

ADMINISTRATIVE TRIBUNAL

Judgement No. 399

Case No. 384: WALSH

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, President; Mr. Arnold Kean,
Vice-President; Mr. Roger Pinto; Mr. Jerome Ackerman, alternate
member;

The presence and participation of an alternate member ensured that the panel would always have three members, and could avail itself of the alternate's special knowledge of the issues raised in this case;

Whereas on 20 May 1985, Stephen Thomas Walsh, a staff member of United Nations Division of Narcotic Drugs, filed an application that did not fulfil the formal requirements of 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 extended the time-limit for the filing of an application until 3 December 1985;

Whereas on 9 January 1986, the Applicant filed an application that also did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas on 10 April 1986, the Applicant, after making the necessary corrections, again filed an application in which he requested the Tribunal:

"A) As a preliminary measure, to obtain from the Respondent the following additional information or documents:

- (i) Details of all the various methodologies which have ever been applied to the conversions of Field Service Officers to the Professional category;
 - (ii) The report of the Headquarters Joint Appeals Board in the case of Mr. Thomas McAndrew [Finance Officer] and the evidence upon which the report was based together with the decisions taken by the Secretary-General upon the report;
 - (iii) Details of the computations of salary used in the conversion/promotion of all Field Service Officers (about four individuals) who have been promoted through the competitive examinations for promotion to the Professional category;
- B) To rescind the administrative decision of 18 March 1982 whereby the difference between the Applicant's salaries and allowances before and after promotion was replaced by a personal transitional allowance;
- C) To order the Respondent to recalculate the Applicant's emoluments upon conversion/promotion, by adding the difference between the invariable element of the Field Service Monthly Mission Allowance (MMA) and the Professional category assignment allowance, to his net base Field Service salary and then to grant him the net base salary in the Professional category nearest to the resulting amount, plus one step in recognition of his promotion in order to satisfy staff rule 103.9(i).
- D) If the Secretary-General wishes to avail himself of the option given to him under article 9, paragraph 1 of the Statute, the Applicant requests compensation by an amount equal to all the financial losses that the Applicant thus suffers (to be mutually calculated and agreed between the parties concerned)."

Whereas the Respondent filed his answer on 26 March 1987;
Whereas the Applicant filed written observations on 5 August 1987, in which he amended his pleas as follows:

"14. In the light of the Respondent's answer, the Applicant requests the Tribunal to allow him to be more specific in his pleas and asks the Tribunal to direct the Respondent to:

- (i) Rescind the administrative decision of 18 March 1982 whereby the difference between the Applicant's salaries and allowances before and after promotion was replaced by a personal transitional allowance;

AND

- (ii) Promote the Applicant, if the conversion concept is

valid, to P-3 rather than to P-2 effective 1 March 1982 since he had earned a promotion and, according to the intrinsic conception of the conversion methodology, the Applicant was already equivalent in grade to P-2;

OR

- (iii) Recalculate the Applicant's emoluments upon promotion on 1 March 1982, by adding the difference between the invariable element of the Field Service Monthly Mission Allowance (MMA) and the Professional category assignment allowance, to his net base Field Service salary and then to grant him the net base salary in the Professional category nearest to the resulting amount, plus one step in recognition of his promotion in order to satisfy staff rule 103.9(i). This would accord with Tribunal Judgement No. 175;

OR

- (iv) If the Respondent pleads administrative hardship, direct him to compensate the Applicant for all financial suffering. The amount could easily be calculated in US Dollars by the payroll computer in Vienna and should, perhaps, be enhanced, by about 25% to compensate for the fall in value of the US Dollar during the delays requested by the Respondent. Additionally, it would be necessary to calculate the amount by which the Applicant's pension would thus have been increased and pay it in a lump sum using the actuarial factor as for the pension fund lump sum;

OR

- (v) Direct the Respondent to pay the Applicant a lump sum of \$US 30,000 in full settlement;
- (vi) In addition to the above, the Applicant requests the Tribunal to recognize the hardship and stress which he has suffered due to the absence of an understandable, equitable methodology for the promotion of Field Service Officers to Professional grade - and also due to the extraordinary delays by the Administration. On these grounds, the Respondent may please be directed to pay the Applicant additional compensation of \$US 5,000 for the trouble and stress thus caused.

