

VIII. In addition, the Tribunal notes that the Applicant provided information about his date of birth in 1967; but it was on 21 October 1980 that he sent to the Administration the memorandum transmitting a copy of the "excerpt of transcript of judgement in lieu of birth certificate" dated 7 February 1980, and requesting a correction of his date of birth. The Applicant therefore waited 12 years before asking the Administration to make the correction.

IX. The Tribunal considers that the Applicant waited too many years before requesting the correction (Cunio case, IV). It notes too that the Applicant failed to give, in his defence, any reason or justification for such a long delay.

X. The Applicant claims that "in light of the Administration's action in the identical and contemporary Koenig case, its refusal to grant Applicant's request is discriminatory".

XI. In the opinion of the Tribunal, it has not been established that the Administration's denial of the request for correction involved discrimination against the Applicant.

XII. For the above reasons, the Tribunal considers without merit the Applicant's request for correction of the date used in his administrative records.

XIII. Accordingly, the Tribunal concludes that in the present case, there is no point in examining the Applicant's arguments concerning the authenticity and validity of the "excerpt of transcript of judgement in lieu of birth certificate", issued at Boutilimit on 7 February 1980.

XIV. The application is rejected.

(Signatures)

T. MUTUALE
President

Samar SEN
Vice-President

Geneva, 14 June 1985

Luis M. de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 349

(Original: French)

Case No. 331:
Alinazanga

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

Request by a former staff member of UNHCR for the rescission of the decision to terminate his appointment for misconduct, and for compensation.

Recommendation of the Joint Appeals Board to pay compensation to the Applicant.—Recommendation accepted.

Question of the legality of the decision to terminate the Applicant for misconduct.—Finding that the Applicant was guilty of serious misconduct, though there were attenuating circumstances.—Consideration of the circumstances in which the decision was taken.—Conclusion that the decision was completely irregular: it was not preceded by the formalities for protecting staff members' rights provided in the Staff Rules; it imposed a second disciplinary measure for the same misconduct; it was never notified to the party concerned.—Contention that

the first disciplinary measure was imposed by a local representative who may not have had the necessary powers.—Finding that this measure was definitive in nature.—Tribunal holds that the two disciplinary measures taken involved serious irregularities and that they did not respect the right of defence.—The Tribunal determines that the true legal status of the decision is that of termination of a permanent appointment under staff regulations 9.1 (a) and 9.3 (a) and staff rules 109.3 (a) and 109.4.—Consideration of the various elements of compensation due to the Applicant.—Applicant's claim for reimbursement of medical expenses.—Claim not receivable as not having been submitted to the Joint Appeals Board.

Award of indemnity in lieu of notice equal to six months' salary and of termination indemnity equal to eight months' salary, calculated on the basis of the scale in force on the date of the judgement.—Award of compensation for annual leave due during the period of notice.—Award of interest of 9 per cent per year on these sums.—Award of a sum of 10,000 zaires for costs.—All other pleas rejected.

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed as follows: Mr. Arnold Kean, Vice-President, presiding; Mr. Luis de Posadas Montero; Mr. Roger Pinto;

Whereas, on 28 May 1984, Tombo Ndase Alinazanga, former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), submitted an application to the Tribunal in which he requested payment of the following compensation:

“(a) Payment of our full salary from 13 April 1981 to the day on which the judgement is rendered;

“(b) Reimbursement of 8,547.50 zaires (eight thousand five hundred and forty-seven zaires fifty makutas), representing medical expenses;

“(c) Reimbursement of 7,985.00 zaires (seven thousand nine hundred and eighty-five zaires): cost of telegrams and postal services;

“(d) Reimbursement of 2,835.00 zaires (two thousand eight hundred and thirty-five zaires) representing the cost of the preparation of our application;

“(e) Payment of 950,550.00 zaires (nine hundred and fifty thousand five hundred and fifty zaires), representing damages plus interest for the injury sustained.”;

Whereas the Respondent's answer was submitted on 20 September 1984;

Whereas, on 3 December 1984, the Applicant submitted written observations in which he revised his pleas as follows:

“33. . . . that the improper decision taken in our case be purely and simply rescinded, without depriving us of our right to the damages . . . in other words that:

“(a) Our reinstatement in our post be rendered effective and uninterrupted at the time of the judgement, . . . our salary paid in accordance with . . . of our application;

