

Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

Judgement No. 265 was delivered on 19 November 1980 and any application for revision based on the discovery of a new fact, as defined in article 12, has to be submitted within one year of the judgement and 30 days of the discovery of such a fact. The present petition of the Applicant forwarding some material, the authenticity of much of which has been questioned by the Respondent, was not filed within the time-limits prescribed in article 12, and must therefore fail. The Tribunal has no power to relax this rule or to extend the time-limits even if it accepted the reasons given for the delay. Nor can it be reasonably argued that the limit of one year should be reckoned from the date of Judgement No. 271 of 13 May 1981 which rejected the first application for the revision of Judgement No. 265; such an interpretation would totally defeat the principle and purpose of article 12 of the Statute by making it possible for any applicant to continue a case indefinitely by a series of successive applications for revision. Even if the time-limits did not apply, the material presented by the Applicant after so many years and without any indication of how and from where it was obtained cannot bring into question the evidence on which the Tribunal based its Judgement No. 265.

III. The Tribunal holds that the application is not receivable inasmuch as it was made after the expiry of the two time-limits prescribed in article 12.

IV. The application is therefore rejected.

*(Signatures)*

Suzanne BASTID

*Vice-President, presiding*

Samar SEN

*Vice-President*

*Geneva, 6 May 1982*

Arnold KEAN

*Member*

Jean HARDY

*Executive Secretary*

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## Judgement No. 285

*(Original: English)*

**Case No. 272:**  
**Perucho**

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

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*Non-renewal of the fixed-term appointment of a staff member of the United Nations Children's Fund. Staff Rule 104.12 (b).—Judgement No. 142.—Assurance creating a reasonable expectancy of con-*

*tinuation of the Applicant's employment.—Question whether the Respondent's obligation vis-à-vis the Applicant was actually discharged.—Consideration of the Administration's conduct vis-à-vis the Applicant.—Conclusion reached by the Tribunal that the Administration, on the basis of general allegations which were not supported by evidence, was determined not to continue the Applicant's employment.—Award to the Applicant of four months' net base salary as compensation.—The Applicant's other pleas are rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Arnold Kean; Mr. Herbert Reis;

Whereas at the request of Silvino C. Perucho, 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 to 30 November 1981 the time-limit for the filing of an application to the Tribunal;

Whereas, on 30 November 1981, the Applicant filed an application in which he requested the Tribunal:

“to rule that the Secretary-General should accept and implement the recommendations of the JAB.”

Whereas the Respondent filed his answer on 28 January 1982;

Whereas the Applicant filed written observations on 15 March 1982;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF on 1 December 1976 as a Production Foreman with the Greeting Cards Operation (GCO) at Toronto, Canada, under a fixed-term appointment for one year at the GS-2 level. On 1 December 1977 his appointment was extended for one year. On 14 January 1978 he sent to Mr. Tony Abbott, Member of Parliament, Ottawa, Canada, a letter reading in part:

“ . . .

“I am writing you this letter with the hope and prayer that you can extend any possible assistance in the continuation of the operations of United Nations Children's Fund, Greeting Card Operations (UNICEF GCO) printing plant in Markham, Ontario, wherein the undersigned is the Production Foreman and the only UN staff member in Toronto. Although hesitant and afraid of losing job, I took the courage so as not to contribute to the rising unemployment. I hope you will do your utmost best without any mention to this letter.

“ . . .

“The news that I gathered lately was that UNICEF GCO in New York will close our operations in Canada and all the jobs we are doing here like overprinting, box-making, folding and boxing of greeting cards will now be handled in New York plant. This arrangement, if pushed through by New York this year, will seriously affect us. Presently, UNICEF GCO in New York is making the study and no final plan has been released yet. Meantime, we are in a quandary and our workers are calling me daily to know when they will start working again.

“I would appreciate it very much therefore if you can work out something

whereby UNICEF GCO New York will continue and expand our plant operations in Canada. . . .”

