

is made really on the beneficiary of the annuity payments and that the assessments are in effect on two different persons. The contention of the Applicant that he has been subject to double taxation therefore fails.

X. For the foregoing reasons, the Application is rejected.

(Signatures)

R. VENKATARAMAN
Vice-President, presiding

L. IGNACIO-PINTO
Member

Francis T. P. PLIMPTON
Member

Z. ROSSIDES
Alternate Member

Jean HARDY
Executive Secretary

New York, 20 October 1967.

Judgement No. 112

(Original : French)

Case No. 110 :
Yáñez

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

Non-renewal of fixed-term appointment of a technical assistance expert of ICAO.

Request for opinion of expert graphologist concerning a confidential report on the Applicant.—Rejection of the request on the ground that the report contested did not prevent the extension of the Applicant's appointment and did not influence the contested decision.

Request by the Respondent that the Tribunal should examine as a preliminary question the Applicant's plea that he had a right to expect renewal of his contract.—Rejection of the request.

Request for a rescission of the decision not to renew the appointment.—Discretionary nature of this decision.—This decision could not impair any legitimate right or expectation since, under a provision of the relevant Staff Rules, the appointment could not carry any expectation of, nor imply any right to, renewal.—Principle that, for the purposes of rescission for misuse of power, the Tribunal should not investigate the reasons for a discretionary decision unless that decision impaired a right or a legitimate expectation.—Jurisprudence of the Tribunal and the International Court of Justice.

Request for a new certificate of service.—Necessity of using, in the certificate of service issued to a staff member leaving the Organization, the very words which have been put in the periodic reports by the superior.—Conformity of the disputed certificate with the last confidential report on the Applicant.—Rejection of the request.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President ; Mr. Héctor Gros Espiell ; Mr. Louis Ignacio-Pinto ; Mr. Zenon Rossides, alternate member ;

Whereas, on 5 September 1966, Francisco J. Yáñez, a former technical assistance expert of the International Civil Aviation Organization, hereinafter called ICAO, and the Applicant in the present case, filed an application concerning the non-renewal of the fixed-term appointment he held from ICAO and requested the President of the Tribunal to designate a counsel to assist him ;

Whereas, on 12 September 1966, the President, in pursuance of United Nations Administrative Instruction ST/AI/163, designated as counsel Mr. Rafael Rodriguez-Delgado, a staff member of the United Nations ;

Whereas the above-mentioned application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal ;

Whereas, on 16 September 1966, under paragraph 10 of that article, the Executive Secretary of the Tribunal returned it to the Applicant and called upon him to make the necessary corrections within a period of ninety days ;

Whereas the Applicant, after making the necessary corrections, again filed the application on 15 December 1966, the pleas of which he amended on 19 September 1967 ;

Whereas the pleas, as amended, request the Tribunal :

A. *As preliminary measures :*

(a) *As to competence :*

To declare its competence in the case, in conformity with article 2 of its Statute ;

(b) *As to receivability :*

To declare the application receivable under article 7, Paragraph 3 of its Statute ;

(c) *As to time-limits :*

To declare that the application has been submitted within the proper time-limits ;

(d) *As to the expert opinion of a graphologist :*

To consult an expert graphologist about part F of the Confidential Staff Report on Mr. F. Yáñez for the period May 1963 to May 1964, and put to him the following questions :

(i) Whether the sentence which apparently states : “ In spite of ratings under C and D this is and [sic] adverse report that C/ICAOTAM should have requested expert to sign ”, the date “ 19/5/64 ”, and the signature which apparently is that of Mr. Fournier, were written by the same person or by two or three different persons.

(ii) Whether these three entries were written with the same pen.

(iii) Whether they were written with the same ink.

(iv) Whether it might be said that the person who wrote the sentence tried to imitate the handwriting of the signature.

B. *With regard to the decision contested, reinstatement, compensation and other relief claimed :*

(i) To rescind the Respondent's decision not to renew the Applicant's contract after its expiry on 31 December 1965 ;

(ii) To instruct the Respondent to reinstate the Applicant in his former post as from the date of termination, extending the Applicant's appointment to 31 December 1966 and awarding him a new extension from that date to 31 December 1967, and, concurrently, instruct him to pay the Applicant all the salary arrears, with interest, due for the period 31 December 1965 to the date of effective reinstatement of the Applicant in his post ;

(iii) Alternatively, in the event that the Respondent avails himself of the option given to him under article 9, paragraph 1, of the Statute of the Tribunal, and decides that the Applicant shall be compensated without further action being taken, to award the Applicant a sum equivalent to two years' net base salary, as compensation for the material damages and injury sustained by the Applicant, including loss in career opportunities, and a sum equivalent to one additional year's net base salary in respect of moral suffering caused in this exceptional case ; the total amount of compensation claimed thus amounting to the equivalent of the Applicant's net base salary for three years ;

(iv) To instruct the Respondent to pay the Applicant the sum of \$300 to cover costs and expenses incurred by him ;

(v) To instruct the Respondent to give the Applicant a new Certificate of Service, taking into account his entire period of service with ICAO and dismissing the invalid Confidential Reports ;

(vi) To hold oral proceedings for the purpose of hearing the parties ;

Whereas, on 1 March 1967, the Respondent filed his answer and an application asking the Tribunal to examine as a preliminary question the Applicant's plea that he had a legal right to expect renewal of contract ;

Whereas, on 8 May 1967, the Applicant filed written observations and a reply to the above-mentioned application by the Respondent, together with new documents not available to him when the application instituting the proceedings had been introduced ;

Whereas, on 6 and 12 June 1967, the Applicant requested the President of the Tribunal, under article 10 of the Rules of the Tribunal, to order certain preliminary measures to be taken to obtain additional information and documents ;

Whereas, on 14 June 1967, the Respondent filed written observations on the documents filed by the Applicant on 8 May 1967 ;

Whereas, on 23 June 1967, the Respondent filed written observations on the preliminary measures requested by the Applicant on 6 and 12 June 1967 ;

Whereas, on 13 July 1967, the Applicant filed written observations on the Respondent's observations filed on 14 June 1967 relating to the reply to the Respondent's application ;

Whereas, on 17 July 1967, in response to the Applicant's requests of 6 and 12 June 1967, the President of the Tribunal requested the Respondent, under article 10 of the Rules of the Tribunal, to furnish certain additional information and documents ;

Whereas, on 20 and 24 July 1967, the Respondent furnished the above-mentioned information and documents ;

Whereas, on 19 September 1967, the Applicant amended his pleas and withdrew his request for certain preliminary measures ;

Whereas, on 29 September 1967, the Respondent furnished a statutory

declaration relating to the text at issue in the request for the expert opinion of a graphologist ;

Whereas, on 9 October 1967, the Tribunal heard the parties at a public session ;

Whereas the facts in the case are as follows :

The Applicant entered the service of ICAO on 23 June 1962 under a short-term appointment as an air traffic controller for the ICAO Technical Assistance Mission in the Congo. The appointment, which was for six months subject to the right of either party to terminate it upon thirty days' notice, was amended on 24 August 1962 and was subsequently extended four times, the first extension being to 31 December 1962, the second to 31 December 1963, the third to 31 December 1964, and the fourth to 31 December 1965. As a consequence of the second extension, which prolonged the continuous service of the Applicant beyond one year from the date of the initial appointment, the Applicant henceforward enjoyed the conditions of service applicable to staff members with intermediate-term appointments and qualified for admission to the United Nations Joint Staff Pension Fund as an associate participant. In addition, under the terms of a letter sent to the Applicant at the time of the fourth extension, the conditions of service set out in the ICAO Field Service Staff Rules became applicable to him and accordingly the previous letters of appointment issued to him were cancelled ; moreover, the duration of the appointment was subject to the right of either party to terminate it in accordance with the provisions of the Staff Rules, including Rule 9.6 concerning notice. While in the service of ICAO, the Applicant received annual salary increments on 23 June 1963, 23 June 1964, and 1 June 1965, the corresponding personnel action forms being dated 10 July 1963, 4 June 1964 and 24 June 1965 respectively. Two confidential reports were prepared on the Applicant's work and conduct. The first, covering the period May 1963 to May 1964, contained six sections. Section A (Qualities and Performance of Duties) was subdivided into eighteen headings : (1) Responsibility ; (2) Relations with colleagues ; (3) Contacts with local staff ; (4) Penetration ; (5) Constructive power ; (6) Judgement ; (7) Initiative and originality ; (8) Knowledge of Mission's Work ; (9) Output ; (10) Quality ; (11) Expression on paper ; (12) Oral expression ; (13) Capability as instructor ; (14) Leadership ; (15) Organization of work ; (16) Adaptability to climate ; (17) Obligation as an international civil servant ; (18) Punctuality and attendance. Under each of these headings the reporting officer had a choice between four ratings (1, 2, 3, 4) to express his opinion, except for heading (5) (three ratings) and headings (17) and (18) (two ratings). The Applicant was given the first rating under headings (16), (17) and (18), the second under headings (1), (4), (5), (7), (8), (9), (11), (12) (for English), (13), (14) and (15), and the third under headings (2), (3), (6), (10) and (12) (for French). Section B (Special Aptitudes ; Discussion on Shortcomings) was not filled out. In section C (Over-all Grading for Qualities and Performance of Duties) the Applicant was rated an efficient officer, and in section D (Fitness for Promotion) he was rated not suitable for immediate promotion, but likely to qualify in time. Section E (Reporting Officer's General Remarks) was not filled out. The first five sections of the report were dated 4 May 1964 and signed by the Chief of Mission, Mr. Miranda-Correa. Section F (Remarks by Director, Technical Assistance Bureau) contained this comment : " In spite of ratings under C and D this is and [*sic*] adverse report that C/ICAOTAM should have requested expert to sign ", dated 19 May 1964 and signed " J. P. Four-

nier". The second confidential report covered the period June 1964 to July 1965, and the same form was used as for the first. In section A, the Applicant was given the first rating under headings (9), (11), (12), (16), (17) and (18), the second under headings (1), (5), (7), (8), (13) and (15), the third under headings (3), (6) and (10), and the fourth under headings (2) and (4); the rating under heading (15) was followed by the words "when in navigation bureau" and the rating under heading (17) was accompanied by a question mark. In section B, a negative answer was given to the following two questions: "Has the officer any special aptitudes or qualifications not covered above? Are you satisfied that his present work uses his qualities to the best effect?", and it was stated that the Applicant was a source of minor problems, a chronic complainer and argumentative. Section C referred forward to section E, and section D contained the same rating as given in section D of the first report, with the reservation: "If attitude changes". Section E noted friction between the Applicant and another expert, resulting in poor co-ordination. The first five sections of the report were dated 7 July 1965 and signed by Mr. Guyot, who had been Chief of Mission since the second half of May 1965. Section F contained the following comment: "This is an adverse report and should be shown to Mr. Yáñez". Apparently, no confidential report was prepared for the period preceding May 1963.

On 21 June 1965 an incident occurred at the N'Djili (Kinshasa) Airport; the Applicant was on duty in the control tower and, in view of weather conditions and the traffic situation, refused take-off clearance to an aircraft of the Congolese Air Force engaged in emergency operations. On 25 June 1965, the Chief of the ICAO Mission sent a memorandum to the Director of the Technical Assistance Bureau at Montreal concerning the incident, together with a report submitted by the Applicant. That memorandum was followed, on 2 July 1965, by a second memorandum in which the Chief of Mission, on the basis of various documents, disputed the validity of the grounds on which the Applicant had based his decision at the time of the incident of 21 June, and charged that he had shown poor judgement. In reply, the Director of the Technical Assistance Bureau requested the Chief of Mission, on 9 July 1965, to send him the confidential report on the Applicant (the second confidential report discussed above) and to recommend what action should be taken. On 22 July 1965, the Chief of Mission sent the Director a third memorandum, enclosing the report requested, and describing other incidents in which the Applicant had been involved both before and after the incident of 21 June, in particular an incident of 6 August 1964 in respect of which the Applicant had received a letter of reprimand from the previous Chief of Mission, and an incident of 26 June 1965, which had not yet been investigated. In that memorandum, the Chief of Mission also commented on the above-mentioned confidential report and informed the Director of certain steps taken by the Spanish Chargé d'Affaires in favour of the Applicant. He ended by saying that, since the Chargé d'Affaires had offered to try to obtain for the Applicant a transfer back to the Spanish Ministry of Transport during his next visit to Madrid, he had accepted that solution rather than immediate termination of the Applicant's contract, in order to spare the feelings of everyone concerned and save the professional future of the Applicant. On 4 August 1965, the Chief of Mission sent the Director of the Technical Assistance Bureau a fourth memorandum transmitting documents relating to the incident of 26 June 1965 and informing him, in particular, that pending the results of the negotiations being carried on by the Chargé d'Affaires, he was

considering the possibility of retaining the Applicant until December 1965. "At any rate", he concluded, "the renewal of his contract beyond December 1965 is extremely doubtful".

At the request of the Director of the Technical Assistance Bureau, the Applicant submitted written observations on 26 August 1965 in which he commented on the second confidential report and emphasized that his problems had begun with the arrival of a new Chief of Mission. The observations were transmitted to the Director, attached to a memorandum of the same date in which the Chief of Mission stated, *inter alia*, that, contrary to what had been thought, the Applicant was not attached to the Spanish Ministry of Transport, that the transfer envisaged was therefore impossible and that there was no alternative but to release him. On 7 September 1965, Mr. J. P. Fournier, Technical Assistance Officer, prepared a memorandum for the Director of the Technical Assistance Bureau, in which he reviewed the Applicant's file. He noted that the first confidential report had been considered of an adverse nature and had not been signed by the Applicant because at the time the practice had not yet been taken up of returning adverse confidential reports to the Mission for signature by the person concerned. The memorandum ended by recommending dismissal of the Applicant for cause as soon as possible. On 15 September 1965, the Director of the Technical Assistance Bureau sent the following memorandum to the Chief of Mission, in reply to his letter of 26 August 1965 :

" . . .

" 2. We have analysed the contents of your memorandum most carefully and we agree that, in the interest of the Organization, it is not safe to keep Mr. Yáñez as a Controller and he should therefore be immediately relieved of his duties at the Control Tower. However, for reasons of our own, we do not want to make an official charge against him for termination from this Headquarters. Accordingly, you are authorized to choose between the following alternatives :

" (a) Assign Mr. Yáñez to your Headquarters on the preparation of Air Traffic Services instructions or on such other duties as he can adequately handle until the expiry of his current contract on 31 December 1965 ;

" (b) Inform Mr. Yáñez in writing that his contract with the Organization is being terminated with thirty days' notice from the date of such notification in accordance with the provisions of Rule 9.6 (b) of the ICAO Field Service Staff Rules ; further, that six weeks' termination indemnity will be paid to him according to Rule 9.7 (b) of the ICAO Field Service Staff Rules, and that payment will be made to him in lieu of leave which he has accrued during service with the Mission. A copy of such notification should be forwarded to this Headquarters.

" 3. You should therefore relieve Mr. Yáñez of his present duties immediately and then inform us when you have taken a decision as to whether or not he should remain until the end of the year."

The Chief of Mission chose the first alternative and informed the Applicant of his decision in the following memorandum dated 30 September 1965 :

" Your case has been reviewed and all the factors relating to recent incidents have been thoroughly analysed by ICAO Headquarters and they have given me the authority to choose between two alternatives.

" I have therefore decided not to recommend the renewal of your contract

on its expiry on 31 December 1965. Until that date it is expected that you will carry out your duties to the best satisfaction of your supervisor.

“ In the meantime, should there be any adverse report on the accomplishment of your duties and/or behaviour, I will have to adopt the alternative course of action authorized by ICAO Headquarters, namely, to terminate your contract with thirty days’ notice, in accordance with ICAO Field Service Staff Rules, para. 9.6 (b).

“ You will continue to work in the *Bureau de Navigation Aérienne* at N’Djili Airport under the supervision of the Air Traffic Services Adviser, Mr. R. Pelletier. ”

On 7 October 1965, in a memorandum again contesting the validity of the assessment in the second confidential report and invoking Rule 8.1 (a) of the Field Service Staff Rules, the Applicant appealed to the Secretary-General of ICAO against the aforementioned decision not to recommend the renewal of his contract when it expired. In reply, the Secretary-General informed the Applicant on 22 November 1965 that, taking into account the interests of the Organization, he had decided that the Applicant’s contract should not be renewed after its expiry on 31 December 1965. On 26 November 1965 the Director of the Technical Assistance Bureau placed the following note in the Applicant’s file :

“ I have had this morning the visit of Colonel Guilló, representative of Spain in the Council, who, acting on instructions from his Government, stated that there is a feeling among the Spanish experts in the Congo that Mr. Guyot is discriminating against them.

“ I gathered the impression that some persons in the Spanish Foreign Affairs Service in the Congo also had the same feeling, which was transmitted to Madrid without complete explanation of the facts that are at the base of such reaction, mainly the incidents involving Mr. Yáñez.

“ I gave detailed explanation to Mr. Guilló and agreed to his suggestion that another Spanish expert could be assigned to replace Mr. Yáñez, thus showing that there is no discriminatory attitude against Spanish experts. Would you, please, time the arrival of the Spanish expert to be recruited in such way that he will be at Leopoldville only a few days after the departure of Mr. Yáñez. ”

When the Applicant asked the Secretary-General of ICAO to agree to the submission of his case to the United Nations Administrative Tribunal in accordance with Rule 8.3 of the Field Service Staff Rules, the Secretary-General informed him, on 6 December 1965, that, pursuant to Rule 8.2 of the said Rules, he designated the ICAO Advisory Joint Appeals Board as the appeals machinery, and that, according to the Board’s Rules, a staff member who wished to appeal against a particular decision should, as a first step, address a letter to the Secretary-General requesting that the decision be reviewed. On 13 December 1965 the Applicant appealed to the Advisory Joint Appeals Board, which gave its opinion (Opinion No. 24) on 6 June 1966. The sections of that Opinion entitled “ Findings and Conclusions ” and “ Recommendations ” read as follows :

“ *Findings and conclusions*

“ 16. Before giving its views on the substance of the case, the Board invites the attention of the Secretary-General to the question whether there

should have been a request by the Appellant to the Secretary-General for a review of the latter's decision of 22 November 1965 before he could have come to the Board in appeal. The point was not pressed by the Representative of the Secretary-General (see para. 2 of his comments dated 19 January 1966), but it may be pointed out that the manner in which the said decision was rendered by the Secretary-General (letter to the Appellant dated 22 November 1965), made it unnecessary for the Board to insist on a strict compliance with Rule 3 (a) of GSI-1.4.7, which would only have led to prolonging the proceedings without any advantage of having elicited any new facts to bear on the case.

“ 17. The Board having considered the arguments presented by the parties, both in the written and the oral presentations, finds and concludes as follows :

“ A. *As regards the question of non-renewal of the contract*

“ (1) The contract of employment of the Appellant dated 12 November 1964 was for the period 1 January 1965 to 31 December 1965 and was governed by ‘ the terms and conditions of service set out in the ICAO Field Service Staff Rules and as amended from time to time ’.

“ (2) The fixed-term appointment of the Appellant expired, without being extended, on the date specified in the staff member's contract of employment, namely on 31 December 1965, as provided for in Rule 9.2 (a) of the said Staff Rules, and the staff member was ‘ separated from the service of the Organization by reason of . . . the expiration of the period of his appointment ’ (Rule 9.1 of said Rules).

“ (3) No reasonable expectancy of renewal or extension was created in the Appellant in view of the nature of the fixed-term contract and specially because of Rule 2.3 (c) of the said Rules which says that an appointment shall in no case carry any expectation of, nor imply any right to, extension, and therefore of renewal of a contract. Rule 2.3 (a) cited by the Representative of the Appellant does not affect the clear intent expressed in Rule 2.3 (c).

“ B. *As regards the question of prejudice leading to non-renewal of the contract*

“ (1) Independently of the right of the Secretary-General to extend or not to extend a fixed-term appointment, it seems that the Board is justified in looking into a case where allegations are made that proper procedure had not been followed, for instance in dealing with the staff member's confidential reports, or in conducting an investigation involving him, or that the action contested had been motivated by prejudice or any extraneous considerations.

“ (2) In the present case, however, the allegations of bias and prejudice motivating the actions of the Chief, ICAOTAM, Congo, have not been substantiated. The allegations are not specific and it is not possible for the Board, without concrete and sufficient evidence, to come to a firm conclusion on the force of these allegations. The memorandum from the Chief of the Mission, dated 25 June 1965, cited by the Representative of the Appellant, is considered to be inconclusive.

“ Recommendations

“ 18. In view of the findings and conclusions stated above, the Board recommends to the Secretary-General that the appeal requesting the payment of compensation to the Appellant for the prejudice and harm caused to him by the non-renewal of his contract, be disallowed. ”

On 16 June 1966 the Secretary-General expressed his agreement with the recommendation of the Advisory Joint Appeals Board, and the Applicant submitted the aforementioned application on 15 December 1966.

Whereas the Applicant's principal contentions are :

1. The Applicant was awarded periodic salary increments in accordance with Rule 3.4 of the Field Service Staff Rules, which states that such increments shall be awarded to staff members “ on the basis of satisfactory service ”. The fact that such increments were awarded proves that the “ adverse ” confidential report has no weight. Moreover, the Applicant had been advised that he was eligible, when the time came, for full participation in the Pension Fund and the contested decision deprived him of that possibility.

2. In view of the successive extensions of his appointment, the award of periodic salary increments and the installation of his family in the difficult environment of the Congo, the Applicant could legitimately expect continuing employment. The right to the extension of renewable fixed-term contracts has been recognized by the International Court of Justice, the United Nations Administrative Tribunal and the ICAO Advisory Joint Appeals Board. As far as the Applicant's record of service is concerned, the complaints against him have not been proved.

3. In view of the circumstances in which it was taken, the contested decision was a disciplinary measure based, improperly, on unproved evidence, two totally worthless confidential reports and memoranda deliberately distorting the material facts. The animosity and antagonism of the Chief of Mission towards Spanish and Portuguese experts, and towards the Applicant in particular, was the real reason for recommending the termination of the Applicant's appointment. On several occasions, notably in Judgement No. 93, the Administrative Tribunal has held that discretionary powers should be exercised without prejudice or improper motivation.

4. The contested decision is vitiated by procedural defects, thus :

(a) The Respondent failed to observe article IV.12 of part III of the ICAO Service Code, which is applicable as a supplementary legal source : the first confidential report was shown to the Applicant after a delay of over six months, while the period of service prior to that covered by the report was not dealt with in a confidential report ;

(b) The rights of the Applicant under articles 10 and 11 of the Universal Declaration of Human Rights were not respected ; in violation of article V.4 of part III of the Service Code, no investigation was conducted to prove that his services were unsatisfactory and there are flagrant contradictions between the favourable and unfavourable ratings given him.

Whereas the Respondent's principal contentions are :

1. The fact that the Applicant was awarded periodic salary increments in no way prevented his immediate superior from making unfavourable comments about him in a confidential report. The Applicant's contractual status precluded him from becoming a full participant in the Pension Fund.

2. Not only did the Applicant's contract carry no expectancy of renewal, but the contrary is clearly stipulated in Rule 2.3 (c) of the Field Service Staff Rules. The Applicant's plea of a legal right to expect renewal of contract is legally inadmissible and the jurisprudence cited by the Applicant is irrelevant. Moreover, the record of the Applicant's performance was not one which justified reasonable expectation of renewal.

3. The Applicant's contract was not terminated. If it had been terminated before its expiry, and if the ground of termination had been misconduct, then that would have been a disciplinary measure. The contract in fact expired in accordance with its terms. The allegations of prejudice are unfounded and irrelevant. In Judgement No. 93, the Administrative Tribunal also stated that the burden of proving prejudice or improper motivation rested with the Applicant.

4. Concerning the allegations of procedural defects :

(a) The ICAO Service Code did not apply to the Applicant. Furthermore, the Applicant suffered no damage because of the first confidential report as his appointment was renewed, and the Advisory Joint Appeals Board and the Secretary-General were aware of the Applicant's comments on the two confidential reports ;

(b) The provisions of the Universal Declaration of Human Rights and the Service Code mentioned by the Applicant are irrelevant. In fact, no criminal charge was brought against the Applicant and he was not dismissed.

The Tribunal, having deliberated until 25 October 1967, pronounces the following judgement :

I. In the pleas of his application, the Applicant requests as a preliminary measure the opinion of an expert graphologist about several points in the confidential report in the performance of his duties during the period May 1963 to May 1964.

This report, the first five sections of which were signed on 4 May 1964 and section F on 19 May 1964, was prepared after the Applicant's appointment had been extended until 31 December 1964. It did not prevent that appointment from being extended once again from 31 December 1964 to 31 December 1965, during which time a second confidential report covering the period June 1964 to July 1965 was prepared.

In the circumstances, the Tribunal sees no reason to seek the opinion of an expert graphologist as requested, since the adverse comment in the report (section F), the date and nature of which the Applicant is contesting, did not prevent the extension of his appointment. There is also no evidence in the file that the comment influenced the final decision taken on 22 November 1965, whose rescission the Applicant is seeking.

II. The Applicant entered the service of ICAO on 23 June 1962 under a short-term appointment as an air traffic controller with the ICAO Technical Assistance Mission in the Congo. That appointment, which was for six months, was extended four times : the first time until 31 December 1962, the second until 31 December 1963, the third until 31 December 1964 and the fourth until 31 December 1965.

III. In his answer the Respondent asked the Tribunal to examine as a preliminary question the Applicant's plea that he had a legal right to expect renewal of his contract.

The Tribunal considers that this is not a preliminary question but, on the contrary, an issue which should be settled by a judgement on the merits of the case.

IV. The Applicant was subject to conditions of employment applicable to experts with intermediate-term appointments (ICAO Field Service Staff Rules, Rule 2.2 (b)).

When such an appointment expires, there are no grounds, in principle, entitling the incumbent to expect an extension of his appointment or conferring on him any right thereto. That is expressly stated in Rule 2.3 (c) of the ICAO Field Service Staff Rules, which stipulates that an appointment shall in no case carry any expectation of, nor imply any right to, its extension or conversion.

The Applicant's appointment expired, without having again been extended, on the date specified in the contract, namely, 31 December 1965. Consequently, the Applicant was separated from the service of the Organization by reason of the expiration of his appointment, in accordance with Rule 9.2 (a), which stipulates that a fixed-term appointment shall expire, unless extended or converted, on the date specified in the staff member's contract of employment.

V. The decision taken by the Respondent on 22 November 1965 not to renew the Applicant's contract when it expired on 31 December 1965 was within the former's discretion. It could not impair or prejudice any legitimate right or expectation since, under Rule 2.3 (c) of the Field Service Staff Rules, which were specified as being applicable to the Applicant in the letter of appointment extending his contract for the fourth time, such an appointment could not carry any expectation of, nor imply any right to, renewal.

VI. In the present case, there are no grounds for examining the presumed or possible motives for non-renewal of the contract ; for in order to give rise to the possibility of considering rescission of a discretionary administrative decision for misuse of power, on the basis of an inquiry into its motivation, that discretionary decision must impair a right or a legitimate expectation.

On the other hand, the Tribunal cannot, in principle, undertake an examination of the reasons or grounds for a decision not to renew a contract where the administrative decision in question does not affect any right or legitimate expectation, as in the case of a staff member whose appointment ends simply because its period has expired.

VII. The Tribunal has already affirmed that principle in regard to the corresponding provisions of the United Nations Staff Rules now in effect (Judgement No. 94, Pappas, paras. IV and XIV). The Applicant has no grounds for referring to Judgement No. 4 of the Tribunal, which concerned the dismissal of staff members holding temporary indefinite contracts ; the case was different from the present one, which does not involve dismissal, but non-renewal of an appointment which expired. Other earlier cases judged by the Tribunal were also different, either because the provisions of the rules in force differed from those applicable in the present case (Judgements No. 15, Robinson ; No. 46, White ; No. 47, Carter ; etc.), or because there had been a definite offer to renew the appointment when it expired (Judgement No. 86, Mr. A).

Similarly, the Applicant has no grounds for referring to the jurisprudence of the International Court of Justice, since the case he cites involved an Administrative Memorandum which the Court deemed to be " a modification of the Staff Rules "

by virtue of which all officials with the requisite qualifications, on the expiry of their appointments, were entitled to expect renewal of their appointments (Judgements of the Administrative Tribunal of the ILO upon complaints made against UNESCO, Advisory Opinion of 23 October 1956, ICJ Reports 1956, page 96).

VIII. The Applicant also requests the Tribunal to instruct the Respondent to give him a new certificate of service taking into account his entire period of service with ICAO and dismissing the confidential reports whose validity the Applicant contests.

The right to receive a certificate of service is provided for as follows in the ICAO Field Service Staff Rules :

“ Rule 9.13—Certificate of Service

“ A certificate relating to the nature of his duties and the length of his service shall be given, at his request, to a staff member who is separated from service. At his request, the certificate shall also refer to the staff member’s competence, efficiency and official conduct. ”

The Applicant requested a certificate by a letter dated 23 February 1966. The Director of the Technical Assistance Bureau replied in a letter dated 7 March 1966, enclosing a certificate. After the Applicant had objected, in a letter dated 19 March 1966, to the wording of that certificate, the same officer sent him another certificate, dated 10 May 1966, which also did not satisfy the Applicant.

The Tribunal has already stated, in connexion with a provision similar to Rule 9.13 of the ICAO Field Service Staff Rules, that the certificate of service given to a staff member leaving the service of the Organization should “ use the very words which have been put in the periodic reports by the superior ” (Judgements No. 49, Carruthers, and No. 107, Miss B). The Tribunal laid down that, if that condition has not been met, the former staff member is entitled to ask for the certificate to be amended.

IX. It must therefore be decided whether the certificate issued is in conformity with the terms used in the reports, whether the assessments made in the latter are adequately and faithfully reproduced and whether the over-all rating given the staff member is in conformity with that in the reports.

X. The Tribunal notes that the first paragraph of the certificate issued on 10 May 1966, which is identical with the text of the certificate dated 7 March 1966, correctly indicates the nature of the Applicant’s duties and the length of his service.

The second and third paragraphs, which have no equivalent in the certificate of 7 March 1966, give an assessment of the Applicant’s “ competence, efficiency and official conduct ”. In the opinion of the Tribunal, this assessment reasonably and satisfactorily reflects the most important comments in the last confidential report, dated 7 July 1965. Although it does not reproduce those comments textually or in their entirety, it adheres strictly to the spirit and substance of the report of 7 July 1965. The certificate is in the main couched in the same terms as are used in the report and no statement can be found in it which conflicts with the assessment given in that report.

The Tribunal therefore has no grounds for ordering a new certificate to be prepared.

XI. For these reasons, the Tribunal rejects the application.

(Signatures)

Suzanne BASTID

President

H. GROS ESPIELL

Member

L. IGNACIO-PINTO
Member

Z. ROSSIDES
Alternate Member

Jean HARDY
Executive Secretary

New York, 25 October 1967.

Judgement No. 113

(Original : French)

Case No. 113 :
Coll

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

Termination, at the request of the assisted Government, of the fixed-term appointment of a technical assistance expert of ICAO.

Special circumstances in which ICAO was operating in the Congo at the time of the Applicant's termination.—Circumstances in which two inquiries were held regarding an air traffic incident in which the Applicant was involved.—Special function of the ICAO mission to the Congolese Government.—Letter from the competent Minister requesting termination of the Applicant's services.—Decision, consequent upon this letter, to terminate the Applicant's appointment "in the interest of the Organization".

Consideration of the propriety of this decision.—Principles governing the exercise of the discretionary power conferred on the Secretary-General by the right to terminate an appointment "in the interest of the Organization".—Doubt cast on the Applicant's professional competence in the letter from the Minister requesting the termination of his services.—Fact that the Respondent did not follow the procedure he had undertaken to follow in order that the facts might be clarified and the Applicant enabled to explain his actions.—Disregard by the Respondent of fundamental guarantees to which the Applicant was entitled, and of his right to be heard in a case involving his professional competence.—Award by the Respondent of a termination indemnity based on the strictest application of the Staff Rules, whereas the Respondent had indicated his intention of giving the Applicant the benefit of particularly favourable treatment.—Irregularity of the termination decision, inasmuch as the Applicant was not afforded the guarantees recognized to be necessary by the Respondent himself in the light of the facts of the case.

Reinstatement of the Applicant impossible in the circumstances.—Award to the Applicant of an indemnity equivalent to his base salary for the period of the appointment remaining as from the date of termination, less the sums already paid in consequence of the termination.