ADMINISTRATIVE TRIBUNAL

Judgement No. 408

Case No. 399: RIGOULET Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Roger Pinto, Vice-President; Mr. Ahmed Osman;

Whereas, on 20 June 1986, Jacqueline Rigoulet, a former staff member of the International Trade Centre (ITC), United Nations Conference on Trade and Development (UNCTAD), General Agreement on Tariffs and Trade (GATT), hereinafter referred to as ITC-UNCTAD/GATT, filed an application, the pleas of which read as follows:

"SECTION II: PLEAS

(a) Preliminary measures

(i) I request the Administrative Tribunal to order the Respondent to submit to it the original of my registered letter in which I repeated my request to the Tribunal that it should authorize me to present my case to it directly, in accordance with the provisions of article 7 of its Statute;

(ii) I request the Administrative Tribunal to hear the representatives of the Secretary-General of the United Nations and the Executive Director of the International Trade Centre UNCTAD/GATT, in order to determine which of their staff services was responsible for taking a decision on the implementation of the provisions on the repatriation grant;

(iii) I request the Tribunal to request the International Trade Centre UNCTAD/GATT to submit the original of the letter from Mr. Helmut Debatin [Under-Secretary-General], dated 23 April 1981, to Mr. P. C. Alexander [...], on the delegation of authority by the Secretary-General of the United Nations to

the Executive Director of ITC-UNCTAD/GATT in matters relating to personnel administration;

(b) Decision contested

I request the Administrative Tribunal to rescind the decision denying me entitlement to the repatriation grant...;

(c) Respondent's obligations

I request the Administrative Tribunal to find that the repatriation grant should be payable to me, in accordance with the provisions of the United Nations Staff Rules and Regulations and consistent interpretation thereof. I further request the Administrative Tribunal to order the Respondent to pay me the amount of the repatriation grant, in Swiss francs at the official United Nations exchange rate prevailing in June 1985, corresponding to 15 (fifteen) weeks of gross salary, as specified in annex IV of the Staff Rules and Regulations, plus the interest that would have accrued if the amount in question had been invested at an annual rate of return of 4 per cent in June 1985 until the effective date of payment."

Whereas, on 16 October 1986, the Respondent filed his answer, in which he agreed that the application should be submitted directly to the Administrative Tribunal;

Whereas, on 19 November 1986, the Applicant filed her written observations;

Whereas, on 27 March 1987, the President of the Tribunal decided that there would be no oral proceedings in this case;

Whereas, on 6 May 1987, the Tribunal asked the Respondent a number of questions, to which he replied on 13 May 1987 and 20 May 1987;

Whereas, in a memorandum dated 25 May 1987, the Tribunal asked the Consultative Committee on Administrative Questions a number of questions, to which the Committee replied on 2 June 1987;

Whereas, on 3 June 1987, the Tribunal decided to defer consideration of this case to its autumn session;

Whereas, in a memorandum dated 6 August 1987, the President of the Tribunal, in implementation of article 10 of its Rules, asked the Respondent a number of questions, to which he replied on 20 August 1987;

Whereas the facts in the case are as follows:

The Applicant, who is of French nationality, entered the service of the United Nations on 3 May 1965. She was recruited on a two-month fixed-term contract at the G-4 level for the Interim Committee of the International Trade Organization, (ICITO). She was assigned to the International Trade Centre, ICITO, GATT. Her contract was extended for further fixed-terms and converted into a probationary contract on 1 November 1966 and a permanent contract on 1 November 1967.

On 1 January 1974, the Applicant was promoted to the P-1 level and acquired the status of an internationally recruited staff member. The "place of recruitment" given on the Personnel Action form concerning this promotion was Reignier (France).

On 28 February 1975, the Applicant was seconded to the United Nations Environment Programme at Nairobi (Kenya). She returned to headquarters on 1 April 1977. She was employed at the headquarters of ITC-UNCTAD/GATT in Geneva until 31 May 1985, the date of her separation. From 1965 until the date of her separation, the Applicant lived at Collonges-sous-Salève in France.

While making preparations for her retirement, the Applicant provided the personnel office of the ITC-UNCTAD/GATT, with papers certifying that she would reside at Strasbourg from 1 July 1985 onwards. On 15 May 1985, the Division of Personnel Management of ITC-UNCTAD/GATT filled out a Travel Authorization form indicating that the "purpose of travel" was "repatriation travel". Moreover, on the same day the ITC Division of Personnel Management filled out a P.35 administrative form authorizing payment of the repatriation grant. That document was transmitted to the Chief, Payments Section, Finance Service, United Nations Office at Geneva (UNOG), which requested information on the matter from the Chief, Personnel Service. In a memorandum dated 22 July 1985, the Chief, Personnel Administration Section, UNOG, gave the following reply:

> "...
>
> A French national, working in Geneva, who lived in France all the time until the age of retirement is not entitled to payment of repatriation grant, even if he/she provides evidence of relocation for changing residence. In this connection I draw your attention to the first sentence of staff rule 109.5 (i) which reads as follows: 'No payment shall be made to ... any staff member who is residing at the

time of separation in his or her home country while performing official duties.' ..."

On 23 July 1985, the Chief, Payments Section, Finance Service, UNOG, transmitted a copy of the memorandum in question to the Chief, Staff Administration Section, ITC, with the following request:

"I would appreciate it if you could amend Mrs. J. Rigoulet's P.35 accordingly."

In a letter dated 23 September 1985, the Applicant requested the Chief, Personnel Service, UNOG, to pay her the repatriation grant and to explain why the payment in question had not yet been made. In a reply dated 3 October 1985, the Chief, Personnel Service, UNOG, made the following comments:

"...

In that connection, I should like to draw your attention to the fact that the requirements for payment of the grant naturally apply only to staff members who are eligible for the grant.

United Nations staff rule 109.5 (i) specifies that no payments shall be made to any staff member who is residing at the time of separation in his or her home country while performing official duties.

Since you are of French nationality and were residing in France at the time of separation, you do not fall within the category of staff members who are entitled to the repatriation grant.

..."

Following a further exchange of letters between the Applicant and the Chief, Personnel Service, UNOG, on 16 November 1985, the Applicant sent a letter to the Secretary-General requesting a review of the administrative decision adopted by the Chief, Personnel Service, UNOG, on 3 October 1985.

The Chief of the Administrative Review Unit of the Office of Personnel Services at United Nations Headquarters acknowledged receipt of that letter on 4 December 1985. In a letter dated 7 January 1986, the Assistant Secretary-General for Personnel

Services confirmed the decision denying the Applicant entitlement to the repatriation grant, stating the following:

> "...
>
> Since its inception, the payment of a repatriation grant has been limited to 'staff members with respect to whom the Organization is obligated to undertake repatriation to the home country.' Staff rule 109.5 (i) specifically excludes 'any staff member who is residing at the time of separation in his or her home country while performing official duties.' The rule has been consistently applied by the United Nations over the years at all duty stations. You were residing in France, your home country, at the time of your separation. Therefore, I can find no grounds on which to reverse the decision you contest."

On 4 February 1986, the Applicant requested the Secretary-General's authorization to submit the dispute directly to the Administrative Tribunal.

In a registered letter dated 23 March 1986, the Applicant repeated her request, indicating that if she had not received a reply from the Secretary-General by 1 April 1986 she would consider that she had in effect received the authorization in question.

On 20 June 1986, the Applicant filed with the Tribunal the above-mentioned application.

Whereas the Applicant's principal contentions are:

1. The Respondent is obliged to repatriate the Applicant, notwithstanding the fact that her place of home leave was not established when she was promoted to the Professional category. Since she was internationally recruited at Reignier (France) for employment in Geneva (Switzerland), the United Nations had an obligation to return her at its own expense, upon separation, to Reignier, which is located outside the country of her duty station.

2. The Respondent's construction of staff rule 109.5 (i) discriminates against staff members of French nationality who have freely chosen to reside in their own country because geographical factors are conducive to such a course of action.

3. The special status of Geneva cannot justify application of a staff rule resulting in inequitable and discriminatory treatment of nationals of one and the same country.

Whereas the Respondent's principal contentions are:

1. Under the Staff Rules, no payments shall be made to any staff member residing at the time of separation in his or her home country.

2. The Applicant cannot claim that she had acquired a greater right to the repatriation grant as a result of erroneous information set forth in a summary of statements made at a meeting on preparation for retirement.

The Tribunal, having deliberated from 6 May to 5 June 1987 in Geneva and from 13 October to 13 November 1987 in New York, now pronounces the following judgement:

I. The Applicant is chiefly requesting the Tribunal to rescind the Respondent's decision denying her entitlement to the repatriation grant.

In order to pass judgement on this request, it is necessary, as the Applicant rightly indicated in her written observations, to consider the United Nations Staff Rules as a whole. The provisions governing effective payment of the repatriation grant to a given staff member are set forth in the following texts:

- Staff regulation 9.4;
- Annex IV to the Regulations;
- Staff rule 109.5.

Consideration of these texts as a whole, supported by a detailed analysis, enables the Tribunal to identify three prerequisites for payment of a repatriation grant to a staff member, taking account of all relevant factors.

II. These conditions are as follows:

First condition

Firstly, the staff member in question must be in the category of staff members who are eligible for the repatriation grant. Under annex IV, the staff members in question are those whom the Organization is obligated to repatriate.

III. Second condition

The fact that under annex IV a staff member is among those whom the Organization is obligated to repatriate does not mean that he or she is automatically entitled to the grant.

In order to be eligible for the grant, a staff member must be able legitimately to exercise the right in question by meeting the relevant requirements set forth in staff rule 109.5, which are as follows:

(1) Rule 109.5(d) specifies, inter alia, that payment of the repatriation grant shall be subject to the provision by the former staff member of evidence of relocation away from the country of the last duty station.

(2) Rule 109.5(e) specifies, inter alia, that entitlement to repatriation grant shall cease if no claim for payment of the grant has been submitted within two years after the effective date of separation.

The foregoing thus points to an important conclusion. There is not an unbreakable link between a staff member's entitlement to be repatriated by the Organization and effective payment of the repatriation grant. In fact, a staff member whom the Organization is obligated to repatriate may well not receive the grant if he or she does not meet the requirements for legitimate exercise of the entitlement in question.

IV. Third condition

Whereas it was possible to demonstrate on the basis of the second condition that entitlement to the repatriation grant is not automatic, on the basis of the third condition it may be concluded that payment of the repatriation grant is not an absolute right.

The existence of this third condition is advantageous in that it facilitates implementation of the provisions concerning the grant, while avoiding unnecessary implementation difficulties.

It should also be noted that this third condition is set forth in annex IV to the Staff Regulations. The text of annex IV begins with the following sentence: "In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate" (emphasis added by the Tribunal).

The Tribunal draws attention to the words "in principle"; the choice of these words and their inclusion in the text in question is

significant. These words indicate that payment of the grant to staff members whom the Organization is obligated to repatriate is not an absolute right, which means that the general principle of payment of the repatriation grant to those entitled to it is subject to exceptions in certain circumstances. In other words, payment of the grant to a staff member otherwise entitled to it who has met the requirements for legitimate exercise of the right in question may be withheld in specific cases laid down in the relevant provisions, for reasons recognized by the legislative authority as grounds for such exceptions. It is now a question of establishing what the exceptions are.

V. The first exception to the general rule in question is already laid down in annex IV to the Staff Regulations. After having specified that, in principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate, annex IV provides for a first exception to that principle. The text states that the repatriation grant shall not, however, be paid to a staff member who is summarily dismissed.

This exception provided for in annex IV is followed by other exceptions laid down in staff rule 109.5.

It is true that exceptions should normally be applied restrictively. One might be tempted to say that further exceptions cannot simply be added to the Staff Rules, without the special authorization of the Staff Regulations. In the instance in question, the Secretary-General was authorized by staff regulation 9.4 to establish a scheme for the payment of repatriation grants under the conditions specified in annex IV to the Regulations. It may be noted that annex IV specifically authorizes the Secretary-General to determine detailed conditions and definitions relating to eligibility and requisite evidence of relocation.

VI. On the strength of this statutory authorization, the Secretary-General made provision in the Staff Rules for further exceptions to effective payment of the grant to staff members who normally should have received it, since he deemed such exceptions essential. The third prerequisite for effective payment of the

grant to a given staff member may thus be set forth as follows: the absence of a legal obstacle provided for in the provisions in force preventing entitlement to the grant from producing its anticipated effect, namely, payment of the grant.

VII. The cases in which there is a legal obstacle to payment of the grant may be identified on the basis of the text of annex IV to the Regulations and of staff rule 109.5. The cases in question are:

(1) Summary dismissal of a staff member (annex IV to the Staff Regulations);

(2) Local recruits, who are dealt with in staff rule 104.6;

(3) A staff member who abandons his or her post (staff rule 109.5 (i));

(4) The death of an eligible staff member in the absence of a surviving spouse or children whom the Organization is obligated to repatriate (rule 109.5 (m));

The justification for this exception is in keeping with the purpose of the repatriation grant: payment of the grant is precluded simply because there is nobody to repatriate;

(5) The fifth case, which is relevant to the case under consideration, concerns any staff member who is residing at the time of separation in his or her home country while performing official duties.

VIII. The justification for this exception is as simple as it is convincing. There is no reason to pay a repatriation grant to a staff member who is residing at the time of separation in his or her home country.

The Applicant contends that the content of the text in question concerns only a staff member who is both residing and performing official duties in his or her home country. According to the Applicant, any staff member performing official duties in a country other than his or her home country but residing in his or her home country is eligible for the repatriation grant.

The Tribunal believes that the wording chosen by the legislative authority for the text in question covers both situations, because the justification for withholding the grant is exactly the same.

There is no reason to pay a repatriation grant to a staff member who is already residing at the time of separation in his or her home country.

IX. If the legislative authority had wished to depart from that logic in the text, it would have worded the text differently and thus faithfully reflected its intention in that connection.

It did not do so because it wished to respect the logic of the text in any situation where a staff member is residing at the time of separation in his or her home country, regardless of whether he or she is performing official duties in that country or elsewhere.

X. In view of the foregoing, the Applicant, who is of French nationality and who was residing at Collonges-sous-Salève in France at the time of separation while performing official duties in Geneva, is not eligible to receive the repatriation grant under rule 109.5 (i). Under the Staff Rules, residence in the home country at the time of separation is a legal obstacle to payment of the grant in that case.

XI. The Tribunal notes here that there are no grounds for believing that French staff members working and residing in Geneva are being given more favourable treatment than French staff members working in Geneva and residing in France. The two categories of French staff members do not have the same legal status under the provisions in force.

XII. The Tribunal is aware that in Geneva international organizations adopt different rules or follow different practices in respect of payment of the repatriation grant in similar cases. However, the Tribunal is obliged to apply to United Nations staff members the provisions of the Staff Regulations and Rules that are in force.

It is not for the Tribunal to establish uniform practice in respect of payment of the repatriation grant.

XIII. The Applicant cited geographical factors relating to Geneva's location in respect of the adjacent French territory and the implications that such factors might have for payment of the repatriation grant. In the Tribunal's view, such factors are of an extrajudicial nature. The Tribunal could take them into account only if they were to become the subject of a legal norm forming part of the law applicable by the Tribunal in matters relating to the payment of the repatriation grant; this is not the case.

XIV. The Tribunal concludes that, in refusing to pay the repatriation grant to the Applicant, the Respondent has not violated either the Staff Regulations or the Staff Rules.

XV. In view of the special circumstances in this case, the Tribunal notes the following:

(1) The Applicant worked in Geneva, where staff members of other international organizations did receive the repatriation grant despite the fact that they were in the same position as she was regarding their country of residence.

(2) Had the Applicant had the slightest suspicion that the repatriation grant would not be paid to her, she could easily have resided in Geneva and thus have avoided being deprived of the grant.

She continued to live at Collonges-sous-Salève because it suited her to do so and because it was not at all clear to her that the United Nations was going to refuse to pay her the repatriation grant.

It is true that the Tribunal has always believed that staff members, particularly those who have been employed by the United Nations for a long time, should be familiar with the rules governing their terms of appointment. They cannot plead ignorance of the rules in question in order to support their contentions.

However, in view of the special circumstances in which the Applicant found herself, the Tribunal considers, without creating a precedent, that the Applicant in this case deserves compensation in an amount of $US 2,000.

XVI. On all these grounds, without prejudice to what was decided in paragraph XV, the Tribunal rejects the application concerning

payment of the repatriation grant and orders the Respondent to pay the Applicant the amount of $US 2,000.

(Signatures)

Samar SEN
President

Ahmed OSMAN
Member

New York, 13 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary

DISSENTING OPINION - MR. ROGER PINTO

I. Contrary to the majority of the members of the Tribunal, I consider that the Applicant is entitled to the repatriation grant by virtue of the applicable texts.

II. The Applicant, who is of French nationality and was born in Strasbourg (Haut-Rhin), entered the service of the United Nations on 3 May 1965. She served in Nairobi, Kenya, from 1975 to 1977. She separated from service on 31 May 1985. From 1977, her duty station had been the United Nations Office at Geneva. During that period she resided at Collonges-sous-Salève, in France. When preparing for retirement, she stated that she would spend her retirement in Strasbourg and claimed the repatriation grant as provided for in staff rule 109.5 (i). The grant was refused.

III. The Respondent's refusal is based exclusively on interpretation of the texts relating to the "repatriation grant". Staff rule 109.5 (i) stipulates:

> "No payments shall be made to ... any staff member who is residing at the time of separation in his or her home country while performing official duties. A staff member who, after service at a duty station outside his or her home country, has served at a duty station within that country may be paid on separation, subject to paragraph (d) above, a full or partial repatriation grant at the discretion of the Secretary-General."

The paragraph (d) referred to states, inter alia:

> "(d)Payment of the repatriation grant shall be subject to the provision by the former staff member of evidence of relocation away from the country of the last duty station."

Annex IV to the Staff Regulations states:

> "In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate. ... Staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station" (my emphasis).

IV. These two texts do not make entitlement to the repatriation grant subject to any nationality condition. They emphasize the importance attached to the duty station. Annex IV to the Staff Regulations excludes from entitlement to the repatriation grant only staff members who continue to reside in the country of their duty station. However, it does not expressly provide for all the possible choices open to staff members residing outside the country of their duty station. for example, a staff member residing outside the country of his duty station may elect to retire in that duty station or to retire in his country of residence either without changing his place of residence or moving to another part of the country.

V. The interpretation of these texts has given rise to certain difficulties in respect of United Nations staff members of French nationality serving in Geneva and residing in the suburbs of Geneva, in French territory.

VI. In 1969, the question was settled in the WMO Secretariat following a request submitted by the Staff Association, which inquired whether "French nationals in the Professional Category, residing in the area within the 25 km radius around Geneva, are entitled to home leave if they were recruited by the Organization in other parts of France" (memorandum of 17 June 1969; document provided, pursuant to questions raised by the Tribunal, by the Respondent and prepared by Mr. F. Villanueva, Chief, Personnel Service, in Geneva; documents cited below). The Chief of Personnel (C/Pers) of WMO, after examining the situation at the United Nations, the International Labour Office and WHO, observed in his reply:

> "In the case of ITU, whose Staff Rules are virtually identical to those of the United Nations on this point, home leave is nevertheless granted to French nationals who were recruited outside the local radius, even when they reside in the area adjacent to Geneva".

In recommending this solution, the Chief of Personnel added:

> "This solution has the advantage of settling the question of payment of the repatriation grant, which according to WMO staff rule

194.1, is payable to staff members having served for a number of years 'away from [their] home country' ...".

The home country is defined as:

"... the country of home leave entitlement".

On 23 June 1969, the Chief (C/AC) made the following handwritten note on this memorandum of 20 June: "I agree with your conclusions ... because it is the logical and fair solution".

VII. The question of the application of the provisions relating to the repatriation grant to French nationals serving in Geneva but residing in France was subsequently raised by GATT. It was brought up in CCAQ report Co-ordination I.R.1087 of 14 March 1975. The Committee gave the following reply:

"39. It was recognized that whatever the decision on this point in the particular geographical circumstances of Geneva, the result would be arbitrary in one sense or the other. Subject to a reservation by the United Nations, CCAQ agreed that what should be determining was the place of assignment" (emphasis added).

VIII. The CCAQ had explained in a report of 18 December 1974 (CCAQ/S41/R3/Pers) the reasons for that conclusion, which had been adopted by almost all the international organizations based in Geneva:

"14. ... what must be determining is the place of duty and to get into questions of where a staff member actually resides in the Geneva area can only lead to endless paradoxes. For example, it would be totally unrealistic to make a distinction between those who reside in Ferney (within the radius defined as Geneva) and those who reside in Thonon (from which hundreds of French commute daily to Geneva). A practical consideration is the fact that Geneva has virtually no hinterland and increasingly the surrounding French territory will become the bedroom of this city."

On this point the report goes on to say:

"15. It may seem unjustified to pay the grant to a Frenchman actually residing in his own country but is such a person living in Ferney significantly different from one living in Grand Saconnex? Is the Frenchman in Geneva really 'dépaysé'? And if he is from Normandy, is he less 'dépaysé' in Geneva than the Italian from Aosta or the German from Freiburg?

Probably the simplest rule is to make determinations on the basis of the duty station, provided there is an entitlement to travel at date of termination, i.e. the staff member was recruited from outside the local area in the first place."

IX. Furthermore, it appears that the concept of a "local area" of residence adjacent to Geneva including a portion of French territory is applied by the United Nations and by the other international organizations based in Geneva when determining the status of staff recruited in that area. Thus, appendix B to the rules on conditions governing local recruitment (ST/SGB/Staff/Rules/1/Rev.4/Appendix B (Geneva)/Amend.2 May 1978) states:

"Pursuant to staff rules 104.6 and 104.7:

1. A locally recruited official shall be defined as an official in the General Service category who, at the time of the appointment, fulfils either of the following conditions:

(a) (Irrelevant)

(b) Irrespective of nationality, he or she is a resident within a radius of 25 km from the Palais des Nations regardless of the duration of that residence."

Thus, the United Nations sometimes acknowledges that residence in French territory within a radius of 25 km from the Palais des Nations in Geneva must be considered as residence in Switzerland (for the purposes of recruitment), while at other times it does not, and residence within a radius of 25 km from the Palais des Nations is considered as residence outside Switzerland. This attitude reveals a certain lack of logic and leads to an unfair solution rejected by all the other organizations based in Geneva, with the exception of GATT.

X. According to the Respondent, there are 187 staff members serving at Geneva who reside within a radius of 25 km from the Palais who are eligible for the repatriation grant, and 118 staff members of the United Nations and GATT who are in the same situation but who cannot receive the repatriation grant because of the position taken by the United Nations.

XI. The Tribunal has been informed that today only the United Nations and GATT refuse the grant to United Nations staff members of French nationality serving at Geneva and entitled to the repatriation grant but residing in France in the area adjacent to Geneva. This position is justified, according to the Respondent, by the "straightforward application" of staff rule 109.5 (i). The whole question, therefore, is whether this interpretation is correct.

XII. I note that the provision invoked by the Respondent is far from clear. The staff members covered by rule 109.5 (i) are those who are "residing at the time of separation in [their] home country while performing official duties". These are indisputably staff members who, at the time of separation, are residing in their home country. But the expression "while performing official duties" may be read as concerning staff members who perform official duties in their home country. On the basis of this interpretation, the repatriation grant is not payable to staff members who perform official duties and reside in their home country. The Respondent has not expressly commented on the provision in question. He would seem to support a second interpretation of this provision: this would also concern staff members who, while performing official duties in a country other than their home country, reside in that home country.

XIII. If the drafter of this provision intended to refuse the repatriation grant to staff members residing in their home country, whether they are performing official duties there or not, the addition of the expression "while performing official duties" was completely pointless. It would have sufficed to write:

"... any staff member who is residing at the time of separation in his or her home country."

However, according to a consistent rule of interpretation, the provisions to be interpreted must produce a useful effect. In this case, the only useful effect of the expression "while performing official duties" is to deny staff members the repatriation grant if they are residing in their home country where

they are performing official duties, that is, their duty station. Otherwise, the expression in question adds nothing to the meaning of the provision to be interpreted.

XIV. The Respondent, in commenting on annex IV to the Staff Regulations, has clearly seen the difficulty involved in this interpretation. In his answer, he mentions the third sentence in annex IV:

> "Staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station."

The Respondent acknowledges that this third sentence "expressly excludes payment of the grant to staff members who do not relocate outside the country of the duty station". This express and strict exclusion would seem to indicate that staff members who do relocate in a country other than that of the duty station are entitled to the grant. The Respondent rejects this interpretation in the following terms:

> "... this provision [the third sentence of annex IV to the Staff Regulations] does not provide by converse implication that all staff members who relocate outside the country of the duty station are <u>necessarily</u> entitled to the grant" (emphasis by the Tribunal).

The Respondent does not give any further explanation of what he means by "necessarily". I cannot endorse this interpretation. Exclusions must be narrowly interpreted. The provision in question must be limited to cases of exclusion for which it expressly provides. However, it provides only for the case of a staff member who remains in the country of his duty station: he is not entitled to the repatriation grant. Other cases of exclusion cannot be added by interpretation. Annex IV to the Staff Regulations, therefore, does not reinforce the interpretation of rule 109.5 (i) given by the Respondent.

XV. I must then ascertain whether any other elements of rule 109.5 throw any light on the meaning of paragraph (i). The Tribunal notes that the last sentence of paragraph (i) provides for the possibility for a staff member who, after service at a duty station

outside his or her home country, has served at a duty station within that country to be paid a full or partial repatriation grant. Thus, even a staff member serving at a duty station within his or her home country may, on separation, be awarded the grant at the discretion of the Secretary-General.

Paragraph (d) of rule 109.5 provides that payment of the grant shall be subject to the provision by the former staff member of evidence of "relocation away from the country of the last duty station" and evidence that he or she "has established residence in a country other than that of the last duty station". The emphasis is placed on the country of the duty station and not in the country of residence.

XVI. These provisions, combined with the text of annex IV to the Staff Regulations, show that the cumulative, requisite and sufficient conditions which create entitlement to the grant for staff members whom the Administration is obligated to repatriate are:

1. Service at a duty station outside the home country (without prejudice to the final sentence of rule 109.5 (i));

2. Relocation, on separation, away from the country of the duty station; and, this condition being fulfilled;

3. An actual change in the place of residence, wherever it may be, on separation.

XVII. As CCAQ emphasized in its study of 18 December 1974, the determining element must be the place where the staff member performed his duties. This, in my view, is the sense of the applicable provisions. A staff member serving at a duty station outside his home country is entitled to the repatriation grant when he retires outside the country of the duty station - whether it be in his home country or some other country. He must further, as indicated in annex IV, relocate - in other words, move from the residence which he was occupying at the time of separation, without need to specify whether or not this residence is situated in the country of the duty station.

XVIII. It is noted that the wording of the relevant provisions of the Staff Rules of ITU and WMO is similar to that of the United Nations Staff Rules:

"2. Payments of repatriation grants shall be subject to the following conditions and definitions:

...

(a) No payment shall be made to any staff member who is residing at the time of separation in his home country while performing his official duties" (Re. Reg; 97/2/(d)-ITU)

"(b) No payments shall be made ... to any staff member who is residing at the time of separation in his home country while performing his official duties" (rule 194.1 (g) WMO).

However, both these organizations interpret these provisions as applying to staff members residing in their home country where they perform their official duties.

XIX. This interpretation of the applicable texts corresponds to the objective sought through the award of the repatriation grant, namely, to enable the staff member to meet the special costs incurred as a result of relocation: professional or business contacts to be renewed; departure from the residence occupied and obligations resulting therefrom; relocation expenses.

XX. I find that the Applicant fulfils the requisite conditions for payment of the repatriation grant.

That she is a staff member whom the Organization is obligated to repatriate is not in dispute. She has always served at a duty station outside her home country - France - and most recently at Geneva in Switzerland. On separation she relocated from Collonges-sous-Salève (situated within a 25 km radius from the Palais des Nations) to Strasbourg (France). Her repatriation expenses were paid.

XXI. I have noted above the particular characteristics of the French territory surrounding the city of Geneva. The French territory constitutes a kind of hinterland to Geneva and acts as a kind of dormitory for Geneva. A very large number of international

civil servants working in Geneva live in this area for reasons of convenience and housing and because of the lower cost of living. Moreover, Collonges-sous-Salève forms part of a Free Zone, which has international status. As we have seen, Collonges-sous-Salève lies within a 25 km radius from Geneva, and those residing there are considered by the United Nations as residing in Switzerland for purposes of recruitment.

XXII. Apart from the United Nations and GATT, all the other international organizations based in Geneva recognize entitlement to the repatriation grant for their staff members serving in Geneva and residing in nearby French territory who retire outside the country of their duty station. This situation gives rise to discrimination which is difficult to justify vis-à-vis United Nations staff members. Such discrimination is not supported by a reasonable interpretation of the texts applicable to United Nations staff members.

XXIII. This is the interpretation of the applicable texts adopted by all the organizations of the United Nations system based in Geneva, with the exception of the United Nations and GATT.

The Secretary of CCAQ informed the Tribunal of the following:

"1 (a). The organizations based in Geneva, other than the United Nations and GATT, award the repatriation grant to French staff members serving at Geneva, who reside in France and who at the time of their separation relocate to another part of France." (our emphasis)

I therefore conclude that the Applicant is entitled to the repatriation grant.

(Signatures)

Roger PINTO
Vice-President

New York, 13 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary