

ADMINISTRATIVE TRIBUNAL

Judgement No. 422

Case No. 425: SAWHNEY

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Arnold Kean, Vice-President, presiding;  
Mr. Ahmed Osman; Mr. Ioan Voicu;

Whereas, on 14 January 1987, Saroj Bala Sawhney, a former staff member of the United Nations, filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 18 March 1987, the Applicant after making the necessary corrections, again filed an application, the pleas of which read as follows:

"PLEAS

- (a)1. A true copy of the Fixed-Term Contract in question is attached. (...)
2. Letter of 7 September 1980 from the Projects Admin.[istrative] Assistant is attached. (...)
3. A true copy of 'Field Manual, Personnel Administration, Locally Recruited Staff' regarding Separation para b(i) is attached. (...)
4. A true copy of 'Field Manual Personnel Administration, Locally Recruited Staff' regarding Sick Leave is attached. (...)
5. A true copy of the letter dated 8 October 1985 of offer from the Representative of the Secretary-General addressed to my Counsel is attached. (...)

6. A true copy of the cable from my Counsel regarding second offer for settlement from the Representative of the Secretary-General is attached. (...)
  7. A true copy of letter dated 1st April 1986 to the Secretary, JAB [Joint Appeals Board] from my Counsel is attached. (...)
- (b) To rescind the decision of the JAB and that of the Secretary-General.
- (c) The following obligations and their specific performance is requested:
1. The administrative decision arbitrarily taken by the UN/TCD [Technical Co-operation and Development] not to renew my Fixed-Term Contract beyond 31 May 1981 while on sick leave in India.
  2. To pay salary and allowances and other benefits with retrospective effect from 1 June 1981.
  3. To contribute to my Pension Fund, due amounts with retrospective effect from 1 June 1981.
  4. To pay me adequate compensation for the material and moral injuries suffered by me as a direct consequence of the arbitrary decision taken by UN/TCD not to renew my Fixed-Term Appointment beyond 31 May 1981 thereby causing considerable material and financial loss, as well as immeasurable moral injury during the last 6 years.
  5. To pay me adequate compensation for unreasonable delay in the procedures, virtually constituting a 'denial of justice'.

(d) The amount of compensation is calculated as under:-

1. Net base salary at \$4,918 p.m. [per month] from June 1981 to date (i.e. 5 years 10 months)	\$28,688/-
2. Contribution to Pension Fund	\$ 3,000/-
3. Medical Expenses for self	\$ 5,000/-
	<u>\$36,688/-</u>
(e) Damages	\$10,000/-"

Whereas the Respondent filed his answer on 11 December 1987;  
Whereas the Applicant filed written observations on 13 April  
1988 and 25 April 1988;

Whereas the facts of the case are as follows:

Saroj Bala Sawhney entered the service of the United Nations on 16 November 1972 as a locally recruited secretary for a technical assistance project - the "Rural Public Works Project" - in Kabul, Afghanistan. She was initially offered a three month fixed-term appointment at the G-6, step I level from 16 November 1972 through 28 February 1973. Her appointment was successively extended first, for a further fixed-term period of three months and then, on a yearly basis, the final extension offered on 1 June 1980 with an expiration date of 31 May 1981. During the course of her employment, the Applicant's grade was reclassified to the G-7, step I level and her functional title was changed to Senior Secretary/Junior Administrative Assistant effective 1 July 1976. On 1 January 1977, the Applicant was transferred to another project "Strengthening of the Rural Development Department" also in Kabul.

On 19 July 1980, the Applicant went to India on annual leave. She was due to return to Kabul on 25 October. On 24 September 1980, the Applicant wrote to the Project Manager at Kabul to inform him that she had registered her children in school at Chandergah, India and that her husband had been unable to obtain a visa to enter the United States of America. She stated that she did not know whether or not she would return to Kabul and asked the Project Manager to recommend to a friend of his at the UNDP (United Nations Development Programme) Office in Delhi that he assist her family.

In a reply dated 22 October 1980, the Project Manager stated that on UNDP's advice, he could make no recommendation for the employment of local Afghan staff in other UN offices outside Afghanistan, in light of the number of UN local staff who had abandoned their posts and sought jobs with the UN outside Afghanistan. Nevertheless, he authorized her to give his name as a

reference to his colleagues at the UNDP Office in Delhi. In addition, he asked the Applicant to give him formal notice in case she decided not to return to Afghanistan at all.

In a letter dated 22 October 1980, the Applicant asked the Project Manager at Kabul to grant her sick leave until 6 December 1980. She enclosed a doctor's certificate which stated that she required a six-week rest due to viral hepatitis. The Project Manager forwarded the doctor's certificate to the United Nations Medical Director at Headquarters, who authorized sick leave for the Applicant from 21 October to 6 December 1980.

In a further letter dated 3 December 1980, the Applicant asked the Project Manager for additional sick leave. She submitted a doctor's certificate that stated she was suffering from a "threatened abortion" and needed "complete bed rest for six weeks" from 7 December 1980 to 19 January 1981. On 13 December 1980, the Project Manager forwarded her request to the Medical Director, who authorized a further six weeks of leave until 19 January 1981.

On 16 January 1981, the Applicant wrote to the Project Manager to inform him that she had sent to the UN Medical Director at Headquarters a complete medical report on her state of health. In addition, she submitted a third medical certificate which stated that while "undergoing treatment for [a] threatened abortion", the Applicant had had a "spontaneous incomplete abortion at three and one-half months (14 weeks) pregnancy". The doctor in India advised her "to proceed on the authorized abortion/maternity leave". The Project Manager forwarded the certificate to the UN Medical Director who, in a memorandum dated 20 March 1981, informed the Officer-in-charge, Administrative Section, DTCD, that maternity leave was not granted in connection with an abortion but that he was prepared to authorize sick leave for the Applicant until the end of January 1981. In addition, a detailed medical report would be required to justify further sick leave.

On 4 April 1981, the Project Manager transmitted to the Applicant a copy of the UN Medical Director's memorandum. He asked

her about the present state of her health and stated that if she was still sick, she should forward a detailed medical report concerning her continuing illness since 1 February. He also enquired as to when she might be able to return to Kabul.

In a letter dated 3 March(sic) 1981, the Applicant informed the Project Manager that she had been hospitalized in Chandigarh and had had an operation on 23 March 1981. She enclosed a medical certificate in which the doctor advised that she rest for 15 more days. The Project Manager received this letter on 10 April 1981 and forwarded it to the UN Medical Director who subsequently approved further sick leave until 5 April 1981.

On 8 May 1981, the Applicant submitted to the UN Medical Director a medical report by her doctor and a doctor's certificate covering the period 1 February - 13 March 1981. On the same day she wrote to the Project Manager and referred to a prior letter of 12 April under cover of which she had sent him another doctor's certificate advising a further rest period of 15 days. She also stated:

"I am sorry that I cannot predict at this time that [sic] when I would be able to return to Kabul in view of the critical condition of my health, but would certainly keep you informed about the progress of my health."

The Project Manager forwarded the Applicant's letter and the medical certificate to the UN Medical Director on 16 May 1981.

On 18 May 1981, the Applicant submitted directly to the Medical Director a detailed medical report and a doctor's certificate dated 22 April, advising a further rest period of six weeks commencing 21 April 1981.

The Applicant's fixed-term appointment expired on 31 May 1981.

In a memorandum dated 8 June 1981, the UN Medical Director informed the Officer-in-Charge, DTCD, that on the basis of the doctor's certificate forwarded to him by the Project Manager on 16 May 1981, he would only approve sick leave for the Applicant for

the period running from 6 to 20 April 1981. He added: "However, no more sick leave beyond that date will be approved. I see no medical reason why Ms. Sawhney should not return to her duty station."

In a memorandum dated 2 July 1981, addressed to the Officer-in-Charge, Administrative Section, DTCD, the UN Medical Director, after reviewing the case on the basis of the most recent medical report submitted directly by the Applicant on 18 May 1981, reconfirmed that "further sick leave beyond 21 April 1981 could not be certified and that Ms. Sawhney should return to her duty station (Kabul) where her medical condition [could] be reassessed by one of [the] UN Examining Physicians". The Project Manager advised the Applicant of the Medical Director's decision in a cable dated 7 July 1981.

Since the Applicant did not reply, in a letter dated 11 August 1981, the Project Manager advised her of the contents of earlier communications concerning the expiration of her sick leave and stated "... you are now considered to be absent without leave with effect from the expiry of your last authorized sick leave on 20 April 1981. Will you please let me know urgently by cable whether you intend to return to Kabul or whether you wish to separate from UN services... . In the event that I do not receive your decision by the 31 August, I will have no alternative but to consider that you have abandoned your post and initiate administrative action accordingly."

The record of the case shows that the letter dated 11 August 1981 crossed a letter from the Applicant dated 2 August 1981. The Applicant referred to prior letters dated 2 and 25 June 1981, in which she asserted that she had requested the Project Manager to obtain approval for a four-month period of special leave without pay commencing 2 June 1981, on the ground that her health did not permit her to resume her functions "after a long and continuing sickness".

In addition, she acknowledged receipt of the 7 July cable and requested the Medical Director to reconsider his previous decision to deny her a further six-week period of sick leave from 20 April

1981.

In a reply dated 18 August 1981, the Project Manager informed the Applicant that he had never received her letters of 2 or 25 June 1981. He stated that her request for special leave without pay would have to be approved by DTCD Headquarters in New York. In the meantime, pending a decision on her request, she should ignore his letter of 11 August 1981. On 22 August 1981, the Project Manager transmitted the Applicant's request for special leave without pay to Headquarters.

In a cable dated 22 August 1981, the Project Manager informed the Officer-in-Charge, Administrative Section, DTCD, that:

"...

AAA SAWHNEY CONTRACT EXPIRED 31 MAY 1981

BBB APPLICATION SPECIAL LEAVE WITHOUT PAY ON MEDICAL GROUNDS  
RECEIVED AND FORWARDED TCD TODAY

CCC MY LETTER 11 AUGUST CANCELLED PENDING RESULT APPLICATION SPECIAL  
LEAVE

DDD PLEASE ADVISE ADMINISTRATIVE ACTION REQUIRED BY PROJECT

..."

In a letter dated 10 September 1981, the Applicant asked the Project Manager to provide her with a letter of reference before he left Kabul for another assignment. On 21 September 1981, the Applicant wrote to the Officer-in-Charge, Administrative Office, DTCD to request that she "be absorbed within the UN system ... at a duty station other than Kabul, Afghanistan ...". She emphasized that, having recovered from her long illness, she had planned to return to Kabul, when she learned that the project for which she had worked had been reduced to two experts. Moreover, she could not "withstand the strain and tension which still [prevailed] in Afghanistan". On 2 October 1981, the Administrative Officer, DTCD, informed the Applicant that the UN and the UN Agencies were independent from one another and that DTCD was therefore unable to

request that the latter consider the Applicant for employment.

In a cable dated 23 September 1981, the Officer-in-Charge, DTCD, informed the Project Manager at Kabul that the Applicant's request for special leave without pay had been rejected. The cable read in part as follows:

"...UNABLE AUTHORIZE LEAVE WITHOUT PAY FOR MEDICAL REASONS. LENGTHY ABSENCE FROM PROJECT NECESSITATES ACTION RE APPOINTMENT. IF ACCUMULATED ANNUAL LEAVE SUFFICIENT COVER REMAINDER OF APPOINTMENT THAT IS 6 APRIL TO 31 MAY 1981. SUGGEST SEPARATION UPON EXPIRATION OF CONTRACT OR TERMINATION DUE ABANDONMENT OF POST SINCE SAWHNEY APPARENTLY UNWILLING RETURN AFGHANISTAN TO UNDERTAKE MEDICAL EXAMINATION SUGGESTED BY ME[DICAL] DIRECTOR WHO STILL UNABLE CERTIFY ADDITIONAL SICK LEAVE. FORWARD P/5 [PERSONNEL ACTION FORM] INITIATING WHATEVER ACTION APPROPRIATE ..."

In a letter dated 28 September 1981, the Applicant inquired as to the outcome of her request for special leave without pay, and expressed her intention to resume her duties in Kabul. On 13 October 1981, the Project Manager informed the Applicant of the decision, taken by DTCD at Headquarters, in a letter that reads in part as follows:

"... DTCD Headquarters New York has ruled that no further sick leave or special leave without pay on medical grounds will be granted to you beyond that already approved up to 20 April 1981 inclusive.

2. They have also advised that you should be separated from service either from the date of expiry of your present contract on 31 May 1981 or the date on which your accrued leave was exhausted whichever was the sooner. Your accrued leave has been calculated as expiring on 17 May 1981. In accordance with their advice action is therefore being taken to separate you from service on 17 May 1981."

In a letter dated 2 November 1981, addressed to the Officer-in-charge of the Kabul Project, the Applicant stated that she would be writing to Headquarters to seek reconsideration of the decision taken in her case on the ground that she had not abandoned her post and was entitled to a termination indemnity. In a reply



dated 12 November 1981, the Acting Project Manager quoted the instructions received from Headquarters concerning her separation from service and informed the Applicant that his office could take no further action on the matter.

In a letter dated 11 December 1981, the Administrative Officer, DTCD, informed the UNDP Resident Representative in Kabul that he had decided to treat the period 17 through 31 May 1981 as special leave without pay and that any sum of money due to Mrs. Sawhney should be paid to her through the Resident Representative in New Delhi. Thereafter, the Applicant would be considered separated from service upon the expiration of her appointment, effective 31 May 1981.

In a letter dated 12 January 1982, the Applicant requested the Chief Administrative Officer, Administrative Section, DTCD, to review the decision to separate her from service at the expiration of her appointment. At the end of January, the Officer-in-Charge, DTCD, informed the Applicant that, as previously explained, the Medical Director had not approved further sick leave beyond 20 April 1981. Since she had not reported for duty on that date, she had been placed on annual leave through 17 May and thereafter granted special leave without pay until the expiration of her appointment on 31 May 1981.

In a letter dated 20 February 1982, addressed to the Officer-in-Charge, Administrative Section, DTCD, the Applicant asserted that she had never been informed that the period 18-31 May 1981 would be treated as special leave without pay. She requested an explanation for the contradiction between the statement in the Personnel Action Form sent to her on 30 September 1981 which stated "termination due to abandonment of post" and the contention by DTCD that it had allowed her appointment to expire. In a reply dated 5 March 1982, the Administrative Officer, Administrative Section, DTCD, explained that, although the office at Kabul had suggested that she be separated from service for abandonment of post, DTCD at Headquarters had rejected that suggestion and had allowed her

appointment to expire. The decision to place her on special leave without pay had been taken after the Applicant ignored repeated requests to return to Kabul.

After a lengthy exchange of correspondence, in a letter dated 24 June 1982, the Administrative Officer, Administrative Section, DTCD, reiterated that the "action taken in respect of [her] separation [could] not be revised". On 8 September 1982, the Applicant requested the Secretary-General to review the administrative decision taken by DTCD. Not having received a reply from the Secretary-General, on 30 July 1983 the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 29 July 1986. Its conclusions and recommendation read as follows:

"Conclusions and recommendation

75. The Panel concludes that the Medical Director acted within the authority granted to him by the Staff Rules and administrative instruction ST/AI/221 of 14 June 1974 in denying the appellant's request for additional sick leave beyond 21 April 1981.
76. The Panel concludes further that the appellant had no legal expectancy of continued employment with the Organization after 31 May 1981.
77. The Panel also concludes that the Administration took the contested decisions without consideration of extraneous factors, free of improper motivations, and in a manner which was neither arbitrary nor capricious; in good faith and with due consideration for the rights of the appellant.
78. Accordingly, the Panel makes no recommendation in support of the appeal."

On 20 January 1987, 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 to maintain the contested decision.

On 18 March 1987, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant had a legitimate expectation that her appointment would be extended from 1 June 1981 to 31 May 1982.
2. Administrative Field Manual, Personnel Administration, Locally Recruited Staff provides under separation, paragraph (b), that "whenever a contract is allowed to expire, the staff member should be informed as far as possible in advance that his contract will not be renewed."
3. The UN Medical Director wrongfully denied sick leave for six additional weeks from 21 April 1981 and special leave without pay for medical reasons.
4. The present UN Medical Director admitted during the JAB hearings that he would have made enquiries before rejecting or accepting the Applicant's request for additional sick leave.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision to deny the Applicant both further sick leave and special leave without pay for medical reasons was a permissible exercise of his discretionary authority.
2. The circumstances and the merits of the case show that the Applicant had no "legal expectancy" of the renewal of her fixed-term appointment.
3. The Respondent's alleged "unreasonable" delay in replying to the Applicant's appeal does not, by itself, give rise to a right to compensation.
4. The Applicant's claim to a termination indemnity is without merit as the facts indicate that she was separated from service at the end of her fixed-term appointment and was, therefore, not entitled to an indemnity.

The Tribunal, having deliberated from 4 May 1988 to 27 May 1988, now pronounces the following judgement.

I. The Applicant requested the cross-examination of Dr. Michael Irwin, the United Nations Medical Director, regarding her case. Having examined this request in the light of the information available in the records of the case, the Tribunal deems it unnecessary to grant the request.

II. The Applicant contests the Respondent's decision to deny her further sick leave and special leave without pay (SLWOP) for medical reasons after 20 April 1981.

With regard to her sick leave, the Tribunal notes that staff regulation 6.2 provides among other things that:

"The Secretary-General shall establish a scheme of social security for the staff, including provisions for health protection, sick leave ..."

Administrative instruction ST/AI/221 of 14 June 1974 prescribes in paragraph 11 the manner in which the Respondent discharges his responsibility under staff regulation 6.2 as follows:

"The Medical Service is responsible for approving all sick leave and maternity leave on behalf of the Secretary-General and for determining physical fitness for work in cases of illness, injury or pregnancy."

In conformity with this text, the Medical Director approved consecutive requests for sick leave made by the Applicant for six months covering the period from 21 October 1980 to 20 April 1981. After review of the medical information submitted to him by the Applicant and her physician, the Medical Director decided in a memorandum dated 2 July 1981 that he could not approve any further sick leave beyond 20 April 1981, and that, in his judgement, the Applicant should return to her duty station and submit to a medical examination by a United Nations examining physician. On 7 July 1981, the Applicant was advised by cable of the Medical Director's decision.

III. Moreover, the Tribunal finds that the Medical Director's decision, taken on behalf of the Secretary-General, is in accordance with staff rule 106.2(a)(viii), which reads in part:

"A staff member may be required at any time ... to undergo examination by a medical practitioner named by the Secretary-General. Further sick leave may be refused ... if the Secretary-General is satisfied that the staff member is able to return to duty ...".

IV. To challenge this decision denying further sick leave, the Applicant could have requested under staff rule 106.2(a)(viii) that the matter be referred to an independent practitioner or a medical board.

According to staff rule 106.2(a)(viii) it is for the Applicant and not the Secretary-General to invoke such option. The Applicant failed to challenge the Medical Director's decision.

V. Since the Applicant did not exercise this option, the Tribunal cannot substitute its judgement for that of the Respondent in denying further sick leave or determining the Applicant's physical fitness to return to work. (Judgement No. 69, Coutsis, para. IV). In this respect, the Tribunal finds the Medical Director's decision valid in accordance with the pertinent Staff Regulations and Rules.

VI. The Tribunal will now consider whether the Respondent's decision to deny further sick leave for the Applicant is tainted with arbitrariness, as claimed by the Applicant.

The Applicant advances two arguments in this connexion:

In her first argument, the Applicant claims that by requiring examination by the United Nations examining physician in Kabul, instead of having the doctor in New Delhi examine the Applicant, the Medical Director acted in an arbitrary way. The Tribunal notes that the JAB has raised this question with the current UN Medical Director, Dr. Irwin. The Tribunal agrees with the explanation given

by Dr. Irwin, contained in the JAB Report, which states that "To recommend otherwise, namely that the staff member have an examination by the United Nations' Examining Physician at the staff member's place of leave, would give de facto recognition of the fact that the staff member's affliction was of so serious a nature as to preclude return to the duty station. This, he noted from the appellant's medical records, was not at all the case. He therefore agreed with his predecessor's decision concerning examination at the duty station."

In her second argument the Applicant contends that Dr. Irwin expressed an opinion that another period of sick leave beyond 20 April 1981 could have been certified.

This point was also raised during the JAB deliberations. The Tribunal notes the answer given by Dr. Irwin to the effect that:

1. He agreed professionally with his predecessor's decision, although he might have asked additional questions;
2. Any recent suggestion he had made about giving the Applicant any additional sick leave was in the context of settlement efforts with a view to avoiding lengthy and costly appeal proceedings, and could in no way be interpreted as suggesting an additional award of sick leave on the merits.

VII. For the foregoing reasons, the Tribunal finds that the Respondent's denial of further sick leave to the Applicant was a correct application of pertinent Staff Regulations and Rules and his decision was not arbitrary or motivated by prejudice or improper motives.

VIII. The Applicant alleges that SLWOP for medical reasons from 1 June to 31 October 1981 was arbitrarily refused.

The Tribunal notes first in this regard that under staff regulation 5.2 and staff rule 105.2(a) a grant of SLWOP for medical reasons is not a right of the staff member, but is within the discretionary authority of the Secretary-General.

Moreover, the Tribunal notes that the request for SLWOP was made well after the expiration of her contract and for a period beyond her appointment which expired on 31 May 1981. In this respect, staff rule 106.2(d) states the following:

"Entitlement to sick leave shall lapse on the final date of a staff member's appointment".

Therefore, the denial of SLWOP for the period requested by the Applicant is a correct implementation of Staff Regulations and Rules and is not arbitrary.

IX. The Applicant claims that she had a "legal expectancy" with regard to the renewal of her fixed-term appointment, which the Respondent wrongfully denied.

In its Judgement No. 199, Fracyon, paragraph I, the Tribunal stated that:

"The decision whether or not to renew a fixed-term appointment is within the discretion of the Secretary-General and, in the absence of countervailing circumstances, non-renewal will not give rise to any rights on the part of the staff member".

The Applicant submits that in her case, there are countervailing circumstances which militated in favour of the renewal of her appointment for another year from 1 June 1981 to 31 May 1982, and in this respect she cites to sustain her "legal expectancy" of renewal the fact that her appointment had been renewed every year from 1973 to 1980.

X. The Tribunal observes that the Applicant was in fact employed on the basis of a series of fixed-term appointments, which extended from November 1972 until her last fixed-term appointment, offered to her on 1 June 1980, with an expiration date of 31 May 1981. The Tribunal considers that a series of successive fixed-term appointments by itself is not enough to detract from the effect of staff rule 104.12(b), which stipulates that fixed-term appointments

carry no right of renewal or conversion to any other type of appointment. Moreover, this provision was incorporated verbatim in each and every one of the Applicant's letters of appointment. According to staff rule 109.7(a), such appointments expire automatically and without prior notice.

Therefore, after the expiration date of a fixed-term appointment, there is no automatic renewal, but a new contract must be concluded to keep the staff member in the service of the United Nations.

Therefore, the Applicant's argument in this respect must fail.

XI. The Applicant further claims that since her appointment for the preceding period from 1 June 1980 to 31 May 1981 was signed by the Administration on 11 August 1980, she was expecting her appointment for the period from 1 June 1981 to 31 May 1982 to be renewed in September 1981.

The Tribunal considers that simply because the Applicant's previous letter of appointment had been submitted to her after its commencement date, it does not necessarily mean that next year her appointment would automatically be renewed. The Tribunal concurs with the explanation given by the Respondent in his answer, that evidently, in that case, the Applicant must have been informed that her appointment would be renewed for another one-year term and, on the basis of that information, went on leave to India, where the letter of appointment was forwarded to her.

XII. The Applicant also invokes in this respect the fact that she had a record of very good performance during the entire period of her service. The Tribunal considers that this fact in itself is not enough to impose an obligation on the part of the Respondent to renew her fixed-term appointment. The Tribunal recalls in this connection its Judgement No. 205, El Nagggar (1975), paragraph IV, in which it stated that:



"... under Article 101 of the Charter, the power of appointment rests with the Secretary-General. The type of appointment to be offered to a staff member is within the discretion of the Secretary-General. Neither the exceptional competence of a staff member nor favourable recommendations for a particular type of appointment by themselves create an entitlement to such an appointment."

XIII. The Applicant also invokes in favour of her claim of legal expectancy of renewal of her appointment the fact that the Respondent was still regularly communicating with her, dealing with her requests, until October 1981, both for her sick leave beyond 20 April 1981 and for SLWOP from 1 June 1981 to 31 October 1981.

The Tribunal observes that normally, the Applicant's contract having expired, the only pending matter was to settle as promptly as possible her final entitlements arising from the expired contract.

XIV. The question then arises why the Respondent was still dealing with these two specific above-mentioned requests after her appointment expired on 31 May 1981 and her service with the United Nations had ceased.

XV. With regard to the Respondent's dealing with her first request for further sick leave after 20 April 1981, the Tribunal notes the following:

(a) The Applicant had certified sick leave until 20 April 1981. On 18 May 1981, she requested another period of sick leave covering in fact the remaining part of her appointment starting from 21 April 1981. The Applicant, having submitted her request for sick leave during her contract, the Respondent was in duty bound to consider it and take a decision on it.

(b) But the fact that her request was made on 18 May 1981, close to the expiration of her contract, and taking into account the distance and difficulty of communications between the three locations concerned, New York, Kabul and New Delhi, the decision of the Medical Director, of necessity, had to be taken and communicated

to the Applicant after the expiration date of her contract. As a matter of fact, the Medical Director's decision in New York was contained in a memorandum dated 2 July 1981 and was communicated to the Applicant by cable dated 7 July 1981 by Mr. Todorof, the new Project Manager in Kabul. The cable stated:

"MEDICAL DIRECTOR UN ADVISES NO FURTHER CERTIFIED SICK LEAVE WILL BE GRANTED UNLESS YOU RETURN DUTY KABUL IMMEDIATELY FOR CHECK-UP HERE STOP CABLE YOUR DECISION RETURNING OR RESIGNING."

XVI. The Tribunal, therefore, finds that the fact that the Respondent was handling the Applicant's request for sick leave after the expiration of her appointment was unavoidable because of the delay in communications, justifiable in order to respect the Applicant's right to proper consideration of her request, and necessary to allow the Applicant a fair opportunity to regularize a period of uncertified sick leave within the period of her contract, while respecting pertinent rules on the matter.

XVII. The Tribunal observes that the Applicant did not return and did not reply to the afore-mentioned cable, until 2 August 1981, when she sent a letter to Mr. Glaister, the Project Manager at Kabul, containing two requests:

- (a) Reconsideration of the Medical Director's decision to refuse her sick leave after 20 April 1981; and,
- (b) A new request for SLWOP for the period of at least four months, i.e. from 2 June 1981 to 1 October 1981.

The Tribunal notes that the Respondent could have rejected these two requests outright: the first as being presented too late after the cable of 7 July 1981, and the second as being irreceivable because it related to a period beyond the term of her appointment. Nevertheless, the Administration attempted to give her requests fullest consideration, and transmitted her submission to the Medical Director for reconsideration.

XVIII. On 23 September 1981, the Medical Director, having maintained his initial decision to deny sick leave beyond 20 April 1981 and the decision to deny SLWOP for medical reasons, the Respondent decided to initiate administrative action with a view to settling the Applicant's final entitlements arising from her expired appointment. These decisions were conveyed to the Project Manager in Kabul, who so advised the Applicant.

XIX. From the foregoing sequence of communications and events, the Tribunal finds that, after the cable of 7 July 1981, and again after the requests presented by the Applicant on 2 August 1981, the Respondent was entitled to put a stop to this correspondence with the Applicant and proceed to settle her entitlements arising out of her contract, which expired on 31 May 1981. On the contrary, the Respondent exercised patience and gave the Applicant ample opportunity from 7 July 1981 to late September 1981 to comply with the instruction to return to Kabul.

XX. The Tribunal is of the view that if the Applicant had returned to her duty station and passed the medical check-up as she had patiently and firmly been requested to do, in compliance with the Medical Director's decision, she would have strengthened her position vis-à-vis the Respondent in obtaining a fair and equitable settlement for the still uncertified sick leave from 20 April 1981 until the end of her contract. At the same time, the Applicant would have created the possibility that a new contract for her would be given consideration.

XXI. The Tribunal observes that the Applicant not only did not return, but while engaging the Respondent in correspondence about her sick leave and SLWOP, she had, according to the record of the case, taken action which demonstrated her intention not to return to Kabul. These actions were taken as early as 24 September 1980 (during the period of her annual leave to India) and as late as

21 September 1981 and comprised:

1. Her seeking employment with UNDP at New Delhi;
2. Her request to the Project Manager in Kabul to send her a letter of reference;
3. Her request for employment with the Organization at a duty station "outside Kabul".

It is clear that the Applicant's behaviour in this respect was incompatible with the extension of her appointment with the Kabul project.

XXII. From the analysis of the correspondence exchanged between the parties and in the light of the circumstances of the case, the Tribunal finds that they do not corroborate a firm commitment which could have constituted a basis for legal expectancy of continued employment with the Organization after the expiration of the Applicant's fixed-term appointment on 31 May 1981.

Therefore, the Tribunal concludes that the Respondent's decision not to renew her fixed-term appointment, which expired on 31 May 1981, was a proper exercise of his discretionary authority and that the Applicant's contention in this regard is not well-founded.

XXIII. With regard to the Applicant's claim for a termination indemnity, the Tribunal observes in this connection that Counsel for the Applicant, in his observations, stated that he convinced the Applicant that the question of termination indemnity did not arise in her case. Therefore, the Tribunal is not called upon to decide this issue.

XXIV. The Applicant claims that the Respondent did not respect para. (b)(1) of the Administrative Field Manual, Personnel Administration, locally recruited staff, which states that:

"Whenever a contract is allowed to expire, the staff member should be informed as far as possible in advance that his contract

will not be renewed."

According to this text, the Applicant was entitled to be advised as soon as possible that her contract would not be renewed.

Since the Respondent failed to do so, and since the Respondent had recognized that some communications were sent to the Applicant in ignorance of the fact that the Applicant's contract had automatically expired on

31 May 1981, the Tribunal decides that compensation shall be awarded to the Applicant for the injury she has sustained.

The Tribunal assesses this compensation in an amount equal to three months net base salary at the time of the expiration of the Applicant's appointment. This amount includes compensation for that part of the delay in the appeal procedure which was caused by the Respondent.

XXV. For the foregoing reasons,

1. The Tribunal orders the Respondent to pay the Applicant, as compensation, an amount equivalent to three months net base salary at the time of the expiration of the Applicant's appointment.

2. All other pleas of the Applicant are rejected.

(Signatures)

Arnold KEAN  
Vice-President, presiding

Ahmed OSMAN  
Member

Ioan VOICU  
Member

Geneva, 27 May 1988

R. Maria Vicien-Milburn

Executive Secretary