VI. For the foregoing reasons, the Tribunal orders the Respondent to give effect to the election by the Applicant to receive an early retirement benefit under article 30 of the Regulations and to commute it into a lump sum under article 29 (*d*) (i) to the extent of one third of its actuarial equivalent.

VII. In view of the provision in article 45 of the Regulations that the Pension Fund shall not be liable for interest on any due but unpaid benefit, the request for interest is denied.

(Signatures)

Suzanne BASTID
President

Francisco A. FORTEZA
Member

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

New York, 11 October 1979

Judgement No. 253

(Original: French)

Case No. 236:
Klee

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

Request for interpretation of Judgement No. 242.

Dispute concerning the date to be applied in determining the exchange rate applicable to the conversion into schillings of the amount of 15 months' salary awarded to the Applicant by Judgement No. 242.—Application by the Respondent of the exchange rate on the date of payment.—The texts invoked by the Respondent do not refer to the payment of compensation fixed by a judgement.—Irrelevance of the question of benefits due to staff members upon separation from service.—Irrelevance of Judgements Nos. 234 and 196.—Need to refer to the terms used by the Tribunal in fixing the compensation due to the Applicant.—The Tribunal intended to reconstruct the Applicant's career.—The Tribunal decides that the compensation must be calculated by reference to the sums which the Applicant would have earned in schillings had he been maintained in service over the 15-month period, on the basis of the various successive exchange rates prevailing during that period.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Francisco A. Forteza; Mr. T. Mutuale;

Whereas, in Judgement No. 242 delivered on 22 May 1979, the Tribunal decided that the Respondent should "pay the Applicant the amount of 15 months' salary at the

P-3, step VII level, including all allowances, except home leave entitlement, which the Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976";

Whereas, on 6 July 1979, the Financial Services of UNIDO paid the Applicant, as an advance pending final payment instructions from New York, the sum of 534,266 Austrian schillings, representing "80 per cent of the salary plus emoluments" due to the Applicant;

Whereas, in a letter of 20 July 1979, the Personnel Administration of UNIDO gave the Applicant an exact breakdown of the compensation established in New York, from which it emerged that the sum already paid to the Applicant involved an overpayment of AS 1,726, adding that:

> "Since the payments due to you are in the form of a compensation and not actual salary, the exchange rate for conversion into Austrian schillings should be the one applicable on the date of payment.";

Whereas, in a letter of 3 August 1979, the Applicant requested the Secretary-General, *inter alia*, that the compensation awarded by the Tribunal be paid to him in Austrian schillings at the exchange rate prevailing between 1 April 1976 and 30 June 1977;

Whereas, in a letter from the Assistant Secretary-General for Personnel Services dated 27 August 1979, the Applicant was informed that the Secretary-General had rejected that request;

Whereas, on 26 October 1979, the Applicant filed an application, with a plea in which he requested the Tribunal to:

> "Declare and rule that the compensation awarded to the Applicant by Judgement No. [242] of 22 May 1979 and equivalent to 'the amount of 15 months' salary at the P-3, step VII level, including all allowances, except home leave entitlement, which the Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976' should be paid to him in Austrian currency, conversion from United States dollars to Austrian currency being effected at the rates of exchange in effect between 1 April 1976 and 30 June 1977.";

Whereas the Respondent filed his answer on 27 February 1980;

Whereas the Applicant's principal contentions are:

1. Since the Applicant was always paid in Austrian schillings, since he is currently domiciled in Austria and since the compensation must be equivalent to the salary which he would actually have been paid in Austrian schillings had he remained in service from 1 April 1976 to 30 June 1977, the exchange rates applicable are those which were in effect during the period concerned and not the rate prevailing on the date of payment, namely 6 July 1979. The sum thus paid to the Applicant does not in fact correspond to the salary which he would actually have been paid during that period and which constitutes the basis for the compensation ordered by the Tribunal in reparation of the injury sustained by the Applicant.

2. In the course of the proceedings leading up to the Judgement, UNIDO had proposed to the Applicant an amicable settlement which the Applicant rejected and which involved the *ex gratia* payment of an amount equivalent to three months' net base salary at the exchange rate prevailing at the time of separation.

3. From the amount of the sum paid to the Applicant on 6 July 1979 it would

seem that the UNIDO Administration initially accepted the Applicant's argument.

Whereas the Respondent's principal contentions are:

1. In accordance with the established policy of the United Nations regarding the rate of exchange to be used for payment of compensation or other sums due to staff members upon separation from service made in currencies other than US dollars, and in the absence of a specific directive by the Tribunal to the contrary, the compensation awarded to the Applicant in its Judgement No. 242 should be paid at the rate of exchange dollar-Austrian schilling in effect as of the date of payment.

2. In the present case, payment was not unreasonably delayed by the conduct of the Respondent.

The Tribunal, having deliberated from 15 to 22 April 1980, now pronounces the following judgement:

I. The Applicant requests an interpretation from the Tribunal of paragraph XII of its Judgement No. 242, of 22 May 1979, to the effect that the Respondent shall pay the Applicant "the amount of 15 months' salary at the P-3, step VII level, including all allowances, except home leave entitlement, which the Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976."

The Applicant and the Respondent agree on the amount in US dollars of the sum due in this connexion, namely $US 38,157.35, and that settlement should be paid in Austrian currency. Their positions differ, however, as to the date to be applied in determining the appropriate exchange rate. According to the Applicant, the date taken by the Respondent would cause him a loss of 149,338.14 schillings.

II. The Tribunal must first determine how the Respondent intended to apply Judgement No. 242.

It can be seen from the letter which the UNIDO Personnel Administration sent to the Applicant on 20 July 1979 that a sum of AS 534,266 was paid to the Applicant on 6 July 1979. According to that letter, that sum represented an advance. In addition, on the general payment voucher of 6 July 1979 issued by the Administration, the statement "80% of the salary plus emoluments only" appears next to the figure 534,266, which suggests that an appreciable balance remained to be paid to the Applicant. The Tribunal notes that this document mentions an amount of $US 39,284.26, which would seem to imply that the sum of one thousand dollars awarded in Judgement No. 242 for costs had been included. Lastly, it should be noted that the document gives no indication of the exchange rate used.

In the above-mentioned letter of 20 July 1979, the UNIDO Personnel Administration states that instructions have been received from New York regarding payment of the sums due pursuant to Judgement No. 242. After listing the various items to be included in calculating the compensation, the Administration states that, since the payments due are in the form of a compensation and not actual salary, the exchange rate should be the one applicable on the date of payment. As the exchange rate then prevailing was 13.60 schillings to the US dollar, the Applicant was informed that his compensation amounted to 532,540 Austrian schillings and that he would in fact have to refund 1,726 schillings to the Administration.

Thus, not only did the Applicant not receive any payment in addition to the advance already received, but he was asked to refund an overpayment.

In his answer, the Respondent attempts to explain the discrepancy between the amount

due to the Applicant under the Respondent's reading of the Judgement and the amount paid on 6 July 1979 as the result of "an error made by UNIDO in calculating the amount of salary awarded in Austrian currency". The Tribunal is of opinion that the legal implications of such an error would have to be considered only if the Respondent's main argument was accepted.

III. In his answer, the Respondent seeks to justify the choice of the date of payment on the basis of such texts as the Regulations of the Joint Staff Pension Fund. The Tribunal observes that these texts do not refer to the payment of compensation fixed by a judgement. The question of benefits or other sums due to staff members upon separation from service, to which the Respondent also refers, is also irrelevant since such sums are awarded on the basis of regulations: they follow automatically on legal termination of service. In the present case, however, a sum is to be paid in compensation for the injury sustained as the result of a measure which the Tribunal has declared illegal, and consequently the terms used in the Judgement are decisive in determining what compensation the Tribunal believed would constitute adequate reparation.

IV. The Respondent saw fit to refer to two earlier decisions of the Tribunal concerning the choice of exchange rates. He first referred to Judgement No. 234 (*Johnson*). In that case, following termination which it found irregular, the Tribunal awarded the Applicant "compensation equal to the amount of two years' net base salary", less *ex gratia* payments. The Respondent stated that, "in the absence of any directive to the contrary by the Tribunal", he had applied "the United Nations rules and procedures", that is to say, he "used the exchange rate prevailing on the date of payment". The Applicant in that case argued that "since the compensation was intended to constitute reparation for the injury sustained, it was the date of the termination, that is, the date of the injury, that must be taken into account in determining the exchange rate applicable". According to the Judgement, "the Tribunal observes that although the injury occurred on the date of termination, the sum due to the Applicant was determined by the judgement. It was thus on the date of the judgement that the debt owing to the Applicant was determined with binding force. Her rights in Swiss francs must therefore be established on the date of the judgement and according to the exchange rate prevailing on that date".

It must be remarked that, if there were grounds in the present case for following the precedent of Judgement No. 234, the exchange rate applicable on 22 May 1979 would have to be used, rather than that prevailing on 6 July 1979, which was used by the Respondent.

V. The Respondent attempts to evade the issue by drawing attention to the fact that payment was not "unreasonably delayed". In so doing, he seems to be basing himself on Judgement No. 196 (*Back*). In that case, however, it was a matter of a delay in authorizing payment of the lump sum due to a retired staff member and of determining whether or not the delay could be attributed to negligence on the part of the Respondent.

It is thus clear that, in the above-mentioned case, the question of the applicable exchange rate involved a situation totally different from that now at issue between the parties.

VI. In conclusion, the Tribunal is of opinion that the construction which the Respondent seeks to place on Judgement No. 242 can be justified neither by regulations nor by earlier judgements of the Tribunal.

VII. In order to determine the precise scope of the obligation imposed on the Respondent by Judgement No. 242, reference must be made to the terms used by

the Tribunal in fixing the compensation due to the Applicant. Paragraphs XI and XII of the Judgement deal with this point. In paragraph XI it is stated that "in addition to the compensation equivalent to one year's salary, calculated as stated in the recommendation of the Joint Appeals Board, the Applicant should be granted the equivalent of three months' salary". Paragraph XII reiterates the main points in that recommendation:

> ". . . having also been informed that the Applicant has rejected the *ex gratia* compensation granted by the Respondent, the Tribunal decides that the Respondent shall pay the Applicant the amount of 15 months' salary at the P-3, step VII level, including all allowances, except home leave entitlement, which the Applicant *would have earned* had he been *maintained in UNIDO's service* for 15 months from 1 April 1976." [Emphasis added.]

This shows that, in determining suitable compensation for the injury sustained by the Applicant, the Tribunal intended to follow a method other than that used in the Johnson case. In that case, compensation had been fixed by reference to a definitively established amount: subject to certain deductions corresponding to amounts already received, it was "equal to the amount of two years' net base salary" for the person concerned. It was therefore really a matter of the *extent* of the injury assessed by the Tribunal, which could just as well have indicated the amount of the sum to be paid.

In the judgement which the Tribunal is now requested to interpret, on the other hand, the double reference to the Applicant's entitlement and to the fact that he might have been maintained in service clearly shows that the Tribunal intended actually to reconstruct the Applicant's career financially for a period of 15 months. The Tribunal observes that the Respondent himself took into consideration the successive amounts in dollars which the Applicant would have earned had he been maintained in service during the 15 months from 1 April 1976 to 30 June 1977. By seeking to convert those amounts at the exchange rate prevailing on the date of payment, however, the Respondent refuses to recognize the full extent of the Applicant's entitlement had he been maintained in service, that is, had he been in a position to receive Austrian schillings over a 15-month period at successive prevailing exchange rates. Yet it was precisely the restoration of these rights which the Tribunal intended to grant to the Applicant.

VIII. In the circumstances, being called upon to interpret Judgement No. 242, the Tribunal decides that the total compensation for the injury sustained by the Applicant must be calculated by reference to the sums he would have earned in Austrian schillings had he been maintained in service over the 15-month period from 1 April 1976 to 30 June 1977, on the basis of the various successive exchange rates prevailing during that period.

IX. With regard to the sum of $1,000 awarded for costs, the Tribunal decides that, following the precedent of Judgement No. 234 (*Johnson*), the amount in Austrian schillings must be calculated at the exchange rate prevailing on the date of the Judgement ordering payment, that is, on 22 May 1979.

(Signatures)

Suzanne BASTID
President

T. MUTUALE
Member

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Geneva, 22 April 1980

Judgement No. 254

(Original: English)

Case No. 229:
Fernández-López

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

Request for rescission of a decision taken** by the Secretary-General on the recommendation of the **Advisory Board on Compensation Claims.

***Claim for compensation filed by the widow** of a staff member of UNCTAD killed in an accident while **riding in a car driven by his hierarchical superior.**—Controversy as to whether the route taken to the **Palais des Nations was direct or indirect.**—**The** law applicable in the case.—Staff Regulation 6.2 and **Staff Rule 106.4.**—**Inapplicability of the internal** laws relied on by the Applicant.—**The** "general rule" **of the United Nations referred to by the Respondent.**—Respondent's contention that, according to that **rule, if a staff member does not travel to work** by a direct route, the travelling cannot be attributed to **the performance of official functions.**—**Inapplicability** of that rule.—The Applicant's husband was performing **his official duties when he accepted his** superior's invitation to travel to the office in his private **car.**—**Inapplicability of article 2 (b) (iii),** in fine, of appendix D to the Staff Rules.—Validity of the **Applicant's claim for compensation.**—**The contested** decision is rescinded.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Samar Sen;

Whereas at the request of Mrs. Fernández-López, the Applicant herein and the widow of Mr. Juan José Fernández-López, a former staff member of the United Nations Conference on Trade and Development, hereinafter called UNCTAD, the President of the Tribunal, with the agreement of the Respondent, extended successively to 30 April 1978, 31 May 1978, 31 July 1978 and 10 August 1978 the time-limit for the filing of an application to the Tribunal;

Whereas, on 15 August 1978, the Applicant filed an application the pleas of which read as follows:

"1. The Tribunal is requested to rescind the decision of the Secretary-General, reached on the advice of the Advisory Board on Compensation Claims [ABCC] and communicated to the Applicant by letter of 31 January 1977, refusing the Applicant's