

XIV. The Applicant is claiming reimbursement of medical expenses incurred after 26 March 1981. The Tribunal notes, however, that he did not submit this demand to the Joint Appeals Board and that his application is not receivable therefore on this point.

XV. In view of the long delay experienced by the Applicant in resolving his situation, the Tribunal deems justified the granting of 9 per cent interest, as of 25 August 1981, and until payment is made in full, on the compensation awarded to the Applicant by the Tribunal in the preceding paragraphs.

XVI. The Tribunal also resolved that the Applicant is entitled to reimbursement of his telegram and postage costs and the cost of preparing his application, which costs can be estimated at 10,000 zaires.

In view of the foregoing, the Tribunal orders the Respondent to pay the Applicant:

1. An indemnity in lieu of notice equal to six months' salary, calculated on the basis of the General Service salary scale in force on the date of the judgement;

2. A termination indemnity equal to eight months' salary, calculated on the basis of the General Service salary scale in force on the date of the judgement;

3. Compensation for 60 days' annual leave up to 25 August 1981 and for annual leave accrued during the period of six months' notice starting 25 August 1981;

4. Interest of 9 per cent a year, as of 25 August 1981 until the date of payment, on the sums due to the Applicant under 1, 2 and 3 above;

5. A sum of 10,000 zaires for the costs of preparing his case.

XVII. All other pleas are dismissed.

(Signatures)

Arnold KEAN

Vice-President, presiding

Luis M. de POSADAS MONTERO

Member

Geneva, 14 June 1985

Roger PINTO

Member

R. Maria VICIEN-MILBURN

Secretary

Judgement No. 350

(Original: English)

Case No. 348:
Raj

**Against: The Secretary-General
of the United Nations**

Request by a staff member of UNDP for the rescission of the decision to reorganize the Finance Section of the UNDP office at New Delhi as violating his rights.

Conclusion of the Joint Appeals Board that the contested reorganization was within the Respondent's discretion and that the Applicant did not establish that it was mala fide or motivated by extraneous factors.—Recommendation to reject the application.

Applicant's contention that in taking the contested decision the Respondent acted in a discriminatory way.—The Tribunal's jurisprudence with regard to reorganization of an office.—As stated in Judgement No. 117 (Van der Valk), such decisions fall within the discretionary power of the Administration and the Tribunal has no competence to examine how an office should be organized.—The only basis to challenge such decision is for the staff member concerned to prove that it is vitiated by prejudice or other improper motives.—The fact that a reorganization may affect the career of a staff member does not necessarily point to discrimination or improper motives.—Applicant's contention that the contested reorganization was not followed by any positive results.—Finding that this circumstance does not necessarily indicate the existence of improper motives.—Conclusion that the reorganization was a legitimate exercise of discretionary power.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. T. Mutuale, President; Mr. Arnold Kean, Vice-President;
Mr. Luis de Posadas Montero;

Whereas at the request of Hans Raj, a staff member of the United Nations Development Programme, hereinafter referred to as UNDP, the President of the Tribunal, with the agreement of the Respondent, successively extended to 9 January 1985 and 31 March 1985, the time-limit for the filing of an application to the Tribunal;

Whereas on 1 April 1985 the Applicant filed an application the pleas of which read as follows:

"1. The applicant respectfully submits that the Administrative Tribunal should find that the administrative decision to reduce the number of units in the Finance Section of the UNDP Office in New Delhi from three to two was not motivated by reasons of efficiency (which the Respondent has at no time attempted to explain or describe) but was implemented by the Resident Representative deliberately to avoid having to appoint the applicant chief of the third (now defunct) unit and thereby to inhibit his career prospects. The applicant submits that the Tribunal should direct the respondent to re-instate the third unit in the above-mentioned Office.";

Whereas the Respondent filed his answer on 23 May 1985;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP at the New Delhi Office on 1 May 1964 as a Clerk/Typist at the ND-3, step I level. His initial three-month fixed-term appointment was extended for a further year and was subsequently converted to an indefinite appointment on 1 August 1965, and then to a permanent appointment on 1 November 1972. His permanent appointment was confirmed on 1 November 1977. During the course of his employment, he was promoted to the ND-4 level in 1967, to the ND-5 level in 1973 and to the ND-6 level on 1 January 1980. The Applicant had been assigned to the Finance Section of the UNDP Office in New Delhi on 18 January 1977 and his functional title had been changed to "accountant". The Finance Section consisted of three units: the "Rates and Contributions" Unit; the "Pay and Allowances" Unit; and the "Accounts and Budget" Unit. The Applicant worked in the "Rates and Contributions" Unit. It appears that in 1978, the Chief of the "Accounts and Budget" Unit was detailed to New York and no other staff member was appointed to replace him.

In a letter dated 8 April 1980 addressed to the UNDP Resident Representative the Applicant requested that the "Accounts and Budget" Unit of the Finance Section be "revived". The Applicant described the manning table and the functioning of each unit in the Finance Section. He noted that upon the departure of the Chief of the "Accounts and Budget" Unit, the Unit had become "non operational as there was no ND-6 in Finance Section" who could exercise the functions of Chief of that Unit. The Applicant stated that in light of the announcement of the recent promotions, there were no more "technical reasons" to render the "Accounts and Budget" Unit "non operational" and therefore it should be "revived".

In a reply dated 23 June 1980 the UNDP Assistant Resident Representative stated in part:

"As you point out, there are eleven posts in the Finance Section and the areas of responsibility numbered three in the recent past. Two staff members were assigned to 'Rates and Contributions'. In discussing this subject with my colleagues, we decided that it was cumbersome and unnecessary to clutter up the Finance Section with three organisational units Thus, we have streamlined the finance operations by having a Finance Section composed of the same eleven posts, five posts in the 'Contributions, Budget and Accounting' area, another five posts in the 'Rates, Pay and Allowances' area, and the Senior Finance Officer in overall charge of the Finance Section. None of the posts in the Finance Section have been downgraded as a result of this reorganisation, nor was any such action the object of the exercise."

In addition, he advised the Applicant that his promotion prospects would not be affected by not being the "head of a unit" and that "having been recently promoted to the ND-6 level, [he could] expect to be assigned to duties commensurate with that level and which bear relation to the duties assigned to [his] colleagues in the Finance Section, according to their grades."

On 26 June 1980, the Applicant addressed a letter to the UNDP Assistant Resident Representative, in which he asked for the reconsideration of his request to revive the "Accounts and Budget" Unit. He set forth a series of reasons in support of his request and added that in his view, the decision to close the "Accounts and Budget" Unit had been taken when the Applicant was promoted to the ND-6 level and had demanded assignment of duties commensurate with that level.

In a reply dated 30 June 1980, the Officer-in-charge of the UNDP Office in New Delhi stated that he had nothing further to add except to

"reiterate that the reorganisation of the Finance Section, carried out following discussion and advance notice to the staff members in the Section, was a simple 'streamlining' operation and has not affected any staff member's grading or promotion prospects. . . . the reorganisation was discussed beforehand also with the Resident Representative who gave it his full support."

On 21 July 1980 the Applicant requested the UNDP Administrator to review the administrative decision of 30 June 1980. This letter was transmitted to the Chief, Division of Personnel at Headquarters, by the UNDP Resident Representative in New Delhi on 13 August 1980. The UNDP Resident Representative noted that

"the reasons for the reorganisation are mentioned in Mr. Nixey [Assistant Resident Representative]'s letter of 23 June and we can only add that the

reorganisation met with the approval of all members in the Finance Section (who were consulted and advised prior to the reorganisation) with the exception of Mr. Hans Raj."

On 11 September 1980 the Applicant lodged an appeal with the Joint Appeals Board. The Board adopted its report on 14 December 1983. Its unanimous conclusions and recommendations read as follows:

"Conclusions and recommendations"

"53. The Panel finds that the decision to reorganize the Finance Section resulting in the formal abolition of the function of chief of the third unit which for the previous eighteen months had not been assigned, was within the respondent's authority and discretion and that, in accordance with the jurisprudence of the Administrative Tribunal, the Panel cannot substitute the respondent's judgement with its own on the merits of that decision taken in the interest of good administration.

"54. In addition, the Panel finds that the evidence submitted by the appellant did not provide sufficient basis to establish that the reorganization was a *mala fide* decision or was motivated by extraneous factors. Accordingly it concludes that the respondent's decision to reorganize the Finance Section did not violate any of the appellant's rights under the terms of his appointment.

"55. The Panel, however, was disturbed by some of the circumstances surrounding the reorganization and by the manner in which it was carried out. It observed that the *status quo ante* might have led the appellant to believe that, once he was promoted to the ND-6 level, he could expect to be assigned the functions of the chief of the third unit in his section, a function not assigned to any other staff member for the past eighteen months. In this situation, the timing of the reorganization, the imprecise manner by which it was communicated and put into effect, the failure of the Administration to change the appellant's title on his promotion and to assign him functions commensurate with his status and level inevitably raised understandable doubts in the mind of the appellant, as to the motives behind the reorganization.

"56. The Panel therefore recommends that the respondent

"(i) take special care to ensure that the reorganization and the developments it has given rise to do not in any way adversely [a]ffect the appellant's career prospects;

"(ii) immediately assign to the appellant, functions and responsibilities commensurate with his level;

"(iii) correct all the relevant records, if not already done, to reflect the appellant's appropriate title upon his promotion to ND-6.

"57. Finally, the Panel recommends that the respondent take no further action on the appeal."

On 31 August 1984 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Panel's report and had decided to maintain the contested decision and to take no further action in the case.

On 1 April 1985, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Joint Appeals Board failed to draw logical conclusions from its findings and considerations, and failed to declare that the UNDP Administra-

tion acted in a discriminatory manner towards the Applicant and that the reorganization of the office was unjustified and unreasonable.

2. The UNDP Administration deliberately eliminated the "Accounts and Budget" Unit in order to avoid appointing the Applicant as Chief of the Unit and inhibit his career prospects.

3. The UNDP Administration at no time demonstrated that the reorganization of the office led to greater output of work with the same staff resources.

Whereas the Respondent's principal contentions are:

1. The Secretary-General, as chief administrative officer of the United Nations, may reorganize the Secretariat or any part thereof and, as staff members do not have a right to any particular organizational structure, a decision to reorganize part of a UNDP office to which the Applicant was assigned does not violate his rights.

2. An Applicant alleging that a discretionary administrative decision is invalid on the basis of improper motivation must establish such improper motivation. The Applicant has not adduced any evidence, let alone credible evidence, to establish improper motivation in the decision to restructure the UNDP Office in New Delhi. It follows that the Applicant's unsubstantiated assertions of prejudice must be dismissed.

The Tribunal, having deliberated from 14 to 25 October 1985, now pronounces the following judgement:

I. The Applicant considers that the UNDP Administration acted in a discriminatory manner towards him when it decided to reorganize the office in which he worked, reducing the number of units previously existing from three to two.

II. The Tribunal has previously held that decisions of this nature fall within the discretionary powers of the Administration and that it is not within the Tribunal's competence to examine whether a given office should be organized in any particular way or whether better results would be obtained if a reorganization took or failed to take place (Judgement No. 117; *Van der Valk*).

III. According to the Tribunal's consistent jurisprudence, the only possibility for a staff member to challenge a decision of the Administration on these matters is to prove that such a decision was vitiated by prejudice or some other improper motive.

IV. The mere fact that a reorganization may hinder the prospects or in any way affect the career of a staff member does not necessarily point to the existence of discrimination or improper motives in the Administration and thus, does not in itself give grounds for any claim against the decision taken.

V. Responsibility of the Administration would only arise if the reorganization had been carried out for improper motives; in this case with the deliberate intention of damaging a staff member's position.

VI. It is for the staff member concerned to prove that the Administration exercised its discretion in this improper way.

VII. The Tribunal is of the opinion that this has not been proved in the present case. The Applicant alleges that no positive results followed the reorganization that took place in his office. The Tribunal finds that this circumstance does not necessarily indicate the existence of improper motives behind the decision taken. The Administration's discretion would still have been used legitimately, even if the results of the reorganization would not have shown any improvement in the work done.

VIII. The Applicant also mentions as evidence of the existence of prejudice against him, the fact that the post of head of the dissolved unit was held vacant until the moment he was in a position to claim it. The Tribunal cannot concur with this view, since the unit had *de facto* been non-existent since 1978 and what the Administration actually did on the occasion was to turn down the Applicant's request to revive the unit.

IX. The reorganization of the office must therefore be considered as a legitimate exercise of a discretionary power of the Administration.

X. Consequently, all the Applicant's pleas are rejected.

(Signatures)

T. MUTUALE
President

Arnold KEAN
Vice-President

New York, 25 October 1985

Luis de POSADAS MONTERO
Member

R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 351

(Original: English)

Case No. 330:
Herrera

Against: The Secretary-General
of the United Nations

Request by a former staff member of the United Nations for the rescission of the decision to dismiss him for misconduct, and for termination indemnity and compensation for the injuries suffered.—Request for preliminary measures: production of certain documents.

Conclusion of the Joint Appeals Board that the Applicant's conduct merited the sanction imposed on him.—Recommendation to grant the Applicant a compensation of three months' net base salary for procedural faults observed during the procedure.—Recommendation accepted.—Recommendation to grant the Applicant a compensation of three months' net base salary for the extraordinary delay (five years) in the consideration of the case by the Board.—Recommendation rejected.

Request for preliminary measures rejected.

Question of the legality of the disciplinary sanction imposed on the Applicant.—Applicant's contention that the investigation carried out in accordance with personnel directive PD/1/76 was vitiated.—Finding that the investigation accorded the Applicant all the rights to which he was entitled under PD/1/76 and that the terms of that directive are fully protective of staff members who are subject of a disciplinary procedure.—Applicant's contention that he should have enjoyed the same procedural rights in the investigation carried out by the Ad Hoc Committee established by the Executive Secretary of ECLAC.—The Tribunal holds that the establishment of the Ad Hoc Committee was an exceptional measure justified in the circumstances, that it did not interfere with the PD/1/76 investigation nor did it vitiate it and that it did not result in the denial of due process.—Errors committed by the Administration in the handling of the case.—Finding that none of these errors had a substantial effect on the decision to dismiss the Applicant or on his rights.—Applicant's contention that the Secretary-General did not take into account extenuating circumstances.—Extensive discretion of the Secretary-General in disciplinary measures which the Tribunal will review only in certain exceptional conditions, as stated in Judgement No. 300*

* In 1984, the Economic Commission for Latin America (ECLA) officially changed its name to the Economic Commission for Latin America and the Caribbean (ECLAC).