15. The figures proposed by the Applicant are those which, after due thought, he considered fair in the circumstances. He will of course be willing to consider any fair alternative which may be proposed."

Whereas on 22 September 1987, the President of the Tribunal, under article 10 of the Rules of the Tribunal, put questions to the Respondent and to the Applicant, and on 29 September 1987, the

Respondent provided answers thereto;

Whereas on 8 October 1987, the Applicant commented on the Respondent's reply;

Whereas on 8 October 1987, the President of the Tribunal, under article 10 of the Rules of the Tribunal, put further questions to the Applicant and the Respondent, to which they both provided answers on 9 October 1987;

Whereas on 12 October 1987, the Applicant submitted additional comments;

Whereas on 14 October 1987, the Tribunal heard the parties at a public hearing;

Whereas on 15 October 1987, the Applicant submitted additional comments;

Whereas the facts in the case are as follows:

Stephen Thomas Walsh entered the service of the United Nations on 5 July 1965 as a Field Service Security Officer at the FS-2, step 1 level. He was initially offered a one year fixed-term appointment and was assigned to UNTSO (United Nations Truce Supervision Organization in Palestine). He served on a series of further fixed-term appointments until 1 January 1974, when he was offered a probationary appointment. On 1 January 1975 his appointment became permanent. During the course of his employment as a Field Service Security Officer, he was promoted to the FS-3 level on 1 June 1970, and to the FS-4 level on 1 April 1976. On 1 January 1980, he was granted a special post allowance to the FS-5 level. On 11 March 1981 his functional title changed to Field Service Officer, Procurement Assistant. From 1 November 1981, he was promoted to the FS-5 level.

In 1981, the Applicant sat for the competitive examination for promotion from the General Service to the Professional category, instituted by General Assembly resolution 33/143 of 20 December 1978, and was successful. In a cable dated 29 January 1982, the Secretary of the Central Examinations Board informed the Applicant that he had passed the competitive exam and asked him to indicate to which one of three professional posts at three different duty stations, he wished to be promoted. She requested that the Applicant make his choice within less than 24 hours. The Applicant

did so without knowing at the time what his emoluments would be. In fact, as set below, he received erroneous calculations of his emoluments on 18 March 1982 and corrected ones, on 18 June 1982 only. In a letter dated 8 February 1982, the Assistant Secretary-General for Personnel Services, OPS, informed the Applicant that his promotion would be implemented upon his assignment to the post of Social Affairs Officer in the Division of Narcotic Drugs, at the United Nations Office in Vienna.

According to a note for the record from the Officer-in-Charge of Staff Services, OPS, on 17 February 1982, the Applicant inquired by telephone about certain details concerning the implementation of his promotion, namely the effective date of the promotion, the date on which he should report to the new duty station and the determination of his level upon promotion. In a reply dated 25 February 1982, the Officer-in-Charge of Staff Services, OPS, notified him that his promotion would be implemented from the first month on which he took up his duties at Vienna and that she was sending by pouch to UNTSO the "COMPLETE GUIDELINES" on the implementation of the competitive examination.

In a cable dated 8 March 1982, a Personnel Officer at UNIDO, Vienna, asked the Personnel Officer in New York to cable the level and step which the Applicant had been offered. In a reply dated 17 March 1982, the Personnel Officer at Headquarters stated that the "CONVERSION FROM FS [FIELD SERVICE] TO PROFESSIONAL CATEGORY YET TO BE CALCULATED BUT AS AN FS FIVE HE WILL GO TO P TWO".

On 31 March 1982, the Personnel Officer sent to the Chief, Personnel Administration Section, UNIDO, calculations dated 18 March 1982, showing the Applicant's emoluments upon his conversion from the Field Service to the Professional category and his promotion to the P-2, step IV level. The methodology used to determine these emoluments was as follows:

- The Office of Personnel Services established that a P-2, step III level base salary corresponded to the Applicant's net base salary at the FS-5, step III level;

- The Applicant's total net remuneration at the FS-5, step III level at Vienna was to be \$US 33,913.12. This sum included base salary plus a Monthly Mission Allowance (MMA). (The MMA consists of a variable element equivalent to post adjustment and an

invariable element which has been viewed historically as corresponding to a combination of the assignment allowance and an amount reflecting the character of the work performed by Field Service Staff);

- The total net remuneration at the P-2, step III level, which was taken to determine the level and step of conversion, with the inclusion of an assignment allowance, to be discontinued later, was of \$US 32,491.92;

- The difference between the total net remuneration at the FS-5, step III level and the total net remuneration at the P-2, step III level established the amount of a personal transitional allowance to which the Applicant was entitled upon his promotion. The Office of Personnel Services stated that in view of staff rule 103.9(i), the Applicant was entitled to one additional step at the P-2 level - i.e. P-2, step IV - and that the personal transitional allowance would disappear through salary increments.

This methodology was based on the contents of an unpublished memorandum dated 15 December 1977 from the Assistant Secretary-General for Personnel Services to the Assistant Secretary-General for General Services. This memorandum, which set forth "Norms and Procedures for conversion of Field Service officers to the Professional category" modified a prior 1974 memorandum proposing a methodology now advocated by the Applicant and which, though not officially adopted, had been followed in the past.

On 5 May 1982, the Applicant sought clarification of his entitlements, since his net emoluments after his promotion were lower than what they would have been had he been assigned to Vienna as a Field Service Officer at the F-5, step III level. He also raised the question whether it "would not be fairer" to adjust the difference between post adjustment and Monthly Mission Allowance by granting additional salary scale steps rather than by granting a personal transitional allowance whose effect might be to "freeze" his salary for several years.

On 19 June 1982, the Personnel Officer at Headquarters acknowledged there had been an error in the computation of the Applicant's emoluments and forwarded new calculations on a sheet dated 18 June 1982. The computation of the Applicant's remuneration upon promotion was effected in figures as follows:

"REVISED

18 June 1982

COMPUTATION OF LEVEL AND STEP UPON CONVERSION FROM
FIELD SERVICE TO PROFESSIONAL CATEGORY

Effective 1 March 1982

(all figures in annual net terms and US \$ (1) unless
stated otherwise)
(next increment date July 1982)

1.	Present Base Salary (D/) at FS-level 5 step III	20,050.00
2.	Nearest Base Salary (D/) at Professional level P2 step III (which will determine level and step of conversion)	20,287.21
3.	Total net remuneration at FS level:	
	Net Base salary:	20,050.00
a x b = (c) + d = (1155.26) x e = f +	Monthly Mission Allowance ² :	13,863.12
	+ Language Allowance (if any):	not applicable
	Total	33,913.12
4.	Total net remuneration at level and step of conversion:	
	Net Base salary:	20,287.21
g x b =	+ Post adjustment ² : P2, step III	10,204.71
	+ Assignment Allowance ²⁾³⁾ :	1,000.00
	Total	31,491.92
5.	Amount of Personal Transitional Allowance (if any)	
	(item 3) :	33,913.12
	- (item 4) :	31,491.92
	Total (PTA)	2,421.20

Note: 1) Excluding dependency or other payments that are identical for both categories.

2) Based on rates applicable to receiving office (if there is a change of duty station) Jerusalem to Vienna

3) To be included even if staff member is given removal in lieu of assignment allowance.

a = Monthly Mission Allowance = 15.18

b = Multiplier = 57 Vienna

c = Monthly salary 865.26

d = Invariable element = 290

e = 12 months

f = Annual salary

g = post adjustment = 179.03

PROMOTION

In view of staff rule 103.9(i) one step will have to be added to the salary after conversion, with the following result:

1)	Net D base salary at P2/IV:	20,832.16
	Assignment Allowance: ^{1/}	1,000.00
	Post Adjustment: (P2/IV) g x b ^{2/}	10,481.16
	Subtotal	32,313.32
2)	Personal Transitional Allowance: (see Part I)	<u>2,421.20</u>
3)	Total net pay following promotion:	34,734.52

The Personal Transitional Allowance will disappear through salary increments.

Note. ^{1/} The Assignment Allowance will be discontinued upon Mr. Walsh's actual move since he will be entitled to full removal of personal effects. (emphasis added)

^{2/} g = 183.88
b = 57 = Vienna"

* * * * *

According to this methodology, an assignment allowance of \$1,000 was included in the computations. However, since no assignment allowance would in fact be payable to the Applicant, the sum of \$US 33,734.52 was lower by \$US 178.00 than the Applicant's previous total remuneration before promotion. The Personnel Officer also stated in his memorandum of transmission:

"In his letter Mr. Walsh queried the procedure of computation of level and step upon conversion from Field Service to Professional category. I can only point out that the computation form was drawn up and agreed upon by officers from the Field Operations Division, the Office of Personnel Services and the Office of Financial Services. The same form has been used in the conversion of all Field Service Officers to the Professional category including those successful in the first competitive exam".

In a cable dated 21 July 1982, the Chief, Personnel Services, UNIDO, asked why an assignment allowance had been included in the calculation if the Applicant would not in fact receive an assignment

allowance. In a reply dated 23 July 1982, the Personnel Officer stated that he could not "explain conceptual reasons for the decision", and if he wished further information he should write to the Office of Financial Services.

In a memorandum dated 18 August 1982 the Officer-in-charge, Salaries, Allowances and Insurance Section, Office of Financial Services (OFS), explained to the Chief, Personnel Administration Section, UNIDO, the reasons for including an assignment allowance in the computation of remuneration in cases of conversion from the Field Service category to the Professional category. He concluded as follows:

"... I take note of the fact that, as a result of the conversion, Mr. Walsh will have a slightly lower take home pay as he is not entitled to an assignment allowance. You will appreciate however, that this cannot be looked into in isolation but must be related to the fact that he has an entitlement to removal costs and, in the long run, to the benefits he may derive from the possibility of a longer career advancement in the Professional category".

In a memorandum dated 10 September 1982, the Personnel Officer, Personnel Administration Section, Personnel Service, UNIDO, explained to the Applicant the rationale for the inclusion of an assignment allowance in the calculation of his emoluments and concluded as follows:

"6. While I am sympathetic to your request for correction of the computation in order to eliminate any financial loss, I can assure you that the computation takes into account the requirements of staff rule 103.9(i) by adding one step in the P-2 level (i.e. step IV) when establishing your total net remuneration following promotion ...".

On 7 October 1982, the Applicant requested that exceptional consideration be given to his receiving an assignment allowance in lieu of full household removal costs since "life in peace-keeping missions was hardly conducive to the establishment of a household worthy of removal to Europe". On 9 May 1983, his request was rejected. On 8 July 1983, the Applicant asked the Secretary-General to review the administrative decision taken concerning the level of his emoluments upon promotion, emoluments which had been reduced by \$US 178.60 per year. Not having received a reply from the

Secretary-General, on 10 February 1984, he lodged an appeal with the Joint Appeals Board. The JAB adopted its report on 1 February 1985. Its unanimous recommendations read as follows:

"Recommendations

The Board recommends that:

- (a) As an exception, and in view of the particular circumstances which the Appellant has advanced in support of his request for an Assignment Allowance in lieu of removal benefits, which are summarized in paragraph ..., above, the Appellant be granted an Assignment Allowance;
- (b) All other pleas of the Applicant be rejected;
- (c) Steps be taken within the appropriate administrative and staff/management organs to devise, implement and publicize a coherent policy and methodology which can be used system-wide and in all circumstances for determining the level, step and remuneration of Field Service staff members who are promoted to the Professional category.

..."

On 15 July 1985, the Secretary-General informed the Applicant that he had taken note of the Board's report, and in the light of the Board's report had decided to grant him "under staff rule 111.2(b) Assignment Allowance as an exception to staff rule 103.22(a) and (b) to take no further action in [the] case".

On 10 April 1986, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The methodology used by the Respondent to calculate the Applicant's emoluments has no basis in the Staff Regulations and Rules nor in other guidelines which have been given to the staff, and conflicts with Judgement No. 175 of the United Nations Administrative Tribunal.

2. The Applicant's MMA was also "salary" and should be given equal treatment in the calculations by the Respondent in order that the Applicant receives immediate financial recognition of his promotion and, more importantly, that the benefits of that recognition should continue throughout his career.

3. Since the Applicant was already at the FS-5 level,

equivalent to the P-2 level, any logical or meaningful promotion would have to be to the P-3 level.

4. The Personal Transitional Allowance is not based upon any rule to which the Applicant or a Personnel Officer can refer. It is therefore inaccurate and its equitable application cannot be checked or monitored.

5. Since the methodology used by the Respondent effectively "freezes" the Applicant's emoluments for several years, its result does not constitute a 'promotion' in real terms.

Whereas the Respondent's principal contentions are:

1. The Applicant's promotion from FS-5 to P-2 was consistent with ST/AI/279 which established conditions for movement to the Professional category as a result of the 1981 Competitive Examination.

2. The calculation of the Applicant's step within the P-2 grade was consistent with staff rule 103.9 and was calculated in accordance with established methodology.

The Tribunal, having deliberated from 13 October 1987 to 9 November 1987, now pronounces the following judgement:

I. The issue before the Tribunal, as recognized by the Respondent in his written and oral submissions, is whether the Applicant's promotion from FS-5 to P-2 under General Assembly resolution 33/143 of 20 November 1978, was consistent with ST/AI/279 and with staff rule 103.9.

II. The relevant portion of ST/AI/279 is paragraph 17 which provides:

"Successful candidates who are at the top level of the local General Service salary scales or at the FS-5 level will be recommended for promotion to P-2. Those below these levels will be recommended for promotion to P-1. The salary step at the P-1 or P-2 level will be determined on the basis of staff rule 103.9 on salary policy in promotions. At duty stations where a General Service staff member's emoluments in local currency, when computed for promotion purposes under that rule, exceed the ceiling step of P-1 or P-2, as the case may be, the staff member will be paid a personal transitional allowance in an amount sufficient to meet the requirements of that rule".

III. The question raised by the Applicant is essentially whether the Respondent, in arriving at the salary step of P-2 level for the Applicant under ST/AI/279, properly recognized that the Applicant was being promoted and correctly applied staff rule 103.9 in determining the salary step to which he should be assigned upon being promoted.

IV. Apart from the foregoing, the Tribunal is unaware of any authoritative text that specifically deals with the question how to place Field Service Officers serving at one duty station, being sent on promotion to another as a member of the Professional staff. The Respondent, in determining the Applicant's starting point in the Professional scale at Vienna, seems to rely on an unpublished memorandum of 1977: any reduction in the amount of take-home-pay of the Applicant resulting from the manner of setting the starting point in the scale following the promotion is to be made up by a personal transitional allowance, which in turn is gradually absorbed over the years by annual increments. This may well result, that over several years a staff member would not receive any significant financial benefit from his promotion; this indeed happened to the Applicant.

V. The Respondent has argued that when a person is promoted from one service to another, and/or from one job to another, it is but natural that the terms and conditions of his old service or post cannot be expected to apply or reflect automatically to the new service or post; while in some cases this general principle may be appropriate - as the JAB seems to have concluded in this instance - there are several features in the present case which would call for a modification.

VI. The basic difficulty arises from the structure of the Monthly Mission Allowance (MMA) the Applicant was entitled to as a Field Service Officer and the pattern of allowances he could claim on promotion to the Professional category. The parties have considerably helped the Tribunal to unravel these two systems: as a Field Service Officer, the Applicant could draw several allowances

which remained unaffected by his promotion (e.g. dependency, education grant) but post adjustment for a professional was included in the "variable portion" of a MMA of a Field Service Officer and its "invariable portion" consisted of an assignment allowance (paid to both categories) and of the "remainder after subtracting assignment allowance". After the JAB's recommendation regarding assignment allowance had been accepted by the Respondent, the point at issue is whether the "remainder after subtracting assignment allowance" should be taken into account in determining at what step in the P-2 level the Applicant should be placed on promotion.

