General could not grant such an extension and that only the Joint Appeals Board could do so in exceptional cases, and advised the Applicant, if he so wished, to proceed with his appeal before the Board and to submit to the Board, in the first instance, the question of the receivability of his appeal. The Respondent enclosed in his reply a copy of the applicable Staff Rules as to appeals.

VII. In spite of this specific advice on 4 April 1972 the Applicant took no action until 11 July 1972—an unexplained delay of some three months (and a delay of a year and a month since he had been reminded on 8 June 1971 of the possibility of administrative appeal)—when he finally, almost one year and nine months after his receipt on 19 October 1970 of the notice of summary dismissal for serious misconduct, applied to the Joint Appeals Board for an extension of time within which to submit an appeal.

VIII. As stated above, Staff Rule 111.3 *(d)* grants the Joint Appeals Board the power to "waive the time-limits in exceptional circumstances". In the present case, the Board decided not to waive those time-limits, finding that the reasons offered by the Applicant for the delays did not constitute "exceptional circumstances". The Tribunal regards that decision as fully supported by the record.

IX. The application is accordingly rejected.

(Signatures)

R. VENKATARAMAN
President

Zenon ROSSIDES
Member

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

New York, 16 October 1974

Judgement No. 194

(Original: English)

Case No. 187:
Witmer

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

Withdrawal of an offer of employment as technical assistance expert for medical reasons relating to a previous period of service by the Applicant.—Request for compensation for breach of contract.

Absence of a letter of appointment.—Judgement No. 142.—Examination of all the circumstances relating to the candidacy of the Applicant.—Invocation by the Respondent of Staff Regulation 4.6.—Having been asked to undergo a medical examination as a prior condition to his appointment and having undergone that examination satisfactorily, the Applicant had fulfilled the conditions stipulated in the offer of appointment.—Denial of clearance to the Applicant by the Medical Director on the basis of his medical record during a previous period of employment.—Authority of the Medical Director to make recommendations of this nature and right of the Secretary-General to act on such recommendations.—The Respondent acted negligently in making an offer of appointment apparently subject to a new medical examination when he knew that whatever his health condition at the time the Applicant could not have been granted an appointment on account of his past medical history.—Principle of estoppel prevents the Respondent from raising objections based on the Applicant's medical history and disregarding the latest favourable medical report.—Conclusion of the Tribunal that the Applicant had become entitled to the

fixed-term appointment offered to him and that the Respondent, by withdrawing the appointment, failed to carry out his obligations towards the Applicant.—Award to the Applicant of compensation in the amount of $8,400, less such amount as may already have been paid as indemnity.

Request for medical reclassification of the Applicant.—Request rejected, such reclassification being within the competence of the Medical Director.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Zenon Rossides;

Whereas, at the request of John Witmer, a former technical assistance expert and OPEX (Operational, Executive and Administrative Personnel) officer of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 1 May 1974 and again to 1 June 1974 the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 May 1974, the Applicant filed an application the pleas of which read as follows:

"*(a)* The Applicant asks the Tribunal to endorse the Report No. 229 submitted to the Secretary-General by the Joint Appeals Board (see [Report], para. 40).

"*(b)* The Applicant consequently invokes the obligations arising from *(a)* above and requests specific performance thereof taking into consideration as part performance, action which has been unilaterally undertaken by the Respondent.

"*(c)* The Application requests the Tribunal to order the medical reclassification of the Applicant.";

Whereas the Respondent filed his answer on 19 August 1974;

Whereas the Applicant filed written observations on 26 September 1974;

Whereas the facts in the case are as follows:

The Applicant served in Syria as Town and Country Planning Expert under a series of fixed-term appointments from 12 September 1958 to 31 December 1962 and as OPEX Officer (Chief Architect and Town Planner) under a one-year fixed-term appointment from 1 January 1963 to 31 December 1963.

In May 1962 the Applicant contracted typhoid and viral hepatitis. On 7 January 1963, however, following a medical examination ordered in connexion with his OPEX appointment, he was placed in class 1a by the Medical Director of the United Nations. In September 1963 the Applicant was offered a one-year extension of his OPEX appointment; on 25 September 1963 he rejected the offer on the ground that he had already accepted a post of chief architect in the town of Zug (Switzerland). On 13 December 1963, however, the Medical Director advised the Office of Personnel that "on the basis of the new medical examination [the Applicant] underwent in November 1963, the extension of mission in Syria or other tropical and subtropical climates is medically contraindicated". On 31 December 1963 the Applicant's appointment came to an end and his medical classification was changed to class 2. On 10 June 1965 the Secretary of the Advisory Board on Compensation Claims, with which the Applicant had filed a claim in respect of his illness of May 1962, informed him that the Board had recommended, and the Secretary-General had approved, that the illness of May 1962 be accepted as attributable to service, that related medical expenses as certified by the Medical Director be paid, that a residual partial impairment, assessed at 10 per cent of the whole man, be recognized and lump-sum compensation in the amount of $3,000 be paid, and that the claim for loss of earnings be rejected.

On 11 May 1970 the Technical Assistance Recruitment Service (TARS) informed the Applicant that his name had been officially submitted, as one of a panel of candidates, to the Government of Yugoslavia for the post of Project Manager-Physical Planner in Yugoslavia. On 18 May 1970 the Applicant replied that he was available and willing to begin a mission at any time. In a cable dated 8 June 1970 the Resident Representative of the United Nations Development Programme (UNDP) in Yugoslavia informed Headquarters that the Government of Yugoslavia had confirmed its acceptance of the Applicant for the post, and inquired about the date when the Applicant would be available. On 9 June 1970 the office of TARS in Geneva wrote to the Applicant asking him to take the necessary medical examination as soon as possible at an established local hospital and enclosing medical forms to be completed and returned to the Medical Director by the examining physician. On 19 June 1970 TARS cabled the Applicant the following offer:

> "Pleased to advise that Government of Yugoslavia accepted your candidature for post Project Manager (Physical Planner) Physical Development Plan for North Adriatic Region YUG-426-SL. Therefore United Nations offers you above assignment for twelve months subject to medical clearance and completion of preappointment formalities. . . . Please cable acceptance this offer and indicate earliest date availability. Assume you already contact reference medical examination".

On 22 June 1970 the Applicant cabled the following reply:

> "Accept with pleasure your offer and am available from the 14 July on medical examination as your letter accomplished and sent today to Medical Director".

On 23 June 1970 TARS confirmed its offer to the Applicant in a letter reading in part:

> "I am pleased to confirm that the Government of Yugoslavia has approved your candidature for the post of Project Manager: Physical Planner. Accordingly, I write this to offer you, on behalf of the Secretary General of the United Nations, the post as described in the attached job description. The appointment will be for a period of one year and will be subject to your medical clearance.
>
> ". . ."

In the meantime the Director of the Project had sent to the Applicant, on 18 June 1970, a letter asking him to visit the site of the project at Rijeka for a few days in order to be introduced to the organization of the project and in order to organize, with the Director, "necessary steps for [their] common future action". The Applicant had received that letter on 22 June 1970 and had, on the following day, asked TARS to cable him its agreement to the proposed visit. On 1 July 1970 TARS cabled the Applicant the following reply:

> "Questions of your visit Rijeka discussed with Khrustalev [Senior Adviser, Centre for Housing, Building and Planning] and we agree it would be useful for you visit Yugoslavia before coming to New York for briefing. We will try arrange reimburse additional expenses this visit".

