

Judgement No. 309*(Original: English)***Case No. 284:
De Shields****Against: The Secretary-General
of the United Nations**

Request by a former staff member of the United Nations for rescinding the decision to terminate his permanent appointment for unsatisfactory services, and for reintegration or compensation.

Conclusion of the Joint Appeals Board that due process had been observed in reaching the termination decision.—Recommendation to reject the application.

Question of the validity of the termination decision.—Conditions of termination of a permanent appointment under staff regulation 9.1 (a).—Judgements No. 98 (Gillman) and No. 131 (Restrepo).—Final nature of the Secretary-General's determination whether services of a staff member are satisfactory or not, provided that his decision was reached through due process.—Conditions of withholding a within-grade salary increment on the grounds of unsatisfactory service.—Decision to withhold is applicable during the period of rebuttal procedure.—Applicant's contention that due process was not observed in the proceedings of the Appointment and Promotion Panel.—Observation of the Tribunal on the existence of two parallel procedures to examine the nature of a staff member's services (rebuttal procedure and proposal of termination) and suggestion to consider introducing changes to avoid overlapping of review procedures.—Finding of the Tribunal that the Applicant's case was thoroughly and fairly examined in the proceedings of the Appointment and Promotion Panel.—The Tribunal holds that its finding in Judgement No. 225 (Sandys), condemning the practice of unjustifiably favourable periodic reports, applies to the present case.—The Tribunal finds no evidence of unfair, incomplete or unreasonable procedure, or of prejudice or improper motives.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. T. Mutuale; Mr. Luis M. de Posadas Montero; Mr. Herbert Reis, alternate member;

Whereas at the request of Charles Michael De Shields, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 3 May, 21 June, 30 June and 13 July 1982 the time-limit for the filing of an application to the Tribunal;

Whereas, on 8 July 1982, the Applicant filed an application in which he requested the Tribunal

“to order the rescission of the decision of 23 December 1981 by the Secretary-General which maintained his decision of 15 May 1979 to terminate the permanent contract of the Applicant on grounds of unsatisfactory service under Staff Regulation 9.1 (a) and his restoration to full status as a staff member.”

Whereas the Respondent filed his answer on 25 January 1983;

Whereas, on 26 April 1983, the Applicant filed written observations which he corrected on 27 April 1983 and in which he amended his pleas to read as follows:

"The Administrative Tribunal is respectfully requested to order the rescission of the decision of 23 December 1981 by the Secretary-General which maintained his decision of 15 May 1979 to terminate the permanent contract of the Applicant on grounds of unsatisfactory service under Staff Regulation 9.1 (a) and his restoration to full status as a staff member; or

"In the event that the Secretary-General decides, in the interest of the United Nations that the Applicant shall be compensated without further action being taken in his case, determination by the Administrative Tribunal, under Article 9 of its Statute, of compensation in the amount of the equivalent of two-years' net base salary of the Applicant for the injury sustained."

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 1 July 1968 under a fixed-term appointment for three months as a Clerk at the G-2 level in the Maintenance and Operations Section, Buildings Management Service, Office of General Services. This appointment was followed by a probationary appointment which was converted to a permanent appointment on 1 January 1971. The Applicant was promoted to G-3 on 1 January 1969 and to G-4 on 1 April 1975. Until 30 June 1976, he was rated in his periodic reports as "a staff member who maintains a good standard of efficiency" or as "an efficient staff member giving complete satisfaction". In his performance evaluation report for the period 1 July 1976-1 December 1977, however, his performance was described as "a performance that does not fully meet standards". On 17 March 1978, after discussing the report with the Applicant, the Chief of the Section addressed the following memorandum to the Executive Officer of the Office of General Services:

"This afternoon, Mr. de Shields and I discussed his periodic report from 1 July 1976 to 1 December 1977. I pointed out to him and he did realize that it was not a good report. We discussed in length each aspect in his report and also several items in relation to his overall performance in the Maintenance Office in 3B-12. He realized that he has not been able to maintain the necessary records specifically in relation to leave slips and doctor's certification required to be submitted to the Executive Office so that the staff concerned would not be inconvenienced by having their pay checks withheld.

"He stated that in the past two years, he has requested re-assignment through Personnel to improve himself and to achieve a better position within the organization but to date nothing has materialized. He feels that his present position has no future and due to this fact, he has no incentive to perform a satisfactory job. Based on our lengthy discussion, I feel that he would accept Agreed Termination.

"It is important that the maintenance records in the Maintenance and Operations Section be maintained at a high level because they represent the total staff of 118 manual workers. Mr. de Shields does not maintain these records thus causing inconvenience and embarrassment to the Section.

"It is imperative that action be taken immediately to resolve this present problem. I must point out that Mr. de Shields' performance has continued to deteriorate since 1 December 1977. Also, a staff member who has filled in for Mr. de Shields in the last three months, is on extended sick leave so that maintaining records required by the Executive Office has been very difficult.

"Once again, I must point out that since 1 January 1978, the leave record of Mr. de Shields . . . leaves much to be desired . . . :"

On 3 April 1978 the Executive Officer recommended in a memorandum to the Office of Personnel Services that the Applicant's services be terminated "under Staff Regulation 9.1 (a), either for unsatisfactory performance or in the interest of the good administration of the Organization". On 14 April 1978 a copy of the memorandum of 17 March 1978 was given to the Applicant. On 21 April 1978, in a memorandum to the Chairman of Working Group II of the Appointment and Promotion Panel, a copy of which was subsequently given to the Applicant, the Office of Personnel Services supported the recommendation of the Office of General Services that the Applicant's services be terminated under Staff Regulation 9.1 (a) "for unsatisfactory performance". On 19 May 1978 the Applicant submitted his comments on that recommendation in a memorandum addressed to the Chairman of Working Group II of the Appointment and Promotion Panel, stressing that the recommendation for termination was based on one questionable periodic report after a long history of good or very good reports. The Chief of the Section having complained to the Office of General Services on 28 July 1978 that the Applicant's performance had not improved and that he continued to have difficulties in maintaining the necessary records, the Executive Officer urged the Office of Personnel Services, on 2 August 1978, to ensure that the termination action be completed expeditiously. On 6 September 1978 the Chief of the Section informed the Applicant by telephone that he intended to order the withholding of his within-grade salary increment due in October 1978. On 7 September 1978 the Applicant protested this proposed action in a memorandum, addressed to the Assistant Secretary-General for Personnel Services and copied to the Chairman of Working Group II of the Appointment and Promotion Panel, which read in part:

"I submit for your urgent consideration that such a decision on his [the Chief of Section's] part is premature and that it would avert the proper procedure under Personnel Directive PD/5/69 which prescribes that I should receive a report on the matter and that I 'must be given the opportunity to rebut' that report 'in accordance with the provisions of paragraph 13 of ST/AI/115' (now ST/AI/240).

"Under PD/5/69 arbitrary decision to withhold a salary increment and to avert the proper procedure which provides for a recommendation that the staff member should have an opportunity to rebut *before* a decision is taken is illegal.

"I submit further that so arbitrary an action to compound the pre-judgements that I exposed in my memorandum of 19 May 1978 to the Chairman of Working Group II Appointment and Promotion Panel (of which I sent a copy to the Assistant Secretary-General of Personnel Services) is to be rejected by the Administration."

On 13 September 1978 the Chief of the Section sent to the Executive Officer of the Office of General Services a special report recommending the withholding of the Applicant's within-grade salary increment. On 14 September 1978, having received a copy of this special report, the Applicant wrote again to the Assistant Secretary-General for Personnel Services, with a copy to the Chairman of Working Group II, stating *inter alia* (in a version subsequently corrected by him):

"May I appeal to you to insure that I be given sufficient time to rebut this special report under the provisions of Personnel Directive PD/5/69 and

Administrative Instruction ST/AI/240, paragraph 13 (which entail a Departmental Review of the recommendation of withholding of increment) before a fair, complete and reasonable procedure of investigation by a joint review body under Administrative Instruction ST/AI/222 of the recommendation of termination takes place."

On 20 September 1978 the Applicant wrote a further memorandum to the Assistant Secretary-General for Personnel Services, also copied to the Chairman of Working Group II, which read in part:

"SUBJECT: "1. Withholding of within-grade salary increment: Special
OBJET: Report dated *13 September 1978*, received by C. De Shields
14 September 1978; P-5 action of implementation found to
have been signed by the Department of General Services
and Office of Personnel Services on *14 September 1978*.
"2. Procedure of termination review of permanent con-
tract in progress.

"1. With reference to the two points described under 'Subject' above, may I bring to your attention the fact that my letter to you dated *7 September 1978*, concerning the proper procedure of review of recommendation of withholding of within-grade salary increment under Personnel Directive PD/5/69; and my letter to you dated *14 September 1978* concerning the relation of the procedure under Personnel Directive PD/5/69 to the procedure of review of recommendation for termination under Administrative Instruction ST/AI/222 have been unheeded and unanswered.