VII. In resolving this question, the Tribunal believes it appropriate to view the results of the Respondent's actions of which the Applicant complains. The Applicant sees the calculation made by the Respondent as resulting in a reduction of \$178.60 per year in his emoluments while he, on being promoted, could expect some financial benefit. If a comparison is made of his remuneration in Vienna, where he was posted upon promotion to the P-2 level, with what his remuneration would have been there as an FS-5 officer, it is evident that disregarding the \$1000 assignment allowance to which he was held not entitled in consequence of the promotion and which was granted to him only as a matter of special exception in unusual circumstances, but including the personal transitional allowance, about which more will be said below, his "promotion" did indeed result in a reduction of \$178.60 per year. Without the personal transitional allowance, his promotion would have originally meant a reduction of \$2,599.80 per year.

VIII. In order to understand how a promotion can bring about such results, one must turn to the methodology employed by the Respondent in attempting to apply ST/AI/279 and staff rule 103.9. What the Respondent did, was to assume that the Applicant's base salary as an FS-5, step III, amounting to \$20,050 compared most nearly to P-2, step III, amounting to \$20,281.21. In so doing, the Respondent ignored altogether the entire MMA of \$13,863 to which the Applicant, as an FS-5 in Vienna, would have been entitled. To the extent that any portion of the MMA could reasonably be described as reflecting compensation for the nature of the work performed by, and the

qualities required of, Field Service personnel, it would seem that a comparison of net base salaries alone, for the purpose of arriving at the proper P-2 step most nearly comparable to the Applicant's FS-5 position, would be questionable as not being, in fact, a comparison of likes. For, at least a part of the invariable element of the MMA reflects, in the Tribunal's opinion, compensation for the nature of the work performed by, and the qualities required of, Field Service personnel. That part is, as the Applicant contends, the invariable element less the amount of the assignment allowance.

IX. During the oral hearing, there was an assertion by the Respondent that this part of the MMA is related to the Field Service category as a whole, as distinct from the nature of the job of a Field Service Officer. But, as another assertion by the Respondent at the hearing appeared to acknowledge, this was a distinction without a difference. For if it relates to the category as a whole, that can simply mean that it is related to the nature of every job in the category and the qualities required for its performance. In principle, the Tribunal sees no significant difference between the treatment advocated by the Applicant with respect to the invariable element of the MMA, and the treatment of allowances provided in staff rule 103.9 (ii).

X. While therefore the Tribunal can accept the Respondent's assertion that terms and conditions of service and of posts can differ, unless and until a proper review of the problem arising from promotion of FS Officers to the Professional category has been undertaken comprehensively, the balance of the argument favours the Applicant.

XI. Unless the Respondent's failure to take the invariable element of the MMA less the assignment allowance into account, in determining the comparable P-2 step rate is otherwise justified by a reasonable interpretation of ST/AI/279 or staff rule 103.9, the Respondent's action with respect to him would appear unacceptable. The Tribunal turns, now, to the justifications advanced by the Respondent.

XII. First, the Respondent relies on the last sentence of paragraph 17 of ST/AI/279 as justifying the methods used by him, and in particular the procedure whereby the Personal Transitional Allowance would disappear after the Applicant's promotion. As indicated above (paragraph II) the last sentence of paragraph 17 states:

"At duty stations where a General Service staff member's emoluments in local currency, when computed for promotion purposes under that rule, exceed the ceiling step of P-1 or P-2, as the case may be, the staff member will be paid a personal transitional allowance in an amount sufficient to meet the requirements of that rule".

It should be observed that read literally, this sentence has no application to Field Service employees, but applies only to General Service employees. In addition, it applies only when the GS employees' total emoluments exceed the ceiling step of P-1 or P-2 as the case may be. Thus, even if this provision applied to Field Service Officers, it would have no application here because the ceiling step is in no event exceeded in this case. In any event the provision leaves unclear the question of how long the Personal Transitional Allowance is to be paid and how, if at all, it is to be phased out.

