serious discussions with these superiors about his position on several occasions in the years prior to his reaching the age of sixty. As a consequence, there was failure to recognize the existence of promises likely to give rise to a certain expectation on the part of Appellant of being extended for as long as permissible under the prevailing rules and criteria. This situation might have been unequivocally communicated to the Division of Personnel in Geneva, which, in turn, would have then been in a position to make a stronger and more forceful case—attributing due weight to any moral commitment which the promises might have implied—for submission to Headquarters. Headquarters would then have been able to make an assessment in full and complete knowledge of all the elements of the case. That such a process was not followed, and that the Division of Personnel in Geneva was not made sufficiently aware, by those concerned, of aspects of the case which contributed to evoking expectations on the part of Appellant, indicate the extent of Respondent's very limited responsibility in the matter.

"54. For the foregoing reasons, and in order to grant Appellant a measure of appropriate relief, the Board recommends to the Secretary-General that he be paid the equivalent of six weeks' salary.

"55. The Board, although conscious that the Appellant may have suffered inevitably from worry and stress in the concluding months of his service, can find no valid evidence to support his allegation about bad treatment, with adverse effects on his health, contained in the supplementary part of his appeal. The Board wishes nevertheless to recommend also to the Secretary-General that a modified version of the customary farewell letter, under the signature of the Director of the Division of Administration in Geneva, and containing a proper appreciation of Appellant's ten years of service,\*\* should be sent to him as soon as possible.

"56. Because of the reasons explained in the previous paragraphs, the Board cannot support the other claims made by Appellant in his application and rejects them accordingly."

On 25 October 1983 the Assistant Secretary-General for Personnel Services informed the Applicant that

"The Secretary-General, having re-examined your case in the light of the Board's report, has decided:

"(a) to maintain the contested decision;

"(b) to reject the Board's recommendation for an *ex gratia* payment; and

"(c) to accept the Board's recommendation that a modified version of the customary farewell letter, under the signature of the Director of the Division of Administration in Geneva, and containing proper appreciation of your ten years' service be sent to you as soon as possible.

"The Secretary-General's decision not to accept the Board's recommendation for an *ex gratia* payment is based on his conclusion that, at the time of your separation from service, no moral obligation to extend your appointment existed which would make payment desirable in the interest of the Organization."

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\*\* "The Board noted that Appellant's supervisors all regarded him as a loyal and conscientious staff member."



On 20 December 1983 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant submitted his resignation to his post in Canada in exchange for an extension of his appointment for two years at the United Nations beyond the age of sixty. Officials at the United Nations undertook a commitment to extend the Applicant's appointment—before General Assembly resolution 33/143 was adopted—in accordance with the legislation then in force.

2. The Joint Appeals Board failed to properly examine the evidence and based its conclusions on deficient proceedings. The Applicant and his legal adviser could not attend all the hearings.

3. The Respondent is legally bound to grant the Applicant a two-year extension of his appointment and is responsible for actions of its officials who acted in bad faith in 1977/8 and caused the Applicant to resign from his Canadian post.

4. The Respondent is morally liable to the Applicant under Staff Regulations 8.1 and 8.2 and Articles 23 (1) and 25 (1) of the Universal Declaration of Human Rights because it benefited financially from his performance on account of the vacancy of the post of Deputy Chief of the Section for one year and because this vacancy resulted in adverse effects on the Applicant's health as a result of his being overworked.

Whereas the Respondent's principal contentions are:

1. The Respondent was under no obligation to renew the Applicant's temporary appointment upon its expiration on 31 May 1981 or to offer him any other type of appointment. A fixed-term appointment excludes any expectancy of renewal or of conversion to any other type of appointment in the Secretariat of the United Nations and the Applicant has not established any grounds to vitiate the Secretary-General's decision not to extend his service beyond the retirement age.

2. The Applicant has no legally cognizable expectancy as regards continued employment on expiry of his fixed-term contract.

3. In the absence of any violation of any term or condition of the Applicant's contract of employment there is no basis for an award of compensation. *Ex gratia* payments are matters entirely within the discretion of the Secretary-General.

4. The documents and witnesses requested by the Applicant, as a preliminary measure, are not relevant to the issues actually before the Tribunal.

The Tribunal, having deliberated from 10 October 1984 to 2 November 1984, now pronounces the following judgement:

I. The chief claim of the Applicant is that the Administration should have retained his services past the age of sixty as a consequence of the circumstances in which he agreed to remain with the United Nations after having been informed that the Canadian Government refused to extend his secondment.

At that moment, the Applicant had to face the choice of either relinquishing his Canadian post, in which he could have gone on serving until he was 65, or keeping it and simultaneously putting an end to his assignment with the United Nations. The Applicant opted for the first possibility, i.e. he relinquished his Canadian post and continued to serve the United Nations in spite of the fact that in the United Nations sixty was the retirement age.

The Applicant claims that, in making his choice, he was influenced by the assurances given to him by some of his superiors that, when he reached age sixty they would recommend him for an extension to the Secretary-General, such an extension then being possible under Staff Regulation 9.5. The Applicant further claims that as a result of these assurances he conceived a legitimate expectancy of an extension of his services beyond the age limit set by the Staff Regulations and Rules. His expectancy was of two more years of service, as the granting of two-year extensions beyond age sixty was a current practice at the time. Some months after the Applicant had made his choice, the General Assembly in Resolution 33/143 asked the Secretary-General to change the policy currently followed of freely granting exceptions allowing the retention of staff members beyond age sixty and to adopt a more restrictive one, limiting extensions only to the time required to find a suitable replacement for the retiring staff member and then for a maximum of six months.

When the Applicant approached the age of sixty, the recommendation for a two-year extension that according to the Applicant, would have fulfilled his expectancy and kept the promises made to him, was not forwarded to the Secretary-General. Instead, a recommendation for a six-month extension, the maximum allowed by the General Assembly resolution, was sent to Headquarters for approval.

This recommendation was not accepted by Headquarters, which only granted a two-month extension, the exact time needed for the Applicant's replacement to become available. As a result, the Applicant submits that his legitimate expectancy was not taken into consideration and, as this expectancy was due to the conduct of certain staff members, a commitment for the Administration had arisen at the time.

II. With regard to the above claim of the Applicant, the Tribunal examined first whether at the time the Applicant had made his choice between continuing with the Canadian Government or with the United Nations, his decision of keeping the latter position was influenced by his belief that, if he opted for the United Nations, he would be able to continue serving beyond the sixty-year age limit set by Staff Regulation 9.5.

Secondly, the Tribunal went into the question whether the belief that might have influenced the Applicant's choice arose from the actions of members of the Administration and if, as a consequence, an expectancy was created.

Finally, the Tribunal examined whether the existence of such an expectancy entailed responsibility on the part of the Administration and the extent of that responsibility in the case of its non-fulfilment.

III. As regards the above-mentioned questions, the Tribunal finds:

(a) from the evidence produced it is clear that the Applicant relinquished his Canadian post in the belief that his services with the UN would be retained beyond age sixty;

(b) it is equally clear that the Applicant's belief arose as a consequence of the assurances given to him by certain members of the Administration;

(c) as for the exact nature of these assurances, the Tribunal finds that they did not go beyond the promise to recommend the Applicant to the Secretary-General for an extension of his appointment. The Applicant understood that the staff members who made this promise could not go as far as guaranteeing a waiver of the sixty-year limit by the Secretary-General. This is shown by the expressions the Applicant uses in his letter dated 12 December 1977 ("the UN

granting of a maximum extension of two years depends upon a directive of the Secretary-General”);

(d) therefore the expectancy created in the Applicant's mind through the assurances of certain staff members concerned only the issuing of a recommendation for an extension, not the granting of such an extension;

(e) it is obvious that the Applicant further expected that a two-year extension of his appointment would be granted, but this expectancy was merely based on the observation of what was at the time the current practice, i.e. that practically every recommendation for an extension beyond retirement age met with a favourable decision.

The expectancy thus entertained by the Applicant included two different elements: one created by the assurances made to the Applicant by certain staff members as to the issuing of a recommendation for an extension in his favour, and the other originating in the observation of what was the common practice followed at the time.

The responsibility of the Administration for the assurances given to the Applicant by certain staff members refers only to the expectation created by them, that is of a recommendation for an extension of his appointment beyond retirement age. The expectation of the granting of an extension was not a consequence of these assurances but stemmed from what was the experience of the moment and cannot be ascribed to any particular person;

(f) at the time the Applicant made his choice, the extension for retaining staff members beyond age sixty usually took the form of an extension for two years, so the recommendation the Applicant was promised would normally have been for such a period.

Subsequently, the General Assembly Resolution outlined a more restrictive policy and extensions became possible only if a suitable replacement was not available at the time and then only for a maximum period of six months;

(g) the circumstances having changed, the engagement undertaken towards the Applicant for a recommendation for an extension of his services beyond the sixty-year age limit was consequently modified and could never take the form of a recommendation for a two-year extension, as a period of six months was set as a maximum in the resolution approved by the General Assembly. The staff members involved had committed themselves to do something that was perfectly feasible at the time, i.e. recommending an extension for two years beyond the sixty-year age limit. Subsequently the General Assembly intervened and the Secretary-General modified his policy accordingly. It thus became impossible for a staff member to be recommended for a two-year extension;

(h) the Applicant submits that the commitment undertaken by the Administration at the time he made his choice, endowed him with an acquired right which could not be affected by the change of policy brought about following the request of the General Assembly. The Tribunal cannot concur with this view. The commitment undertaken by the staff members who made assurances to the Applicant was taken within the framework of the policy on retirement that was followed at the time; and after a new and more restrictive policy was introduced, their commitment could not go beyond the possibilities offered by the new policy.

In the circumstances only an extension of six months was possible and in February 1981 an extension of the Applicant's appointment for such a duration was recommended to Headquarters. Therefore, it must be concluded that the

commitment undertaken at the time the Applicant made his choice in favour of remaining with the United Nations was kept subject only to the new conditions that had arisen;

(i) upon receipt of this recommendation, Headquarters decided not to accept it and informed Geneva that only a three-month extension had been granted. This extension was subsequently reduced to two months.

In this respect, the Tribunal notes that it was within Headquarters discretion to follow or not Geneva's recommendations. Nevertheless, the Tribunal cannot but find that the granting of a three-month extension, of which the Applicant was informed, followed by its reduction to two months, caused the Applicant disappointment which must have affected him adversely;

(j) the Applicant submits that the staff member chosen as his successor was not fit for his job and was only appointed in order to have a replacement ready and thus refuse him any further extension.

The Tribunal cannot go into this matter as it is beyond its competence to judge the suitability of a staff member selected by the Administration for any given post. The Tribunal could examine this question only in the event of a definite infringement of the regulations or if any element of bad faith were detected in the proceedings.

In this case, the Tribunal finds no such reasons, as the Applicant's allegation that his successor was incompetent and appointed only to find hastily a replacement for him has not been proven and is further invalidated by the fact that this staff member is still working at the same post.

IV. Along with his chief claim, the Applicant seeks compensation "for the injury and the loss suffered by the Applicant as the result of his being overworked and particularly for his being inhumanly treated by his new supervisor". No substantial proof has been produced by the Applicant in connection with this latter allegation, and the Tribunal is unable to take it into consideration. Nevertheless, the Tribunal notes that the Applicant's health had considerably deteriorated during the last stage of his work with the United Nations and that the medical evidence produced shows that this condition was due to various problems connected with his work.

The Tribunal further notes that a contract with the International Council on Archives to perform work for UNESCO was offered to him and that such offer, initially accepted by the Applicant, was subsequently refused by him owing to "unfortunate circumstances". These "unfortunate circumstances", although not specifically explained in the Applicant's letter of refusal, cannot but refer, in the Tribunal's opinion, to the Applicant's health, since the refusal took place approximately at the same time as the Applicant started to undergo medical treatment. The exact cause of the Applicant's ill health is not mentioned in the medical certificates, which only refer to a depressive reaction due to problems connected with the Applicant's work.

The Tribunal holds that it can be reasonably argued that a decisive influence on the deterioration of the Applicant's health can be attributed both to overwork during the last period of his services with the United Nations, as well as to the strain caused by the uncertainty about his future and chiefly to the understandable disappointment suffered as a consequence of the final reduction of his extension from three months to two months—a reduction not explained to him by the Administration.

V. In the circumstances, the Applicant is entitled to compensation which the Tribunal assesses at \$US 4,000. This amount is to be paid to him by the Respondent.

VI. Subject to the above, all other pleas are rejected.

(Signatures)

Samar SEN  
*Vice-President, presiding*

Herbert REIS  
*Member*

*New York, 2 November 1984*

Luis de POSADAS MONTERO  
*Member*

R. Maria VICIEN-MILBURN  
*Acting Executive Secretary*

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## Judgement No. 342

(Original: English)

Case No. 345:  
Gomez

Against: The Secretary-General  
of the United Nations

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*Request by a staff member of the United Nations to find that the Respondent erred in not recommending her for promotion under the procedure for promotion from the General Service to the Professional category in force before the changes subsequent to General Assembly resolution 33/143; request for granting a special post allowance and for compensation for injuries sustained.*

*Conclusion of the Joint Appeals Board that the Applicant did not have an acquired right to promotion under the system existing prior to General Assembly resolution 33/143.—Recommendation to reject the Applicant's claims.—Recommendation to grant her a sum equivalent to three months' net base salary as compensation for the anxiety which the situation caused her.—Recommendation rejected.*

*Question of the Administration's responsibility for not assigning the Applicant to a Professional post and not providing suitable training for her.—Consideration of the circumstances of the case.—Conclusion that there was no legal responsibility on the part of the Administration.—Nature of the memorandum by which the Applicant was assigned on a trial basis to the Dag Hammarskjöld Library.—The Tribunal observes that, as a general rule, the Organization does not enter into legally binding contractual arrangements for the career development of its staff.—Question of the application to the Applicant of the procedure for promotion from the General Service to the Professional category established pursuant to General Assembly resolution 33/143.—Conclusion that Judgement No. 266 (Capió) is not relevant to the present case.—Applicant's contention that the new policy should not have been applied to her case.—Contention rejected.—The Tribunal reiterates its rejection, as in Judgement No. 311 (Schurz), of the theory that staff members who were "collateral" to, or on a level with or superior to, staff members recommended for promotion before the introduction of the new policy should be regarded as having an acquired right to be considered for promotion.—Applicant's claim that she was entitled to a special post allowance under staff rule 103.11 (b).—The Tribunal holds, in conformity with Judgement No. 275 (Vassiliou), that the granting of this allowance is within the discretion of the Secretary-General and that it is limited to exceptional cases.—Applicant's claim for three months' salary for professional and moral injury, as recommended by the Joint Appeals Board.—Without seeking to justify the refusal to comply with this recommendation, the Tribunal has no legal basis for obliging the Secretary-General to make the award.*

*Application rejected.*

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