On 3 March 1978 Mr. Abbott replied *inter alia* that if the Applicant agreed, he would be prepared to bring the Applicant's letter to the attention of the Canadian Consulate General in New York with the request that they discuss the Applicant's concerns with UNICEF-GCO International Office officials. On 7 April 1978 the Applicant wrote to the Plant Manager of GCO in New York, with whom he had discussed the matter on the telephone, the following letter:

“Enclosed is my January 14th letter which is self explanatory together with the reply by the Honourable Tony Abbott.

“As discussed with you over the phone, my letter was written with no slightest intention to cause grievance. It was done in good faith and with malice towards none. I am a disciplined man who adheres to sound principles, respect to superiors and fair play.

“I worked to the bone to prove my worth. I believed that any individual who works hard with honesty, sincerity and dedication deserves a break. I stayed in UNICEF with an eye for the future. Suffice it to say that my academic training and experiences are more than adequate to qualify me for the job I am presently doing.

“Your commitment to help and that of the Director is very much appreciated. I apologized for any inconvenience or affliction the January 14th letter had caused you.”

On 2 May 1978 the Director of GCO in New York addressed the following letter to the Applicant:

“Some time ago I had the visit of Mr. Hutton from the Canadian Consulate, New York, who wished to get some detailed information concerning the Markham operations and our expenditures in Canada. As we were in the process of studying the reorganization of our Canadian operations, I was surprised to find that Mr. Hutton was informed about our intentions, and I finally realized that he had received a copy of your letter to Mr. Tony Abbott, Member of the Parliament, dated 14 January 1978.

“I can well understand your concern about the proposed changes, but would have appreciated it very much if you had contacted me before writing to a Member of Parliament. Furthermore, I had given you my personal assurance during my visit to Markham on 7 December 1977, that you would not lose employment with UNICEF regardless of the steps to be taken to improve the operations in Canada. This reorganization has met with the approval of the Canadian Committee for UNICEF and is in the best interest of our Organization on a long-range basis.

“Should you have any queries, I would ask you to contact me direct.”

On 28 June 1978 the Applicant wrote to the Director of GCO as follows:

“During Mr. Cleary [the Plant Manager of GCO]'s visit to Canada, he proposed that I should transfer to New York to handle the shipping (export) functions of GCO under Mr. F. deSena.

“While the position duties are not made up yet and the position title not established, he further suggested that I should spend a week or two weeks time

working with Freddie to ascertain and write up the job description for the proposed position.

"In connection with the above, I wish to see you at your most convenient time.

" . . . "

On 30 June 1978 the GCO facility in Canada was closed and the Applicant was placed on travel duty at Headquarters until 15 August 1978. His performance for the period 1 December 1976 to 15 August 1978 was rated as "very good". On 11 August 1978 the Director of UNICEF Personnel Administration sent the following letter to the Applicant:

"I am writing to confirm the termination of your fixed-term appointment as Production Foreman for UNICEF in Toronto, Canada. The effective date will be the close of business on Tuesday 15 August 1978.

"As you know, the Greeting Card Operation facility in Canada was closed as of 30 June 1978 and since then the Greeting Card Operation has continued to use your services on *travel duty* at Headquarters but this arrangement will be discontinued as of the close of business on 15 August 1978.

"Termination of your services as Production Foreman in Toronto would normally entitle you to termination indemnity and you would also be entitled to payment in lieu of notice since the notice given to you in this letter is less than required under United Nations Staff Regulations. However, as you have shown interest in employment as a locally recruited staff member of the Greeting Card Operation at Headquarters and may be employed here in the new post in which you are interested we are not offering you these payments at this time.

"I believe you are aware that some questions concerning the new post for which you are a candidate have arisen and it may take some time for final solution and selection of the most suitable candidate. It has therefore been decided to offer you a fixed-term appointment for three months starting 16 August 1978 as a locally recruited staff member. You will be placed at Step 4 of the G-4 level, the level at which the new post has been classified.