“(b) The medical expenses we have incurred thus far, which have recently increased from 8,435.00 zaires to 12,248.00 zaires, be reimbursed in their entirety;

“(c) The expenses incurred for cables and mail, which have increased from 7,985.00 zaires to 13,685.00 zaires, likewise be reimbursed in their entirety . . . ;

“(d) The expenses incurred in connection with the preparation of our application and these observations, amounting to a total of 3,735.00 zaires, be reimbursed . . . ;

“(e) The payment of damages claimed for the injury resulting from causes other than administrative irregularities, constituting full moral and material compensation for arbitrary arrest and torture; these damages amount to some 950,550.00 zaires, a sum which should normally be increased by a small rate of interest at the Tribunal’s discretion to make up for the long delay and the constant depreciation of the zaïre due to inflation”;

Whereas the Applicant made additional depositions on 14 February, 24 March, 5 May, 23 May and 31 May 1985;

Whereas the President decided on 21 May 1985 that oral proceedings were not necessary in this case;

Whereas, at the Tribunal’s request, additional information was submitted by the Respondent on 24 May 1985;

Whereas the facts of the case are as follows:

The Applicant, a locally recruited General Service employee, entered the employment of the Office of the United Nations High Commissioner for Refugees on 5 August 1974 as a secretary at the UNHCR Sub-Office at Bukavu, Kivu (Zaire). He received a number of short-term appointments up until 1 February 1975, when he was given a six-month fixed-term appointment as a Clerk-Typist, level G-5, step 2. This appointment was extended successively by one year, six months and one year. On 1 May 1977, the Applicant was promoted to level G-6 and his functional title changed to that of Senior Clerk-Typist. On 1 January 1978, his appointment was converted to an indefinite appointment.

On 13 November 1980, the Head of the UNHCR Sub-Office in Kivu accused the Applicant in writing of having purchased, in UNHCR’s name but with his own funds, 800 litres of petrol and 1,000 litres of fuel oil and then having sold them for his own profit, and requested the Applicant to provide him as soon as possible with an explanation of the reasons which had prompted him to engage in commercial operations by selling UNHCR’s fuel ration, so that he could report to the Regional Representative and UNHCR headquarters in the interest of the United Nations. That same day, the Applicant made a written admission of his misconduct; “misconduct which is admitted is half pardoned”.

On 9 December 1980, the Head of the UNHCR Sub-Office in Kivu sent the UNHCR Regional Representative for Central Africa at Kinshasa a memorandum in which he proposed that the Applicant be transferred to Aru as a disciplinary measure. He added:

“Since the Sub-Office still needs his services in order to train a secretary to replace him at Bukavu, we would request that, if our proposal for disciplinary measures is accepted, it take effect no earlier than 15 February next. We none the less emphasize the need to take exemplary action against the party concerned.”

In a memorandum dated 13 January 1981, the UNHCR Regional Representative for Central Africa at Kinshasa informed the head of UNHCR Sub-Office in Kivu that, while he was inclined to favour summary dismissal of the Applicant, it appeared that:

“for practical reasons, and because the Applicant has repented and you hope that there will be no repetition of such misconduct, you have opted for the solution of giving the guilty party a last chance.”

He therefore recommended,

“While agreeing to the idea of a disciplinary transfer, that this should be accompanied by 15 days’ suspension without pay, a single warning on grounds of fraud.”

The Head of the UNHCR Sub-Office in Kivu informed the Applicant of this decision in a memorandum of 13 February 1981, in which he stated that:

“. . . disciplinary action of 15 days suspension without pay followed by a disciplinary transfer to Aru is being taken against you for your serious misconduct in selling, in our name, fuel intended for the Sub-Office’s vehicles. This action constitutes a single warning to you from the Office of the High Commissioner for Refugees and the slightest attempt at similar misconduct will be grounds for summary dismissal with the loss of all benefits.

“2. We hereby inform you that this disciplinary action of 15 days’ suspension without pay will be effective 16 February-6 March and will be reflected in your salary for March 1981.”

In a confidential memorandum of 16 February 1981 addressed to the Head of UNHCR Personnel Services and received at Geneva on 5 March 1981, the Head of the UNHCR Sub-Office in Kivu informed the Head of Personnel of the disciplinary action taken against the Applicant . . . and requested him to take such action into account in calculating the salary of the party concerned for the month of March.

