

For the foregoing reasons, the application is rejected and the request for costs under plea J is denied.

(Signatures)

Suzanne BASTID  
President

Herbert REIS  
Member

Endre USTOR  
Vice-President

Jean HARDY  
Executive Secretary

New York, 7 October 1981

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## Judgement No. 279

(Original: English)

**Case No. 255:**  
**Mahmoud**

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

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*Request by a former locally recruited staff member of the United Nations Children's Fund (UNICEF) in Beirut for the payment of a daily subsistence allowance.*

*Situation in Beirut when the Applicant left to spend her annual leave in Paris.—No security measures had yet been put into effect by UNICEF.—Circumstances in which the Applicant left Paris for Cairo, was recruited by the UNICEF Cairo Office and discovered that two other persons of Egyptian nationality, recruited locally at Beirut and assigned to Cairo, were drawing daily subsistence allowances.*

*The Applicant's argument that her appointment in Cairo should be treated as identical to that of all the other UNICEF staff members who had been transferred from Beirut to Cairo.—Differences between the Applicant's situation and that of the other staff members.—Argument rejected.—Applicant's argument that her assignment to Cairo was a decision taken at the initiative and in the interest of UNICEF.—Circumstances of the assignment.—Argument rejected.—Applicant's claim that there was discrimination against her.—Consideration of the allegations.—Claim rejected.*

*Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Madame Paul Bastid, President; Mr. Samar Sen; Mr. Herbert Reis;

Whereas at the request of Mrs. Nahed Mahmoud, a former staff member of the United Nations specifically recruited for the United Nations Children's Fund, hereinafter called UNICEF, the President of the Tribunal, with the agreement of the Respondent, extended successively to 31 January 1980, 22 February 1980, 15 April 1980, 16 May 1980, 30 June 1980 and 31 July 1980 the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 July 1980, the Applicant filed an application in which she requested the Tribunal:

“(1) to order the rescission of the decisions which, wrongfully and in an arbitrary manner, denied the applicant’s entitlement to a daily subsistence allowance (decisions contained in correspondence dated 10 December 1975 (annex 10 (b)), 19 March 1976 (annex 27), 7 December 1976 (annex 30 (a)) and 4 February 1977 (annex 33)), decisions resulting from

- “(i) a misreading of the facts of the case by UNICEF Headquarters, N.Y.,
- “(ii) a divergence in security measures taken by UNICEF and UNESCO, respectively, which affected the applicant who was, on the one hand, a UNICEF staff member and, on the other, a responsibility of UNESCO’s for security purposes; and
- “(iii) discriminatory treatment of the applicant as compared to certain male colleagues at UNICEF;

“(2) to determine the period during which the applicant was entitled to receive per diem; and

“(3) to direct the Respondent to arrange for payment to the applicant of such sums as the Tribunal finds her to be entitled to.”

Whereas the application contained a request for oral proceedings;

Whereas the Respondent filed his answer on 3 March 1981;

Whereas the presiding member ruled on 20 August 1981 that no oral proceedings should be held in the case;

Whereas the Applicant filed written observations on 11 September 1981;

Whereas, on 2 October 1981, the Respondent submitted additional information at the request of the Tribunal;

Whereas the facts in the case are as follows:

The Applicant, an Egyptian national, was locally recruited by the UNICEF Office at Beirut on 1 March 1972. She served under a succession of fixed-term appointments until 1 January 1975, when she received a probationary appointment which was converted on 1 July 1975 into a regular appointment as a Secretary at the GS-4 level.

On 7 September 1975 the Applicant left Beirut on annual leave with her two children. She was scheduled to resume her duties on 1 October 1975. While she was in Paris with her husband—an internationally recruited UNESCO staff member also stationed in Beirut—the situation in Lebanon deteriorated and the Applicant’s husband was instructed by UNESCO not to travel to Beirut. The Applicant decided not to return to that city and, after explaining her situation and her plans in two letters addressed on 26 September 1975 to the Regional Director and to the Administrative and Finance Officer, respectively, of the UNICEF Office at Beirut, she flew to Cairo, where she arrived on 3 October 1975. Three days later she reported to the UNICEF Area Representative in Cairo, who advised her that he could not employ her. On 13 October 1975 the Area Representative informed the Regional Director in Beirut accordingly.

On 23 October 1975 the Regional Director sent the following cable to the Area Representative:

“ . . .

“IN AGREEMENT NEW YORK EYE AM TEMPORARILY ATTACHING

BADRAN ISLAM AND FARRAG TO YOUR OFFICE ADMINISTRATIVELY. MAHMOUD CAN BE HIRED AS SECRETARIAL HELP AND WILL BE PAID FOR FROM REGIONAL OFFICE FUNDS. . . .”

On the same day the Administrative and Finance Officer of the Beirut Office addressed to the Area Representative a letter reading in part:

“I am pleased to inform you that Mr. McDougall [the Regional Director in Beirut] confirmed that the three Egyptian International Staff Members in our Office, namely: Dr. Badran, Dr. Farrag and Mr. Islam will be operating from Cairo Office. . . .

“On the other hand, Mrs. Mahmoud who is a secretary in our office and whose husband is a UNESCO Expert were not allowed to come to Beirut due to prevailing conditions. Since the three experts from our office will be operating from your office they will need secretarial help and therefore, Mr. McDougall agreed that Mrs. Mahmoud can work for the three of them and her salary be paid in Egyptian Pounds charging Beirut Budget as shown below and until further notice. . . .

“The most important is that Mrs. Mahmoud was on annual leave from 8-30/9/75. Until the period she resumes her duty at Cairo she will be considered on annual leave. I should be obliged if, when she takes up her post with you, to keep an attendance record to be sent to us regularly at the end of each month. Also, please keep an attendance record for the 3 above mentioned Int. staff members to be sent to us.

“For Mrs. Mahmoud October salary, please pay her LL 1,299.00 based on the present prevailing rate which is LL 2.27 to \$1.-, chargeable to Beirut Budget as mentioned above. . . .

“Please cable us when Mrs. Mahmoud resumed her duties at Cairo in order to enable us to raise a Personnel Action Form in this regard.”

On 1 November 1975 the Applicant accordingly started working as a secretary to the three officers temporarily assigned from Beirut to Cairo. At her request her salary was paid to her in U.S. dollars at the Beirut rate. On 27 November 1975 the Administrative and Finance Officer wrote to a Personnel Officer at UNICEF Headquarters to request guidance on certain administrative matters as follows:

“ . . .

“During the disturbances in Lebanon many of our local staff have left Lebanon to: Jordan, Kuwait, Egypt, etc.. All of these local staff have applied for Annual Leave; one of them had already used all the balance of her A/Leave, while the other one [the Applicant] was temporarily reassigned to Cairo Area Office. . . .

“I have had earlier reported to you the status of this Staff Member who was on A/Leave in Europe and being the wife of a UNESCO expert, she was not allowed to go back to Beirut. Since UNESCO’s instructions could not be applied on Mrs. Mahmoud who is a UNICEF staff member, locally recruited at Beirut, she was told that after she absorbs her leave, she will be granted LWP [leave without pay]. According to our records, she had absorbed all her leave and as of 31 October 1975, she over took 8 days.

“As from 1st November 1975, Mrs. Mahmoud was requested to work at our Cairo Office to help the 3 International Staff who were temporarily re-assigned to

Cairo, therefore, the 8 days will be deducted from her future entitlement of A/Leave. A PAF [Personnel Action Form] is issued in this regard, which I hope is in order and of which copies are sent herewith. Please remember that her salaries will be paid by Beirut Office once she comes back. . . .”

The Personnel Action Form in question, signed by the Regional Director on 27 November 1975, indicated under “Type of Action”: “Temporary Re-Assignment to Cairo Area Office”. On 10 December 1975 the Personnel Officer replied:

“ . . . Your arrangement with regard to Mrs. Mahmoud’s work in Cairo is the best you could do under the circumstances. However, I would not call her work in Cairo an ‘assignment’. This, in UN terminology means a detail of a staff member from one duty station to another with entitlement to per diem, etc., i.e., something like your assignment to Headquarters this summer. UNICEF has not asked Mrs. Mahmoud to stay in Cairo and her stay is rather for personal reasons. Therefore, I do not see a need for raising a personnel action and I am returning it to you for cancellation. Your letter is sufficient as an explanation of the nature and circumstances surrounding her work in Cairo. We also note that you are considering the eight days of annual leave she took over her entitlement as ‘advance leave’. Since there is no break in Mrs. Mahmoud’s service, her pension fund contributions should be deducted in the usual manner and a pension fund statement should be prepared for this purpose. . . .”

About the middle of December 1975 the Regional Director visited Cairo. On 18 December 1975 he informed the Resident Representative of UNDP in Cairo that:

“ . . . due to the prevailing conditions in Lebanon, a group of our International Staff from the Regional Office of Beirut will be operating temporarily from Cairo. We have accepted the kind offer made to us by Mr. Hilal Abdallah Hilal, Chairman of the Egyptian Authority for Cultivation and Development in Dokky, to use their premises.

“Administrative matters will be handled by the UNICEF Cairo Office and the following staff members will be authorized to send messages or cables through your office:

“Dr. Osman Farrag,

“Dr. Hoda Badran,

“Mr. Sabah Allawi,

“Mr. Mohamed Islam,

“Mrs. Nahed Mahmoud.

“Mr. Allawi will be handling administrative matters related to this temporary unit.”

On 22 January 1976 the Applicant wrote to the Administrative and Finance Officer that:

“ . . .

“I was happy when you informed me last week that HQ has agreed to transfer my salary to Cairo in dollars, as I requested in my letter to you in November.

“In a meeting with Mr. McDougall on Friday 16, he informed me that this arrangement should be changed and asked me to make my choice for one of the two following alternatives:

"1. Either to be re-assigned in Cairo, according to local salary scale; or

"2. To take leave without pay until a final decision is made about the Regional Office in Beirut

"He also explained to me that this would be effective 1 February.

"I hereby would like to advise you of my option for the second alternative, hoping for the fast normalisation of the situation in Lebanon and the resumption of the activities of our Regional Office in Beirut."

On 23 January 1976 the Director of the Administration Division at UNICEF Headquarters sent the following cable to the Regional Director:

"AAA. OFFICIAL PRESENCE EGYPT INTERNATIONAL STAFF MEMBERS OF EGYPTIAN NATIONALITY RESULT OF EVACUATION FROM THEIR DUTY STATION WHICH AUTHORIZED BY SECRETARY GENERAL. THEREFORE THEIR TREATMENT SHOULD BE EXACTLY THE SAME AS THAT OF OTHER INTERNATIONAL STAFF MEMBERS EVACUEES OF OTHER NATIONALITIES AND SO THEY ENTITLED TO PER DIEM IN EGYPT AS LONG AS EVACUATION EMERGENCY EXISTS OFFICIALLY AND THE POST CLASSIFICATION TO REMAIN UNCHANGED FROM THEIR OFFICIAL DUTY STATION BEIRUT. ANY DIFFERENT TREATMENT WOULD BE ARBITRARY AND ILLEGAL. BBB. CANNOT APPLY DOUBLE STANDARDS IN APPLICATION OF RULES REGARDING ALLAWI AND NOUNOU SINCE BOTH ARE LOCALLY RECRUITED STAFF BEIRUT. PER DIEM THEREFORE SHOULD BE PAID EITHER TO BOTH OR NONE AT ALL. IN THIS REGARD PLEASE NOTE ALLAWI FOR ALL PURPOSES IS TO BE TREATED AS A LOCALLY RECRUITED STAFF MEMBER AS NOUNOU. MAHMOUD'S PRESENCE EGYPT ORIGINALLY RESULTED FROM PERSONAL CONSIDERATIONS NOT INVOLVING UNICEF'S EMPLOYMENT IN VIEW HUSBAND'S ATTACHMENT UNESCO, THUS PER DIEM NOT PAYABLE. HOWEVER IF YOU NEED HER SERVICES CAIRO SHE MUST BE MAINTAINED UNDER BEIRUT SALARY SCALE."

In a letter to the Applicant dated 28 January 1976 the Regional Director, after referring to her decision to take leave without pay, stated:

"We have given your case another thought and hereby offer you, if you so wish, to continue working as a secretary to the Regional Staff temporarily reassigned to Cairo, with the understanding that your duties will strictly be of secretarial nature, which includes receipt of mail, filing, typing all letters for the Regional Staff. If this is acceptable to you, you are kindly requested to continue working in the offices provided for the Regional Staff. If you select to take the above offer you will continue to cash your salary at Beirut Salary Scale payable in US\$. I should also like you to keep in mind that Mr. Allawi will continue to be the Administrative Officer in addition to his other duties."

On 2 February 1976 the Applicant accepted that offer. On 4 March 1976, in a memorandum to the Deputy Director of the Administration Division at UNICEF Headquarters, the Applicant raised the question of her entitlement to daily subsistence allowance while in Cairo:

"Could you please clarify to me if I am also entitled per diem like Messrs.

Allawi and Nounou for the period I am working in Cairo. If not can I have an explanation . . . Are secretaries not entitled for allowance when they are working away from their duty station? I am sorry, I do not have the Manual of Rules and Regulations to check my entitlements.

"The only difference is that I am a woman and I am married to a UN expert.

" . . . "

On 19 March 1976 the Personnel Officer at UNICEF Headquarters answered:

"I wish to advise you that your stay in Cairo was not initiated by UNICEF. It was solely due to your personal circumstances. Being a wife of a UNESCO staff member, you were not allowed, under UNESCO procedures, to return to your duty station. As a UNICEF staff member you could have returned. From correspondence I have on file, I see that UNICEF/Beirut has tried to accommodate you when choosing not to return to Beirut for personal reasons by allowing you to work during your forced stay in Cairo instead of putting you on leave without pay. You have not been asked to go to Cairo or stay there by UNICEF. Therefore, I see no reason why UNICEF should pay you per diem. Being again a wife of a UNESCO staff member, you are UNESCO's responsibility as far as dependants are concerned.

"By copy of this letter to UNICEF-Beirut, I am asking them to look further into the justification for your stay in Cairo from the point of view of being UNICEF staff and the possibility of your joining your duty station.

"However, should you still for personnel reasons choose to continue to stay in Cairo to work instead of being placed on leave without pay, please remember that it is your choice and that there is no obligation on the part of UNICEF to make any special allowances for you.

"I leave this to Mr. Awad's decision."

On 30 March 1976 the Applicant wrote to the Personnel Officer that she was not satisfied with her answer and would raise the matter with the Staff Association in Beirut. On 5 April 1976 she wrote to the Administrative and Finance Officer requesting per diem on grounds of economic hardship and complaining of sex discrimination. On 2 June 1976 the Administrative and Finance Officer replied that Headquarters was taking care of her case. On 12 October 1976, after a further exchange of letters with UNICEF Headquarters, the Applicant submitted her claim to the Executive Director of UNICEF. On 16 November 1976 the Deputy Regional Director addressed the following letter to the Applicant:

"Headquarters and our office have been informed by Cairo Office that your temporary employment at Cairo has created dissatisfaction for the Cairo staff members. The main reason is that you have received the salary at Beirut scale payable in U.S. dollars. Thus, your salary is about 3 times that of other Cairo secretaries who are performing the same job as yours.

"So far, Headquarters and our office have not taken any action because in the letter from Mr. James McDougall to you dated 28 January 1976, he agreed to pay you the Beirut salary in U.S. dollars during the period you worked as secretary to the regional staff temporarily reassigned to Cairo and Mr. Allawi was the Administrative Officer.

"Now that Mr. Allawi has left Cairo on 9 April 1976 and all former regional officers were officially transferred to Cairo and Khartoum (1 August and 1 October

respectively), we have no justification to continue paying you the Beirut salary in U.S. dollars. Therefore, we are writing to inform you, with effect from 1 December 1976, that:

(a) If you wish to continue working in Cairo, you will get your salary in Egyptian Pounds at the Cairo Salary Scale. Mr. Larsen will decide the level and steps suitable to your qualifications. During the period you work for Cairo Office, starting from 1 December 1976, you will be treated as on leave-without-pay from Beirut Office. We will issue a Personnel Action covering your leave-without-pay and Cairo Office will offer you the Special Service Agreement. Headquarters has written to Mr. Larsen requesting him to give first priority and favourable consideration to you, if you wish to work for the Cairo Office.

“(b) If you do not wish to work for Cairo Office, you will be on leave-without-pay. If the Regional Office is re-opened in Beirut and all former staff members of the Regional Office resume working, you will rejoin the Beirut Regional Office. (In your letter dated 22 January 1976 to Mr. Awad, you expressed your wish to take leave-without-pay.)

“(c) You can be reassigned to Cairo Office and you will officially become a staff member of Cairo Office, provided Mr. Larsen has a post suitable to your qualifications in the Manning Table.

“ . . . ”

On 30 November 1976 the Applicant cabled headquarters protesting against the choice offered to her and refusing to take leave without pay. On 1 December 1976 Headquarters sent her the following cable:

“Your duty station is currently Amman [to which Beirut UNICEF staff members had been evacuated]. [The Area Representative] who is responsible for recruitment local personnel confirms there is no need for your services his office. Therefore you have three alternatives: AAA Return to duty in Amman immediately; BBB Request leave without pay until office returns to Beirut then join it there; CCC Resign. Failing to do this we have no alternative but terminate your service with immediate effect. We unable continue present arrangement in Cairo.”

On 5 December 1976 the Applicant cabled Headquarters that she proposed to travel to Amman on 2 January 1977 and her proposal was subsequently accepted by Headquarters. On 7 December 1976 the Executive Director of UNICEF, replying to the Applicant's letter of 12 October 1976, advised her that he agreed with the decision that she was not entitled to per diem during her stay in Cairo. By a cable of 12 December 1976 to headquarters the Applicant requested UNICEF to review her case and to extend to her subsistence allowance during her period of employment in Cairo. On 14 December 1976 Headquarters cabled the Applicant confirming UNICEF's decision that she was not entitled to such payment. On 6 January 1977 the Applicant sent to the Joint Appeals Board a letter of appeal which was treated as a request for review under Staff Rule 111.3 (a). On 4 February 1977 the Officer-in-Charge of Personnel Services informed the Applicant that the Secretary-General, having reviewed her case, had decided to maintain the decision of the Administration of UNICEF to deny her payment of daily subsistence allowance during her stay in Cairo. On 21 February 1977 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 19 June 1979. The Board's conclusions and recommendation read as follows:

*“Conclusions and recommendation*

“47. The majority of the Board concludes that: (a) the appellant was not on official travel status in Cairo from her arrival there in October 1975 until her departure for Amman as a result of her assignment to that city in December [1976]; and that (b) she was not entitled to daily subsistence allowance during that period.

“48. Accordingly, the majority of the Board recommends that the contested decision be maintained.”

The Alternate Member elected by the Staff appended to the Board's report the following dissenting opinion:

“1. While I agree with the first 44 paragraphs of the report, I cannot agree with the conclusions of the majority concerning the case of Mr. Nounou, set out in paragraph 45. I believe that his case is very similar to the appellant's case. Both were locally recruited staff members of the UNICEF office in Beirut, both travelled to Cairo on their own. Since Mr. Nounou received daily subsistence allowance while he was employed in Cairo, the appellant should also have received that allowance. I believe, in particular, that the majority of the Board attached too much importance in dealing with Mr. Nounou's case to the difference between services which are 'essential' and those which are 'needed'. That difference, in my view, is more semantic than real.

“2. Since I disagree with paragraph 45 of the report, I also disagree with the finding, conclusions and recommendation of the majority of the Board set out in paragraphs 46, 47 and 48 of the report.”

On 26 September 1979 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General, having re-examined her case in the light of the Board's report, including the minority opinion, had accepted the majority recommendation that the decision which denied her daily subsistence allowance during her stay in Cairo in 1975 and 1976 be maintained. On 31 July 1980 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The fact that the Applicant took annual leave during September 1975 was fortuitous and therefore not capable of making her lose future benefits for which she otherwise was eligible.

2. The Applicant is entitled to per diem as of the day the Beirut unit in Cairo started functioning, composed of three officials receiving per diem and herself, that is, as of 1 November 1975.

3. All the staff evacuated from the Beirut Office thereafter, including General Service staff locally recruited in Beirut, were paid per diem for the duration.

4. There is no ground in the allegations that the Applicant went to Cairo simply to be with her husband and that her being offered employment by UNICEF in Cairo was an "accommodation" which set her apart from other staff members shifted from Beirut to Cairo and did not entitle her to receive per diem.

Whereas the Respondent's principal contentions are:

1. The Applicant is not entitled to daily subsistence allowance because her travel to Cairo was not on official business or authorized by UNICEF. Instead of returning to her post at Beirut after her annual leave, she proceeded to Cairo without UNICEF's consent.



2. It was for entirely personal and family reasons that the Applicant decided to proceed to Cairo. This decision was taken on the basis of her own evaluation of the situation since evacuation procedures had not yet been initiated in Beirut and, in any event, she was a locally recruited staff member with no repatriation entitlements from UNICEF.

3. Far from failing to observe any of the Applicant's rights, UNICEF went well beyond its obligations in order to accommodate her both as to her place of work and her remuneration.

The Tribunal, having deliberated from 23 September to 8 October 1981, now pronounces the following judgement:

I. The Applicant states that her claim "revolves, basically, around the question of the Applicant's status in Cairo between the date of her arrival from Paris, on 3 October 1975, and her departure for Amman, Jordan, about 2 January 1977". In determining her status during this period, the relevant factors are the terms and conditions of her service in Beirut as a local recruit with UNICEF/ORDEM, the security arrangements made by UNICEF and by UNESCO where her husband worked, and the circumstances in which the Applicant moved early in October 1975 from Paris to Cairo. The Applicant began to work with UNICEF in Cairo from 1 November 1975.

As regards evacuation as a measure of security, the Applicant has admitted that as a local recruit of the staff of UNICEF/ORDEM at Beirut, she and her family "would not normally have been eligible had she been only a locally-recruited General Service staff member of UNICEF". In September 1975 such security measures as evacuation to a third country applied to the Applicant only to the extent that she was a part of her husband's family, her husband being an internationally recruited official of UNESCO in Beirut.

II. By 7 September 1975 when the Applicant left Beirut with her children for Europe on her annual leave, the conditions in Beirut were highly disturbed; the general principles and guidelines for the security of personnel of UNICEF were available in the Field Administration Handbook, although no specific measures had been given effect to. Irrespective of whether different actions were contemplated for the staff of UNESCO, a specialized agency in the United Nations family, the Tribunal accepts the view of the Joint Appeals Board that security measures of UNESCO could not be binding on UNICEF. In any event, if the Applicant found that any security measures prescribed by UNESCO were in conflict (or not in full consonance) with her obligations as a staff member of UNICEF, she had the duty to refer such a conflict to her employers and be guided by their advice. The Applicant failed to do so.

III. The Applicant stated that some time about the middle of September 1975 she (but not her husband who did not come to Paris until 20 September 1975) was orally asked by UNESCO in Paris that she and her children should not return to Beirut. The memorandum of UNESCO dated 13 October 1975 addressed to the Applicant's husband said that "owing to the political situation in Beirut, you are instructed to prolong your stay in Paris until further notice". He continued to be in Paris until 23 October 1975. This raises the presumption that the UNESCO security requirements could have been met if the Applicant and the two children had continued to stay in Paris. However, she decided that all three of them should go to Cairo. No evidence is forthcoming that she took any steps about the middle of September 1975—when UNESCO reportedly asked her not to

return to Beirut—to inform UNICEF in Beirut that in view of UNESCO's advice, she would not return to Beirut by 1 October 1975 when her annual leave was to expire and she was expected to resume her duties. She sent no information and asked for no instructions about what she should do in the circumstances.

IV. The tenor of the two letters, both dated 26 September 1975 (i.e. at least 8 days after she was told by UNESCO not to return to Beirut), which she addressed to Mr. McDougall, Regional Director of UNICEF and to Mr. Fuad N. Awad, Administrative and Finance Officer, is essentially private and personal. These two letters were sent through an intermediary who happened to be going back to Beirut and simply conveyed the Applicant's decision to go to Cairo "to send our daughters to school in Cairo until life comes back to normal in Beirut, firstly for security and secondly not to lose a scholar year". The letter to Mr. McDougall further discusses various possibilities that may be available to the Applicant for work with UNICEF in Cairo and states *inter alia*: "I will not be able to resume work on 1 October as scheduled and would appreciate if you could help me in recommending my temporary assignment to our Cairo Office. If there is no work available, could you please consider granting me leave without pay. I am only making suggestions as I am not aware of the possibilities of such an arrangement . . . or what can be done as I am keen at keeping my job with UNICEF and will leave only if there is no other way . . ." (Emphasis added). This extract shows that at the end of September 1975, the Applicant had no firm expectation of working with UNICEF in Cairo; she certainly had no right to work there as a "local recruit" appointed in Beirut. In any event, she left Paris for Cairo without waiting for a reasonable time for a reply either from Mr. McDougall or Mr. Awad: indeed, no reply was requested and perhaps not even expected as she had already made up her mind to go to Cairo, and had not, as she could and should have, sent any earlier and urgent messages to the UNICEF Office at Beirut or to Headquarters.

V. Once in Cairo, she called at the local Office of UNICEF, and was told that there was no job for her; subsequently however Mr. McDougall authorized Mr. Larsen in Cairo for her to be "hired" so that she could give secretarial assistance to the officers who had at about that time been separately assigned to Cairo from UNICEF/ORDEM Office at Beirut. The Applicant was originally allowed to draw Cairo scale of pay—about ⅓ of Beirut scale—but was later happy "when you [Mr. Awad] informed me that HQ has agreed to transfer my salary to Cairo in dollars, as I requested in my letter to you in November". These measures were thus initiated by her and taken at her suggestion. The arrangements agreed to by Mr. McDougall continued without complaints or protests from the Applicant until about 4 March 1976: in fact, the Applicant wrote as late as 2 February 1976 to Mr. McDougall "thank you again for your understanding". However, by 4 March 1976 the Applicant had discovered that two other persons of Egyptian nationality locally recruited in Beirut—Messrs. Allawi and Nounou assigned to Cairo from Beirut—were drawing daily subsistence allowance: from that time onwards, she made repeated attempts to obtain the same terms as these two officials, culminating in her appeal to the Tribunal.

VI. The Applicant argues that her appointment in Cairo should be treated as identical with that of all the others who were transferred from Beirut UNICEF to Cairo, especially of Messrs. Allawi and Nounou. The Tribunal finds however that the circumstances surrounding the Applicant's appointment in Cairo were in so many respects different from those affecting other UNICEF staff members transferred temporarily from

Beirut, that the majority of the Joint Appeals Board rightly held that she was not entitled to be treated in the same way as the others.

First, UNICEF Office at Beirut specifically authorized all the others to join at Cairo, while the Applicant went there because of her concern for security and the schooling of her children. Secondly, when the Applicant herself sought, and eventually obtained, work in Cairo with UNICEF, quite possibly her presence and employment in Cairo was of mutual advantage, but that does not detract from the fact that initially she was neither expected nor required in Cairo; it was only by circumstances and through a spirit of accommodation and helpfulness, specially on the part of Mr. McDougall, that she was employed in Cairo on much more favourable terms than what she could legitimately hope for. Thirdly, the mere fact that some Egyptians were eventually sent to Cairo does not by itself establish that the Applicant too would have been sent if she had happened to be in Beirut at the time: some members of the staff were transferred elsewhere and the Applicant too could have been sent to some place other than Cairo if she had not circumstantially rather foreclosed that option by moving to Cairo on her own initiative and volition. Fourthly, evacuation of local recruits for security reasons and their employment elsewhere are not contractual or legal rights, but fall entirely within the prerogative and discretion of the Respondent. The Applicant is not entitled to decide what would have happened if she had continued to stay on in Beirut. Lastly, the long correspondence for over a year and suggestions to the Applicant from time to time that she could choose from among the possibilities open to her indicate that she accepted being treated differently from the others until she found that Messrs. Allawi and Nounou were drawing per diem while she was not. The Joint Appeals Board examined this aspect of the Applicant's case and concluded by a majority decision that the Applicant's situation was not comparable to that of the others. However, one member of the Joint Appeals Board considered that the majority had attached unjustified importance to the difference between an "essential" job done by Mr. Nounou and a "needed" job done by the Applicant. This distinction is not relevant: the fact remains that the Applicant was not instructed to go to Cairo but went there on her own initiative. She thus placed herself beyond the scope of the Secretary-General's discretion regarding payment of per diem.

VII. The Tribunal has further examined her repeated claim that she was asked or advised to work in Cairo with the clear implication that her assignment there was a decision taken at the initiative and in the interest of UNICEF. The facts however are otherwise. Apart from the two letters which the Applicant wrote on 26 September 1975 indicating that she was not seeking to establish any rights to work in Cairo, she sent a letter on 22 January 1976 to Mr. Awad which in part read:

"In a meeting with Mr. McDougall on Friday 16, he informed me that this arrangement should be changed and asked me to make my choice for one of the two following alternatives:

"(1) Either to be reassigned in Cairo, according to local salary scale; or

"(2) To take leave without pay until a final decision is made about the Regional office in Beirut.

"He also explained to me that this would be effective 1 February.

"I hereby would like to advise you of my option for the second alternative, hoping for the fast normalisation of the situation in Lebanon and the resumption of the activities of our Regional Office in Beirut."

Nonetheless, the Applicant carried on with her job in Cairo on terms accepted by Mr. McDougall until November 1976, when she was asked to choose, with effect from 1 December 1976, either to continue to work in Cairo if Mr. Larsen needed her services and would accept her and thus become a local recruit in Cairo; or to go to UNICEF Office in Amman or Cyprus; or to proceed on leave without pay. While offering these choices, the letter dated 18 November 1976 from UNICEF Headquarters to Mr. Koleilat of Amman office ends with the words: "We believe that the above offers are very fair to her". However, on 30 November 1976, the Applicant sent a telegram to UNICEF in New York and said:

"For Sandberg/Moosa Today received Mr. Koleilat's AO/AM/293 of sixteen November copied HQ informing me of my being put on leave without pay as of 1 December (tomorrow) stop After one year of debate I am shocked to get such a proposal stop Dr. Badran my direct supervisor informed me upon her arrival from HQ that my case was being reconsidered stop I am appealing to you for the last time to have a fair treatment and stop this unjust action. FYI I cabled Mr. Koleilat refusing to go on leave".

On 1 December 1976 the Deputy Director of Personnel Administration telegraphed the Applicant in the following terms:

"Your duty station is currently Amman [to which Beirut UNICEF staff members had been evacuated]. [The Area Representative] who is responsible for recruitment local personnel confirms there is no need for your services his office [in Cairo]. Therefore you have three alternatives: AAA Return to duty in Amman immediately; BBB Request leave without pay until office returns to Beirut then join it there; CCC Resign. Failing to do this we have no alternative but terminate your service with immediate effect. We unable continue present arrangement in Cairo."

These developments, taken together with the exchange of correspondence at the time and the relevant records, establish that UNICEF did not initiate action for the Applicant's appointment in Cairo.

VIII. The Applicant became dissatisfied about March 1976 and, in her letter of appeal to the Joint Appeals Board for per diem during her stay in Cairo, she stated:

"On 1 March Messrs. Allawi and Nounou were called back to Beirut and I was delegated to be in charge with the administrative matters and secretarial assistance of the ORDEM unit.

"I received some correspondence for filing that informed me that my two colleagues were getting per diem for the whole period of their assignment in Cairo."

In support of her claim the Applicant has relied chiefly on the decision of Mr. McDougall to let her draw Beirut salary in Cairo and in U.S. dollars. The Respondent maintains that this decision, which gave much benefit to the Applicant, was a "mistake" that could not be made a ground for additional financial gains to her. The Applicant's second contention is that Mr. McDougall by signing a Personal Action Form was treating her as a staff member temporarily reassigned to Cairo. However, Mr. Awad's letter of 27 November 1975 forwarding this form to Headquarters opens with the words: "I have below two queries for which I should appreciate very much to have your guidance". A personnel officer at Headquarters made it quite clear that such a form was not necessary, for "I would not call her work in Cairo an 'assignment' ". The questions raised by Mr. Labouisse

before he sent his letter of 7 December 1976 rejecting the Applicant's claim for per diem are of no significance. The Applicant cannot base her claim on tentative opinions that individual officials in UNICEF may or may not hold. Furthermore, the Applicant implies that the inclusion of her name in office directories and telephone lists of the Cairo office of UNICEF/ORDEM tended to prove that she was being treated in the same manner as the others. These information papers are prepared for practical convenience and cannot, in the absence of very strong indication to the contrary, sustain a presumed legal right. The Tribunal has held that the Applicant's status was not comparable to that of the other local recruits who came from Beirut and in the circumstances these and other peripheral issues raised by the Applicant cannot make any material difference.

IX. Finally, the Applicant alleges that she has been discriminated against because of her sex or because she was married to an official of UNESCO or because of some personal prejudice against her. This latter allegation of prejudice was fully investigated by the Joint Appeals Board which found unanimously that a letter relied on by the Applicant "had exercised no influence on the contested decision". There is nothing to show that any unfavourable decision was taken because of her sex; arguably, her position as a mother with two children was at least to some extent responsible for Mr. McDougall's decision to allow her Beirut pay in Cairo to be drawn in U.S. dollars. Furthermore, as regards Mr. Nounou, the Tribunal considers that he observed the rules and was indeed sought out and asked by his employer to work in Cairo, while the Applicant followed a course of action primarily in the interest of herself and her children, and was only incidentally involved in working with UNICEF in Cairo. In addition to her salary, the Applicant, while in Cairo, received various benefits in her capacity as wife of a UNESCO official the details of which have not however been made available to the Tribunal.

X. Taking all the facts and circumstances into consideration, the Tribunal concludes that:

(a) the Applicant was employed in Cairo from 1 November 1975 until the end of December 1976 in very special conditions, and that the terms of her employment in Cairo were different from what they would have been if she had been officially sent to Cairo as a Beirut local recruit;

(b) the terms of her appointment in Cairo were fair and generous;

(c) there was no discrimination against her.

XI. The application is rejected.

*(Signatures)*

Suzanne BASTID  
*President*

Samar SEN  
*Member*

*New York, 8 October 1981*

Herbert REIS  
*Member*

Jean HARDY  
*Executive Secretary*