"2. I was informed suddenly today by Miss Derek, Secretary, Appointment and Promotion Panel, to expect to be called by the Appointment and Promotion Panel on Friday of this week 22 September 1978, and to prepare myself with an examination of my Official Status File which she had.

"3. Upon examining my Official Status File I found that a P-5 action, (of which I had not received a copy) had been completed on *14 September 1978* by both the Department and the Office of Personnel Services ordering the implementation of the recommendation of withholding of increment in disobservance of the provisions of Personnel Directive PD/5/69 (See my letters to you dated *7* and *14 September 1978* of which I sent copies also to the Chairman of the Appointment and Promotion Panel), and of the provisions, which are related, of Administrative Instruction ST/AI/240, paragraph 13.

"4. I submit to you that these actions by the Administration's *disobservance of the provisions of administrative instruments* which the administration itself has authored and published are highly reprehensible, and that those actions are designed deliberately to vitiate the procedure of review under Administrative Instruction ST/AI/222 of the recommendation for termination of my permanent appointment.

"5. I submit once more that these actions would compound unfairly the prejudgements that I exposed in my memorandum of 19 May 1978 to the Chairman of the Appointment and Promotion Panel, and I expect him to consider himself responsible *as well* if he accepts the vitiation that these actions indicate of the procedures of the Appointment and Promotion Panel under Administrative Instructions ST/AI/222.

" . . .

"8. I note also that I did not see, or receive, or know of the existence of the memorandum dated 3 April 1978 by the Executive Officer of the Office of General Services until I examined my file today, 20 September 1978."

On 21 September 1978 the Applicant, having read the memorandum of 3 April 1978, submitted observations thereon to the Chairman of Working Group II; referring to the difference between the provisions in Staff Regulation 9.1 (a) dealing respectively with termination for unsatisfactory services and with agreed termination, he stated that it would be unconscionable for the Administration to choose arbitrarily in his case between these two different sets of provisions without reference to their implications. On 26 September 1978, in a reply to the Applicant's communication of 14 September 1978 to the Assistant Secretary-General for Personnel Services, the Chief of Staff Services advised the Applicant that, as he had submitted a rebuttal to the special report of 13 September 1978, the rebuttal would be investigated and an appraisal filed in accordance with the procedure set out in ST/AI/240, that such rebuttal, however, would not have the effect of suspending the withholding action, but that should the appraisal be in his favour, the increment would be reinstated; as to the Applicant's reference to Working Group II, the review of his case would await the result of the investigation and appraisal. On the same day the Applicant replied that he had not yet submitted a rebuttal to the special report, that under PD/5/69 he was entitled to the opportunity to rebut a recommendation for withholding his increment *before* a decision was taken to withhold it, and that it was necessary for the withholding order to be rescinded before he submitted a rebuttal since otherwise the departmental review of both the special report and the rebuttal would be a spurious review of a *fait accompli*. On 27 September 1978 the Chief of Staff Services suggested to the Applicant that if he had not yet submitted a rebuttal to the special report, he do so at his earliest convenience since the time-limit for such a rebuttal was one month from the date of receipt of the report. The Applicant submitted his rebuttal on 13 October 1978. In the meantime, the Assistant Secretary-General for General Services had, on 28 September 1978, communicated to the Applicant, in accordance with ST/AI/240, the names of five staff members from whom the Applicant was requested to select three to constitute the panel which would review his rebuttal to the special report. On 17 October 1978, however, the Applicant informed the Assistant Secretary-General for General Services that none of the five names were acceptable and requested a further list of five names from which to choose the panel. After a further exchange of correspondence between the Applicant and the Assistant Secretary-General for General Services, on 31 October 1978 the latter rejected the Applicant's request for lack of adequate reasons being furnished and asked him to indicate his selection by no later than 7 November 1978. On the same day the Assistant Secretary-General for General Services requested the Office of Personnel Services to advise the Appointment and Promotion Panel to proceed with the termination proceedings as there was, in his view, no real linkage between the Panel's review of the termination request and the rebuttal of the decision to withhold the salary increment. On 10 November 1978 the Chief of Staff Services requested Working Group II of the Appointment and Promotion Panel to begin the review of the recommendation of the Office of General Services to terminate the Applicant's appointment; in his view, this recommendation was sufficiently supported by documentation as to be self-contained and furnish ample basis on which to reach a decision independently of the rebuttal procedure, which was a