In a letter dated 5 March 1981 addressed to the Head of the UNHCR Sub-Office in Kivu, copies of which were sent to Kinshasa, UNHCR Personnel Services and the UNHCR Staff Committee, the Applicant claimed that he had received notification of the action taken against him only the previous day, contested the procedure by which he had been disciplined and objected to the disciplinary transfer to Aru, arguing that suspension accompanied by a transfer constituted a double penalty for the same misconduct.

By telegram of 24 March 1981, the Head of UNHCR Personnel Services informed the Chief of the Staff Service at United Nations Headquarters of the acts committed by the Applicant and requested the Secretary-General’s approval for the Applicant’s summary dismissal. The telegram stated, *inter alia*:

“ALINAZANGA HAS SIGNED RECOGNITION OF GUILT. UNFORTUNATELY, INCIDENT DATES BACK TO 13 NOVEMBER 1980 BUT ONLY JUST BROUGHT TO OUR ATTENTION AND STAFF MEMBER MEANTIME ON DUTY. ATTACHED ARE COPIES OF EXCHANGE OF NOTES BETWEEN HEAD OF SUB-OFFICE AND ALINAZANGA DATED 13 NOVEMBER 1980; GRATEFUL YOUR SEEKING SECRETARY-GENERAL’S URGENT APPROVAL SUMMARY DISMISSAL. WE TODAY SUSPENDING STAFF MEMBER WITHOUT PAY PENDING DECISION.”

That same day, the Head of UNHCR Personnel Services at Geneva informed the UNHCR Sub-Office in Kivu that the Applicant’s actions, which had just been brought to her attention, constituted “serious misconduct warranting summary dismissal” and that, as a result, the case had been referred to New York for a decision by the Secretary-General. The Head of the Sub-Office was instructed to suspend the Applicant “immediately without pay” and to withhold his salary for March.

In a memorandum dated 7 April 1981, the Head of the UNHCR Sub-Office in Kivu informed the Applicant of the decision taken, in the following terms:

“ . . . you are hereby suspended until further notice pending a decision by Headquarters on your serious misconduct in selling fuel intended for the use of the Sub-Office . . . ”.

On 12 April 1981, the Applicant requested the Secretary-General to refer the case to the Joint Appeals Board to determine whether the procedure followed by the Head of the UNHCR Sub-Office in Kivu to discipline him had been correct and to inform him immediately of the decision taken on his case.

By telegram of 14 April 1981, the Chief of the Staff Service of the Office of Personnel Services at Headquarters informed the Head of UNHCR Personnel Services at Geneva that:

“THE SECRETARY-GENERAL HAS APPROVED THE DISMISSAL OF TOMBO NDASE ALINAZANGA FOR MISCONDUCT EFFECTIVE IMMEDIATELY WITH ONE MONTH'S INDEMNITY IN LIEU OF NOTICE. NO TERMINATION INDEMNITY. MEMO FOLLOWING.”

That same day, he transmitted to her a confidential memorandum dated 31 March 1981 in which the Assistant Secretary-General for Personnel Services had recommended to the Secretary-General that he approve the Applicant's dismissal for misconduct in accordance with personnel directive PD/1/76 for the following reasons:

“Although the misconduct of the staff member would merit summary dismissal, the incident unfortunately dates back to 13 November 1980 but has only just been brought to the attention of UNHCR and the staff member has, in the meantime, remained on duty. For this reason, I consider it more appropriate to recommend his dismissal for misconduct as a disciplinary measure under staff rule 110.3 (b) rather than for summary dismissal. Considering the gravity of the misconduct and the fact that the staff member has been paid during the interval, I recommend that you exercise the discretion not to approve any indemnity in connection with his dismissal. Under this procedure, Mr. Alinazanga is entitled to one month of notice. However, as his services are not required during the period of notice, I would authorize payment of compensation in lieu of notice in accordance with staff rule 109.3 (c).”

On 16 April 1981, the Deputy Director of the UNHCR Administration and Management Division at Geneva informed the Kivu Sub-Office, through the Regional Office at Kinshasa, that the Secretary-General had approved the Applicant's “summary dismissal”. He added:

“WILL WRITE SOONEST ON SEPARATION FORMALITIES. MEANTIME PLEASE CONFIRM AAA EFFECTIVE DATE ON WHICH STAFF MEMBER SUSPENDED. BBB DATE AND PERIOD COVERED BY LAST SALARY PAYMENT. CCC NO SALARY PAYMENTS MADE OR TO BE MADE FOR MARCH AND APRIL. KINDLY EXPEDITE LEAVE AND ABSENCE REPORTS FEBRUARY AND MARCH.”

In a reply dated 23 April 1981, the UNHCR Regional Representative for Central Africa at Kinshasa indicated:

“AAA EFFECTIVE DATE OF SUSPENSION OF ALINAZANGA TOMBO 13 APRIL. PARTY CONCERNED TOOK ANNUAL LEAVE FROM 2 MARCH TO 10 APRIL. WE NOTIFIED HIM OF HIS SUSPENSION ON 7 APRIL.

“BBB THE LAST SALARY HE RECEIVED WAS ON 5 MARCH, FOR THE MONTH OF FEBRUARY.

"CCC SENDING YOU AS SOON AS POSSIBLE LEAVE AND ABSENCE REPORTS FOR FEBRUARY AND MARCH."

On 27 April 1981, the Head of UNHCR Personnel Services at Geneva sent the following telegram to the Head of the UNHCR Sub-Office in Kivu, through the Regional Office at Kinshasa:

"ALINAZANGA'S DISMISSAL FOR MISCONDUCT WILL TAKE EFFECT ON 13 APRIL, DATE ON WHICH HE WOULD NORMALLY HAVE RETURNED TO WORK AFTER ANNUAL LEAVE. YOU CAN NOW MAKE PAYMENT OF MARCH SALARY AS AUTHORIZED . . . HOWEVER, REQUEST YOU CONFIRM BY RETURN CABLE THAT YOU ARE WITHHOLDING APRIL SALARY TO ENABLE US TO EFFECT TERMINATION AND MAKE PAYMENT OF SUMS DUE IN CONNECTION WITH: AAA SALARY FROM 1 TO 12 APRIL BBB ACCRUED ANNUAL LEAVE CCC ONE MONTH SALARY IN LIEU OF NOTICE. PLEASE CABLE US DATES ANNUAL LEAVE TAKEN BETWEEN 1 FEBRUARY AND 12 APRIL. LETTER FOLLOWING WITH INSTRUCTIONS ON MEDICAL AND PENSION FUND FORMALITIES."

On 30 April 1981, the Applicant sent the Secretary-General a letter in which he questioned the conduct of the Head of the UNHCR Sub-Office in Kivu and noted that he had learned from friends of the Secretary-General's decision to dismiss him. He asked whether his letter of 5 March 1981 addressed to the Head of the UNHCR Sub-Office in Kivu and his letter of 12 April 1981 addressed to the Secretary-General had in fact been received at Headquarters.

On 13 May 1981, the Head of the UNHCR Sub-Office in Kivu informed the Regional Office at Kinshasa that:

"ALINAZANGA TOMBO ARRESTED TODAY AND HANDED OVER TO SEARCH BRIGADE FOR HAVING ORGANIZED TRAFFIC IN FELLOWSHIPS FOR BURUNDI REFUGEE STUDENT PROGRAMME. MANY REFUGEE STUDENTS APPARENTLY INVOLVED IN THIS AFFAIR."

In letters dated 14 and 15 May 1981 written from prison, the Applicant asked the Secretary-General to intervene since the Head of the UNHCR Sub-Office in Kivu had been instrumental in his arrest by the Zairian authorities on 13 May 1981. On 23 May 1981, the Applicant sent a letter to the High Commissioner for Refugees at Geneva requesting his intervention in view of the fact that he had been in prison for eight days.

By telegram of 26 May 1981, the UNHCR Regional Representative for Central Africa at Kinshasa informed the Head of UNHCR Personnel Services at Geneva that the Applicant had been arrested by the Zairian authorities and that the latter wished to know whether "UNHCR SEEKS CRIMINAL PROCEEDINGS AGAINST ALINAZANGA AND REFERRAL OF THE CASE TO THE COURTS".

On 29 May 1981, the Applicant sent the Secretary-General a further letter repeating his accusations against the Head of the UNHCR Sub-Office in Kivu and requesting that a decision be taken on his case and communicated to him. He also requested that an inquiry be conducted by an independent official from UNHCR at Geneva. That same day, the Head of UNHCR Personnel Services at Geneva requested the UNHCR Regional Representative at Kinshasa to go to Bukavu to inquire into the matter of the traffic in refugee fellowships and to discuss with the Head of UNHCR Sub-Office in Kivu the points raised by the Applicant in his letters addressed to the Secretary-General on 30 April, 14 May and 15 May 1981.

On 1 July 1981, the Regional Representative at Kinshasa sent Headquarters a cable in which he stated, *inter alia*:

"... suggest that legal proceedings not be taken against Alinazanga

"... assume that nine days in prison are sufficient to deter him from any further action of the same kind

"... misconduct in connection with distribution of fellowships could not be duly established ...".

In a letter dated 2 July 1981 addressed to the Head of UNHCR Personnel Services, the Applicant raised certain points in connection with the administrative formalities relating to his separation and added:

"I also think that the Office should have begun by informing me in writing of my dismissal, rather than sending me these forms as if it was I that had asked to leave UNHCR. I also find this procedure too slow and protracted for, if I have really been dismissed, it is almost three months since I was suspended without pay (with the exception of my salary for March, which I received on 14 May 1981: ...) and I have received no written notification which would enable me to make other plans for the future in order to support my family. ..."

On 6 July 1981, a personnel action form for termination was drawn up at UNHCR headquarters which indicated that the Applicant's last day of work was 13 February 1981, that the effective date of his separation was 12 April 1981, that he was to receive one month's salary as indemnity in lieu of notice and that he had accrued 28 1/2 days' annual leave.

In a telegram dated 22 July 1981, the Director of the Administration and Management Division at Geneva requested the Regional Representative at Kinshasa to instruct the Head of the Kivu Sub-Office to:

"PAY ALINAZANGA THREE THOUSAND ONE HUNDRED AND FIFTY-SEVEN ZAIRES AND FIFTEEN MAKUTAS (3,157.15 ZAIRES) AND DEBIT UN ACCOUNT 5201012 FIVE HUNDRED AND SEVENTY-FOUR UNITED STATES DOLLARS AND THREE CENTS (\$US 574.03), REPRESENTING SEPARATION PAYMENT CONSISTING OF SALARY FOR THE PERIOD 1-12 APRIL 1981, ONE MONTH'S INDEMNITY IN LIEU OF NOTICE (13 APRIL-12 MAY 1981) ... AND 28.5 DAYS' ANNUAL LEAVE".

On 27 July 1981, the State Counsel General of the Republic of Zaire informed the Applicant that the "dossier opened against him for misappropriation of private funds ... had been filed definitively without any action being taken because of insufficient evidence".

On 7 August 1981, the Head of the Sub-Office endorsed a payment order for the sum of 3,157.15 zaires representing the "portion in zaires of the final indemnities paid to Citizen Alinazanga Tombo, former employee of the Bukavu Sub-Office". On 25 August 1981, the Regional Representative at Kinshasa informed UNHCR Personnel Services at Geneva that the Applicant had received the sum of 3,157.15 zaires.

On 19 September 1981, the Applicant lodged an appeal with the Geneva Joint Appeals Board. While the Joint Appeals Board procedure was going on, the Secretary-General proposed a settlement to the Applicant which the latter rejected.

The Board adopted its report on 15 December 1983. Its recommendations were as follows:

"Recommendations of the Board"

"51. In the light of the above, the Board recommends to the Secretary-General that:

"Appellant be paid in local currency adjusted to the revised salary scale for Zaire, effective 1 October 1983:

"(a) Two additional months' salary in lieu of notice (plus 6 per cent interest as of 7 August 1981, date of the cheque of his termination pay);

"(b) Salary for the period of suspension from 13 April 1981 until 25 August 1981 (plus 6 per cent interest as of the latter date);

"(c) Taking into account the hardships Appellant suffered, compensation for annual leave from 16 February 1981 to 13 April 1981, which Appellant was made to take.

"An appropriate letter be addressed by UNHCR to Appellant, expressing regrets for Appellant's incarceration from 13 to 22 May 1981 and referring to the very competent manner in which Appellant had performed his duties".

On 20 December 1983, the Chief of the Personnel Administration Unit sent the Applicant a personnel action form "correcting the entitlements due to him at the time of his separation from UNHCR" and stating that the delay in settling the question was "most regrettable". The personnel action form indicated that the effective date of separation should be 25 August 1981, i.e. the "date staff member received written notification of termination", that the indemnity in lieu of notice should be "*three months' salary* instead of one month", and that the annual leave balance to be paid should be "*60 days* in lieu of 28 1/2 days (absence to be considered as suspension with pay instead of forced annual leave)". By letter of 17 January 1984, the Applicant refused payment. In a reply dated 27 January 1984, the Chief of the UNHCR Personnel Administration Unit at Geneva informed him that the above sums were due to him from the UNHCR Administration in connection with his separation from service and would in no way prejudice the outcome of his appeal to the Tribunal. On 6 March 1984, the Regional Representative at Kinshasa informed UNHCR at Geneva that that the Applicant was refusing to accept payment.

On 17 August 1984, the Assistant Secretary-General for Personnel Services informed the Applicant that:

"The Secretary-General, having re-examined your case in the light of the report of the Joint Appeals Board, has:

"(a) Taken note of the Board's report and of the action taken by UNHCR to make the payments indicated [by the Joint Appeals Board]; and

"(b) Decided that, at your request, you may be given a statement referred to the quality of your work during your service with UNHCR.

"The above-mentioned decision taken by the Secretary-General is "the final decision on the appeal" mentioned by Staff Rule 111.2 (o). Therefore, any further recourse you might wish to file should be addressed to the Administrative Tribunal."

In the meantime, on 28 May 1984, the Applicant had submitted the application mentioned earlier.

Whereas the Applicant's principal contentions are:

1. In punishing Applicant's misconduct, Respondent failed to comply with staff rule 110.3 on "disciplinary measures" and staff rule 110.4 on "suspension pending investigation".

2. Respondent failed to give Applicant proper notice of termination as provided for in staff rule 109.3 and to comply with staff rule 109.4 on termination indemnity.

3. Respondent violated articles 9 and 5 of the Universal Declaration of Human Rights, which provide that "No one shall be subjected to arbitrary arrest, detention or exile" and "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". During Applicant's imprisonment, Respondent did nothing to assist him.

4. Respondent's unfavourable reports on Applicant have prevented him from finding a job in other organizations in Zaire.

5. The Joint Appeals Board took an unnecessarily long time to rule on the case. Respondent proposed an amicable settlement which Applicant rejected in January 1982, but the Joint Appeals Board did not adopt its report until December 1983.

6. The inquiry into the traffic in fellowships conducted by the Regional Representative for Central Africa at Kinshasa was not impartial because the Regional Representative was a compatriot of the Head of the UNHCR Sub-Office in Kivu.

Whereas the Respondent's principal contentions are:

1. The Respondent acknowledges that UNHCR has never denied that this case was handled badly and that the delays in notifying Applicant of his dismissal caused him unnecessary anxiety.

2. Respondent's decision to separate Applicant from service was a proper exercise of administrative discretion since Applicant's conduct was clearly inconsistent with the high standard required of an international civil servant.

3. The only issue in this case is an assessment of the compensation due Applicant for the admitted violation of his procedural rights. Respondent requests the Tribunal to uphold the assessment of damages made by the Joint Appeals Board and accepted by UNHCR.

The Tribunal, having deliberated from 24 May to 14 June 1985, hereby delivers the following judgement:

I. The Tribunal notes that the Applicant was guilty of serious misconduct, even though attenuating circumstances can be invoked, in the light of local conditions. Furthermore, he paid UNHCR the profit he had earned from the private sale on 14 November 1980 of fuel intended for UNHCR, for which he had paid out of his own pocket. The Applicant has admitted these facts.

II. As a result of the above misconduct, he was the subject of disciplinary action decided on by the UNHCR Regional Representative at Kinshasa and notified to the Applicant by the Head of the UNHCR Sub-Office in Kivu on 13 February 1981: 15 days suspension without pay and disciplinary transfer.

III. In May 1981, the Applicant was the victim of slanderous charges in connection with other events. He was even imprisoned for eight days by the local police authorities. Although the charges against him were finally dismissed, he never received from the local UNHCR authorities the assistance which he was entitled to expect.

IV. At this point, the disciplinary action taken against the Applicant had achieved its object and should have concluded. It continued, however. The Head of UNHCR Personnel Services requested the Chief of the Staff Service at United Nations Headquarters to seek the Secretary-General's approval for summary dismissal. The Secretary-General approved the Applicant's dismissal for misconduct by telegram dated 14 April 1981.

V. No further disciplinary action was initiated against the Applicant who, on 25 August 1981, received from the United Nations Office at Geneva a

personnel action form for termination dated 6 July 1981 which simply stated that it was being issued to effect termination of his contract.

VI. The Tribunal considers that the decision which served as a basis for the personnel action form of 6 July 1981 transmitted to the Applicant on 25 August 1981 was completely irregular. In fact:

(a) It was not preceded by the formalities for protecting staff members' rights provided for in the Staff Rules;

(b) It imposed a second disciplinary measure for the same misconduct, which had already been the subject of the disciplinary measure of 13 February 1984;

(c) This decision was never notified to the party concerned.

VII. The Respondent did not maintain in its answer that the decision of 13 February 1981 was null and void because it has been taken by an authority which did not have the power to take such a decision, namely the UNHCR Regional Representative at Kinshasa. The Tribunal notes that the power of the Regional Representative to take such a decision was not questioned by the Administration. Even if it had been, the Tribunal notes that the disciplinary measure thus taken against the Applicant was definitive in nature. The Respondent could not now allege that the authority which took that decision did not have the power to do so without inevitably affecting the Applicant's rights.

VIII. The Tribunal notes that the two successive disciplinary measures taken by the Respondent involved serious irregularities. They did not respect the rights of defence to which staff members who are the subject of disciplinary action are entitled by virtue of the Staff Rules.

IX. The Tribunal is therefore compelled to restore to the measure of termination of the Applicant's contract, communicated in a personnel action form for termination on 25 August 1981, its true legal status. Such measure in fact constitutes a decision to terminate the appointment of a staff member holding a permanent appointment, as provided for in Staff Regulations 9.1 (a) and 9.3 (a) and Staff Rules 109.3 (a) and 109.4.

X. The Tribunal notes that, on 29 December 1983, the Applicant was notified that the effective date of his separation should be 25 August 1981, the "date staff member received written notification of termination". He was granted an indemnity, payment of which he refused of three months' salary instead of the not less than three months' notice provided for in staff rule 109.3 (a). The Applicant had not, in fact, received any notice of termination.

XI. The Tribunal considers that, in these circumstances, the Applicant should have received at least six months' notice. Accordingly, it resolved that the party concerned is entitled to six months' salary in lieu of notice, to take effect from 25 August 1981.

XII. The Applicant was also entitled, by virtue of staff rule 109.4 (a) and (b), to termination indemnity calculated in accordance with annex III to the Staff Regulations. The Applicant served the United Nations for more than seven and less than eight years. The amount of his termination indemnity is therefore eight months' salary.

XIII. The Respondent recognized the Applicant's entitlement to compensation for 60 days' annual leave. The Tribunal considers that, in the circumstances, he is also entitled to damages in the form of compensation for the annual leave which he would have accrued during the period of six months' notice, had he served it.

XIV. The Applicant is claiming reimbursement of medical expenses incurred after 26 March 1981. The Tribunal notes, however, that he did not submit this demand to the Joint Appeals Board and that his application is not receivable therefore on this point.

XV. In view of the long delay experienced by the Applicant in resolving his situation, the Tribunal deems justified the granting of 9 per cent interest, as of 25 August 1981, and until payment is made in full, on the compensation awarded to the Applicant by the Tribunal in the preceding paragraphs.

XVI. The Tribunal also resolved that the Applicant is entitled to reimbursement of his telegram and postage costs and the cost of preparing his application, which costs can be estimated at 10,000 zaires.

In view of the foregoing, the Tribunal orders the Respondent to pay the Applicant:

1. An indemnity in lieu of notice equal to six months' salary, calculated on the basis of the General Service salary scale in force on the date of the judgement;

2. A termination indemnity equal to eight months' salary, calculated on the basis of the General Service salary scale in force on the date of the judgement;

3. Compensation for 60 days' annual leave up to 25 August 1981 and for annual leave accrued during the period of six months' notice starting 25 August 1981;

4. Interest of 9 per cent a year, as of 25 August 1981 until the date of payment, on the sums due to the Applicant under 1, 2 and 3 above;

5. A sum of 10,000 zaires for the costs of preparing his case.

XVII. All other pleas are dismissed.

(Signatures)

Arnold KEAN

Vice-President, presiding

Luis M. de POSADAS MONTERO

Member

Geneva, 14 June 1985

Roger PINTO

Member

R. Maria VICIEN-MILBURN

Secretary

Judgement No. 350

(Original: English)

Case No. 348:
Raj

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

Request by a staff member of UNDP for the rescission of the decision to reorganize the Finance Section of the UNDP office at New Delhi as violating his rights.

Conclusion of the Joint Appeals Board that the contested reorganization was within the Respondent's discretion and that the Applicant did not establish that it was mala fide or motivated by extraneous factors.—Recommendation to reject the application.