

ADMINISTRATIVE TRIBUNAL

Judgement No. 386

Case No. 355: COOPER

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, First Vice-President, presiding;
Mr. Luis de Posadas Montero, Second Vice-President; Mr. Ahmed Osman;

Whereas on 10 January 1984 and 3 April 1984, Dan Colin
Cooper, a former staff member of the United Nations, filed an
application that did not fulfil the formal requirements of article 7
of the Rules of the Tribunal;

Whereas on 9 August 1984, the Applicant filed (after the
expiration of the time-limits prescribed by the Tribunal) a
corrected application that still did not fulfil the formal
requirements of article 7 of the Rules of the Tribunal;

Whereas on 4 June 1985, the Applicant requested the Tribunal
to suspend the provisions regarding time-limits, under article 7,
paragraph 5 of the Statute of the Tribunal;

Whereas on 14 June 1985, the Tribunal decided, in accordance
with article 7, paragraph 5 of its Statute to suspend the time-limit
for filing an application until 30 September 1985;

Whereas on 12 September 1985, the Applicant again filed a
corrected application, the pleas of which read as follows:

"1. The Applicant seeks a Declaration from the Tribunal that:

(a) The rules of 'due process' are identical to, if not
broader than, those of 'natural justice', as submitted
in ...;

(b) Paragraphs ... of [Applicant's statement to the Joint

Appeals Board] are correct statements of United Nations law;

- (c) Paragraphs ... of [Applicant's statement to the Joint Appeals Board] are correct statements of fact;
 - (d) The rules of due process were broken at all stages of the procedure (from 1972 onwards);
 - (e) The Joint Appeals Board erroneously considered inadmissible matters and ought to have granted the applications of 20 or 21 January 1981;
2. The Applicant requests the Tribunal accordingly to refer the case back to a newly constituted Joint Appeals Board and order the new Board to rehear it in accordance with United Nations law ...;
 3. In the alternative, the Tribunal is requested to declare that the Joint Appeals Board's decision to reject without giving grounds the submissions in ... is clearly wrong, to declare that the errors made at all stages were errors of substance which cannot be remedied over 10 years later, accordingly, to declare the contested decision null and void, and to order the re-instatement of the Applicant with compensation to be assessed;
 4. The Tribunal is also requested to refer back to a newly constituted Joint Appeals Board, the Applicant's claims ..., to order discovery by the Respondent, and to order the new Board to come to a just decision in accordance with Staff Rules and Regulations.
 5. The Tribunal is further requested to order the implementation of paragraph 90 of the Board's report."

Whereas the Respondent filed his answer on 3 April 1986;

Whereas on 22 September 1986, the Applicant's widow informed the Executive Secretary of the Tribunal that the Applicant had died on 22 August 1986;

Whereas on 2 October 1986, the President of the Tribunal requested the Applicant's widow to submit proof that she had succeeded to her husband's rights;

Whereas on 27 October 1986, the Executive Secretary of the Tribunal informed the Applicant's widow that the Tribunal had adjourned consideration of the case until its next session to be

held in Geneva in May 1987;

Whereas on 26 January 1987, the Applicant's widow filed written observations;

Whereas on 27 March 1987, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas on 13 April 1987, the Applicant's widow submitted letters of Administration issued by the English High Court of Justice, certifying that the Applicant died domiciled in England and Wales and that his estate devolved by law and vested in Mrs. Winifred Patricia Anne Cooper as the personal representative of the deceased, in which capacity she has maintained the deceased's application to the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 2 July 1968. He was initially offered a probationary appointment at the P-2, step I level as a Translator Trainee in the Department of Conference Services. On 1 July 1970, his appointment was converted to a permanent appointment and he was promoted to the Second Officer, P-3 level, as a Translator. On 1 September 1971, the Applicant was transferred to Geneva, where he served in the Languages Division until 19 March 1976, the date of his separation from the service of the United Nations.

The Applicant's performance during his tenure of service with the United Nations, was evaluated in six performance evaluation reports, hereinafter referred to as "periodic reports". In a first periodic report covering the period running from 2 July 1968 to 31 July 1969, the Applicant was described as "a staff member who maintains only a minimum standard". His supervisor, the Chief, English Translation Section at Headquarters stated that the Applicant had "perhaps had some slight temperamental difficulty in settling down to the routine" of the Section's work. He added: "His work tends to be somewhat uneven - good on occasion, but sometimes below the standard of what is his potential best. However, he has

the intelligence, experience and ability to make a good translator/précis writer, and there has been a distinct improvement in his work in the more recent period ...". In a second periodic report covering his period of service from 1 August 1969 to 31 March 1970, the Applicant was described as "a staff member who maintains a good standard of efficiency". His supervisor stated that the Applicant had "in recent months made substantial progress and [had] now reached a satisfactory level of performance, both in translation and in précis-writing". In a third periodic report covering his period of service from 1 April 1970 to 31 August 1971, the Applicant was described as "a staff member who maintains a good standard of efficiency". His supervisor stated that "During the period under review, in which Mr. Cooper was promoted to the P-3 level, his work continued to improve and he was able to sustain a satisfactory level of performance, especially in précis-writing".

In a fourth periodic report covering his period of service from 1 September 1971 to 1 July 1973, after the Applicant's transfer to Geneva, the Applicant was described as "a staff member who can maintain a satisfactory standard of efficiency." The Chief, English Translation Service, United Nations Office at Geneva (UNOG) commented that the Applicant had "made a disappointing start at the Geneva Office". He stated that the Applicant had "been slow to settle in and to adapt himself to the routine of the section's work, and his general performance suffered in consequence." He noted that the Applicant was "at his best when working on summary records, either as précis-writer or translator", activities in which he displayed "a good measure of interest and enthusiasm, as is evidenced by his willingness to take on extra précis-writing assignments...". In a fifth periodic report covering his period of service from 2 July 1973 to 1 July 1975, the Applicant was described as "a staff member who does not always maintain a satisfactory standard of efficiency". The Chief, English Translation Services, UNOG, commented on the Applicant's performance and stated in this connection, that although in accordance with the Applicant's "strong

preferences he had been employed mainly on précis-writing", his work fell "below the standard to be expected of a staff member with his length of service and experience". In addition, "the signs of improvement noted in Mr. Cooper's last periodic report [had] unfortunately not been confirmed during the period covered by the present report". The Applicant kept "erratic hours of work" and seemed "to lack the diligence and the willingness to accept a measure of discipline that are essential in a member of an operational section." In a sixth periodic report covering his period of service from 2 July 1975 to 30 September 1975, the Applicant was described as "a staff member who does not always maintain a satisfactory standard of efficiency". The Applicant instituted rebuttal proceedings against the fifth and sixth periodic reports.

In April-May 1972, the Applicant was assigned to work for the Conference, UNCTAD III, in Santiago, Chile. It appears that during the conference, as a result of an incident of a private nature in which the Applicant was involved, the Chief, Language Services in Santiago, and the Chief of the UNCTAD Administration requested that the Applicant's services be dispensed with for the remainder of the conference. The Applicant's assignment ended on 15 May 1972, but it was not until 23 June 1972 that he reported back to Geneva to resume his official functions. It appears that he had neither requested annual leave, nor informed his superiors of his whereabouts, or the date of his return. On 28 July 1972, the Chief, Personnel Section, UNOG, informed the Applicant that the Administration had decided to grant him special leave without pay from 21 May through 22 June 1972 - the period of his unauthorized absence from Geneva. In addition, he drew the Applicant's attention to ICSAB's (International Civil Service Advisory Board) (COORD/CIVIL SERVICE/5) report which provides that the conduct of staff members away from Headquarters, their relations with the public and even their private life should be such as not to bring their Organization into discredit or reflect unfavourably upon it.

In a memorandum dated 16 August 1972, the Chief, Languages Division, UNOG, recommended that the Applicant's within-grade salary increment due on 1 July 1972 be withheld. He informed the Chief, Personnel Administration Section, UNOG, that he had discussed the Applicant's "performance and services" since his transfer to Geneva in September 1971, with the Chief, English Translation and Précis-writing Section, UNOG, and that it was their "considered view that Mr. Cooper's services [were] not sufficiently satisfactory in all respects to justify the granting of the within-grade salary increment which was due on 1 July 1972." The Applicant was subsequently awarded the within-grade salary increment on 1 July 1974. His supervisor recorded in a note for the file dated 23 September 1974 that such administrative action "should be meant as an incentive for Mr. Cooper not to relax in the efforts which he [had] been making rather than as a reward for the quality of his services." The note for the file was not copied to the Applicant but provides that its "contents ... will be conveyed verbally to Mr. Cooper."

During all this period, the record of the case shows that the Applicant was engaged in commercial ventures of a private nature which led to extensive correspondence between his creditors and the Office of Personnel Services at the United Nations, from which it appears, among other things, that he had failed to satisfy judgements against him in various jurisdictions.

In a memorandum dated 4 February 1975, the Chief, Languages Division, UNOG, informed the Chief, Personnel Division, UNOG, that, the Applicant's permanent appointment was due for a five-year review and that his Division had concluded that the renewal of the Applicant's permanent appointment would not be in the best interests of the Organization.

On 15 May 1975, the Chief, Personnel Division, UNOG, informed the Applicant that in accordance with staff rule 104.13(a)(ii) his permanent appointment was due for review. Accordingly, his case would be submitted to the Appointment and Promotion Committee (APC)

in New York, for the purpose of determining whether he had maintained the standards of efficiency, competence and integrity established in the Charter. He notified the Applicant that the Chief, Languages Division, UNOG, did not consider his performance "fully satisfactory" and succinctly described the reasons for this assessment. In addition, he advised the Applicant that his conduct vis-à-vis his numerous private creditors "and the large exchange of correspondence with them regarding [his] financial obligations as well as other interventions [had] placed the United Nations in a very embarrassing situation". Even the Chief of the Swiss Permanent Mission to the United Nations Office at Geneva had written to the Director-General of UNOG on the matter.

For all these reasons, the Office of Personnel and the Chief, Language Services, UNOG, had concluded that both the Applicant's work and his conduct did not meet the requisite standards of suitability referred to in staff rule 104.13(c)(ii) and that "in view of the lack of an agreed favourable recommendation on [his] future contractual status", his case would be referred to the APC. The Applicant was informed that he could, if he so wished, address his comments in writing to the Chairman of the APC, not later than 30 May 1975. In a letter dated 16 May 1975, the Applicant informed the Chairman of the APC that he wished to appear personally before the Committee to present his case and to submit evidence to support the confirmation of his contract.

On 16 June 1975, the Chief, Personnel Division, UNOG, submitted a written presentation to the APC in connection with the five-year review of the Applicant's permanent appointment. He concluded that "the renewal of [the Applicant's] permanent appointment would not be in the best interest of the Organization".

It appears that during August 1975 the Applicant sought approval for leave without pay for the period 18 to 29 August 1975, without indicating the purpose of his request. His request was denied because he had sufficient accumulated annual leave. However, while the Applicant was on annual leave, he accepted an assignment

with the International Court of Justice, without prior clearance from his superiors. When the Registrar of the International Court of Justice informed the Chief, Personnel Division, UNOG, that the Applicant had indeed worked for the Court, the Chief, Languages Division, UNOG and the Chief, Personnel Division, UNOG, considered that this action "was clearly improper", but nevertheless agreed "to formally consider [the Applicant] retroactively as having been on special leave without pay for that period."

On 7 October 1975 the Applicant instituted a rebuttal procedure against his most recent periodic reports. The Director, Conference and General Services Section, UNOG, conducted an investigation to determine the validity of the Applicant's rebuttal and in a memorandum dated 4 November 1975, he informed the Chief, Personnel Administration Section, UNOG, that "as a result of those thorough investigations, it would seem that Mr. Cooper's periodic report generally reflects the actual situation of this staff member."

The APC considered the Applicant's case at a series of meetings held between 20 June 1975 and 25 November 1975. At the request of the Chairman of the Committee, two alternate members of the Committee interviewed the Applicant in Geneva in July 1975 and wrote a report on the interview. The Applicant asked for a copy of the report but his request was refused on the ground that the report was marked "confidential". On 27 October 1975, the Applicant submitted a written statement to the Committee, setting forth his own point of view. On 8 December 1975, the Chairman of the APC transmitted to the Chairman of the Appointment and Promotion Board a report which contained the Committee's deliberations and the evidence it had examined. The report concluded:

"After carefully reviewing all the facts of the case, the Committee decided unanimously to recommend that Mr. Cooper's permanent appointment be terminated on the occasion of the five-year review of service under such an appointment for his failure to maintain the requisite standards of suitability as an international civil servant."

On 19 January 1976, the Vice-Chairman of the Appointment and Promotion Board transmitted to the Secretary-General a copy of the APC report and informed the Secretary-General that the Board endorsed the Committee's recommendation.

On 12 March 1976, the Chief, Personnel Division, UNOG, informed the Applicant that:

"The Appointment and Promotion Committee which recently reviewed your permanent appointment has submitted its report to the Appointment and Promotion Board and the Board has recommended to the Secretary-General that your permanent appointment be terminated. Excerpts of the Committee's report and the Board's recommendation will be made available to you upon your request.

The Secretary-General, after a thorough examination of your case in the light of that recommendation and of all the circumstances, has decided with regret that you be separated from the service of the Organization under staff regulation 9.1(a), for having failed to maintain the standards of efficiency, competence and integrity established in the Charter.

This letter constitutes formal notice of termination of your permanent appointment as required by staff rule 109.3(a) to become effective 19 March 1976.

In cases of termination of staff members holding permanent appointment, the required notice period is three months and the effective date of your termination, were you to serve the notice period, would be 19 June 1976. In view of the fact that your services will not be required during that period, you will be paid compensation in lieu of notice under staff rule 109.3(c) and your last day of duty will, therefore, be the same as the date of notice, namely 19 March 1976.

You will also receive termination indemnity in accordance with Annex III to the Staff Regulations as well as payment of accrued annual leave within the limits set by the Staff Rules."

On 29 March 1976, the Applicant requested the Secretary-General to review the administrative decision to terminate his permanent appointment. Having received no reply from the

Secretary-General, on 7 May 1976 he lodged an appeal with the Joint Appeals Board. The Board adopted its report on 4 July 1983. Its conclusions and recommendations read as follows:

"Conclusions and Recommendations:

80. ...
81. The crux of Appellant's defence, which he underlined again in the oral proceedings, was that his contract of employment should only be terminated if it could be proved that his professional work was unsatisfactory. Even if the Board accepted this argument and ignored other aspects of the case, it would still find that there was ample justification to substantiate the Secretary-General's decision on the basis of Appellant's performance alone. The Board observed that it was the consensus of all Appellant's supervisors in the Languages Division that his professional contribution was insufficient and fell short of the required standard.
82. With regard to conduct, Appellant maintains that all the allegations made against him on this score were unjust because the Administration had not referred them to the Joint Disciplinary Committee. On this question, the Board finds that Appellant's contention is ill-founded and agrees with Respondent that the Administration is not estopped from using facts which could call for disciplinary measures in a different context, if so authorized by the Staff Rules. In this case, the Administration used the five-year review to establish if Appellant continued to meet the high standards of efficiency, competence and integrity laid down in the Charter, staff rule 104.14(f)(ii)(B) calling for a comprehensive review encompassing not only a staff member's performance but also his conduct. In view of the foregoing the Board concludes that the recommendation to terminate Appellant's appointment was not only fully warranted, but it was also the only legitimate recommendation that could be made to the Secretary-General in the light of all the circumstances.
83. The Board made special efforts at the hearing to assist Appellant and to exhaust all possibilities of complying with the requirements of due process. It examined very carefully the lengthy final document which Appellant subsequently submitted with his letter of 1 June 1980. However it found nothing in Appellant's evidence at the hearing or in the documentation subsequently presented to alter the facts of the case. Appellant did not appear to understand the gravity of the warnings which, the Board is satisfied, he received, and their possible outcome. Against all the evidence placed

on record he contended that his professional work had been good, that there had never been any serious discussions with supervisors on his shortcomings, and that throughout his UN service he had conducted himself in a manner that was totally honest and straightforward. Where disputes had arisen with the Administration or outside parties, Appellant invariably professed to be the injured party.

84. On one matter - ... - the Board wishes to place on record its strong disapproval of the practice resorted to at the time of making confidential notes for the file which often do not become available to the staff member concerned. However, in the case under consideration the Board is satisfied that the essential contents of the note in question had been properly communicated to Appellant.

85. During the oral proceedings a number of questions were asked by members of the Board concerning Appellant's performance and conduct. In his replies the Board found him devious and less than forthcoming. In some instances he contradicted himself, in others he stated he did not remember. Appellant told the Board inter alia that he never refused to give the Administration his address and that when he went to work with the International Court of Justice he thought his application for leave without pay had already been approved. The Board could only conclude that Appellant's understanding of his duties and obligations as perceived in an international organization such as the United Nations was quite different from that of other staff members. Whatever personal difficulties or misfortunes Appellant may have had, he seemed incapable, in the Board's view, of settling his affairs in a way that might have enabled him to function at the same time as an effective UN staff member with a useful contribution to make in a professional field. This conclusion is confirmed further by information contained in documents which Appellant presented to the Board, after the oral proceedings on 2 May 1983, in response to its invitation for the submission of additional material.

86. The Board finds, accordingly, that:

- (a) Appellant has not discharged the burden of proving that the termination of his appointment was motivated either by prejudice or by extraneous factors;
- (b) It has not been shown that the Appointment and Promotion Committee's consideration of the unfavourable appraisals of Appellant took place in circumstances likely to affect the validity of the Committee's final recommendation to the Board, nor that the recommendation was made on the basis of inadequate or erroneous

information;

- (c) The Committee did not violate procedural requirements in also considering facts relating to Appellant's conduct.
87. The Board is therefore unable to make any recommendation to the Secretary-General to rescind his decision to terminate Appellant's permanent appointment.
88. The Board wishes, however, to make a recommendation concerning costs. In his letter dated 12 April 1983 to the Secretary of the Board, Appellant has requested reimbursement of travel expenses and subsistence for his participation in the oral proceedings on 2 May 1983. Having regard to the special nature and circumstances of this case, in particular the length of time which has elapsed since the appeal was first lodged, more than seven years ago, the Board wishes to recommend to the Secretary-General that Appellant be refunded the cost of return second class rail travel between his home town in England and Geneva, plus five days per diem in Geneva.
89. The Board is not able to make any recommendation concerning payment of Appellant's education grant claims or about any of the other matters mentioned by Appellant in ... of the final document submitted with his letter of 1 June 1983.
90. Independently of its recommendation in paragraph 87 above, which is substantiated entirely by the facts which emerged in the course of its long consideration of this appeal, the Board feels that it cannot conclude its work without expressing its deep concern at the very real hardship suffered by Appellant and his family as a result of the termination of his permanent appointment. As the Appellant explained both in the oral proceedings on 2 May 1983 and in ... of his 'final document' submitted on 1 June 1983, the Secretary-General's decision has had a catastrophic effect on his overall employment prospects. Conscious of this, and motivated by compassion, the Board is encouraged to believe that the plight in which Appellant now finds himself may have induced him to mend his ways and to show a greater sense of personal responsibility and self-discipline. To this end, the Board unanimously and emphatically expresses the wish that the Secretary-General, as an act of humanitarian grace, might consider offering Appellant a temporary appointment of a limited duration, so as to salvage whatever chances he may have of being reintegrated in his profession by serving ultimately in an organization belonging to the United Nations common system."

On 9 March 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 Board's report, [had] decided:

- (a) To maintain the contested decision,
- (b) To accept the Board's recommendation contained in paragraph 88 of the report and consequently to refund you the cost of return second class rail travel between your home town in England and Geneva, plus five days per diem in Geneva,
- (c) To take no further action on your case."

On 12 September 1985, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions were:

1. At no time after he was granted a permanent appointment, did any of the Applicant's supervisors criticize his work either orally or in writing. Neither did they warn him that action would be taken to terminate his appointment.

2. The decision to terminate the Applicant's appointment was taken at a secret meeting in April 1975 by officials with whom the Applicant was out of favour for reasons unrelated to the performance of his official functions.

3. In the course of the various procedures that were to have a bearing on, or actually resulted in the Applicant's termination there were numerous violations of due process by the persons or bodies responsible for ensuring the justice of decisions.

4. The Joint Appeals Board found there were no violations of due process and found that the Applicant's termination was proper without giving any grounds or reasons.

Whereas the Respondent's principal contentions are:

1. The procedures leading to the decision of the Secretary-General to terminate the Applicant's permanent appointment

were proper and in conformity with the relevant Staff Rules concerning the five-year review of permanent appointments.

2. The decision by the Secretary General not to offer the Applicant a temporary appointment was taken in order to secure for the Organization only staff of the highest standards of efficiency, competence and integrity.

The Tribunal, having deliberated from 20 to 27 October 1986 in New York and from 13 to 29 May 1987 in Geneva, now pronounces the following judgement:

I. The death of the Applicant occurred on 22 August 1986 before the Tribunal could consider his application, which, however, is now maintained by his widow, Mrs. Winifred Patricia Anne Cooper.

II. Mrs. Cooper has submitted to the Tribunal Letters of Administration granted to her by the English High Court of Justice (District Probate Registry at Ipswich) on 4 March 1987, which the Tribunal is satisfied is a document validly certifying that the Applicant died intestate and domiciled in England and Wales, and that the Applicant's estate has by law devolved to and vested in Mrs. W.P.A. Cooper as the personal representative of the Applicant.

The Tribunal is satisfied that the Letters of Administration granted to Mrs. Cooper entitle her to maintain her late husband's application, in accordance with article 2, paragraph 2(a) of the Statute of the Tribunal.

III. The Secretary-General decided to separate the Applicant from the service of the Organization under staff regulation 9.1(a), for having failed to maintain the standards of efficiency, competence and integrity established in the Charter. Staff regulation 9.1(a) empowers the Secretary-General to terminate the appointment of a staff member who holds a permanent appointment if, among other things, the services of the individual prove unsatisfactory or he

does not meet the highest standards of integrity required by Article 101, paragraph 3, of the Charter. Termination for failure to meet the highest standards of integrity must not, under staff regulation 9.1(a), take place "until the matter has been considered and reported on by a special advisory board appointed for that purpose by the Secretary-General". The action taken by the Secretary-General clearly fell within his powers under staff regulation 9.1(a) and, in the opinion of the Tribunal, the requirement of consideration and report by a special advisory board appointed for that purpose was satisfied by the review conducted by the Appointment and Promotion Committee and endorsed by the Appointment and Promotion Board.

IV. It is established by the jurisprudence of the Tribunal that the Tribunal "cannot substitute its judgement for that of the Secretary-General concerning the standard of performance or efficiency of the staff member involved". Judgement No. 138, para. V, Peynado, 1970.

V. It has also been established by the jurisprudence of the Tribunal that:

"... permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision" (Judgement No. 98, para. II, Gillman, 1966)

VI. The Tribunal must therefore consider whether the procedure followed for the termination of the Applicant's appointment was complete, fair and reasonable.

VII. The Applicant contends that the charges against him ought to have been the subject of disciplinary proceedings, which the Respondent should not have avoided by taking termination proceedings under staff regulation 9.1(a). A similar argument was rejected by the Tribunal in Judgement No. 157, Nelson, para. IV, 1972, where the

Tribunal stated:

"Although the Administration may not substitute one ground for another as a basis for administrative action, where there are several grounds available to it, it is not obligatory on its part to rely on all such grounds; it may choose to rely on one or more of them. In the present case, the Administration could have relied on either of two grounds, namely, unsatisfactory services due to irregularity in attendance or unauthorized outside employment. The Tribunal is therefore unable to infer from the Respondent's reliance on unsatisfactory services instead of on unauthorized outside employment as a ground for termination that the action taken was vitiated by extraneous motives."

VIII. The Applicant also asserts that "the rules of due process were broken at all stages of the proceedings."

IX. In the first place, the Applicant alleges bias against him on the part of certain individuals concerned with the proceedings. The Tribunal has found no evidence in support of that allegation, and notes in particular that the Applicant himself suggested that the Appointment and Promotion Committee should hear the former Chief of the English Section, against whom he later made charges of bias.

X. Secondly, the Tribunal has examined all relevant files and is satisfied that the Applicant was made fully aware of the complaints made against his efficiency and his conduct, and had ample opportunity to answer them. He had copies of five periodic reports, and submitted rebuttals of two of them (reports covering July 1973-July 1975 and July 1975-September 1975). When the Appointment and Promotion Committee was asked to consider the question of his possible separation, upon the five-year review, he sent them a memorandum of 29 pages, which contained 134 paragraphs in which he contested every criticism brought against him. The Applicant had been fully warned by his superiors and by personnel officers and was given, and took advantage of, every opportunity to defend himself. The Tribunal considers that the maxim audi alteram

partem, which is an essential ingredient of due process, was fully complied with.

XI. The Applicant, complained that he was not given an oral hearing by the Appointment and Promotion Committee. However, two alternate members of that Committee proceeded to Geneva and gave him a hearing. He had, however, some cause for complaint that his request for a copy of the report of that hearing was refused on the ground that the report was an "internal document". The Tribunal has seen the report and is satisfied that the Applicant's lack of a copy in no way hampered him in defending himself, nor did it add to the charges or complaints made against him.

XII. If it is to stand, the Respondent's decision must be reasonable in all respects, and not based on erroneous findings of fact. The Respondent's decision could only be rescinded by the Tribunal as unreasonable, if no reasonable person could have reached the same conclusion on the evidence before him. In the Tribunal's view, there was ample evidence before the Respondent on which his decision could reasonably be reached, including such matters as the Applicant's engaging in unauthorized outside activities while employed by the United Nations, accepting employment with the International Court of Justice without the prior permission of his superiors, failing to discharge judgement debts, lack of punctuality in his work, disputes with Swiss creditors which led to representations being made to the Secretary-General by the Permanent Observer of Switzerland at the United Nations Office at Geneva, and his early return from official business in Chile owing to a dispute with a Chilean general. None of these matters was denied by the Applicant, though he attempted to justify his conduct. The Respondent's decision therefore cannot be vitiated as having been unreasonable or based on erroneous findings of fact. In addition, the Respondent rightly took into account the criticisms made of the Applicant's efficiency by his superiors.

XIII. The application is accordingly rejected in its entirety.

XIV. The Tribunal observes that the Applicant was given formal notice of separation on 12 March 1976. On 8 July 1979 he wrote to the Acting Secretary of the Joint Appeals Board in Geneva, complaining that the Respondent had had 18 months in which to submit his rebuttal to the Board but had failed to do so. The Applicant commented:

"It seems clear that the Administration hope that they can win this case by default: I shall be dead before it reaches a conclusion at the present rate of progress."

XV. The Applicant has in fact died before the case could be decided by the Tribunal. Counsel for the Respondent, in submitting his rebuttal to the Joint Appeals Board on 21 November 1979, offered an explanation of the twenty months' delay in doing so, and suggested that in the circumstances the delay really did not matter. He wrote:

"The preparation of this statement of rebuttal has required a considerable amount of time in view of the complicated matter involved as attested by the long list of annexed documents. The Respondent, who is presently in charge of yet another appeal case, regrets not to have been earlier in a position to submit this rebuttal as his time was entirely taken up by his heavy regular workload involving frequently a considerable amount of overtime. It should, however, be noted for the record that the delayed submission of the statement of rebuttal has so far, to the best knowledge of the Respondent, not caused any additional delay in the consideration of this case by the Board, in view of the overall situation of the appeals backlog at Geneva ...".

If this explanation is correct, it is evident that the Administration was causing delay in dealing with the Applicant's case by making use of the services of Respondent's counsel on other matters. The Tribunal having considered all available documents,

estimates that the total delay of eleven years in disposing of this case was caused by the Respondent to the extent of approximately one-half.

XVI. The application in this case has been rejected in its entirety, and the Applicant did not claim damages for delay. The Tribunal observes that in two recent cases it has made an award of damages for delay to unsuccessful Applicants, where the delay was inexcusably caused. In Judgement No. 327, Ridler, 1984, the Tribunal awarded the Applicant an amount equal to three months' net base salary, as compensation for delay on the part of the Joint Appeals Board, which took two full years to prepare and submit its report, the process of submission to and examination by the Board having required five years in all. In Judgement No. 353, El-Bolkany, 1985, the Applicant claimed compensation for delay, based on the alleged suffering and anxiety she had undergone. There was no explanation for the delay of nearly 25 months between the conclusions of the Joint Appeals Board's deliberations and its final report. The Tribunal referred to the total delay of five years as "long and unconscionable" and awarded one thousand U.S. dollars as compensation for "the dilatory and casual way in which the Applicant's case was dealt with", commenting that:

"The Tribunal has had several occasions to emphasize that an inordinate delay of this nature not only adversely affects the administration of justice, but on occasions can inflict unnecessary anxiety and suffering to an Applicant."

XVII. In the present case, unnecessary anxiety and suffering was inflicted on the Applicant and also on his widow, by the delay of more than 11 years before the application was finally disposed of. The Tribunal recognizes that the Respondent and the Joint Appeals Board were only partly responsible for the delay, some of which was caused by the Applicant's own dilatoriness, by his requests for further time, or by his death before the proceedings could be completed. Taking all the factors into consideration, the Tribunal

awards Mrs. Cooper as the Applicant's successor, three thousand United States dollars as compensation for delay.

(Signatures)

Arnold KEAN
First Vice-President, presiding

Luis de POSADAS MONTERO
Second Vice-President

Ahmed OSMAN
Member

Geneva, 29 May 1987

R. Maria VICIEN-MILBURN
Executive Secretary