"If you are not offered employment following the three-month period of your fixed-term appointment you will be entitled to the termination payments mentioned above. If you are offered continuation of employment here, we would withdraw your termination and expect your resignation for your appointment in Canada.

"We should be pleased to have your response to this letter as early as possible. If you accept the three-month fixed-term appointment offered you above will you please visit Miss Taylor's office on Wednesday 16 August in order to complete the necessary formalities."

On 18 August 1978 the Deputy Director of UNICEF Personnel Administration advised the Applicant that it had been decided to continue his current appointment through 31 August 1978, on which date the appointment was accordingly terminated. On 1 September 1978 the Applicant was granted a fixed-term appointment for three months as an Export Shipping Assistant with GCO in New York at the G-4 level. On 29 November 1978 the Chief of UNICEF Personnel Services wrote to the Applicant as follows:

"This is to confirm the discussion Mr. Ejgil Christensen [Director of GCO] had with you this morning regarding your status with the Organization.

"As agreed with you, we will extend your contractual status for a further period of three months and 15 days, i.e. 15 March 1979. However, you would be expected

to perform your current duties only until 15 December 1978. Thereafter, in order to assist you with resettling, you would be placed on leave with pay until the end of your contract. You will be paid in cash for accumulated annual leave on separation.

"I would also like to confirm that we will provide you with a return air-ticket to Toronto, as you were initially brought to New York on travel duty. The termination entitlements due to you as a result of the closure of the GCO operation in Toronto, and the decision not to maintain your employment, will also be paid to you as mentioned in Mr. Sandberg's letter of 11 August 1978.

"..."

On 8 December 1978 the Director of GCO wrote a confidential "note for the record" which was critical of the Applicant's personality. On 15 December 1978 the Applicant was placed on special leave with full pay until 15 March 1979 when his fixed-term appointment expired. On 4 April 1979 he addressed a letter to the Secretary-General requesting a review of the decision to terminate his appointment. Having received no reply, the Applicant lodged an appeal with the Joint Appeals Board on 6 July 1979. The Board submitted its report on 27 February 1981. The Board's conclusions and recommendations read as follows:

*"Conclusions and recommendations"*

"26. The Board finds that the appellant's conduct in writing to a member of Parliament was improper. However, the Board also finds that subsequent to that action by the appellant, the Director of GCO recalled in writing the assurances given to the appellant of continued employment, and the only performance report was favourable to the appellant and did not refer to that incident. Therefore the Board finds unconvincing the respondent's reference to that incident as contributory to the appellant's failure to be appointed to the post of Export Shipping Assistant.

"27. The Board also finds that in all likelihood discussions regarding salaries occurred between the appellant and the respondent. The Board was, however, unable to obtain any record of a written offer of a two-year fixed-term contract from the respondent to the appellant. Taking into account the commitment made to the appellant in writing, the Board finds that if an offer had been made it should also have been made in writing. Moreover, the fact that the post which the respondent claims to have offered to the appellant at the G-4 level was simultaneously being considered for reclassification to the G-5 level, and the further fact that recruitment for the G-5 level post would have been competitive, makes it difficult to believe that a firm offer of a two-year fixed-term contract at the G-4 level was made to the appellant. The Board is of the view that if the Administration had wished to meet its obligation of continued employment it could have offered a higher step at the G-4 level.

"28. The Board further finds that the respondent's handling of this case, especially the decision by the Director, GCO, not to recommend the appellant on the basis of allegations which had not been brought to the appellant's attention, showed a disregard of the principle of good faith in relation between the parties and violated the appellant's implied contractual right as a UNICEF staff member to fair and equitable treatment by the respondent. The Board therefore recommends that Mr. Christensen's note for the record of 8 December 1978 should be removed from the appellant's file.

"29. The Board finds that the respondent had not adequately honoured the

commitment to the appellant of continued employment with UNICEF, and recommends that efforts to meet that commitment should be taken.

“30. The majority of the Board further recommends that in the event that another post cannot be found an amount equivalent to nine months net base salary be awarded to the appellant for the damages which he has suffered. In this regard the Chairman is of the view that were it not for the letter to the appellant referring to continuing employment, UNICEF would have been justified, following the closure of the Toronto office, to terminate with appropriate indemnity the appellant's one-year fixed-term contract. The Chairman further believes that the commitment made to the appellant began in fact from the date of the appellant's assignment in New York. As the appellant's previous contracts were for a duration of one year, the Chairman recommends that the appellant should be given as an indemnity a maximum of one year at his Toronto net base salary, less the total of the salary payments (excluding travel or other subsistence payments) which he received as a result of his coming to New York and of the short-term contracts.”

On 17 August 1981 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General, having re-examined the case in the light of the Board's report, had decided:

“(a) to maintain the contested decision, and

“(b) not to accept the recommendations made by the Board in paragraphs 28 to 30 of its report.

“This decision is based on the Secretary-General's conclusion that you had no valid legal claim to remain in UNICEF's service after the expiry of your last contract and that UNICEF acted in good faith and in fact gave you consideration going beyond its commitments and your legal entitlements. In all the circumstances of the case, the Secretary-General does not feel that payment by UNICEF of further compensation, as recommended by the Joint Appeals Board, would be justified.”

On 30 November 1981 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. After the Applicant was instructed to proceed to New York, no reasonable offer was made to him despite continuing promises by the Director of GCO and the Deputy Director of GCO as well as Finance and Personnel staff. When finally a position was set up, the Director of GCO used a vague pretext of “negative assessment” not to give the job to the Applicant, despite the fact that he was brought to New York specifically for that new assignment.

2. The performance of the Applicant has always been very highly rated, which is another reason why he was brought to New York.

3. Evidence shows the existence of a written promise made by the Director of GCO that the reorganization of GCO would not result in the Applicant's losing employment with UNICEF.

4. The Applicant was brought to New York because it was felt that with the transfer of certain services from Toronto to New York a new post would be required in New York.

Whereas the Respondent's principal contentions are:

1. The Applicant as a locally recruited staff member on a temporary fixed-term

contract had no legal right to being relocated after the closure of UNICEF's facility in Canada.

2. The Respondent discharged his obligation resulting from the commitment made to the Applicant of continued employment after the closure of the Markham facility in Canada.

3. The Applicant had no legal right to remain in the service of the Organization beyond the duration of his last fixed-term contract.

4. The Respondent's decision to separate the Applicant from service was not taken in disregard of the principle of good faith nor was it an abuse of power.

5. The Applicant was adequately compensated by the payments he received from UNICEF consequent to his transfer to New York.

The Tribunal, having deliberated from 26 April to 10 May 1982, now pronounces the following judgement:

I. The Applicant was first employed under a special service agreement as a GCO representative and auditor in Toronto from 21 July 1975 to 31 January 1976. This was renewed from time to time until 30 November 1976. He became a Production Foreman under a fixed-term appointment at GS-2, step V, for one year from 1 December 1976. On 1 December 1977 he was given a further one-year fixed-term appointment which expired on 30 November 1978. Under his fixed-term contract he could not have "any expectancy of renewal or of conversion to any other type of appointment". This is explicit in Staff Rule 104.12 (b), the wording of which was incorporated in the Applicant's letters of appointment. However, this principle would not prevail if, by the conduct of the Respondent, the Applicant was given "a reasonable expectancy of continued employment with UNICEF", namely, "the circumstances of the Applicant's fixed-term appointment and his performance of service created a legal expectancy of continued employment with UNICEF" (Judgement No. 142, *Bhattacharyya*).

II. Late in 1977 UNICEF decided to close down its GCO plant at Markham in Toronto. On 7 December 1977 the Director of GCO visited the plant and gave the Applicant an oral assurance which, in a letter to the Applicant dated 2 May 1978, he described as

"my personal assurance during my visit to Markham . . . that you would not lose employment with UNICEF regardless of the steps to be taken to improve the operations in Canada".

