

ADMINISTRATIVE TRIBUNAL

Judgement No. 398

Case No. 417: MILLBURN

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Luis de Posadas Montero, Vice-President,  
presiding; Mr. Endre Ustor; Mr. Jerome Ackerman;

Whereas on 26 November 1985, Reggie Millburn, a former staff member of the United Nations, filed an application that did not fulfil the formal requirements of the Rules of the Tribunal;

Whereas in a letter dated 18 February 1986, the Applicant requested the President of the Tribunal, under article 14 of the Rules of the Tribunal, to order the production of a series of documents in order to prepare his appeal;

Whereas on 23 March 1986, the Applicant again filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas on 2 June 1986, the Executive Secretary of the Tribunal informed the Applicant that the Tribunal had decided that his request for production of documents must be included in an application to be filed in accordance with article 7 of the Rules of the Tribunal;

Whereas at the request of the Applicant and with the agreement of the Respondent, the President of the Tribunal successively extended to 31 July, 7 November and 7 December 1986, the time-limit in which to file an application;

Whereas on 16 December 1986, the Applicant again filed an

application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas on 2 February 1987, the Applicant, after making the necessary corrections, filed an application, the pleas of which read as follows:

"PLEAS

The Applicant HEREBY REQUESTS the Administrative Tribunal of the United Nations, as a preliminary measure to make the following Orders:-

1. That the Respondent make discovery of the following:-
  - (a) The Applicant's official status file in its entirety;
  - (b) The programme evaluation of the Applicant by the Bahrain Resident Representative;
  - (c) Letter to the Applicant by the Bahrain Resident Representative dated 24th June 1980, subsequently withdrawn (....");
  - (d) Invoice by Beirut Express Bahrain for packing and dispatching the Applicant's personal effects to Australia together with payment voucher;
  - (e) Any other documents held by the Respondent touching upon the Applicant's employment in Bahrain including correspondence, memoranda and reports;
  - (f) Documents held by the Respondent concerning the Applicant's candidature for the Bahrain position, including correspondence, memoranda and reports;
  - (g) Documents held by the Respondent concerning the offer to the Applicant of a post in Libya in 1983 (offer mentioned in paragraph 60 of the United Nations Joint Appeals Board 'conclusions and recommendations');
  - (h) Letter to the Applicant by Hamdan Ben Aissa [Deputy Director, Middle East, Mediterranean Europe and Inter-regional Projects Branch, Department of Technical Cooperation and Development (DTCD)] dated on or about the 13th day of September 1979 (the original of which was handed to either Mr. Butler [Team Leader] or to the Resident Representative and not returned).
- 1A. That the Applicant have leave to cross-examine certain witnesses including INGO VON RUCKTESCHELL [Recruitment Officer, Technical Assistance Recruitment Service, TARS, DTCD], A MORALES [Deputy Chief, TARS, DTCD], and KADRI M.G. EL ARABY [Chief, Middle East Section, DTCD].

The Applicant HEREBY REQUESTS the Administrative Tribunal of the United Nations to make the following declarations and orders:-

2. Declare that the Respondent failed to give written notification to the Applicant that it proposed to change his terms of appointment.
3. Declare that the Applicant was 'singly appointed' as an advisor in traffic engineering at Bahrain.
4. Declare that the Project Document dated 19th February 1979 ... did not represent the contractual relationship between the Applicant and the Respondent with respect to the duties of the traffic engineering advisor.
5. Declare that the correspondence to Mr. Gordon Butler [Team Leader] by Mr. Hamdan Ben Aissa dated 4th October 1980 [17 December 1979 [sic]] directing Mr. Butler to advise the Applicant that his informal quarterly reports to the substantive office were to be received by Mr. Butler was not in accordance with the Applicant's terms of appointment.
6. Declare that the changes mentioned in the project document were initiated by the Respondent and not by the State of Bahrain as indicated in correspondence by Senator Kathy Martin [Senator for Queensland, Australia] to the Applicant dated 30th June 1981 ...
7. Order that the Respondent withdraw all documentation, including communication to other parties by the Respondent, which do not reflect the matters set out in Pleas No. 2 to 6 including:

(a)The following phrase in letter by the Resident Representative to the Applicant dated the 25th day of June 1980 ...:

'As a result of the death of Mr. Butler, the Team Leader of your project and the uncertainty about the arrival date of the new Team Leader'.

(b)The following phrase in telex by El Araby to the Applicant dated the 17th day of July 1980 ...:

'We draw your attention to Res. Rep. letter to you dated 25th June which is United Nations official position.'

(c)The following paragraphs in correspondence by Gordon Butler to Hamdan Ben Aissa dated 17th December 1979 ... namely from the third paragraph to the penultimate paragraph inclusive.

8. Order that the Respondent give notice to Mrs. Butler of any declarations made pursuant to Pleas Nos. 2 to 6.
9. Order that the Respondent withdraw all damaging allegations

or comments on the Applicant's personal status file including:-

- (a) The following phrases in memorandum to the Applicant by Mr. El Araby dated 10th June 1980 ...:
  - (i) 'Since its inception the project has gone through difficult times because of several reasons which you are aware of until the unfortunate passing away of Mr. Butler.'
  - (ii) 'Any project material, books, personal effects ... etc. that belonged to Mr. Butler would be handed to the office of the Resident Representative. I understand that there has been a request to the (sic) effect.'
- (b) The entire handwritten memorandum addressed to Mr. Von Ruckteschell dated 27th June 1980 at the foot of the memorandum mentioned in 9(a) ...
- (c) The entire correspondence by the Resident Representative to Dr. El Araby dated 17th June 1981 ...
- (d) The entire handwritten memorandum addressed to Mr. Von Ruckteschell dated 29th June 1981 at the foot of the first page of the correspondence mentioned in 9(c) ...
- (e) The following phrases in the memorandum by Sondel [Advisor, Traffic Project, Bahrain] to the Resident Representative and Dr. El Araby dated 6th June 1981 ...:
  - (i) 'In the light of these facts, the subsequent contract, negotiated privately by Milburn (sic) with the Ministry, as revealed in the four attached papers, would seem to be wholly out of order.'
  - (ii) 'It might take a third year engineering student a week to put together such a compilation. It is functional and ought to be useful in a limited way, but it hardly justifies the ballyhoo or time/money invested in its creation.'
  - (iii) 'P.S. No copy of the range design has been provided for me yet. I expect to have one soon. If it is, as Milburn (sic) states, basically an X and a circle, [it] will be all but useless and I shall have to find a way to integrate it into a functional design in such a way as to keep the Government from feeling that it has been 'ripped off'.'
- (f) The entire correspondence and enclosures by Mrs. Butler to the Resident Representative dated 25th May 1980 ...
- (g) The following phrases included in the confidential note to the file by Von Ruckteschell dated 8th May 1981 ...:

(i) 'When I asked Mr. Beckerich [Technical Advisor], whether Mr. Milburn (sic) was suitable, he made negative comments.'

(ii) 'I learned unofficially from Mrs. Weidlund [Chief, Central American Caribbean and Regional Projects] that she had experienced many difficulties with the expert and would advise (sic) strongly against his recruitment', and the word 'however'.

10. Declare that the Applicant had no obligation to complete the P.35 form sent under cover of Form No. OTC66(6-76) dated the 13th day of August 1980 signed by Ms. Parris Halkias [Administrative Officer, Administrative Section, Division of Programme Support, TCD] ... which was never replaced before his departure from Bahrain.

11. That the Applicant complied with all other administrative requirements indicated pursuant to the completion of a technical assistance assignment.

12. Declare that the confidential note to the file by Von Ruckteschell dated the 8th May 1981 (referred to in Plea 9(g) herein) ... contained a number of inaccuracies including:-

(a) 'Four candidates have been submitted informally by the P.M.O. following the advice of Mr. Beckerich.'

(b) 'A selection was received by Bahrain with priority option.'

(c) 'Three of the four candidates [...] were not available.'

13. Declare that the finding contained in paragraph 60 of the report by the United Nations Joint Appeals Board to the Secretary-General dated the 22nd day of May 1984 ..., that the Applicant's professional status or competence had not been impugned was wrong and should be struck from the record as:

(a) The finding was based on the false premise that:

'In early 1983 the Applicant was recommended by the United Nations Technical Assistance Recruitment Services for a post in Libya'.

or alternatively:

(b) That undue weight was given to the premise stated in sub-paragraph (a).

or:

(c) That the finding was based on an irrelevancy.

14. Declare that a part of paragraph 53 of the aforementioned report by the United Nations Joint Appeals Board to the

Secretary-General ..., namely the phrase 'who was consulted by Mr. Von Ruckteschell as to the appellant's suitability for the assignment with the Bahrain Government', is erroneous and order that it be struck from the record.

15. Declare that paragraph 54 of the aforementioned report by the United Nations Joint Appeals Board to the Secretary-General ... is anomalous and contains an unnecessary derogatory comment, and order that it be struck from the record.
16. Declare that the finding mentioned in paragraph ... of the said report by the United Nations Joint Appeals Board to the Secretary-General ... that 'it was unfortunate that the Appellant did not at that time take official action in this respect' is erroneous and order that it be struck from the record.
17. Declare that the conclusion mentioned in paragraph 59 of the said report by the United Nations Joint Appeals Board to the Secretary-General ... that 'this delay has not created, on the minds of the Bahrain Government officials concerned, any doubt as to the competence of the appellant' is erroneous and order that it be struck from the record.
18. Determine that the Applicant's professional standing and reputation has been adversely affected by inter alia the matter mentioned in Plea No. 9.
19. Award the Applicant compensation for loss of professional standing and reputation an amount of unspecified damages.
20. Determine that the Respondent has acted maliciously or in bad faith.
21. Award the Applicant aggravated damages or exemplary damages for bad faith and/or malice.
22. Declare that the Respondent was fully responsible for the delay in effecting the final payment to the Applicant.
23. Award an amount of \$US 1,485.03 together with interest to the Applicant for compensation for the delay in the final payment.
24. Award costs by the Respondent to the Applicant in preparation of this Application."

Whereas the Respondent filed his answer on 9 July 1987;

Whereas on 24 September 1987, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the Applicant filed written observations on 5 October 1987.

Whereas in a letter dated 8 October 1987, the Applicant filed

additional comments on his personnel files and submitted a recorded tape as further evidence;

Whereas in a letter dated 15 October 1987, the Applicant submitted additional comments;

Whereas the facts in the case are as follows:

Reggie Millburn was initially recruited by the United Nations in 1961 to serve on a fixed-term project personnel appointment as an Urban Transport Expert in Santiago de Chile. In 1978 - i.e. 17 years later - he was offered two successive fixed-term project personnel appointments to serve as an Infrastructure Engineer in Castries, St Lucia. His assignment ended on 15 December 1978. The Applicant re-entered the service of the United Nations on 12 September 1979. He was offered a one-year project personnel appointment under the 200 Series of the Staff Regulations and Rules, at the L-5, step V level, as an Adviser in Traffic Engineering. He was assigned to Manama, Bahrain.

In a cable dated 17 July 1979, a Recruitment Officer, TARS, DTCD, conveyed to the Applicant an initial offer of appointment and mentioned that a "DETAILED OFFER, PERSONNEL AND OTHER FORMS FOLLOW".

Indeed, on 18 July 1979, the Recruitment Officer, TARS, DTCD, sent a letter to the Applicant in which he stated, inter alia:

"On behalf of the Secretary-General of the United Nations, I am pleased to offer you, in accordance with the Specimen Letter of Appointment and the Statement of Emoluments attached, the post described in the enclosed Job Description."

The Job Description dated 11 April 1979 described the duties to be performed by an Adviser in Traffic Engineering to the Government of Bahrain. The Applicant accepted the offer on 30 July 1979 and on 14 August 1979.

The Applicant arrived at Manama on 13 September 1979. The project document established pursuant to an agreement between the UNDP and the Government of Bahrain, entitled "Assistance to the Traffic and Licensing Directorate" provides, as part of the UNDP input concerning assignment of international staff, for a "Team Leader/Adviser in Public Administration" as well as for an "Adviser in Traffic Engineering". According to the Applicant, he had never

been told that he would have to work with or for another expert. He had never seen the project document and asserted that his appointment was as a "Single Expert". His letter of appointment with the United Nations and the job description attached thereto, could not be affected by the project document, an agreement between UNDP and the Government of Bahrain, providing for a "Team Leader", for whom, or in cooperation with whom, he would have to work.

The Team Leader/Adviser in Public Administration arrived at Manama in September 1979. In a letter dated 17 December 1979, the Team Leader informed the Deputy Director, Middle East, Mediterranean Europe and Interregional Projects Branch, DTCD, of the problems he had encountered with the Applicant in the course of their daily activities, namely that the Applicant maintained that "he never learned until his arrival in Bahrain that he was to be part of a team effort" and that the Applicant objected to submitting progress reports through the Team Leader.

On 5 March 1980 the Chief, Middle East Section, DTCD, wrote to the UNDP Representative concerning the Applicant's first quarterly report and two revised work plans submitted by the Applicant and by Mr. Butler, the Team Leader, respectively. He noted that a discrepancy between the separate work plans indicated that they had not been "reconciled" before being forwarded to his Office. He suggested that, in order to avoid that kind of situation in the future, the two experts should "be advised to work as partners in a team", and to "coordinate their work programme through the necessary consultations." They should "be encouraged to consult together as a team with the Director-General of the Traffic and Licensing Directorate in all matters relating to the project work plan and its execution." Indeed, both experts should be fully aware of what the other was doing or planning to do.

The Team Leader died during the course of the implementation of the project in May 1980. On 25 May 1980, the Team Leader's widow transmitted to the Resident Representative draft notes concerning the project which the Team Leader was compiling on the evening and morning before his death, and which contained references to the Applicant. In her letter, she also expressed her dissatisfaction on the Applicant's "constant unpredictable" behaviour and stated: "I would be remiss if I did not go on record attesting to the nature of



this man so that this mistake [of hiring him] will never be made again by the United Nations."

In June, the Chief, Middle East Section, DTCD, visited Manama and discussed the project with representatives from the Government, the Resident Representative and the Applicant. On 10 June 1980, he wrote a memorandum to the Applicant with instructions concerning the completion of the project, the manner in which he should report to the UNDP Resident Representative "in the absence of a Team Leader", and the final report on his assignment.

On 25 June 1980, the Resident Representative wrote to the Applicant to remind him that he had to submit a report on his activities not later than one week before his departure from Bahrain. He added "As a result of the death [of] Mr. Butler, the Team Leader of your project and the uncertainty about the arrival of the new Team Leader, you are to submit to me, in triplicate a report on your assignment covering the period from 13 September 1979 to the date of your departure ... The report should reach this office no later than 24 July."

On 5 July 1980, the Applicant wrote to the Chief, Middle East Section, DTCD, concerning the instructions set forth in the memorandum of 10 June 1980. In addition, the Applicant enclosed a copy of the offer of appointment that had been provided by TARS, together with a copy of the 11 April 1979 Job Description and added: "I have often wondered in Bahrain on what basis an agreement of this nature with the United Nations could be morally or legally altered without the consent of all the parties."

In a cable dated 8 July 1980, addressed to the Chief, Middle East Section, DTCD, the Applicant demanded an "IMMEDIATE UNQUALIFIED APOLOGY FROM UNDP FOR GROSS BREACH OF PROFESSIONAL ETHICS ..." on account of "ATTEMPT TO UNILATERALLY ALTER MY TERMS OF AGREEMENT WITH UNDP TO PUT ME IN POSITION INFERIOR TO NON PROFESSIONAL EMPLOYEE OF UN." The Applicant had discovered from the late Team Leader's files that he had not graduated from a university and emphatically believed that he should not have been asked to work for him. He therefore requested the "UNCONDITIONAL WITHDRAWAL OF [ALL PRIOR] INSTRUCTIONS ... TO DISCUSS [MY] PROFESSIONAL DUTIES WITH [A] NON-PROFESSIONAL UNDP EMPLOYEE."

The Applicant also asked UNDP to send to the Government of

Bahrain his updated personal history form, since the one that UNDP forwarded was twenty years out of date, and this action had caused him inestimable professional harm.

On 7 August 1980, the UNDP Resident Representative informed the Applicant that "at the request of the Director of Traffic and Licensing, [he had] agreed to allow [the Applicant] to remain in Bahrain until 11 September" upon the condition that the Applicant complete his work and submit his report before his departure from Bahrain.

On 13 August 1980, the Administrative Officer, Administrative Section, DTCD, wrote to the Applicant to forward a Final Clearance Certification Administrative Form No. P.35A. He asked the Applicant to complete the form and return it to Headquarters in order that DTCD take the necessary action to process his final payment. The Applicant did not do so. The Administrative Officer also asked the Applicant on 15 August 1980 to provide documentary evidence of his relocation in Australia for the purpose of payment of his repatriation entitlements.

The Applicant's appointment was finally extended for a further fixed-term period until 28 September 1980. He left Bahrain on 1 October 1980.

On 7 October 1980, an employee of the Applicant's firm in Australia forwarded to the Administrative Office at Headquarters the Applicant's excess baggage ticket, his airline tickets and the Applicant's laissez-passer in order to enable DTCD to "make final clearance". On 7 November 1980, the Administrative Officer, DTCD, acknowledged receipt of the Applicant's repatriation travel documents and informed him that they had been referred to the appropriate office for action.

In a cable dated 1 April 1981, the Deputy Chief, Administrative Section, DTCD, requested the UNDP Resident Representative in Bahrain to forward to Headquarters the Applicant's completed P.35 form. In a reply dated 9 April 1981, the Resident Representative stated that the Applicant had not completed the P.35 form. He did, however, provide Headquarters with information concerning the Applicant's last day on duty and details relating to his shipment of personal effects. According to the record of the case, this document never reached Headquarters.

On 9 April 1981, the Applicant cabled the Administrative Officer, DTCD, to ask why his September 1980 remuneration was being withheld, as well as monies owed to him in lieu of annual leave. On 6 May 1981, the Deputy Chief, AS, DTCD, again cabled the Resident Representative to ask for the Applicant's P.35 form.

On 18 June 1981, the Applicant wrote to the Administrative Officer, Administrative Section, DTCD, to enquire why his final payments which he estimated amounted to \$US 10,000 were being withheld. In a cable dated 30 June 1981, the Deputy Chief, AS, DTCD, apologized to the Applicant for the delay in making the final payment which he attributed to the non-receipt of the final clearance document from UNDP. In a cable dated 28 July 1981, he informed the Applicant that he had processed another P.35 form since the one sent to the field in 1980 had been lost, and that he would receive his final payment four weeks later. The Office of Financial Services processed payment of \$US 12,475 on 8 August 1981. The Applicant asserted in a letter dated 30 October 1981 that his account in Australia was only credited on 23 September 1981 and therefore the UN should be liable for loss of earnings derived from the late payment of some of his emoluments. DTCD conducted an enquiry with the UNDP Resident Representative concerning the Applicant's claims against UNDP. On 28 December 1981, the UNDP Resident Representative addressed a letter to the Administrative Officer, that reads, in part, as follows:

"1. Re: P.35 - Final Clearance Document

I would like to draw your attention to our DPGRAM (432) of 9 April 1981 informing you that the 'expert did not prepare P.35'

...

You will appreciate that there is nothing more we could do than asking Mr. Millburn to fill in the form! I regret he ignored the repeated requests from my administrative staff for submitting this form, for transmission to your office.

...

On 21 December 1981, the Applicant wrote a letter to the Executive Secretary of the Administrative Tribunal in which he sought relief "to rectify the gratuitous personal and professional

damages" caused by UNDP's actions. The Executive Secretary of the Tribunal transmitted this letter to the Secretariat of the Joint Appeals Board. The Secretary of the Joint Appeals Board advised the Applicant that his letter of 21 December 1981 had been transmitted to the Office of Personnel Services which would treat it as a request for a review of an administrative decision. Not having received a reply from the Secretary-General, on 2 March 1982 the Applicant lodged an appeal with the Joint Appeal Board.

On 13 August 1982, the representative of the Secretary-General filed a preliminary statement requesting that the appeal be declared irreceivable. On 22 August 1983, Counsel for the Applicant filed his reply. The JAB Panel, in its executive session on 7 October 1983, considered the question of the receivability of the appeal and decided to waive the time-limits prescribed in the Staff Rules. On 28 November 1983, the representative of the Secretary-General filed her reply on the merits. The Board adopted its report on 22 May 1984.

Its conclusions and recommendations read as follows:

"Conclusions and recommendations

55. The Panel finds that in the terms of his appointment as evidenced by the offer of appointment, his letter of appointment and the Job description, the appellant was never advised that he was to be a member of a two-man team.
56. The Panel finds that the appointment of a Team Leader/Adviser on Public Administration had not in any way altered or changed the appellant's substantive duties and responsibilities as detailed in his job description which was sent along with the offer of appointment dated 18 July 1979. The Panel finds that the appellant did not take official action to clarify the position when he came to know that there would be a Team Leader. Also neither the UNDP Resident Representative in Bahrain nor the DTCD took any action to correct the situation but allowed it to continue throughout the appellant's stay in Manama.
57. The Panel finds that there had been undue delay in the payment to the appellant of his salary for the last month of duty and other separation entitlements. In the interest of good administration and for the financial inconvenience caused to the appellant for which he was partly responsible, the Panel recommends that the appellant be awarded a sum of \$US 1,000.
58. The Panel finds no evidence that the appellant had not completed his assignment before his departure from Bahrain.

59. The Panel finds that the Technical Assistance Recruitment Services had failed to authorize promptly the UNDP Resident Representative, Bahrain, to provide the Government of Bahrain with an updated personnel history form of the appellant. However, in the view of the Panel, this delay has not created, on the minds of the Bahrain Government officials concerned, any doubt as to the competence of the appellant.
60. The Panel finds that Millburn and Associates, of which the appellant is a partner, was engaged by the Government of Bahrain in the preparation of a detailed design on Driver Training Range. This assignment was independent of the appellant's United Nations assignment. The Panel also finds that in early 1983 the appellant was recommended by the United Nations Technical Assistance Recruitment Services for a post in Libya. The Panel therefore finds that the appellant's professional status or his competence has not been impugned in any way either from the point of view of the United Nations or that of the Government of Bahrain.
61. The Panel recommends the deletion of the following in the memorandum dated 10 June 1980 from Mr. El Araby to the appellant so as to reflect the correct position of the appellant vis-à-vis the project:
- (a) Paragraph 2 'Your daily work ... project';
  - (b) The words 'In the absence of a Team Leader' appearing in paragraph 3.
62. The Panel also recommends that reference to letter dated 24 June 1980 from the UNDP Resident Representative to the appellant appearing in Mr. El Araby's cable of 17 July 1980 to the appellant be deleted in view of the fact that the letter referred to had already been withdrawn.
63. The Panel makes no further recommendation in regard to the appeal."

On 17 December 1984, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board's report and had decided:

- "(a) In an attempt to settle the case, to pay \$US 1,000 to [him] as compensation for any responsibility which the Organization may have had in the delay in the final payments to [him];
  - (b) To accept the Panel's recommendations contained in paragraphs 60 and 61 of the report;
- and
- (c) To take no further action on this case."

On 2 February 1987, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant's reputation has been damaged by the bad faith and the malicious acts of the Respondent.

2. The Applicant's terms of appointment as an Advisor in Traffic Engineering were inconsistent with the Project document which provides for a Team Leader on the same project.

3. The Respondent committed a mistake in contracting with the Applicant and with the Team Leader and it was the Respondent's mistake that brought out the ambiguities that arise out of the Applicant's appointment.

4. The largely incoherent writings of the Team Leader which cannot be substantiated and are extremely damaging should not be allowed to remain on the Applicant's file.

5. Since the Applicant's appointment was extended he was not obliged to complete the P.35 form.

Whereas the Respondent's principal contentions are:

1. The Applicant's request to examine his official status file should be rejected in view of the administrative procedure available to address this complaint.

2. The Applicant's request to examine certain witnesses should be rejected as their testimony would not produce any relevant information required for the adjudication of this case.

3. There was no unilateral alteration of the Applicant's terms of appointment by the Respondent.

4. The Applicant has produced no evidence to show that his professional reputation was damaged by the Respondent's actions.

5. The Applicant's request for compensation for the delay in payment of his final pay should be rejected as his own actions were the primary cause of the delay.

The Tribunal, having deliberated from 19 October to 6 November 1987, now pronounces the following judgement:

I. The Tribunal, in the first place, addressed itself to the issue of receivability raised by the Respondent before the Joint Appeals Board, on the grounds that the Applicant's claim had not been filed within the time-limits specified in staff rule 111.2 a).

In this respect, the Tribunal holds that, the JAB having decided that the case was receivable by it, and this decision not having been subsequently challenged by the Respondent, the issue of receivability is not before the Tribunal. In the view of the Tribunal, the time-limit of staff rule 111.2 should be considered as having been implicitly waived.

II. Turning then to the merits of the case, the Tribunal concurs with the conclusions of the JAB and finds that the appointment of a Team Leader/Adviser on Public Administration to work with the Applicant did not in any way, alter or change his substantive duties and responsibilities as detailed in his job description. This being the case, no responsibility for the Administration has arisen. The fact that the Applicant was not previously informed that he would work as part of a team in no way changes this conclusion.

III. The designation by the Administration and the existence of a Team Leader are not inconsistent with the applicable regulations and rules, the terms of appointment of the Applicant nor with the job description of the post he encumbered. Any views to the contrary that may have been held by staff personnel were, in the Tribunal's opinion, mistaken. Therefore, the Administration in this instance was free to appoint a Team Leader without violating the Applicant's contract of employment.

IV. The Tribunal also concurs with the JAB in that no cognizable damage was caused to the Applicant's professional reputation through words or deeds imputable to the Administration. The Tribunal recognizes that the Administration has the right to maintain files containing information about matters of interest from many different sources and it is important to preserve the free flow of such information to the organization so that it may conduct its functions effectively. The fact that adverse comments regarding individuals within or outside the organization may occasionally appear in the

organization's files, is inherent in the normal conduct of its affairs and is not an occasion for intervention by the Tribunal. It has in no way been proved that any adverse material regarding the Applicant that might have been kept in the Administration's files has been mishandled so as to alter the Applicant's good professional standing.

V. With respect to the Applicant's requests to have several documents altered so as to exclude certain references to his situation, the Tribunal notes that a considerable number of the Applicant's requests was accepted by the JAB and, subsequently, by the Administration and, as a consequence, are not sub judice before the Tribunal. The Tribunal will therefore refrain from expressing any views on the altering or modifying of these documents in the files.

VI. As for the texts the JAB did not recommend be altered; for example, those in which reference is made to the difficulties run into by the project in which the Applicant was involved, or in others in which his situation is depicted as part of a team or still in others in which the returning of the late Mr. Butler's personal effects to his widow is mentioned, the Tribunal has reviewed the Applicant's submissions and finds no valid reason for modifying or overruling the JAB's conclusions. The Tribunal is highly skeptical of the wisdom of altering, and sees no legal necessity, in this case, to alter documents contained in the files of the Organization for the convenience of a staff member. It is up to the Applicant to request the Administration to include in his personal file his comments with respect to materials in it and to include such other pertinent documents as may illuminate materials in the file.

VII. The Tribunal also shares the JAB'S view that the Applicant is partially responsible for the delay incurred by the Administration in effecting his final payment. In this respect, the Tribunal finds that the phrase contained in the letter from the Administrative Section of DTCD dated 13 August 1980, cannot be interpreted as saying that the particular type of extension granted to the Applicant, would free him from the obligation of returning form



P.35, which included the Final Clearance Certificate. Inasmuch as this Final Clearance Certificate is always necessary when a staff member is leaving the service, it is not conceivable to suppose that the granting of an extension (in this particular case an extension of a few days) implies a waiver of the obligation of returning the forms.

VIII. The Tribunal also concurs with the JAB in that the delay in sending the Applicant's updated personal history form to the Government of Bahrain has not caused any damage to the Applicant.

IX. The Tribunal rejects all of the Applicant's requests for production of documents and testimony and his other detailed pleas on the basis of the principles set forth in this judgement.

X. For the above-mentioned reasons, the application is rejected in its entirety.

(Signatures)

Luis de POSADAS MONTERO  
Vice-President, presiding

Endre USTOR  
Member

Jerome ACKERMAN  
Member

New York, 6 November 1987

R. Maria VICIEN-MILBURN  
Executive Secretary