XIII. The Tribunal notes in this connection that under the methodology applied by the Respondent in the Applicant's case, the Personal Transitional Allowance turned out to be close in amount to what he would have received had the methodology he advocated been followed. But, the Personal Transitional Allowance for the Applicant would have been phased out over approximately five years by annual reductions equivalent to the normal step increases he could have expected to receive over that period. In effect, the Applicant, having succeeded in a competitive examination, and having earned a promotion was being obliged to forego the normal annual increases which he would have received had he remained an FS-5. In the Applicant's situation, this had an especially harmful effect because he was to reach retirement age around the end of that period, and thus, his pension entitlement would be adversely affected. Taking all of these circumstances into account, the

Tribunal is unable to accept that such treatment of the Applicant can reasonably be described as a "promotion", either within the common understanding of that term, or as was contemplated by the General Assembly when it established the competitive examination procedure, or as is contemplated under ST/AI/279 or staff rule 103.9. The concept of a promotion, reasonably interpreted, could not normally mean either involuntary acceptance of a reduction in base-pay or a requirement that the person promoted be obliged to sacrifice future increases for as long as five years. As the Tribunal pointed out in its Judgement No. 175, "... the obvious purpose of staff rule 103.9 (i) is to ensure that a staff member shall not suffer financially by reason of a promotion" (Garnett, 1973, para. III).

XIV. The Respondent seeks to justify his methodology as binding upon the Applicant because it was purportedly (though not precisely) described in a memorandum dated 15 December 1977 from OPS to OGS and accepted by the latter in January 1978. The difficulty with this, in the Tribunal's opinion, is that the memorandum was never published, and not even brought to the attention of the Applicant before he accepted the promotion. In order to meet the basic elements of due process, a staff member cannot be bound by an unofficial, unpublished memorandum, particularly when he has no notice of it and of its consequences. The Tribunal's jurisprudence regarding the ineffectiveness of unpublished rules that would adversely affect staff is consistent with this view, e.g. Judgement No. 390, Walter (1987). In the present case, there is no evidence that the Applicant was made aware of, much less that he agreed to, the Administration's methodology when he accepted his promotion.

XV. The Respondent also contends that, since the 1974 OPS methodology on which the Applicant relies was also unpublished, it should not constitute a source of authority for the Applicant's argument that the invariable element of the MMA less the assignment allowance should be taken into account in arriving at the proper step at the P-2 level, as was done on an exceptional basis in an earlier case of conversion of a Field Service Officer, Mr. Thomas McAndrew, to the Professional category. The Tribunal does not view

any earlier cases of this nature as precedents. At most, they indicate that, at least at one point in time, the Respondent recognized the reasonableness of the methodology advocated by the Applicant. Thus, when the Applicant entered the Professional category as a result of promotion following a competitive examination, he could at least have expected treatment not less favourable than that accorded Mr. McAndrew. The Tribunal has, however, reached the conclusion that for the reasons set forth in this judgement, the methodology applied by the Respondent in the Applicant's circumstances does not represent a reasonable or permissible interpretation of ST/A1/279 or staff rule 103.9.

XVI. The Tribunal strongly endorses the view of the JAB that "steps be taken within the appropriate administrative and staff/management organs to devise, implement and publicize a coherent policy and methodology which can be used system-wide and in all circumstances for determining the level, step and remuneration of Field Service staff members who are promoted to the Professional category".

XVII. Accordingly, the Tribunal orders:

(a) The rescinding of the administrative decision of 18 March 1982 fixing the Applicant's salaries and allowances;

(b) That the Applicant's emoluments effective 1 March 1982 should be recalculated by adding the difference between the invariable element of the Field Service MMA and the Professional category assignment allowance to his net base Field Service salary and then by granting him the net base salary in the Professional category nearest to the resulting amount, plus one step as required by staff rule 103.9, and that the Applicant's subsequent emoluments should be recalculated accordingly with an appropriate retroactive adjustment paid to him.

XVIII. The Tribunal fixes the amount of compensation to be paid to the Applicant, should the Respondent decide to exercise the option given him under article 9.1 of the Statute of the Tribunal, at a sum equal to \$US 30,000.

XIX. In view of this judgement, the Applicant's plea for promotion to the P-3 level need not be considered.

XX. All other pleas are rejected.

(Signatures)

Samar SEN
President

Arnold KEAN
Vice-President

Roger PINTO
Member

New York, 9 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary