

Respondent in arriving at the decision that the Applicant is incapacitated for further service for reasons of health under Staff Regulation 9.1 (a); and

(b) the Applicant be paid as compensation an amount equal to two month's net base salary for the loss caused by the procedural delay.

16. In view of the circumstances of the case, the Tribunal orders that the name of the Applicant shall be omitted from the published versions of the judgement.

(Signatures)

Suzanne BASTID  
President

CROOK  
Vice-President

R. VENKATARAMAN  
Member

James J. CASEY  
Alternate Member

Nicholas TESLENKO  
Executive Secretary

New York, 8 December 1961.

### Judgement No. 84

(Original: French)

Case No. 84:  
Young

Against: The Secretary-General of  
the International Civil  
Aviation Organization

*Request by a former Technical Assistance official of ICAO for validation by the Joint Staff Pension Fund of service completed before his participation in the Fund.*

*The Provisional Regulations for Technical Assistance Personnel in force when the Applicant entered on duty on 2 November 1951.—Applicant's right under paragraph 19 of the Regulations to participate in the Fund after two years' service.—The replacement on 1 January 1952 of the Provisional Regulations by a Manual for Technical Assistance Personnel.—Absence from the editions of the Manual in force up to 31 December 1957 of any provision relating to pension rights.—Article 248 of the 1 January 1958 edition of the Manual and the Applicant's participation in the Joint Staff Pension Fund by virtue of this provision.—Refusal on the basis of the Regulations of the Fund to validate service completed between 2 November 1951 and 31 December 1957.*

*The Applicant's contractual status.*

*The clause in the initial letter of appointment reserving ICAO's right to amend the Provisional Regulations for Technical Assistance Personnel provided that amendments did not reduce or restrict the conditions set forth in the letter.—The proviso not applicable to the conditions set forth in the Provisional Regulations.—The abrogation on 1 January 1962 of the provisions of paragraph 19 of the Provisional Regulations could operate against the Applicant.*

*Successive extensions of the initial contract.—New contract resulting from the letter of appointment of 1 June 1955.*

*Lack of sufficient information with respect to the purport of the pertinent provisions of the Regulations of the Joint Staff Pension Fund and the scope of the "omnibus" clause*

*contained in the Applicant's contracts.—Questions put to the parties by the Tribunal concerning the interpretation of these provisions and the scope of the "omnibus" clause.*

*Postponement of consideration of the case to allow the parties to reply to the questions put by the Tribunal.*

*Award of costs having regard to the fact that the delay in the hearing of the case was not caused by the Applicant.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Sture Petré, Vice-President ; Mr. Héctor Gros Espiell ;

Whereas on 25 November 1961 Maurice A. Young, former technical assistance official of the International Civil Aviation Organization, hereinafter called ICAO, and the Applicant in this case, requested the President of the Tribunal to appoint counsel to assist him in drawing up and submitting an application to the Tribunal ;

Whereas in accordance with ICAO General Secretariat Instruction No. 1.4.14 Lord Crook, Acting President of the Tribunal, appointed as counsel Mr. Henri Cornil, a United Nations staff member, and extended until 1 April 1962 the time-limit for the filing of an application ;

Whereas on 8 March 1962 the Applicant filed an application to the Tribunal requesting :

(a) a declaration that by refusing the Applicant's request for validation by the Joint Staff Pension Fund of his period of employment from 2 November 1951, the date of his entry on duty, to 1 January 1958, the date of his participation in the Fund, the Respondent and the ICAO Staff Pension Committee infringed the Applicant's contract of employment and conditions of employment ;

(b) an order against the Respondent to pay to the Joint Staff Pension Fund a sum equivalent to 14 per cent of the salary received by the Applicant from 2 November 1951 to 31 December 1958, with compound interest, to enable the Fund to pay to the Applicant the benefits due to him for the entire period of his employment at ICAO ;

(c) an order for payment to the Applicant of the sum of \$7,700 if the Respondent decides to pay compensation for the injury sustained, by virtue of the option given to him under article 9, paragraph 1, of the Statute of the Tribunal ;

(d) an order for payment to the Applicant of costs in the sum of £100 sterling ;

Whereas in accordance with article 17, paragraph 2, of the Rules of the Tribunal the application was transmitted on 20 April 1962 to the Joint Staff Pension Board ;

Whereas the Respondent filed his answer on 8 May 1962 ;

Whereas in accordance with article 17, paragraph 2, of the Rules of the Tribunal the application was transmitted on 20 June 1962 to the Secretary-General of the United Nations ;

Whereas on the same day the President put several questions to the parties and called upon the Respondent to submit additional documents ;

Whereas on 26 June 1962 the Secretary-General of the United Nations reserved his right to intervene in the case and requested the President of the Tribunal to order communication of all the documents in the written proceedings ;

Whereas on the instructions of the President the Executive Secretary communicated those documents ;

Whereas on 9 July 1962 the Respondent replied to the questions put by the President and submitted the additional documents called for ;

Whereas on 10 July 1962 the Applicant replied to the questions put by the President ;

Whereas on 27 August 1962 the Tribunal heard the parties in public session ;

Whereas the facts as to the case are as follows :

The Applicant is a former technical assistance official of ICAO engaged as an expert. He served in the Organization from 2 November 1951 to 31 December 1958. He received three successive fixed-term contracts. The first contract, for eleven months, was accepted by the Applicant on 31 October 1951 and became effective on 2 November 1951, the date of his entry on duty. It was extended several times and expired on 30 June 1954. The second contract, for one year, became effective on 1 July 1954. The third contract, also for one year, became effective on 1 July 1955 and was extended several times, expiring on 31 December 1958 when the Applicant's employment was terminated. These contracts, none of which contained any condition concerning participation in the United Nations Joint Staff Pension Fund, stated that the Applicant's appointment was subject to the relevant regulations of ICAO. At the time the Applicant entered on duty, on 2 November 1951, the provisions relating to technical assistance personnel were collected under the title "Provisional Regulations for Technical Assistance Personnel". Paragraph 19 of the Provisional Regulations dealt with participation in the pension system as follows :

*"Pension Fund*

"Officials appointed for less than two years are excluded from the U.N. Joint Staff Pension Fund. An official appointed initially for less than two years whose appointment is extended to two years or more may include previous service on joining the Pension Fund."

According to this paragraph the Applicant, whose initial contract had been for eleven months, would have participated in the Joint Staff Pension Fund at the end of two years' service, namely on 2 November 1953. On 1 January 1952, however, ICAO decided to apply to its technical assistance experts, in place of the Provisional Regulations, a manual published by the United Nations Technical Assistance Board and entitled "Manual of Personnel Policies and Procedures for Technical Assistance Personnel". Several editions of this Manual were issued. The first edition, effective 1 January 1952, and the second, effective 1 January 1954, made no reference to participation by technical assistance personnel in the pension scheme. The third edition, however, effective 1 January 1958, dealt with the matter in the following provision :

*"Article 248. Pension Fund*

"Eligibility and participation in the United Nations Joint Pension Fund are subject to the Regulations of the United Nations Joint Staff Pension Fund and the Administrative Rules of the Joint Staff Pension Board.

*“(a) Participants*

“Subject to the Regulations and Rules mentioned above, project personnel on Long Term status (including Programme Appointments) shall be eligible to become participants in the United Nations Joint Staff Pension Fund.

*“(b) Associate Participants*

“Subject to the Regulations and Rules mentioned above, project personnel on Intermediate Term status shall be eligible to become associate participants in the United Nations Joint Staff Pension Fund.

*“Conditions*

*“(i) Project personnel must be under 60 years of age to enter the Fund.*

*“(ii) No eligibility for participation exists if the terms of employment specifically exclude participation in the Fund.*

*“(iii) Participation as an associate participant ceases on reaching the age of 60.”*

By virtue of this provision the Director of the Technical Assistance Bureau of ICAO sent the Applicant a notice dated 4 January 1958 informing him that he had on 1 January automatically become a participant in the Joint Staff Pension Fund. On 3 February 1958 the Applicant, who was then assigned to Beirut, requested the Secretary of the Staff Pension Committee of ICAO in writing to have his previous service validated by virtue of article III of the Regulations of the Joint Staff Pension Fund. The version of article III in effect on 1 January 1958, the main provisions of which were established on 7 December 1956, provides as follows:

*“Validation of non-pensionable service*

*“1. A participant who has been in the employment of a member organization as a full-time staff member and whose participation in the Pension Fund was at that time excluded by article II of these regulations because he entered employment under a contract for less than one year, or had completed less than one year of service, may, subject to paragraph 4 of this regulation, elect within one year of the commencement of his participation to have the period of such prior employment included in his contributory service to the extent to which he pays into the Pension Fund, in accordance with the administrative rules established for this purpose by the Joint Staff Pension Board, a sum or sums equal to the contributions which he would have paid had he been subject to these regulations throughout this period, with compound interest at the rate designated in article XXIX, and provided that there has been continuity of employment. For the purposes of this article, intervals of not more than thirty calendar days in the period of employment shall not be considered as breaking the continuity of employment. The time covered by these intervals shall not be included in the period of contributory service.*

*“2. Payment into the Pension Fund of amounts equal to twice the amount of the payment so made by the participant shall be made by the member organization designated for that purpose in accordance with arrangements concluded by the member organizations.*

"3. The earliest date from which employment with the United Nations can be validated is the first day of February 1946.

"4. Notwithstanding the provisions of paragraph 1 of this article, a participant may not make pensionable a period during which he was employed under a contract of employment which specifically excluded his participation in the Pension Fund."

The Applicant's request crossed a letter dated 31 January 1958 from the Secretary of the Staff Pension Committee of ICAO transmitting documents relating to the Fund and explaining that in the Secretary's opinion the Applicant did not fulfil the conditions laid down in article III for the validation of prior service. After an exchange of correspondence with the Secretary and representatives of the Administration of ICAO, the Applicant filed his request for validation with the Staff Pension Committee of ICAO. The Committee, after considering the request, adopted on 20 May 1960 a decision which its Chairman notified to the Applicant in the following terms:

"The Committee found that the right of validation of previous non-pensionable service is stated by paragraph 1 of Article III of the Pension Fund Regulations effective 7 December 1956 ; that this right is given only to full-time members of ICAO who had previously been excluded because either they entered employment under a contract for less than one year or had completed less than one year of service ; and that the further restriction mentioned in paragraph 4 of Article III applies only to those within the two categories mentioned in paragraph 1 of Article III. The Committee considered that you had not been excluded for either of the reasons set out in paragraph 1 of Article III, and consequently paragraph 4 of Article III was not applicable to your request.

"The Committee after examining the original contract under which you were engaged and subsequent renewals concluded that you had been excluded from participation in the United Nations Joint Staff Pension Fund under Article II of the Regulations effective up to 1 January 1958\* by virtue of the provision in your contract dated 25 October 1951 which stated: 'You will not be entitled to receive from the International Civil Aviation Organization any payments, subsidies, expenses or other emoluments other than those specified in the preceding paragraphs of this letter and in the regulations . . . '.

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\* This article reads as follows :

"Article II

*"Participation*

"1. Every full-time member of the staff of each member organization shall become a participant in the United Nations Joint Staff Pension Fund if he enters employment under a contract for one year or more, or when he has completed one year of employment, provided that he is under sixty years of age at the time of entering such employment and that his participation is not excluded by his contract of employment.

"2. The foregoing provision shall apply to the Registrar and every full-time officer of the International Court of Justice except that the occupant of the position of Registrar as at 16 December 1954 shall become a participant notwithstanding that he was over sixty years of age at the time of his appointment.

"3. Participation of a participant shall cease when the payment of a benefit under these regulations becomes due to him or on his account."

"The Committee also noted that the regulations under which you were employed, *i.e.* Technical Assistance Manual of Personnel Policies and Procedures, did not provide for participation in the United Nations Joint Staff Pension Fund prior to 1 January 1958.

"The Committee therefore decided that your request to validate your services prior to 1 January 1958 could not be granted."

On 21 June 1960 the Staff Pension Committee of ICAO reviewed the case at the Applicant's request and confirmed its previous decision. On 2 July 1960 the Applicant appealed to the Joint Staff Pension Board under administrative rule G.10 of the Fund. On 9 December 1960 the Standing Committee of the Board confirmed the decision of the Staff Pension Committee of ICAO. On 6 July 1961 the Standing Committee at the Applicant's request re-examined the case and adopted a new decision which was communicated to the Applicant by the Secretary of the Board on 7 July. In this decision the Standing Committee observed that the Applicant seemed to base his request on article III of the Pension Fund Regulations as worded before the amendments which entered into force on 7 December 1956 and which, among other things, inserted in article III the words limiting its application to members of the staff "whose participation in the Pension Fund was at that time excluded by article II of these regulations because [they] entered employment under a contract for less than one year, or had completed less than one year of service". In this connexion the Standing Committee noted in paragraph 5 of its decision that—

"... the Standing Committee first considered the possible application of this former article [III]. In this connection, the Standing Committee concluded that the former participant could only have become entitled to validate prior non-pensionable service under this former article III had he elected to do so *'within one year of the commencement of his participation'* (see paragraph 1 of this article), and before this article was superseded by General Assembly Resolution 1073 (XI) on 7 December 1956. Accordingly, since the former participant could not have acquired any right to validation of previous service before the commencement of his participation on 1 January 1958, and since at that time the former text of article III had been superseded by the present amended text, it therefore follows that the former participant's claim must be governed solely by the latter."

The decision of 6 July 1961 then reviewed the previous decision of the Standing Committee, and in its paragraph 11 summarized the arguments of ICAO in the following terms:

"ICAO, as the former participant's employing Organization, has on several occasions affirmed that the reason why the former participant was excluded from participation in the Pension Fund prior to 1 January 1958 was in no way related to the duration of any of the term contracts referred to above, but was solely because it was a mutually accepted condition of employment under the Regulations and Rules applicable to Technical Assistance Personnel that the latter would not participate in the Pension Fund."

Lastly, paragraph 15 of the decision of 6 July 1961 set out the new conclusions of the Standing Committee as follows:

"The present conclusion of the Standing Committee is therefore that it has no ground for denying the validity of the reason given by ICAO, and

summarized in paragraph 11 above, for the exclusion of the former participant from the Pension Fund prior to 1 January 1958, or to support the former participant's contention that he was excluded for either of the reasons specified in paragraph 1 of article III of the Pension Fund Regulations. Nevertheless, bearing in mind the lapse of time since the former participant first lodged his appeal, and wishing to ensure that no previous misunderstanding which may have arisen in this case should have the effect of depriving the former participant of any means of obtaining a review of a particular decision against which he had appealed, the Standing Committee therefore recommended that the former participant be apprised by ICAO of the review machinery now available in the event that he should wish to pursue further his remaining dispute with his employing organization in regard to the content and the effect of the terms of his previous employment."

After an exchange of correspondence with the Applicant, the Chief of the Organization and Personnel Branch of ICAO informed the Applicant on 24 August 1961 of the agreement of the Secretary-General to a direct submission of the dispute to the Tribunal under article 7, paragraph 1, of its Statute. On 8 March 1962 the Applicant filed the application hereinbefore mentioned.

Whereas the Applicant's principal contentions are as follows:

1. The Applicant's right to validation of prior employment on his participation in the Joint Staff Pension Fund follows from the express provisions of paragraph 19 of the Regulations for Technical Assistance Personnel which were in force when his initial contract was concluded in 1951.

2. Since the provisions of these Regulations were incorporated by reference in the Applicant's initial contract, the right to validation of prior employment arises also from the initial contract.

3. The initial contract included a clause providing that subsequent amendments to the Regulations for Technical Assistance Personnel could operate against the Applicant only in so far as they did not reduce or restrict for the duration of the contract the conditions set forth therein. The essential terms of the initial contract were continued by successive extensions and renewals until the termination of the Applicant's employment on 31 December 1958. Accordingly, for the entire duration of the Applicant's employment the abrogation of the provisions of paragraph 19 could not operate against him.

4. Furthermore, article III of the Regulations of the Pension Fund, effective 1 January 1958, establishes the right of any participant in the Fund to make prior employment pensionable with the sole exception, mentioned in paragraph 4, of a period during which he "was employed under a contract of employment which specifically excluded his participation in the Pension Fund". Neither the Applicant's contracts nor the Regulations which governed technical assistance personnel during his period of service ever expressly excluded his participation in the Joint Staff Pension Fund. The fact that from 1 January 1952 to 31 December 1957 these Regulations included no provision concerning participation of technical assistance personnel in the Pension Fund cannot be interpreted as an express exclusion. Thus the Applicant's right to validation of prior employment follows also from article III of the Regulations of the Joint Staff Pension Fund.

Whereas the Respondent's principal contentions are as follows :

1. Paragraph 19 cited by the Applicant in support of his application for validation of prior service was part of a collection of administrative texts which were clearly shown to be provisional both by an express statement in paragraph 1 of the collection and by its title "Provisional Regulations for Technical Assistance Personnel".

2. Before the Applicant fulfilled the conditions laid down in paragraph 19 for his participation in the Pension Fund and therefore for the validation of prior service, the provisions of this paragraph had been abrogated by the substitution for Provisional Regulations of a manual which until 1 January 1958 did not include any provision concerning the participation of technical assistance personnel in the Pension Fund.

3. The abrogation of the provisions of paragraph 19 may operate against the Applicant. The words in his contract which have been cited to the contrary are expressly limited to the conditions set forth in his initial letter of appointment. They cannot therefore be applied to provisions contained, like those of paragraph 19, in the Provisional Regulations for Technical Assistance Personnel and not in the letter of appointment.

4. All the Applicant's letters of appointment stipulated expressly that he could not receive payments, subsidies, expenses or emoluments other than those specified in such letters or in the applicable staff regulations. The effect of this 'omnibus' clause was formally to exclude financial benefits such as validation of prior service which had not been specified in the letters of appointment or in the staff regulations.

5. Since the Applicant became a participant in the Joint Staff Pension Fund on 1 January 1958, he could not base his application for validation of prior service on a version of article III of the Regulations of the Fund which ceased to have effect on 7 December 1956.

6. The Staff Pension Committee of ICAO took the view that the text of article III, paragraph 1, effective 7 December 1956, gave the right to validation of previous service only to officials excluded from participation in the Pension Fund because they had entered employment under a contract for less than one year or because they had completed less than one year of service. Since the Applicant had not been excluded for either of those reasons, the Committee considered that he did not fulfil the conditions necessary for obtaining validation of his previous service. Even if the Committee's opinion on this point were not followed, the validation of the Applicant's previous service would still be contrary to the provisions of article III, paragraph 4, which formally bars the validation of a period of service during which the participant was employed under a contract of employment which specifically excluded his participation in the Pension Fund.

The Tribunal, having deliberated from 27 August to 11 September 1962, now pronounces the following Judgement :

1. The Applicant was admitted to participation in the Joint Staff Pension Fund on 1 January 1958 in virtue of the provisions, which came into force on that date, of article II of the Regulations of the Pension Fund and of article 248 of the Technical Assistance Board Manual.



The Applicant requests the validation of his prior service on the basis of article III of the Regulations of the Pension Fund, which provides :

**“Article III**

*“Validation of non-pensionable service*

“1. A participant who has been in the employment of a member organization as a full-time staff member and whose participation in the Pension Fund was at that time excluded by article II of these regulations because he entered employment under a contract for less than one year, or had completed less than one year of service, may, subject to paragraph 4 of this regulation, elect within one year of the commencement of his participation to have the period of such prior employment included in his contributory service to the extent to which he pays into the Pension Fund, in accordance with the administrative rules established for this purpose by the Joint Staff Pension Board, a sum or sums equal to the contributions which he would have paid had he been subject to these regulations throughout this period, with compound interest at the rate designated in article XXIX, and provided that there has been continuity of employment. For the purposes of this article, intervals of not more than thirty calendar days in the period of employment shall not be considered as breaking the continuity of employment. The time covered by these intervals shall not be included in the period of contributory service.

“2. Payment into the Pension Fund of amounts equal to twice the amount of the payment so made by the participant shall be made by the member organization designated for that purpose in accordance with arrangements concluded by the member organizations.

“3. The earliest date from which employment with the United Nations can be validated is the first day of February 1946.

“4. Notwithstanding the provisions of paragraph 1 of this article, a participant may not make pensionable a period during which he was employed under a contract of employment which specifically excluded his participation in the Pension Fund.”

2. The Tribunal notes that the present wording of the main provisions of this text was established on 7 December 1956, and that the first paragraph refers to article II of the Regulations. The pertinent provisions of article II, as worded on 7 December 1956 and until 31 December 1957, were as follows :

**“Article II**

*“Participation*

“1. Every full-time member of the staff of each member organization shall become a participant in the United Nations Joint Staff Pension Fund if he enters employment under a contract for one year or more, or when he has completed one year of employment, provided that he is under sixty years of age at the time of entering such employment and that his participation is not excluded by his contract of employment.”

3. The service for which the Applicant requests validation was performed by him as a technical assistance official of ICAO from 2 November 1951 to 31 December 1957.

The Respondent has opposed validation on the ground of the Applicant's contractual status, which in his view excluded participation in the Pension Fund. He has contended, first, that the Applicant was debarred from validation by article III, paragraph 4, of the Regulations of the Pension Fund, and secondly, that the Applicant did not fulfil the conditions laid down in paragraph 1 of the same article, since his previous exclusion from the Pension Fund had been due, not to the duration of his contract or to the length of his service, but to the terms of his contract relating to pension rights.

4. The Tribunal must therefore consider the Applicant's contractual status. The Applicant has contended that for the entire duration of his employment by ICAO since 2 November 1951 his conditions of employment were substantially regulated by his initial contract established by a letter of appointment accepted by him on 31 October 1951. He maintains that this contract, concluded first for a period of eleven months, had been extended or renewed from time to time and that each time it had been stipulated that the previous conditions of employment were not changed. He held that the right to validation of all his service upon entry into the Pension Fund flowed from the provisions of his initial contract and had subsisted since that time.

5. The Applicant referred to a clause in the letter of appointment whereby his appointment was subject to the Provisional Regulations for Technical Assistance Personnel, together with such amendments as might from time to time be made to those Regulations, provided that no such amendments should "reduce or restrict for the duration of this appointment the conditions set forth in this letter".

Furthermore, at the end of the letter of appointment there was a clause, which the Respondent termed an "*omnibus*" clause, stipulating that the Applicant would not receive from ICAO "any payments, subsidies, expenses or other emoluments other than those specified in the preceding paragraphs of this letter and in the regulations . . .".

6. Paragraph 19 of the Provisional Regulations stated:

*"Pension Fund*

"Officials appointed for less than two years are excluded from the U.N. Joint Staff Pension Fund. An official appointed initially for less than two years whose appointment is extended to two years or more may include previous service on joining the Pension Fund."

Furthermore, the Provisional Regulations included a number of provisions concerning allowances for dependants, reimbursement for travel expenses, home leave, hours of work, etc.

On 1 January 1952 the Provisional Regulations were replaced by a manual issued by the Technical Assistance Board entitled "Manual of Personnel Policies and Procedures for Technical Assistance Personnel". This Manual did not include any provision for participation by Technical Assistance personnel in the Joint Staff Pension Fund. The Manual issued by the Technical Assistance Board was made applicable to ICAO experts. Nor did a new edition of the Manual, effective 1 January 1954, include any provision for participation in the Pension Fund. However, article 248 of the third edition, effective 1 January 1958, re-established such a provision in the following terms:

*“Article 248. Pension Fund*

“Eligibility and participation in the United Nations Joint Pension Fund are subject to the Regulations of the United Nations Joint Staff Pension Fund and the Administrative Rules of the Joint Staff Pension Board.

*“(a) Participants*

“Subject to the Regulations and Rules mentioned above, project personnel on Long Term status (including Programme Appointments) shall be eligible to become participants in the United Nations Joint Staff Pension Fund.

*“(b) Associate Participants*

“Subject to the Regulations and Rules mentioned above, project personnel on Intermediate Term status shall be eligible to become associate participants in the United Nations Joint Staff Pension Fund.

*“Conditions*

- “(i) Project personnel must be under 60 years of age to enter the Fund.*
- “(ii) No eligibility for participation exists if the terms of employment specifically exclude participation in the Fund.*
- “(iii) Participation as an associate participant ceases on reaching the age of 60.”*

7. The Applicant has contended that, even though after 1 January 1952 the Manual did not include any provision for participation in the Pension Fund, his initial contract preserved for him the rights he acquired under paragraph 19 of the Provisional Regulations, since the conditions set forth in the letter of appointment could not be reduced or restricted.

As soon as the Applicant was informed by the Director of the Technical Assistance Bureau of ICAO that he had become entitled on 1 January 1958 to participate in the Pension Fund, he requested validation of all his prior service.

8. The Tribunal must first deal with the argument that the Applicant's right to validation of previous service upon admission to the Pension Fund had subsisted since his acceptance of the letter of appointment on 31 October 1951.

9. At the time of the Applicant's entry on duty as a technical assistance expert, paragraph 19 of the Provisional Regulations, while not entitling him to participate immediately in the Pension Fund, gave him a contingent right to participate with validation of prior service if his appointment were extended to two years. In this particular case the Applicant, who had relinquished pension rights in the administration of his country of origin, could hope if he remained with ICAO to obtain compensation for that loss at the end of two years.

10. However, on 1 January 1952, two months after the Applicant's entry on duty, the Provisional Regulations were replaced by new regulations, which were communicated to the Applicant by a letter from the Secretary-General of ICAO dated 8 April 1952. The Tribunal notes that the Respondent could not state whether the document communicated to the Applicant was the Manual issued by the Technical Assistance Board, or the document issued by ICAO to put the Manual into effect. However, the parties admit that the communicated document did not include any provision concerning pension rights or validation of prior service upon admission to the Pension Fund.

11. The Tribunal notes that the letter of appointment stipulated the Organization's right to amend the Provisional Regulations and limited this right only by the reservation that the amendment should not reduce or restrict "the conditions set forth in this letter".

The scope of this reservation was contested by the parties. The Applicant contended that the reservation extended not only to the conditions of employment set forth in the letter of appointment itself but also, in regard to pensions, to the provisions of the Provisional Regulations mentioned in the letter.

12. The Tribunal observes that the reservation mentions only the conditions "set forth in this letter", whereas in the so-called "*omnibus*" clause, cited above at the end of paragraph 5, reference is made to the payments, etc., specified in "this letter and in the regulations". This difference in wording indicates that the limitation on the right to amend the Regulations is intended only for the protection of the conditions of employment set forth in the letter of appointment itself. Moreover, if this clause had been intended to protect all the conditions laid down in the Regulations, the Administration's power of amendment would have been abnormally curtailed.

13. The Tribunal therefore concludes that the letter of appointment permitted amendments to the Provisional Regulations to take effect with respect to the Applicant, provided only that they did not reduce or restrict the conditions of employment set forth in the letter of appointment itself. Those conditions do not include any provision concerning the Pension Fund.

The deletion, effective 1 January 1952, of the relevant clause of the Provisional Regulations can therefore operate against the Applicant.

14. The Tribunal considers that it should also deal, for the sake of completeness, with the contractual status after that date. It notes that, because of the Applicant's competence and the quality of his services, his initial appointment was extended for one year from 1 October 1952 by a letter dated 31 October 1952 which referred to the conditions of employment contained in the first contract. A further extension until 31 March 1954 was made by a letter dated 16 September 1953, which referred to the conditions of employment contained in the letter dated 31 October 1952. After the expiration of this contract, a letter dated 14 April 1954 extended it again temporarily from month to month. For the conditions of service this letter referred to the letter of 16 September 1953. The letter of 14 April 1954 was superseded, with effect from 1 July 1954, by a letter dated 23 July 1954, whereby the Applicant obtained a further appointment for one year at a gross salary of \$9,460. For the conditions of employment the letter of 23 July 1954 again referred to the letter of 16 September 1953.

15. On the contrary, the letter of appointment dated 1 June 1955, written at the expiration of the period of appointment laid down in the letter of 23 July 1954, does not refer to previous letters. It offers the Applicant the post of chief of mission for one year at a gross salary of \$10,150, and refers for the conditions of employment to the Manual issued by the Technical Assistance Board and to such amendments as may be made from time to time. There was an express stipulation that the latter of 1 June 1955 superseded the letter of 23 July 1954. Extensions of the contract based on the letter of 1 June 1955 prolonged the Applicant's employment until 31 December 1958.

16. The Tribunal considers that the Applicant's acceptance of the terms of the letter of 1 June 1955 gave rise to a new contract, the only conditions of

which are those of the letter itself and of the Manual to which it refers. The post mentioned in the letter of 1 June 1955 is a different post from that with which the previous contracts were concerned ; and, unlike the preceding letters, the letter of 1 June 1955 does not speak of an extension of the previous appointment. On the contrary, it states that it supersedes the letter of 23 July 1954.

17. For these reasons the Tribunal finds that from 1 July 1955 onwards the Applicant's appointment was no longer governed by the provisions of the initial letter of appointment.

18. The Applicant's rights under the Regulations of the Pension Fund must be determined in accordance with the conclusions which the Tribunal has reached in the foregoing paragraphs 13 and 17 concerning his contractual status.

19. In view of the legal problems raised both by the interpretation of article III of the Regulations of the Fund in force on 1 January 1958 and by the successive amendments to the Regulations, the Tribunal noted that a number of points had not been fully discussed by the parties and that the legal position of the Applicant was in some respects similar to that of many United Nations technical assistants experts. Accordingly the Tribunal, under article 15 of its Rules and without at this juncture rendering a final judgement, decided to put the following questions to the parties :

(a) What is the scope of paragraph 4 of article III of the Regulations of the Fund, as amended on 7 December 1956 ? In particular, why does the phrase "contract of employment which specifically excluded . . . participation in the Pension Fund" appear in this paragraph, whereas article II, paragraph 1, which was in force at the same time, refers merely to a contract of employment by which "participation is not excluded" ?

(b) What is the scope and purpose of this paragraph, if one accepts the construction placed on paragraph 1 of the same article by the Respondent and by the Standing Committee of the Joint Staff Pension Board ? According to this construction, are there circumstances in which validation of a period of prior employment would be excluded by paragraph 4 without being also excluded by paragraph 1 of the same article ?

(c) Why was the amendment to article II, which came into force on 1 January 1958, not accompanied by a corresponding amendment to article III, paragraph 1 ? How does the Respondent consider that article III, paragraph 1, and article II, paragraph 1, should be co-ordinated since 1 January 1958 ?

(d) What is the scope of the amendment to article II of the Regulations of the Joint Fund which came into force on 1 January 1953 ? In particular, in view of the contradictory opinions expressed during the preparatory study (comments on article 2 in document JSPB/L.65, dated 3 March 1952, and paragraph 6 of document A/2203, dated 25 September 1952\*) and of the practice since adopted, do the parties consider that this amendment can have had the effect of granting to staff members of member organizations who fulfil the conditions laid down in article II, and whose contract does not contain any clause excluding their participation in the Pension Fund, the immediate and direct right to participate in the Fund ?

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\* The English text of document A/2203 is dated 3 December 1952.

(e) If an organization fails to register with the Fund a staff member who is eligible for participation under the Regulations in force, may the staff member have the period of prior employment validated on becoming a participant in the Fund at a later date ?

(f) If a staff member has completed a certain period of employment which qualifies for later validation, does the fact that his employment was subsequently continued under a contract excluding validation affect his right to validate the earlier period of employment when he becomes a participant in the Fund at a later stage ?

(g) Do the parties believe that the clause described by the Respondent as "the *omnibus* clause" has the same implication as regards pension rights both in the Applicant's initial contract and in the contract which came into force on 1 July 1955 ?

20. In view of the nature of these questions, the Tribunal fixes 1 January 1963 as the date by which the Respondent should submit his replies. They will be communicated to the Applicant, who should submit his replies and comments before 1 March 1963.

21. Under article 17, paragraph 2, and article 19 of its Rules, the Tribunal instructs the Executive Secretary to communicate this judgement to—

The Secretary-General of the United Nations ;

The heads of the specialized agencies that are member organizations of the Joint Staff Pension Fund ;

The Executive Chairman of the Technical Assistance Board ;

The Chairman of the Joint Staff Pension Board.

22. The Tribunal decides to postpone its consideration of this case to enable it to pronounce a final judgement.

23. The Tribunal, finding that the delay in the hearing of this case was not caused by the Applicant, and bearing in mind Judgement No. 65, awards costs to the Applicant in the sum of £100 sterling.

(Signatures)

Suzanne BASTID  
*President*

Sture PETRÉN  
*Vice-President*

Héctor GROS ESPIELL  
*Member*

Nicholas TESLENKO  
*Executive Secretary*

Geneva, 11 September 1962.

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