

IV. The Tribunal, furthermore, finds that, even if it is impossible to prove whether the Applicant's possibilities of promotion have or have not suffered as a consequence of such error, the Administration is liable and consequently adequate compensation should be given to the Applicant.

V. For the above-mentioned reasons, the Tribunal decides that, in view of the fact that the procedural error committed cannot be corrected otherwise, the Respondent shall pay to the Applicant one thousand dollars.

VI. With regard to the alleged deterioration of the Applicant's health as a consequence of the action of the Administration, the Tribunal finds that the Applicant has not produced sufficient evidence.

(Signatures)

Suzanne BASTID

Vice-President, presiding

Luis M. de POSADAS MONTERO

Member

Arnold KEAN

Member

Nicolas TESLENKO

Acting Executive Secretary

New York, 1 October 1982

Judgement No. 294

(Original: English)

Case No. 271:
Pattillo

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

Request for interpretation of Judgement No. 286.

*The Tribunal set the amount of its award on the basis of an erroneous calculation supplied to it.—
Correction of Judgement No. 286 in accordance with Article 12 of the Statute.—Award of an additional
amount of \$7,408.99.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas in Judgement No. 286, delivered on 11 May 1982, the Tribunal decided that the Respondent should pay "four thousand dollars to the Applicant";

Whereas after a sequence of calculations and recalculations, the Office of Financial Services issued on 28 April 1982 to the Applicant a cheque for the sum of \$8,408.99

representing the amount payable pursuant to the Secretary-General's decision of 12 May 1981 under Staff Rule 111.3, and in consonance with the recommendation of the Joint Appeals Board;

Whereas on 3 May 1982, the Applicant refused to accept and returned the above-mentioned cheque to the Chief of the Payroll Section at the Office of Financial Services, and on the same day, the Applicant informed the Director of the Division of Personnel Administration that in line with prior correspondence she wished to defer the matter of "payment under the Secretary-General's decision of 12 May 1981 pending the considerations and judgement of the Tribunal";

Whereas on 24 May 1982, the Applicant requested payment of the sum of \$8,408.99—a cheque for which she had earlier returned—on the ground that the Tribunal had rendered its judgement and therefore deferment of payment of that sum was no longer appropriate;

Whereas on 7 June 1982, the Director of the Division of Personnel Administration informed the Applicant that her letter requesting payment of the sum of \$8,408.99, calculated as described in his previous letter of 12 March 1982, had been forwarded to the Office of Legal Affairs for advice in the light of the Tribunal's Judgement No. 286, and that in the meantime arrangements were being made to pay her the Tribunal's award of \$4,000;

Whereas on 9 June 1982, a cheque was issued to the Applicant for the amount of \$4,000 "in accordance with Judgement No. 286 of the Administrative Tribunal dated 11 May 1982";

Whereas on 3 August 1982, the Director of the Division of Personnel Administration informed the Applicant that the Administration realized that her claim for a payment of \$8,408.99 in addition to the \$4,000 awarded by Judgement No. 286 was based upon the Applicant's interpretation of the Tribunal's judgement, and that the Office of Legal Affairs would inform the Tribunal of the Administration's decision to pay only a total of \$8,408.99 and further request an interpretation of the judgement;

Whereas on 12 July 1982, the Respondent filed an application in which he requested the Tribunal

"... to rule whether payments totalling \$8,408.99 by the Administration to Ms. Pattillo—which amount of \$8,408.99 represents the difference between the net salary and allowances which Ms. Pattillo would have received had her last fixed-term appointment for service with the Dag Hammarskjöld Library been renewed for two years from 1 October 1977 and the salary and allowances actually paid to her by the United Nations over this period—satisfies the Tribunal's order or whether the Respondent must pay Ms. Pattillo \$4,000 in addition to the \$8,408.99, i.e. a total payment of \$12,408.99."

Whereas the Applicant filed her answer on 13 September 1982;

The Tribunal, having deliberated from 23 September to 1 October 1982, now pronounces the following judgement:

I. The request for interpretation submitted by the Respondent in connexion with Judgement No. 286 concerns the amount of payment to be awarded to the Applicant. The Respondent asks whether the Applicant is entitled to receive \$12,408.99, or whether payment of \$8,408.99 to the Applicant would comply with the Tribunal's order.

II. The problem arises from the fact that after having stated in a letter dated 14

September 1981 that the difference between the remuneration which the Applicant in fact received during the period 1 October 1977 to 30 September 1979, and the remuneration she would have received had she been given the two-year contract to which she was entitled, was \$784.28, the Director of the Division of Personnel Administration subsequently indicated in a letter of 12 March 1982 that certain elements had been omitted in the earlier calculation. The difference between \$8,408.99 and the earlier sum of \$784.28 is attributable to the omission of \$7,624.71 corresponding to the Applicant's post adjustment entitlement.

III. The determination of the total compensation of \$4,000 in Judgement No. 286 was made by taking into consideration various factors. In view of the letter of 14 September 1981, the Tribunal considered in that judgement that the remuneration paid to the Applicant by the Respondent was "approximately one thousand dollars less than she would have earned under the contract." However, in the light of the information subsequently supplied by the Respondent, the Tribunal now considers that the amount of its award of 11 May 1982 was at least in part based on an erroneous calculation supplied to it, and is therefore entitled to proceed to a correction of its judgement in accordance with Article 12 of the Statute.

IV. In order to correct this material error, it is necessary to refer to the terms of Judgement No. 286; among the factors considered by the Tribunal in that judgement, it emphasized that "the Applicant was without employment for some two months during that two-year period." The Tribunal took into account the period during which the Applicant was without employment and also that her contract would have been at the P-2 level if it had been renewed. For these reasons, the Tribunal made an award of \$4,000 to the Applicant; it did not intend, however, to award the Applicant an exact amount of damages for the lack of salary during two months. The Tribunal estimated that out of a total award of \$4,000, approximately \$1,000 could be considered as her entitlement under the letter of 14 September 1981 and \$3,000 to be paid to her for lack of employment for two months and the inconvenience and insecurity to which the Applicant was subjected.

V. After taking note of the rectified sum subsequently communicated by the Respondent and as indicated in paragraph II above, the Tribunal considers that an error was made in calculating the amount to be awarded to the Applicant in Judgement No. 286. The Tribunal takes into account the sum of \$8,408.99 as described in paragraph II above and notes that that sum would be related partly to the loss resulting from two months of unemployment. Nevertheless, considering all the elements mentioned in paragraph IV of Judgement No. 286, the Tribunal decides in accordance with Article 12 of its Statute that the total sum due the Applicant should be corrected to \$11,408.99. Since the sum of \$4,000 has already been paid to the Applicant, she is entitled to receive in all a further sum of \$7,408.99.

VI. For these reasons, the Tribunal orders the Respondent to pay the Applicant the sum of \$7,408.99.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Herbert REIS
Member

Samar SEN

Vice-President

New York, 1 October 1982

Nicolas TESLENKO
Acting Executive Secretary

Judgement No. 295

(Original: French)

Case No. 286:
Sue-Ting-Len

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

Application seeking recognition of the Applicant's right to be considered for promotion in accordance with the rules in force prior to the adoption of General Assembly resolution 33/143.

Request that information circular ST/IC/81/19, issued subsequent to Judgement No. 266, should be applied to the Applicant.—Scope of the information circular.—The Secretary-General's concern to provide for a transition between two systems of promotion and to ensure respect for acquired rights.—The first requirement specified in the information circular: assignment to a post corresponding to a Professional post.—That requirement is not met in the case of the Applicant.—The second requirement specified in the information circular: the department concerned must have prepared recommendations prior to 29 August 1979.—That requirement is not met in the case of the Applicant.—The applicant cannot validly claim enjoyment of the benefit of the information circular—Applicant's contention that, regardless of the language of the information circular, she is entitled to enjoyment of acquired rights under the previous system.—Scope of Judgement No. 266.—Staff Regulation 12.1.—Consideration of the Applicant's case in the light of the acquired rights concept.—Critique of the position taken by the Joint Appeals Board.—Crucial importance of the fact that, prior to the entry into force of the new system, action in direct preparation for the evaluation of suitability was taken.—The Tribunal concludes that the Applicant is not entitled to claim the benefit of acquired rights.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mrs. Paul Bastid, Vice-President; Mr. Herbert Reis; Mr. Arnold Kean, alternate member;

Whereas, on 15 July 1982, the Applicant filed an application requesting the Tribunal

“(a) to accept the dissenting opinion of the staff-elected member of the Joint Appeals Board that, on the basis of work actually performed, the Applicant had been assigned the functions of a Professional post and that the Applicant's Department had, in effect, recommended her for promotion to P-2 (or prepared her promotion recommendation) prior to 29 August 1979, and that therefore the Applicant is entitled to have her case transmitted to the appropriate appointment and promotion body for consideration under information circular ST/IC/81/19,

“or, alternatively,