separate matter. On the same day the Chief of Staff Services informed the Applicant accordingly. On 13 November 1978 the Applicant wrote to the Chairman of Working Group II, recalling that the Group had suspended its review of the proposed termination of his appointment until the rebuttal had been investigated and appraised and submitting that there had been a lack of due process on the part of the Administration both in its failure to allow him to rebut the special report *before* the increment was withheld and in its refusal to supply him with an alternative list from which to select the members of the rebuttal panel. On 27 November 1978, having been advised that the Joint Review Group of Working Group II would resume consideration of his case on 30 November 1978, the Applicant wrote again to the Chairman of Working Group II, concluding:

“4. Therefore, I state that, in appearing before the Joint Review Group, I maintain, nevertheless, my right to a Departmental review of the recommendation of withholding of increment before any decision is taken on its implementation (See especially paragraph 3 of Personnel Directive PD/5/69 which refers to the provisions of paragraph 13 of ‘ST/AI/115’, which is now paragraph 13 of Administrative Instruction ST/AI/240), *and* before the application of the procedures of review of the recommendation of termination of permanent contract under Administrative Instruction ST/AI/222.

“5. I seriously enjoin the Joint Review Group to consider that its procedures under Administrative Instruction ST/AI/222 cannot be applied properly in the improper circumstances that have been created and compounded concerning the withholding of my within-grade increment.”

On 10 January 1979 the Executive Officer of the Office of General Services sent to the Chief of Staff Services, who transmitted it to the Joint Review Group on the following day, a memorandum in which he complained of continued deficiencies in the Applicant's work. The Applicant, who had been given a copy of that memorandum, commented on it in a preliminary memorandum dated 17 January 1979 announcing a further presentation from his records and in two memorandums respectively dated 23 and 26 January 1979, all addressed to the Chairman of Working Group II. On 31 January 1979 the Joint Review Group of Working Group II of the Appointment and Promotion Panel submitted its report to the Assistant Secretary-General for Personnel Services. According to its report, the Joint Review Group considered the Applicant's case at four meetings, held on 18 September, 30 November, 5 and 12 December 1978 respectively, and had before it a number of documents, including the Applicant's memorandums dated 17, 23 and 26 January 1979 which were, however, “submitted after the Panel had reached a decision”. Paragraphs 16 and 19 of the report, however, read:

“16. The Joint Review Group was now informed, by Mr. Menon's memorandum to Mr. Chang, dated 10 January 1979, . . . that the staff member has not been able to sustain the improvement as previously reported. It was stated in the memorandum that ‘his performance and the attention he wishes to give to his work varies at will: . . . and that he has once again demonstrated a total lack of interest in taking official requests seriously’.

“19. The Group . . . recalled Mr. De Shields to the meeting and provided him with a copy of Mr. Menon's memorandum. The Chairman suggested that Mr. De Shields may wish to have a few days to prepare his

comments concerning the allegations contained therein to which he replied, that he did not need any additional time and was ready to discuss the memorandum and attachments. The Chairman then invited him to comment on the allegations contained therein."

The report concluded as follows:

"22. After careful consideration of all oral and written evidence, the Joint Review Group unanimously reached the conclusion that the recommendation for the separation of Mr. De Shields was well founded and not prompted by improper motive. The Group also noted that the staff member was given adequate advice and opportunity to correct his deteriorating record and improve sufficiently to make him a reliable and productive staff member, but to no avail. *It therefore decided to recommend approval of the joint recommendation of the Office of General Services and of the Office of Personnel Services for the separation of Mr. De Shields from the service of the United Nations for unsatisfactory service, under Staff Regulation 9.1 (a).*"

On 26 April 1979 the Appointment and Promotion Board endorsed the report of the Joint Review Group and recommended the Applicant's separation from the service to the Secretary-General. On 15 May 1979 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided to terminate his permanent appointment in accordance with the provisions of Staff Regulation 9.1 (a) and Staff Rule 104.14 (f) (ii) (B) effective 21 August 1979. On 4 June 1979 the Applicant requested the Secretary-General to review that decision. On 15 June 1979 the decision was confirmed to him on behalf of the Secretary-General and on 15 April 1980 he lodged an appeal with the Joint Appeals Board, which submitted its report on 16 October 1981. In its report, the Board found that due process had been observed by the Respondent in reaching his decision to terminate the Applicant's permanent appointment, and consequently made no recommendation in support of the appeal. On 23 December 1981 the Assistant Secretary-General for Personnel Services informed the Applicant that, having re-examined his case in the light of the Board's report, the Secretary-General had decided to maintain the contested decision. On 8 July 1982 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Joint Review Group improperly accepted vitiated procedure and circumvention by the Administration of the procedure of Personnel Directive PD/5/69 on withholding of within-grade salary increment, and the consequent vitiation of its own procedures under Administrative Instruction ST/AI/222 in the course of arriving at its recommendation of 31 January 1979.

2. The Joint Review Group improperly and substantively ignored consideration of the Applicant's submissions dated 17, 23 and 26 January 1979 concerning new charges against him which the Group itself had entertained, and therefore rendered its procedure incomplete.

3. The proper application of the procedures of due process in Personnel Directive PD/5/69, Administrative Instruction ST/AI/240, paragraph 13, and Administrative Instruction ST/AI/222 on termination was not realized at any stage in the review of the Applicant's case.

Whereas the Respondent's principal contentions are:

1. The decision to terminate the Applicant was a valid exercise of administrative discretion.

2. The Applicant was given a complete, fair and reasonable procedure before his contract was terminated:

(a) Nowhere in PD/5/69 is there any requirement, written or implicit, that the rebuttal procedure for refusal to grant a within-grade salary increment must be completed before procedures to terminate a permanent appointment can be commenced. The implementation of a decision is independent of whether the decision may be reversed after any appeal process is completed. More importantly, a decision to withhold within-grade increments has no relation to, and is not dependent on, a decision to terminate the staff member;

(b) In any event, the Joint Review Group suspended its session to await the result of the investigation and appraisal of the special report, and resumed its deliberations without awaiting the result of the rebuttal only after the rebuttal proceeding had come to a standstill owing to unreasonable objections raised by the Applicant to all the five names proposed to him for the composition of the panel.

The Tribunal, having deliberated from 20 May to 8 June 1983, now pronounces the following judgement:

I. The Applicant seeks rescission of the administrative decision notified to him on 23 December 1981 to terminate his permanent appointment for unsatisfactory services and asks for reinstatement or alternatively for compensation in the amount of two years' net base salary.

II. According to Staff Regulation 9.1 (a) the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment if the services of the latter prove unsatisfactory. The power to determine whether a particular staff member's services are satisfactory or not lies with the Secretary-General. The Tribunal has repeatedly held that the Secretary-General's appraisal in that respect is final (*Judgements No. 98: Gillman* and No. 131: *Restrepo*) provided that his decision was reached through due process, i.e. by means of a complete, fair and reasonable procedure, and that there was no prejudice or improper motivation vitiating the termination decision.

III. The Applicant contends that he was not accorded due process in several respects. One of these was the withholding of a within-grade salary increment in October 1978. According to the Applicant, the Administration violated the relevant Staff Rules as it withheld the increment and created a *fait accompli* before he could rebut this action. This complaint of the Applicant is unfounded. The Applicant is in error when he construes the relevant rules of the Organization in a manner that the yearly salary increments must be automatically awarded when they fall due and that a decision to withhold an increment on the ground of unsatisfactory services can only be implemented after the staff member had lost his case in a rebuttal procedure. According to this theory the increment would be paid during the whole period of the rebuttal procedure and in case the rebuttal fails the staff member concerned would be obliged to repay the increment he undeservedly received.

However, the meaning of the relevant rules is the reverse, namely, that if a decision is made to withhold a salary increment because of unsatisfactory services, then this decision stands and no increment is paid until the staff member proves his right in the rebuttal procedure. If he does, then the decision to withhold the increment will be rescinded and he will be entitled to all withheld instalments of the increment.

IV. The Applicant also complains that due process was not observed by the Joint Review Group of Working Group II of the Appointment and Promotion Panel when it completed the examination of his case without awaiting the outcome of the rebuttal procedure concerning the withholding of his salary increment.

This complaint raises the following question: is it possible that two parallel proceedings examine at the same time practically the same question, namely, whether the services of a staff member were satisfactory or not? In the present case the Administration has first given an affirmative answer to this question by implication, namely, by offering the Applicant the names of five staff members from whom to select three for constituting a panel to review the question of the increment and that at a time when the procedure concerning the termination of the Applicant's appointment was under way before the Joint Review Group.

Later, however, when the Applicant declared—without giving his reasons—that none of the five staff members presented was acceptable to him, the Administration decided that the rebuttal procedure should be kept in abeyance pending resolution of the question of termination. Indeed, the uncooperative attitude of the Applicant helped to avoid an unnecessary duplication.

The Tribunal finds that the Applicant's right to due process was not violated by the fact that there was no prior examination of his rebuttal concerning the withholding of the salary increment, and that the Joint Review Group has not infringed any regulations or rules by proceeding in the Applicant's case while the rebuttal procedure was suspended. The Tribunal observes, however, that it may be desirable that the Respondent take up the matter and consider introducing possible changes for the purpose of avoiding the overlapping and duplication of these review procedures.

V. There is more merit in the Applicant's complaint against the report of the Joint Review Group. The report, indeed, refers only to four of its meetings (18 September, 30 November, 5 and 12 December 1978) but omits mentioning a meeting held on 16 January 1979. This, however, seems to the Tribunal to be only a clerical error, the more so as paragraphs 16 and 19 of the said report refer to a memorandum dated 10 January 1979 as well as to the fact that a copy of that memorandum was given to the Applicant—obviously at the meeting held on 16 January. Similarly, no particular weight can be given to the objection that the report of the Group only mentions that the Applicant has submitted three memorandums dated 17, 23 and 26 January 1979 "after the Panel had reached a decision" but does not contain a detailed evaluation of these papers. In the view of the Tribunal, the report of the Joint Review Group shows that the Applicant's case was thoroughly examined and that he was afforded a full opportunity to present his views.

VI. The Applicant refers repeatedly to the fact that during his service he received seven periodic reports covering the period July 1968 to December 1977 and of those only the last one relative to the period 1 July 1976 to 1 December 1977 was definitely unfavourable, rating his performance as one "that does not fully meet standards." Moreover, he was promoted to G-3 in 1969, granted permanent status in 1971, promoted again to G-4 in 1975, passed the five-year review in 1976 and received a within-grade increment in 1977.

According to the Joint Review Group's report, when the Applicant's superior was specifically asked how the Applicant could have been granted a within-grade increment in September 1977 when in April 1978 his termination was recommended, the answer was that

"[the within-grade increment] had been given as an incentive, after having counselled him and warned him of the implications . . . the department had at that time still hoped that a transfer would materialize and that an adverse administrative action would then certainly have jeopardized the staff member's chances."

The department's and the Applicant's hopes for a transfer from the Maintenance and Operations Section did not materialize because of the Applicant's "limited skill coupled with his mediocre record", as reported on 3 April 1978 by the Executive Officer of the Office of General Services, who added that "during the past two years, the staff member has demonstrated a total indifference to his functions and has been irregular in his attendance. Besides, while at work his output is inadequate" and concluded with a "strong recommendation" of the Office of General Services "that the staff member's services be terminated under Staff Regulation 9.1 (a), either for unsatisfactory performance or in the interest of the good administration of the Organization".

While the Applicant would have willingly accepted an agreed termination, the Office of Personnel Services felt that such action "would be tantamount to financially rewarding a staff member for inadequate services".

VII. Concerning the incongruity of the favourable periodic reports with the unsatisfactory performance of the Applicant, the Tribunal wishes to recall a similar case in which it found that

"for a supervisor to make periodic reports which describe a staff member's performance in unjustifiably favourable terms, which are subsequently retracted, is as reprehensible as to report in unjustifiably unfavourable terms though, unlike the latter, it cannot be held to reflect prejudice on the part of the supervisor in question. The evaluation of a person whose 'performance has been mediocre from the beginning' as 'an efficient staff member giving complete satisfaction' displays a measure of insincerity on the part of the . . . Officer which, if tolerated by the Administration, would undermine the very purpose of the institution of the periodic reports." (Judgement No. 225, *Sandys*).

This statement applies *mutatis mutandis* to the present case.

VIII. On the basis of all these considerations, the Tribunal holds that the complaints of the Applicant concerning an alleged infraction of his right to due process are groundless. The Tribunal has not found any evidence that the procedure followed in the termination of the Applicant's appointment was unfair, incomplete or unreasonable or that the termination decision was based on prejudice or improper motivation.

IX. For the foregoing reasons, the application is rejected.

(Signatures)

Endre USTOR
President

T. MUTUALE
Member

Luis de POSADAS MONTERO
Member

Geneva, 8 June 1983

Herbert REIS
Alternate Member
Jean HARDY
Executive Secretary