

this case, any “public” purpose in relation to the Applicant or to the United Nations that may be served by requiring the payment of a substantial sum to a retiring staff member who has not incurred any relocation expenses, who has moved his residence not at all in the last 22 years and who intends to maintain his residence in the country of his last duty station where it has been for those 22 years, namely, Switzerland. As observed at the outset of this opinion, the Organization has been generous to the Applicant in the context of the payment of a repatriation grant.

10. For these reasons, I cannot agree that the Applicant had an acquired right to the payment of the repatriation grant which right must in law be recognized without regard to any requirement of relocation to another country and documentary evidence thereof.

(Signature)

Herbert REIS

Geneva, 15 May 1981

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## Judgement No. 274

(Original: English)

**Case No. 263:**  
**Sletten**

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

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*Request by a former Field Service Officer for payment of compensation for the loss of personal effects.*

*Staff Rule 106.5.—Requirement that the value of a lost item should be assessed on the basis of its replacement cost at the time and place of the loss and in its condition at that time.—Applicant's failure to establish that the amount of compensation he was finally offered fell short of the amount calculated according to those principles.—The Secretary-General may not impose on the payment of the sum awarded by the Claims Board the condition that the staff member waive his statutory right of appeal.—Award to the Applicant of the interest awarded to him in consideration of the foregoing by the Joint Appeals Board.—The other claims of the Applicant are rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, Vice-President, presiding; Mr. Arnold Kean; Mr. Herbert Reis;

Whereas at the request of Erling J. Sletten, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 29 June 1981 the time-limit for the filing of an application to the Tribunal;

Whereas, on 3 June 1981, the Applicant filed an application the pleas of which read as follows:

“*Primo*: that the United Nations Administrative Tribunal may order under article 9 para. 1 of the Statute, that the decision by the Deputy to the Assistant Secretary-General for Financial Services of 8 August 1980 . . . regarding the amount of compensation for my loss of personal effects be rescinded on the grounds of erroneous calculation on the part of the Headquarters Claims Board and order the amount of compensation to be determined as the full residual value of compensable items at the time of the loss (\$10,555/-).

“*Secundo*: that the United Nations Administrative Tribunal may order the rescission of the Secretary-General’s decision of 16 January 1980 that, contrary to the recommendation of the Joint Appeals Board, no interest be imposed on the contested award and that interest calculated at 6 per cent compounded annually on the originally awarded \$3,728.96 be awarded from 18 June 1975 to 19 December 1980 or \$1,411.22.

“*Tertio*: that the United Nations Administrative Tribunal may order the rescission of the Secretary-General’s decision that the limitation to be applied in my case should be in the amount of \$10,000 and order a higher limit in accordance with the recommendation by the Joint Appeals Board in paragraphs 71 and 61 of its report . . . , as the application of such a limit in this case would be clearly unreasonable and cause unusual hardship.”

Whereas the Respondent filed his answer on 13 July 1981;

Whereas the Applicant filed written observations on 11 September 1981;

Whereas the facts in the case are as follows:

The Applicant, a Field Service Officer assigned to the United Nations Peace-keeping Force in Cyprus (UNFICYP), was living with his wife and three children in an apartment in the Ashdjian building, 2 Amathus Street, Nicosia. In July 1974 he suffered the loss of the entire contents of his apartment in consequence of hostilities between Greek Cypriot and Turkish Cypriot forces. On 28 September 1974 the Chief Administrative Officer of UNFICYP cabled Headquarters to draw attention to an apparent conflict between paragraph 26 of page A-34 of the Field Administration Handbook and paragraph 6 of Administrative Instruction ST/AI/149 regarding the maxima for compensation for loss of personal effects. On 3 October 1974 Headquarters replied that there was no real conflict since the Field Administration Handbook dealt with emergency cases, a category including all claims by UNFICYP staff, while Administrative Instruction ST/AI/149 dealt with normal cases; the Administrative Instruction was in the process of revision and, pending the issuance of the new text, discretion could be exercised under paragraph 14 to recommend higher compensation for individual items on the basis of unusual hardship. On 26 November 1974 the Field Operations Service advised the Chief Administrative Officer that, according to the Office of Financial Services, the claims for losses suffered during the hostilities must be reviewed by the local Claims Board and transmitted to Headquarters with his recommendations for review and decision by the Headquarters Claims Board. In a memorandum dated 11 December 1974 to the Chief of the Field Operations Service, the Chief Administrative Officer proposed the following procedures for the UNFICYP local Claims Board:

“2. In reaching their conclusions the UNFICYP Claims Board will be guided by provisions contained in Staff Rule 106.5, ST/AI/149 of 16 July 1962, paragraph 26 of page A-34 of the FAH read together with paragraph 14 of ST/AI/149. Various

practical aspects of application of the above to individual cases as contained in the Chairman of the HQ Claims Board's letter to the Chairman of ICAO Claims Board in December 1965 have also been taken into consideration. It is our intention to base our recommendations on various premises outlined below which we believe to be equitable and within the intentions of the various regulations.

“ . . .

“4. *Limitations*

“We have been informed by your cable 1200 of 3 October 1974 . . . that limits imposed on individual items in paragraph 6 (b) of ST/AI/149 are being revised upwards. As suggested, paragraph 14 of the same instruction will be invoked when applicable both to listed items as well as to the general limitation specified in paragraph 6 (c). I hope that the revision of ST/AI/149 can be completed in time for us to make use of it in reviewing the Cyprus claims even though paragraph 14 does provide a means of working with the present instruction.

“5. *Factors determining reimbursement*

“The basis for arriving at equitable figures for reimbursement will be along the lines suggested by the Chairman of the Claims Board in 1967 in that recommendations will be based on justice tinged with compassion. We believe that this approach is most appropriate under the present circumstances when, for instance, all that was recovered from three complete households of personal effects and furniture was a small boxful of spoiled and broken items.

“In general however, factors which will be taken into account when assessing reimbursable values will be:

“a. the condition of the article,

“b. the age of the article,

“c. the original cost of the article less depreciated values,

“d. an additional factor to take into account: the depreciation of the Dollar because of inflation during the period since the article was acquired. This is not the same as replacement cost for a new article but rather the establishment of the value of the article in its present state in terms of the current value of the Dollar.

“It is obviously not possible to lay down hard and fast rules governing reimbursement and each item in each case will have to be assessed individually.

“ . . . ”

In a memorandum dated 16 December 1974 the Office of Financial Services advised the Chief of the Field Operations Service that the limits on the reimbursement of claims from staff in UNFICYP should be as established in a memorandum of 30 April 1970 from the Controller which read:

“In conjunction with the security arrangements for the Middle East, it has been agreed that:

“1. In the event of loss and damage to personal effects as a result of special hazards in the Middle East, the entitlement to compensation in accordance with Administrative Instruction ST/AI/149 shall be limited as follows—

“(a) Subject to paragraph (b) below, no sum in excess of \$4,000 shall be paid by way of compensation to any one claimant in respect of any one incident,

provided that where the claim involves more than one person in the same family group the maximum allowable compensation shall be \$6,000; and

“(b) Compensation for loss of or damage to an automobile not exceeding \$2,000, including all accessories, will be provided in addition to the limits in paragraph (a) above.

“2. The limits under paragraph 1 (a) above do not appear to be sufficient for staff in the area with a removal entitlement or for those who have been in the area for more than five years. We therefore intend to propose to CCAQ that such staff be subject to the limits of \$6,000 for one person and \$10,000 where the claim involves more than one person in a family.

“3. Pending a revision in the limits of compensation for single items in paragraph 6 (b) of ST/AI/149, the following limits may be applied—

“(i) Camera (still or movie) . . . . .	\$150
“(ii) Radio, record player, tape recorder, typewriter . . . . .	\$150
“(iii) Watch, binoculars . . . . .	\$ 75
“(iv) Cash . . . . .	\$100

“4. We would also be prepared to consider paying up to \$200 per person for loss of or damage to jewellery.

“5. The limit of compensation for any one article, including its appurtenances, will be raised to \$400 (except for an automobile).

“6. Compensation for loss of or damage to personal effects will continue to take into account the cost of the article less depreciation. It will not be based on the replacement value of the article lost or damaged.”

A copy of those two memorandums was handed over to the Chief Administrative Officer on 10 January 1975. On 8 January 1975 the Applicant had filed a claim for compensation for the loss of his household and personal effects in the amount of \$10,555. In February and March 1975 the local Claims Board considered the claims submitted by twelve staff members, including the Applicant, for compensation for losses incurred during the hostilities. On 19 March 1975 the Chief Administrative Officer transmitted to the Chief of the Field Operations Service the local Claims Board's individual reports on the claims and a general report covering the procedures followed by the Board in dealing with claims. The general report read in part as follows:

“ . . .

“*Objectives*

“8. The objective of the Board according to its understanding of its terms of reference would be to compensate the staff member for the residual value of a lost item in terms of what the item would have been worth in dollars if sold at the time of loss, subject to the maximum of its original cost.

“9. Factors including currency devaluation and inflation bear on this objective and were taken into account by the Board, not for the purpose of establishing replacement value but rather the real value as depreciated at the time of loss. The Board tried to follow the instructions mentioned on page 1 of the notes of the former

Chairman of the Headquarters Board 'to accomplish rough justice tinged with compassion on the basis of the material at hand'.

*“Procedure*

“10. The extensive preliminary work of verifying and investigating the claims was undertaken by the Board’s Secretary under instructions of the Chairman. In almost all cases staff members had completed inventories of their effects as required by page A-30 of the Field Administration Handbook. The war claims were checked against these inventories item by item. Except for one claim (see para. 14 below), very few discrepancies were discovered between inventories and claims in respect of the original purchase price of the items claimed and of these discrepancies which were both of an upward and downward direction the net result was insignificant except for the one claim referred to.

“11. It was necessary however for the Secretary to obtain for a number of items the manufacturer, the model number in case of equipment, the place of purchase and in a few cases the date of acquisition.

“12. This was a time-consuming activity but the Board felt that it was essential that it be carried out in order to arrive at fair judgements and obviate the need for questions from Headquarters Board.

“13. Additionally the members of the Board were variously familiar with the possessions claimed by a number of the staff members and were thus able to satisfy themselves as to the conditions of these items at the time of loss.

“14. The Board, in addition to reviewing each item on each claim, reviewed the claims as a whole to determine whether they gave the impression of what a staff member might reasonably be expected to have in his household and what he might reasonably have paid for it. In all except one case the Board was fully satisfied in this respect. . . .

“15. Finally whenever acquisition prices appeared to be out of line the Secretary checked locally with merchants selling articles in question or similar items.

“16. The Secretary then prepared for each claim a schedule showing each item, the original purchase price in the currency of acquisition where this was known, but otherwise in dollars, a proposed depreciation percentage and the consequent reimbursement figure in dollars.

“17. In some cases such as clothing, kitchen equipment or the like, the Secretary grouped together individual items on the claim of a similar nature and took an average age and dealt with the group of items as a single item. This was necessary in view of the length and complexity of the claims but the individual items in such groups may be identified and checked against the summaries.

“ . . .

“20. In two cases where staff members of long service have lost all their family possessions the Board recommends a special payment to be made in accordance with paragraph 14 of ST/AI/149 which would take into account the fact that many of the lost items are irreplaceable either because of unavailability or prohibitive present prices. The recommendations also take into account the fact that some of the lost items represent valuable family heirlooms or collections of objects of art which can never be replaced and on which it is impossible to set a market price.

*“Depreciation*

“21. The Board was guided in this matter by the comments on page 2 and the final paragraph on page 3 and the detailed comments on page 4 of the 1965 comments of the former Chairman. The Board took note particularly that ‘settlement of compensation claims in the UN is not a precise science’. As stated on page 2 of the 1965 notes other patterns did emerge for various areas and various types of loss but the Board took note also that ‘scales of depreciation if set too early are likely to be arbitrary and unrealistic, too easily become rigid and universally applied to the embarrassment or disadvantage of either the claimant or the organisation’. With this in mind the Board set the following guidelines for itself:

“(a) Valuable family equipment which would never be sold and which would be specially cared for and which would likely appreciate rather than depreciate in value, the Board applied no depreciation from the original cost. This would include fine china, glass or silver for example;

“(b) For good furniture which the staff member would not be likely to sell on transfer a depreciation of 5% per annum was applied. It was noted that many items of this type had been in the possession of some claimants for 20 years and were still in excellent condition;

“(c) For utility furniture and other household items as well as kitchen equipment 10% per annum was applied;

“(d) For electrical appliances a depreciation of 10–20% was applied depending on the nature of the item;

“(e) For clothing 20% was applied except for slightly lower rates for fine items which would be used only occasionally in the circumstances of the staff members’ services such as for example a good quality wool overcoat;

“(f) For records, tapes and hard cover books a flat 20% figure was applied to the group. The staff members concerned took special care of these items, some of these were irreplaceable and the emphasis of the Board should be placed more on the value to the staff member than what the items would bring if sold at auction which they never would be;

“(g) A limit of 50% has been set for any depreciation in respect of items that are established to have been in good and serviceable condition at the time of loss irrespective of their age.

*“Currency appreciation*

“22. The final reimbursement of staff members for their loss will be made in dollars or in the dollar value of whatever local currency may be paid out. In the past few years there has been a serious depreciation of the dollar in relation to many of the currencies in which the lost items were acquired. More aptly from the staff members’ point of view the currency of acquisition has appreciated in relation to the dollar so that whatever the depreciated value of a given item may be in terms of the local currency in which it was purchased it may take more dollars to provide that amount of local currency (in some few cases such as the Israeli poun[d] it may take less but this is the exception). In some of the claims it was relatively simple to compensate for the appreciation of local currency since the dollar value of those currencies at the present time accomplished this automatically. Thus if an item cost 100 Norwegian Kronor in 1970 and its depreciated value was considered to 50NK

at 1974 the recommended compensation would be the amount of dollars necessary to provide 50NK at the present time.

“23. Some claims however expressed the original cost only in terms of dollars. As the place of purchase was shown however in most cases to be in countries other than the U.S. the Board assumed that the item was purchased in local currency of the country of purchase and applied compensation in terms of the dollars necessary to compensate for the depreciated value of the item in the local currency used. When in individual cases there was doubt as to where an item was bought or the currency which was used and since it was likely that the item could have been purchased in a PX or Service Institute the staff member was questioned. In all other cases it was assumed that the item was originally acquired in US dollars.

“24. In this manner the effects of appreciation of local currencies in relation to the dollar as well as the few cases of the opposite were taken into account.

*“Inflation*

“25. As is well known worldwide inflation has reduced the purchasing power of all currencies drastically in the past several years. This is not taken into account in ST/AI/149 since that document was issued in 1962 and even the revised limits on some items such as cameras or radios were established in 1970 before the acute phase of the current inflation.

“26. Therefore on all items acquired before 1972 considerable inflation has occurred and for older items it became increasingly acute.

“27. Therefore if a staff member purchased a camera for a cost of \$100 in 1970 the same camera lost in the war of 1974 might well be worth \$100 at its depreciated rate as a used item.

“28. Therefore to compensate a staff member for the real value in its depreciated used condition it is necessary to introduce a compensating factor to offset inflation.

“29. The Board recognized that it could not in the available time determine for each of the hundreds of items lost what factor of inflation should be applied to each item considering its age and the present cost of the item as well as the length of time since it was purchased.

“30. Since the heaviest effects of inflation have been felt in the years 1971 to 1975, the Board attempted to establish a reasonable figure for the inflation which has occur[r]ed during that time on a worldwide basis. This would apply to all except three claims of staff members . . . whose losses were small and not affected by inflation.

“31. It appeared to the Board that one conservative measure of this inflation would be the change in the World Average of Post Adjustments. The word conservative is used because the movements of this average tend to follow actual inflationary changes by several months at least. The Office of Financial Services reports that the WAPA between 1 July 1974 and 1 March 1975 increased by a ratio of  $\frac{157.69}{100}$ .

“32. By applying this average to an entire claim as a whole staff members would be favoured in varying degrees in respect of items acquired after 1 July 1971. They would on the other hand be adversely affected in respect of items acquired

before 1 July 1971 since for those items the inflation factor would be still greater. Taking into consideration that the most valuable items such as gold objects, fine china and silverware are subject to the most acute inflation, it seems fair as a minimum to apply an inflation factor of at least half the WAPA increase from 1971 to 1975 and the Board therefore has increased the recommended total for such claim except the three mentioned above by 30%. The Board also felt that in the cases of Messrs. \_\_\_\_\_ and \_\_\_\_\_ an inflation factor of 30% might be excessive and accordingly reduced it in their case to 15%. These increases were applied after adjustment for currency changes.”

The substantive part of the local Claims Board’s report on the Applicant’s claim read:

“B. *Entitlement to Compensation*

“Mr. Sletten’s claim for compensation falls within the terms of ST/AI/149 paragraph 3 (a) (ii) in that it ‘was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area involving special hazards and occurred as a result of such hazards’.

“There is no evidence of any negligence or misconduct on the part of the staff member which could be deemed to have contributed to his losses.

“C. *Action by the Claimant to Recover his Effects*

“Mr. Sletten made many attempts both on an individual basis and through the highest officials in UNFICYP (including the Special Representative of the Secretary-General, the Force Commander, the Senior Political Adviser and the Chief Administrative Officer) to recover his effects. As far back as 26 July 1974 formal representations were made by the Special Representative of the Secretary-General to the Turkish Ambassador, concerning, *inter alia*, the apartments in the Ashdjian Building and asked that arrangements be made to enable the UN to retrieve the possessions of its staff from their apartments. In a reply dated 28 July the Ambassador expressed regret that the persons and property of UN staff had been disturbed in the course of military operations and undertook to transmit the Special Representative’s letter to the Turkish military authorities and advise them to take the necessary precautions. None of these measures, however, met with any success.

“D. *Assessment of Losses*

“A comprehensive listing of the effects which Mr. Sletten lost in the course of the hostilities is attached as Annex III. It comprises articles which the staff member and his dependents would reasonably be expected to need in their home in the mission area.

“The listing in question is dated 7 January 1975. It has been compared to the ‘Inventory of Furniture, Household Effects, Automobiles and Valuables’ submitted by the staff member on 27 May 1973 and insofar as items appear in each list they are identical. The Board views it as an honest presentation of the staff member’s losses.

“E. *Recommendations of the Local Claims Board*

“As required under the ‘Confidential Notes on Claims Board Practices and Policies’, the Local Board has applied the criterion of actual cost minus depreciation, if any, except for items where designated maxima are set. With regard to substantial items of furniture, the Board considers that a depreciation factor of 5% per annum



would be fair to apply since the Claimant expected his furniture to last him throughout the balance of his UN service. At the time of its loss it was still in excellent condition. For items such as china dinner services, certain types of ornaments, vases, tableware, etc., no depreciation is deemed to have taken place where the item was still in essentially its original condition and compensation has been recommended at original cost. In other cases, the Board has applied varying scales of depreciation based on its collective judgement. The Board's recommendations are attached as Annex IV.

“As the Claimant shows his losses in the actual currency of purchase and as they have been converted into dollars at the prevailing rates of exchange losses due to currency fluctuations do not arise.

“As in other cases of total or substantial losses, the Board recommends that Mr. Sletten be awarded a supplementary sum equal to 30% of the recommended compensation to take account of the inflation factor. The 30% figure, as pointed out in the Board's covering report, represents approximately one half of the percentage increase between 1 July 1971 and 1 March 1975 of the World Average of Post Adjustments.

“The Board notes further that Mr. Sletten estimates the total replacement cost of his possessions as \$10,555. The Board considers that this figure is reasonable. It is aware, of course, that compensation in terms of replacement cost is expressly ruled out by ST/AI/149. Nevertheless, as in the case of Mr. Andersen, who also lost all family possessions after nearly twenty years of service with the United Nations, the Board feels that some special consideration is due under paragraph 14 of ST/AI/149 over and above the compensatory adjustments for currency fluctuation and inflation, since the staff member must begin building a household completely from zero. In view of the nature of the items claimed, however, and the fact that they were all acquired within the last ten years of Mr. Sletten's service, and considering that Mr. Sletten has 18 years of service remaining with the UN, it recommends that the payment under paragraph 14 be limited to \$1,000, thus making the total compensation \$7,379.00.”

By a letter dated 18 June 1975 the Director of the Field Operations Service advised the Applicant that the Headquarters Claims Board had reached the following decision on his case:

“The Board has approved compensation in the amount of US\$3,728.96 in accordance with paragraph 3 of ST/AI/149. However, the Headquarters Claims Board does not concur in the UNFICYP Local Claims Board's decision to award a 30% inflationary factor on the recommended compensation figure and a special payment of \$1,000 which has been deemed by the Local Board justifiable on basis of paragraph [1]4 of ST/AI/149. With respect to paragraph 14 of the Administrative Instruction just cited, the Board does not concur that unusual hardships or other extraordinary conditions warrant a special lump-sum payment. Paragraph [1]4 provides only for exceeding the maxima or for compensating for items which are not normally compensable.”

He requested the Applicant to complete and return a release form enclosed in the letter. On 18 September 1975 the Applicant replied that he could not accept the amount offered as compensation and was returning the release form unsigned, and he asked that the Headquarters Claims Board reconsider his case for full compensation. On 26 January

1976 the Director of the Field Operations Service advised the Applicant as follows:

“ . . . your claim was reconsidered by the Headquarters Claims Board at its 141st meeting held recently. The following sets forth an extract from a memorandum dated 20 January 1976 from the Secretary of the Board to this Service:

“ The Board has re-examined Mr. Sletten’s inventory and has decided that the amount recommended at the 137th meeting is fully in accordance with the Board’s depreciation method. The Board arrives at a compensation award by applying a depreciation scale to the items claimed. The original cost of each item and the year purchased are the determining factors in arriving at a net value. It should be noted that the object of the Board is to restore to a claimant the residual value of personal effects lost or damaged. The usage already derived from an article is not compensable.

“ The Board’s recommendation was approved by Mr. Helmut Debatin, Assistant Secretary-General (Controller), Office of Financial Services on 9 January 1976.’

“Accordingly, we send herewith a set of the general release . . . ”.

On 13 July 1976 the Applicant wrote to the Secretary-General requesting review of the amount of the compensation offered to him and on 17 August 1976, having received no reply, he lodged an appeal with the Joint Appeals Board. The Board submitted its report on 27 April 1979. The Board’s conclusions and recommendations read as follows:

*“Conclusions and recommendations*

“69. The Board finds that the award of \$3,728.96 to the appellant for the loss of his personal effects does not represent the reasonable compensation to which he is entitled under Staff Rule 106.5, since the method used by the Headquarters Claims Board to calculate the amount of the award did not take into account the substantial difference between the purchase price of the articles and the cost of replacing them at the time of loss.

“70. The Board recommends that the Secretary-General request the Headquarters Claims Board to recalculate the compensation due to the appellant by a method which takes into account replacement cost at the time of loss, and to advise him concerning the additional amount of compensation to be granted to the appellant.

“71. The Board recommends further that the Secretary-General request the Headquarters Claims Board to take into account, in recalculating the compensation due to the appellant, the views expressed by the Board on the maximum limits applicable to the award in paragraphs 60 and 61 above.\*

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\*“60. The Board considered next the problem of the maximum limits placed on the compensation to be awarded to the appellant. The Board noted that, as the contested award was small, there had been no occasion for the Headquarters Claims Board to apply the maximum limit on compensation allowable to any one claimant in respect of any one incident. Although that maximum, as established in Administrative Instruction ST/AI/149, sub-paragraph 6 (d), had been only \$1,000.00 for an individual claimant and \$2,000.00 where the claim involved more than one person in the same family group, the Headquarters Claims Board had been guided by the higher maximum limits agreed to in the common system some years after the issuance of Administrative Instruction ST/AI/149 in 1962.

“61. Since the recalculation of the award, which the Board would recommend below, might entail the application of such a limit, the Board wished to express its opinion that the appropriate maximum limit would be \$10,000.00, as proposed in the Controller’s memorandum of 30 April 1970 and made applicable to the UNFICYP claims by the Office of Financial Services on 16 December 1974. In the Board’s view, the \$10,000.00 limit should be subject to the Claims Board’s discretion under paragraph 14 of Administrative Instruction ST/AI/149 to recommend a greater compensation if the application of that limit would cause unusual hardship or be clearly unreasonable.

“72. Lastly, the Board finds that the respondent, by making payment of compensation conditional on the appellant’s signing an instrument releasing the United Nations from any liability with respect to his claim, prevented the appellant from securing the use of the \$3,728.96 awarded to him in June 1975. The Board finds further that the Controller awarded that amount of compensation to the appellant because he decided that it was justly due to the appellant under Staff Rule 106.5, and that the appellant should therefore have been allowed to accept that amount without waiving his right to contest the sufficiency of the award. Accordingly, the Board recommends that the respondent should pay to the appellant interest at the rate of 6 per cent on the amount of \$3,728.96 from 18 June 1975 until such time as that amount of compensation is paid to him.”

On 16 January 1980 the Assistant Secretary-General for Personnel Services advised the Applicant as follows:

“ . . .

“The Secretary-General having re-examined your case in the light of the Board’s Report has taken note of the Board’s Report and has decided to remand your case to the Headquarters Claims Board for a recalculation of the award in accordance with the following principles:

“(a) that replacement cost be taken into consideration in the evaluation of compensable items, and

“(b) if relevant, that the limitation to be applied for compensation be in the amount of \$10,000.

“The Secretary-General has decided, however, that no interest be imposed on the contested award. Paragraph 15 of Administrative Instruction ST/AI/149 (identical in the revision issued in 1975) makes payment of compensation for loss of personal effects conditional on the recipient signing an instrument releasing the United Nations from any liability with respect to that claim. This Instruction has been followed and the Organization has not been responsible for any procedural delays.”

On 10 October 1980 the Secretary of the Headquarters Claims Board informed the Director of the Field Operations Division that the Board had recommended to the Assistant Secretary-General for Financial Services new compensation awards calculated in accordance with the Joint Appeals Board guidelines transmitted by the Assistant Secretary-General for Personnel Services, that applying the recommended criteria the sum of \$5,259 had been recommended in the case of the Applicant, and that the Board’s recommendation had been approved on 8 August 1980 by the Deputy to the Assistant Secretary-General for Financial Services. The Applicant received payment in the above amount and signed the release form, indicating at the bottom of the form that he would “submit a further appeal” to the Tribunal. On 3 June 1981, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. Once it is established that the Applicant is entitled to compensation and what items are compensable, he should be compensated in full.

2. The compensation should be equal to the cash value of the lost property at the time when the loss occurred. This value amounts to \$10,555 as shown in the original claim under the misleading heading of “Estimated replacement cost”. That figure in-

corporated any depreciation, negative or positive, which had taken place since the purchase of the lost items.

3. Since the Headquarters Claims Board has accepted that the previous practice of making payment conditional on a full release put the Applicant at a serious financial disadvantage, he should be awarded interest.

4. In the circumstances of the case, the limitation on compensation should be waived.

Whereas the Respondent's principal contentions are:

1. The decision to pay compensation for the loss of personal effects based on replacement cost less depreciation did not violate the Applicant's rights under the terms of his employment and was not arbitrary. In the absence of negligence or fault, no generally accepted principle requires the Organization as an employer to compensate its employees for loss of their personal effects whether or not attributable to their official duties.

2. The Applicant has no right to interest on any part of the compensation already awarded.

3. The Applicant has no entitlement to compensation for the loss of his personal effects in excess of the limits established pursuant to the Staff Rules.

The Tribunal, having deliberated from 22 September to 2 October 1981, now pronounces the following judgement:

I. The obligation of the Respondent to pay compensation in the present case turns upon the interpretation and application of Staff Rule 106.5 rather than any general principle of law.

II. In his letter of 16 January 1980, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had re-examined the case in the light of the Joint Appeals Board's report and had decided to remand the case to the Headquarters Claims Board for a recalculation of the award in accordance with the following principles:

(a) that replacement cost be taken into consideration in the evaluation of compensable items, and

(b) if relevant, that the limitation to be applied for compensation be in the amount of \$10,000.

III. The letter of 16 January 1980 does not specify the time and place in respect of which replacement cost is to be determined. Staff Rule 106.5 requires, within the limits and under terms and conditions established by the Secretary-General, the payment of "reasonable compensation", an expression which, in the Tribunal's view, means a sum equal to the value of the lost effects at the time and place at which the loss occurred, account being taken of their age and condition at that time. In the absence of any special circumstances, such as the impossibility of replacing the Applicant's lost effects in Nicosia at the time of their loss or within a reasonable time thereafter (there is no evidence of such impossibility), the Tribunal's view is that the basis for assessing that value is the replacement cost of the item at the time and place of the loss and in its condition at that time. If the replacement cost of the item in that condition cannot be ascertained, the cost to be taken should be that of a new item at the time and place of the loss. Depreciation must then be deducted for such elements as age, obsolescence, wear and tear, if the nature of the item is such that depreciation occurred. The Tribunal sees no objection to

the method of depreciation adopted by the Headquarters Claims Board. In this connexion, the Tribunal has noted that the Applicant remained in Nicosia for some ten months after the loss of his effects.

IV. The Applicant has not established that the amount he was finally offered (\$5,259.00) fell short of the amount calculated according to the above principles. The Tribunal is therefore unable to award him anything in excess of that amount. The limit of \$10,000 referred to in the Assistant Secretary-General's letter of 16 January 1980 is accordingly not relevant.

V. Although Staff Rule 106.5 enables the Secretary-General to impose conditions on the payment of compensation, the Tribunal does not consider that this empowers him to impose upon the payment of a sum awarded by the Headquarters Claims Board the condition that the staff member must waive his statutory right of appeal to the Joint Appeals Board and to the Tribunal. The Tribunal takes note that the Secretary-General has now accepted the reservation made by the Applicant, in signing the release, of his right of appeal, and would deem it useful if Administrative Instruction ST/AI/149 were amended accordingly. The Tribunal considers that the Applicant was justified in wishing to reserve his right of appeal and therefore confirms the Joint Appeals Board's award of 6% interest on the sum in question, \$3,728.96, from 18 June 1975 until the date of payment of that sum to him, i.e. 19 December 1980.

VI. For the foregoing reasons, the Tribunal orders that 6% interest be paid to the Applicant on \$3,728.96 from 18 June 1975 to 19 December 1980.

VII. The other claims of the Applicant are rejected.

*(Signatures)*

Endre USTOR  
*Vice-President, presiding*

Arnold KEAN  
*Member*

*New York, 2 October 1981*

Herbert REIS  
*Member*

Jean HARDY  
*Executive Secretary*

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**Judgement No. 275**

*(Original: English)*

**Case No. 262:**  
**Vassiliou**

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

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*Request for payment of a special post allowance.*

*Respondent's contention that the application is not receivable because it was not submitted within*