The Applicant visited the site of the project from 9 to 11 July 1970. On 25 June 1970 TARS had sent to the Medical Service a "notification of request for pre-placement medical examination" of the Applicant. In a letter dated 2 July 1970 the Applicant stated, with regard to his medical examination, that his physician had sent his medical report to the Medical Director on 22 June 1970. On 15 July 1970 the Medical Director notified TARS that the Applicant's medical classification was 2a. On 17 July 1970 TARS cabled the Applicant that the Medical Director had not approved his appointment for the mission to Yugoslavia, that the matter was "under reclarification" and that TARS would let the Applicant know the outcome. On 18 July 1970, in a letter addressed to TARS and to the Medical Director, the Applicant contested the decision and asked for a "positive reclarification". In a cable dated 22 July 1970 the Applicant

insisted that the "medical result . . . must be wrong" since he was in perfect health. On 28 July 1970 TARS confirmed the decision to the Applicant by the following letter:

> "I very much regret that the United Nations Medical Director has reported that you do not meet the United Nations medical standards, and has recommended, in your interest as well as that of the Organization, against your appointment. He has suggested that you inform him (Medical Director, United Nations, New York, N.Y.) of the name and address of your private physician in order that he can explain the situation to him, through him, to you, if you wish.
>
> ". . ."

On 14 August 1970, in a letter to the Medical Director, the Applicant regretted that his own physicians, who would testify to his medical fitness for the mission, had not been consulted, and he recalled that at the end of 1963 the United Nations had wanted him to continue his service in Syria even though he had not yet recovered from his illness of May 1962. On 22 August 1970, in a further letter to the Medical Director, the Applicant stated that he had been informed through the Swiss Observer to the United Nations that the Medical Director had justified his disapproval of the Applicant's appointment on the ground that he had been ill for seven years, and he contested that statement as false, imprudent and defamatory. On the same day the Applicant wrote to TARS that "the verdict of the UN Medical Director was given with such an inexcusable frivolity, that I am obliged to proceed against his decision". On 2 September 1970 the Applicant again wrote to the Medical Director, claiming compensation for loss of earnings due to the Medical Director's disapproval of the appointment. On 24 September 1970 the Medical Director sent to the Applicant the following reply:

> ". . ."
>
> "I can understand your disappointment and concern about my medical recommendation to our Office of Personnel regarding your possible appointment to a technical assistance post in Yugoslavia. This recommendation was based mainly on your previous medical record dating back to 1959. If you would like to give me the name and full address of your private physician, in San Gimignano, I would be willing to write him and explain the reasons for my recommendation. You mentioned the name of Professor Luethy, in Basel, for the first time in your letter of 14 August 1970, as someone I could contact about your health, but I presume you would prefer now that I write to a physician near your present address who could then discuss this matter with you."

In a letter dated 15 October 1970 the Applicant invited the Medical Director to give his opinion to Dr. Lüthy and asked to be provided with a post or compensated for the financial damages he had suffered; to that letter the Applicant attached a copy of a letter dated 1 October 1970 from Dr. Lüthy stating that, on the basis of his medical experience with the Applicant, he did not see why the Applicant should be considered medically unfit for an official mission to Yugoslavia; the Applicant sent copies of those letters to the Secretary-General, requesting him to "provide for [the Applicant's] rehabilitation". On 27 October 1970 the Medical Director informed the Applicant that he had written to Dr. Lüthy. On 19 November 1970 the Applicant reiterated his request to the Medical Director for reimbursement of lost earnings. On 11 December 1970 TARS replied that the offer of appointment had been made subject to medical clearance and that, as the Applicant had not met the United Nations medical standards, TARS had been unable to ask him to take up the assignment. On 15 December 1970, in a letter addressed to the Chief of TARS, the Applicant stated that he was disturbed not only by the financial question but also by the moral one and, after explaining why in his view the Medical Director had been wrong, he asked for more information before submitting the matter to the Joint Appeals Board. In other letters dated 15 December 1970 the Applicant again requested the Medical Director to reimburse him for loss of earnings

and asked the Secretary-General to intervene. On 7 January 1971 the Chief of TARS replied as follows:

". . . I wish to reiterate that the conditional offer which was made to you 'subject to medical clearance' per our cable of 18 [19?] June 1970 could not be confirmed because you did not meet the health standards established by the United Nations for service under the Programme of Technical Cooperation. You were notified accordingly by cable dated 17 July 1970, which was confirmed by letter dated 28 July 1970.

"The health standards established by the Secretary General are observed and carried out by the Medical Director. The approval or rejection of a candidate on grounds of failing to meet medical requirements is based on the over-all consideration of these standards and does not necessarily imply that the candidate is actually suffering from an acute illness.

"I therefore regret to confirm once more that the United Nations will not be in a position to appoint you under the Programme of Technical Co-operation.

"Should you wish to pursue with an appeal against the above decision, you may submit your presentation to the Secretary of the Joint Appeals Board in accordance with Chapter XI of the Staff Rules applicable to Project Personnel."

On 13 April 1971 the Applicant again wrote to the Medical Director, asserting that "the legal action against you will give me the rehabilitation". On 14 July 1971 he sent to the President of the Tribunal an application which was transmitted to the Joint Appeals Board. Having decided to entertain the appeal, the Board submitted its report on 5 September 1973. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations

"40. The Board finds that the respondent was negligent in offering the appellant an appointment subject to medical clearance when he knew or should have known that the appellant would not be medically cleared because of his medical record during his previous service with the Organization. The Board concludes that in these circumstances the respondent is estopped from raising the condition of medical clearance, and must be deemed to have entered into a valid agreement with the appellant for a one-year fixed-term appointment. The Board finds further that the respondent has failed to carry out the terms of the agreement and should compensate the appellant for this breach of contract. Considering that the appellant on the basis of net salary less living expenses at Rijeka assesses his actual damages at $700 per month, which in the Board's view is a fair figure, the Board recommends that the appellant should be accorded, as compensation for the Organization's breach of its obligations towards him, the sum of $8,400 representing damages of $700 per month for the term of the agreement."

On 26 October 1973 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken the following decision on the appeal:

"The Secretary-General has re-examined your complaints in the light of the Board's report and has reached the following conclusions:

"1. The Secretary-General did not agree with the Board in characterizing the offer made to you as an act of negligence. Consequently, he considered that the Organization was justified, even though it knew of your past medical record, in making an offer of appointment subject to medical clearance since the administration could not in such a technical matter, substitute its judgement for that of the sole authority within the Organization which was qualified to pronounce on medical questions.

"2. The Secretary-General did not subscribe to the Board's finding that you

and the Organization had entered into a binding agreement. The offer made to you was conditional and therefore could not lead to an agreement unless the conditions laid down were fully met. Consequently, since medical clearance was refused, the Organization was justified in not granting you an appointment and no legally binding agreement could be deemed to have existed.

"3. The Secretary-General did not find merit in the argument that the journey undertaken by you to the site of the project constituted a commencement of performance of a supposedly valid agreement. Your journey was undertaken without an official travel authorization and before you entered on duty. Consequently, there was no commitment to reimburse you for your travel expenses.

"On the basis of the above conclusions, the Secretary-General did not agree with the Board's recommendation that you be paid compensation in the amount of $8,400.00. Nevertheless, the Secretary-General considered that the circumstances of this particular case indicated the presence of some legitimate grievances which called for a measure of redress. The expectation of an appointment on your part reinforced by the fact that the Technical Assistance Recruitment Service did not object to your travelling to the site prior to coming to New York supposedly for briefing purposes, led the Secretary-General to consider authorizing some measure of compensation based on equity rather than on law. The amount of compensation that the Secretary-General has decided is equivalent to the termination indemnity which you would have been entitled to under Staff Rule 109.4 and Annex III of the Staff Regulations if the appointment had in fact been made and then terminated prior to its commencement. This indemnity would amount to two months' salary on the basis of five days' pay for each month of uncompleted service.

"The Secretary-General has also authorized the reimbursement to you of the estimated travel expenses from Italy to Yugoslavia to visit the site of the project.

"In conclusion, the Secretary-General has decided to take note of the Board's report and recommendations and to grant you, as already indicated above, an indemnity equivalent to two months' salary plus the estimated travel costs from your place of residence to Rijeka, Yugoslavia and back."

On 2 November 1973 the Chief of Staff Services advised the Applicant that the second part of the Secretary-General's decision, namely, the reimbursement of the estimated expenses of a round trip from Italy to Yugoslavia to visit the site of the project, had already been implemented by the payment to the Applicant of $205.00 in February 1971 and that the implementation of the Secretary-General's decision would therefore be limited to the payment of indemnity equivalent to two months' salary. On 31 May 1974 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The withdrawal of the offer was attempted after the Applicant had fully complied with the conditions referred to in the Respondent's cable of 19 June 1970, including a medical examination. The Applicant complied with the terms of the offer and effected acceptance according to the offer made to him. Accordingly, a legal obligation arose which could not be broken either deliberately or inadvertently by or on account of a negligent omission by the Respondent.

2. The Applicant was separated from the United Nations service in 1963 at his request, to enable him to avail himself of medical treatment to improve his health. Even at that time, when his health was relatively poor, the Organization was willing to have him continue in service and offered him a renewal of contract. As the Applicant left

the service expressly at his own request to improve his health, the Respondent should be presumed to have full knowledge of this fact.

3. Discretionary powers vested in the Respondent must be exercised in accordance with the principles of justice, and when reasons are given those reasons may be questioned if they are obviously unfair. Proper consideration was not given to the Applicant's current state of health.

4. Prior to the offer of appointment of 19 June 1970 the Applicant's medical history was fully available and within the Respondent's knowledge. The Respondent having indicated in the cable of 19 June 1970 that the Applicant should assume his medical clearance subject to the current examination, it is not open to the Respondent to plead that the Applicant's medical history had not up to that point been considered. Should that be the case, the evidence is tantamount to negligence, for which the Applicant is entitled to damages.

5. When on 1 July 1970 the Respondent authorized the Applicant to visit the project, the results of the Applicant's medical examination, which had been dispatched on 22 June 1970, were already in New York. The Applicant was therefore entitled to presume even at this point that he had been cleared for appointment.

6. The unjustified withdrawal of the appointment has irrefutably prejudiced the Applicant's chances of future appointment with the Organization. The Applicant is entitled to rehabilitation or reasonable compensation for the financial loss suffered.

Whereas the Respondent's principal contentions are:

1. The Secretary-General acted properly in establishing the administrative procedure which resulted in the denial of medical clearance to the Applicant.

2. The offer of appointment was expressly conditioned upon the Applicant's medical clearance, the condition was not fulfilled due to the Applicant's failure to satisfy medical standards; as a consequence the Secretary-General was discharged from all liability, whether contractual or otherwise, with respect to the offer when the condition was unfilfilled through no fault of his own.

3. There is no evidence that the Applicant suffered any actual damages, or if he did, that any such actual damages approached the amount asserted by the Applicant.

4. There was no agreement or appointment which could have taken effect within the meaning of Staff Rule 204.2 or otherwise. The Applicant's travel to Yugoslavia was entirely unrelated to the conditional offer of appointment and was rather the subject of an altogether separate undertaking. In any event entry into travel status could not *ipso facto* convert a conditional offer into an absolute obligation, since travel would not have any effect on the underlying conditions as to medical clearance which remained unfulfilled.

5. The Applicant is not entitled to any recovery based on legal criteria, whether contractual or otherwise, and the Respondent's grant of relief equivalent to two months' salary based on equitable considerations should conclude the case.

The Tribunal, having deliberated from 26 September to 16 October 1974, now pronounces the following judgement:

I. The Applicant claims that by reason of his compliance with the terms of the offer of employment as Project Manager-Physical Planner in Yugoslavia made by the Respondent, a legal obligation to appoint him to the post for one year arose and that the withdrawal of the appointment constituted a breach for which compensation is payable by the Respondent.

The Respondent argues, *inter alia,* that there was no appointment in this case within the meaning of the Staff Rules and that therefore there was no obligation contractual or otherwise to the Applicant.

II. The Tribunal observes that the absence of a letter of appointment within the meaning of the Staff Rules does not conclude the Applicant's claims and that the Tribunal, in accordance with its jurisprudence as decided in its Judgement No. 142 *(Bhattacharyya),* is entitled

> ". . . to consider the contract as a whole, not only by reference to the letter of appointment but also in relation to the circumstances in which the contract was concluded".

In view of the special features of this case, the Tribunal decides to examine all the circumstances relating to the candidacy of the Applicant for the post in question.

III. The Tribunal notes that in spite of typhoid and viral hepatitis contracted by the Applicant in 1962, he was offered in 1963 a one-year extension of his OPEX appointment which he rejected because he had already accepted another position, that in May 1970 TARS on its own initiative proposed the Applicant for the position in Yugoslavia, that the Applicant stated that he was available, that the Government of Yugoslavia accepted the Applicant's candidature, that TARS then asked the Applicant to take the necessary medical examination and later by cable offered the appointment subject to medical clearance, an offer which the Applicant accepted, and that in the meantime the Respondent had agreed to the Applicant's visit to Rijeka, the site of the project, before his going to New York for briefing. Although, as stated, the Applicant accepted the offer and his physician furnished a favourable medical report on 22 June 1970, the appointment did not materialize as the Medical Director did not approve the Applicant's appointment for the mission to Yugoslavia.

IV. The Respondent argues that under Staff Regulation 4.6 the Secretary-General is entitled to establish medical standards and rely on the recommendation of his appropriate advisers regarding the fitness of candidates for employment in the United Nations, that the offer of employment was subject to medical clearance and that, as the Medical Director had not approved the Applicant's appointment, the Applicant had no right to an appointment nor was there an obligation on the part of the Respondent to employ the Applicant.

V. The Tribunal observes that by a letter dated 9 June 1970 the Applicant was asked to undergo a medical examination and arrange for the transmission of the medical report as a prior condition to his appointment. The Tribunal considers that such an offer implied that the Applicant's state of health as reflected in the medical report at the time he was asked to undergo the medical examination would be the basis for the grant or denial of the appointment. The Medical Director concedes that the medical report sent to him on 22 June 1970 was favourable to the Applicant. The Joint Appeals Board mentions in its report that the Medical Director stated in his testimony that "he had read the medical report of 22 June 1970, which showed that at that moment the [Applicant] was apparently quite healthy . . .". It follows, therefore, that so far as the Applicant is concerned, he had fulfilled the conditions stipulated in the offer of appointment.

VI. The Medical Director, however, denied clearance to the Applicant on the basis of his medical record during his employment by the United Nations from 1958 to 1963. The Joint Appeals Board states in its report that the Medical Director testified that "his recommendation had been based *solely* on the [Applicant's] previous medical records . . ." *(Emphasis supplied).* The Medical Director thus changed his prior statement that his recommendation had been based *mainly* on the Applicant's previous medical record, saying that he had used the word "mainly" in order to spare the Applicant's feelings.

VII. The Tribunal recognizes the Medical Director's authority to make appropriate recommendations regarding the employment of a candidate by the United Nations

on the basis of the past or present medical history or other medical data obtained from any other source and the right of the Secretary-General to act on such recommendations. The Tribunal therefore holds that there has been no violation of the pertinent Staff Regulations and Rules in this instance.

VIII. The Tribunal, however, finds that in offering the appointment to the Applicant with the full knowledge of his past medical history, in asking him to go through all the formalities including a new medical examination and in permitting him to visit the site of the project as part of his assignment, the Respondent acted as though the Applicant's past medical history was of no relevance to the appointment. Thus the Respondent acted negligently in making the offer of appointment apparently subject to a new medical examination when he knew or should have known that whatever was the Applicant's health condition at the time the offer of appointment was made the Applicant could not have been granted an appointment on account of his past medical history and classification.

IX. The Tribunal also finds that after asking the Applicant to undergo a new medical examination with the knowledge actual and constructive of his past medical history and his classification as 2a and after obtaining a favourable medical report, the Respondent cannot, by reason of the principle of equitable estoppel, be allowed to raise objections based on the Applicant's past medical history disregarding the current favourable medical report. At pages 644 and 645 of volume 28 of *American Jurisprudence,* second edition, it is stated:

> "More specifically, the general rule is that it is essential to the doctrine of equitable estoppel or estoppel in pais that the party sought to be estopped should have had knowledge of the facts, or at least that he should have had the means at hand of knowing all the facts, or have been in such a position that he ought to have known them."

The Respondent was in full possession of the past medical history and classification of the Applicant and even offered him an extension of his OPEX appointment in 1963 despite such knowledge. Furthermore the Applicant was sponsored by TARS for the position in Yugoslavia without request from the Applicant when TARS knew or should have known the Applicant's past medical history. The Tribunal therefore holds that the Respondent is estopped from raising objections to the Applicant's appointment based on the Applicant's past medical history.

X. Consequently the legal situation is that, as the Applicant had fulfilled the condition stipulated in the offer of appointment and as the Respondent is estopped from raising objections to the Applicant's appointment based on the Applicant's past medical history, the Applicant became entitled to the fixed-term appointment for one year offered to him.

The Tribunal holds that the Respondent, by withdrawing the appointment, failed to carry out his obligations towards the Applicant and thus became liable for the consequences of his action.

XI. In view of the above findings the Tribunal holds that the application is well founded and that the Respondent is liable to compensate the Applicant for the loss caused to him by the withdrawal of the appointment. Since the Applicant had a valid expectancy of service for one year, the Tribunal assesses the damages at $8,400, as recommended by the Joint Appeals Board, namely one year's net base salary less living expenses at Rijeka. The Tribunal accordingly orders the Respondent to pay as compensation to the Applicant the sum of $8,400 less such amount as may have been paid by the Respondent to the Applicant as indemnity.

XII. The Applicant's request for medical reclassification is rejected as such reclassification is within the competence of the Medical Director of the United Nations.

(Signatures)
R. VENKATARAMAN
President
Francis T. P. PLIMPTON
Vice-President
New York, 16 October 1974

Zenon ROSSIDES
Member
Jean HARDY
Executive Secretary

Judgement No. 195

(Original: English)

Case No. 191: Sood

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

Termination of the employment of a staff member holding a fixed-term appointment.—Non-conversion of that appointment to a probationary appointment.

Request for rescission of the termination decision and for the reinstatement of the Applicant.—The Tribunal observes that the Respondent has met the request for rescission of the termination decision.—However, as a result of that decision the Applicant was not given the opportunity of being considered for conversion of his appointment into a probationary appointment.—The Tribunal interprets the plea for reinstatement to mean that the Applicant seeks the renewal of his appointment and/or its possible conversion.—The Tribunal finds that the Respondent accepted the recommendation of the Joint Appeals Board that the termination decision be rescinded without dissenting from the reasons on which it was based.—Principle set forth in Judgement No. 185.—Consequently, the reasons given by the Board for holding that the Applicant was denied due process must be assumed to have been accepted by the Respondent.—The parties must be restored to the status quo *when a termination decision has been rescinded and the reasons for such rescission have not been challenged by the Respondent.—Nature of document 262/5 redefining the contractual policy for local staff.—This document created rights for staff members in this category even though they may not have been aware of its existence or of the rights it created.—The decision to terminate the Applicant's employment and the decision not to consider the possibility of converting his appointment in accordance with the terms of that document were taken simultaneously and on the basis of the same allegations.—Since the first of these decisions was taken without due process it follows that the second was also vitiated by lack of due process.—Conclusion of the Tribunal that by reason of a decision reached without due process the Applicant was deprived of the opportunity of the conversion of his appointment.—Propriety of compensation in lieu of specific performance.—Award to the Applicant of compensation in the amount of one year's net base salary.—Request for renewal of the Applicant's appointment.—Request rejected, since such renewal is a matter within the discretion of the Respondent.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Zenon Rossides; Sir Roger Stevens;

Whereas, on 3 September 1974, Balbir Kumar Sood, a former local staff member of the Office of the United Nations Development Programme, hereinafter called