In the Tribunal's view, this assurance, described in the Respondent's answer as "an oral commitment", given by a senior officer and subsequently confirmed in writing, was sufficient to create in the Applicant a reasonable expectancy of continuation of his employment with UNICEF, not for an indefinite period but for at least the same period as each of the two fixed-term contracts under which he had been previously engaged, that is to say for a period of one year.

III. In Judgement No. 142 (*Bhattacharyya*), an assurance of further employment was given in a letter addressed by the Regional Director of UNICEF to the employee's government from whom his services had been obtained. This was held to give rise to a legal expectancy of further employment. In Judgement No. 128 (*Al-Abed*), an oral statement by a Deputy Resident Representative, not confirmed in writing, was held not to give rise to a legal expectancy of further employment. The Tribunal considers that the

case of the present Applicant, who received an oral assurance from the Director of GCO which was subsequently confirmed in writing, falls within the principle of Judgement No. 142 rather than of Judgement No. 128. The Tribunal is of the opinion that the assurance was sufficient to raise a legal expectancy notwithstanding that it was qualified as a "personal assurance", bearing in mind the seniority of the Director of GCO, who gave the assurance, in relation to the Applicant, a production foreman, to whom it was given.

IV. The Tribunal has considered the evidence with a view to determining whether the Respondent's obligation with respect to the Applicant's legal expectancy of further employment was actually discharged. The Applicant was, in the Tribunal's view, entitled to expect UNICEF to provide further employment for at least one year after the termination of his second one-year contract, i.e., until 30 November 1979, or, if his post became redundant, to seek a suitable alternative post for him. In fact his employment under two shorter fixed-term contracts, one of 3 months and a second of 3½ months, terminated on 15 March 1979, but to assist him with resettlement he was placed on special leave with full pay from 15 December 1978. His period of employment therefore fell short by 8½ months of his legal expectancy, but he received the appropriate termination payments.

The Respondent states that UNICEF made every effort to accommodate the Applicant in order to fulfil the promise given to the Applicant by the Director of GCO. There is a conflict of evidence on this point, but the Tribunal is of the opinion that oral discussions took place between the Administration and the Applicant with a view to his further employment at G-4 level and that the Applicant did not consider the salary offered to be sufficient, bearing in mind what his Canadian salary had been, and the cost of living in New York compared with Toronto. The Tribunal is satisfied that no firm offer was made in writing and that the discussions were not recorded at the time on the Applicant's personal file or elsewhere. Evidence of an oral offer rests only on the recollection of the Administration officials involved, and if the Administration proceeds without a written offer and without proper records it creates the risk of misunderstanding.

V. The Applicant submitted to the Joint Appeals Board and the Board accepted that an offer of employment at G-4 level would not have been made at a time when a request had been made for a new post at G-5 level. The Respondent asserts that this request was not in fact made until after the Applicant had refused an offer of employment at G-4 level. The Tribunal does not find either of these arguments conclusive as to whether a firm offer at G-4 level was made.

VI. The post was reclassified at G-5 level. The Applicant was among the 12 applicants and evidently had the best qualifications for the post. However, a memorandum from the Chief of the Personnel Services Section dated 3 October 1979 includes the following passage:

"Because of the doubts regarding Mr. Perucho's personality which had begun to surface, it was decided to readvertise the vacancy with a closing date of 8 November 1978 in the hope that more candidates would apply for the post so that Mr. Perucho's qualifications and experience could be properly compared with that of other suitable candidates—in other words, what the Organization was attempting to do was to get away from what it believed was a 'Hobson's' choice of situation where in fact no real choice existed."

The readvertising produced an additional candidate who was awarded the post. The



Tribunal draws the conclusion that the Administration went to some lengths to avoid awarding the reclassified post at G-5 level to the Applicant, and that they did so because of "doubts regarding Mr. Perucho's personality which had begun to surface".

VII. When employed in Toronto, the Applicant had been the subject of only one evaluation report, which rated him as "good" in respect of his personal relations with others. The report applied to the period from 1 December 1976 to 15 August 1978. The Respondent states that "the Organization was in no position to evaluate his suitability for a post in a different environment. [It] felt that the Applicant was not suitable for the post and appointed another more suited candidate". A confidential note for the record by the Director of GCO dated 8 December 1978 (one month after the closing date for the readvertised post) includes statements that Mr. Perucho began to show certain personality traits incompatible with UNICEF's standards, made serious allegations against colleagues inside and outside his working environment, created within GCO numerous incidents by spreading rumours which caused serious problems, showed discourtesy, was very aggressive, showed a lack of loyalty towards UNICEF and had a strange sense of relationships with colleagues, whose faults he was over-eager to point out. All of these allegations are in general terms and are unsubstantiated by evidence. The Applicant was not confronted with them or given any opportunity to answer them; besides the Respondent concedes that the note ought to have been discussed with the Applicant and should now be removed from the Applicant's personal file. The Director's confidential note rightly criticizes the Applicant's conduct in writing to a Canadian Member of Parliament about the closure of the Markham plant, which the note states would normally have called for disciplinary action. Accordingly, the Director decided not to recommend the Applicant for the upgraded post as advertised.

VIII. The conclusion reached by the Tribunal is that the Administration, because of the Applicant's having written to a Member of Parliament, and because of general allegations which may or may not have been justified but are not supported by evidence and which the Applicant was never given the opportunity to answer, was determined not to continue the Applicant's employment and, with that in mind, readvertised the upgraded post when it became apparent that the Applicant was the best qualified among the twelve candidates who initially applied.

IX. On the other hand, the Applicant had at an earlier stage an opportunity, though probably not a firm offer, of employment at G-4 level, which he rejected. At all events, it is impossible to determine precisely what happened in that regard, in view of the Administration's failure to make an offer in writing, or to confirm it in writing, or even to make a record at the time in its own files.

X. In the circumstances and in view of the payments received by the Applicant from UNICEF since the expiry of his second one-year contract and of the elements of fault on both sides, the Tribunal orders the Respondent to pay the Applicant as compensation his net base salary in New York for four months. The Tribunal also orders that the confidential note for the record by the Director of GCO dated 8 December 1978 be removed from the Applicant's personal file.

XI. All other pleas of the Applicant are rejected.

*(Signatures)*

Samar SEN  
*Vice-President, presiding*

Herbert REIS  
*Member*

Arnold KEAN  
Member

Jean HARDY  
Executive Secretary

Geneva, 10 May 1982

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## Judgement No. 286

(Original: English)

Case No. 271:  
Pattillo

Against: The Secretary-General  
of the United Nations

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*Non-renewal of a fixed-term appointment.*

*The Respondent does not deny that the Administration should have granted the Applicant a two-year fixed-term appointment.—The Applicant is entitled to compensation for such injury as she may have suffered by reason of the wrongful denial of such an appointment.—Date on which the appointment would have taken effect.—Assessment of the injury sustained by the Applicant.—Award to the Applicant of compensation in the amount of \$4,000.*

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### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Samar Sen, Vice-President; Mr. Herbert Reis; Mr. T. Mutuale, alternate member;

Whereas at the request of Martha Lee Pattillo, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 15 September 1981, 15 October 1981, 10 November 1981 and 17 November 1981 the time-limit for the filing of an application to the Tribunal;

Whereas, on 30 November 1981, the Applicant filed an application in which she requested the Tribunal to order:

“1. The rescission of the administrative decision of 28 April 1978 which denied the Applicant extension of service in the form of a two-year contract from 30 April 1978.

“2. Should the Secretary-General decide under Art. 9 of the Statute of the Tribunal that the Applicant shall be compensated without further action being taken in her case, compensation for the injury sustained, and costs as follows:

“(a) *Compensation for injury sustained*  
\$76,466.00

“This sum is explained as follows: