

Judgement No. 132

(Original: English)

Case No. 132:
Dale

Against: The Secretary General of
the International Civil
Aviation Organization

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

Request for the rescission of the decision not to extend the contract.—It is necessary to consider whether the Respondent was under an obligation to renew the contract upon its expiration.—Obligations assumed by the Respondent, independently of the contract, in his relations with the Applicant.—Question whether the mere statement that no post was available constitutes an acceptable discharge of the obligations assumed by the Respondent.—The contested decision must be considered irregular in so far as it disregards the Respondent's obligations.—The Respondent's obligation to execute the commitments undertaken by him, in the form of a bona fide search for a suitable post.—Award to the Applicant, should the Respondent decide to pay indemnity under article 9, paragraph 1, of the Statute of the Tribunal, of \$3,000 compensation.

Request for the release of documents to the authorities of the recipient State.—The request is rejected as it is not related to the terms of employment.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid; Mr. Louis Ignacio-Pinto; Mr. Zenon Rossides, alternate member;

Whereas, on 29 April 1969, Bernard Dale, a former technical assistance expert of the International Civil Aviation Organization, hereinafter called ICAO, requested the Tribunal to suspend the provisions of its Statute regarding the time-limit for filing an application to the Tribunal;

Whereas, on 13 May 1969, the Tribunal decided, under article 7, paragraph 5 of its Statute, to extend by two months the time-limit for filing an application;

Whereas, at the Applicant's request and with the Respondent's agreement, the President of the Tribunal extended further by two weeks the time-limit for filing an application;

Whereas the Applicant filed the application on 28 July 1969;

Whereas the pleas of the application request the Tribunal:

"1. *As Preliminary Measures:*

"(a) To order that

"(i) The Applicant's report 'Evaluation of the Zaria Mission' dated 18 September 1967 (at E/864-SF 1/3.109);

"(ii) Mr. Macy's report dated 17 October 1967 (at E211);

"(iii) Mr. Macy's letter to his Deputy dated 10 October 1967 (at E211);

“(iv) Mr. Nelson’s investigation report with all annexes and attachments

“should be produced so that the accuracy of the conclusions which the Respondent and I have drawn from certain parts of the Applicant’s personal files may be assessed;

“(b) To order that

“(i) A list of technical headquarters personnel and field experts who were hired by ICAO or received an extension of their contracts between June 1968 and August 1969;

“(ii) A list of experts who were employed by ICAO as aviation pilots or pilot instructors in May/June 1968

“should be produced so that the availability or non-availability of a suitable post for the Applicant’s further employment with ICAO can be assessed;

“2. *As to the merits of the case:*

“(a) To rescind the decision transmitted to the Applicant by cable dated 8 July 1968 by which the Respondent terminated the services of the Applicant under the terms of ICAO Field Service Staff Rule 9.4 (d);

“(b) To rescind the decision of 6 January 1969 by which the Respondent, after consideration of the conclusions and recommendations of the Advisory Appeals Board, maintained the aforementioned administrative decision;

“(c) To order the Respondent to reinstate the Applicant in the services of ICAO;

“(d) To order payment of full salary to the Applicant from the date of the termination of his appointment to the date of his effective reincorporation to ICAO;

“(e) To order the reimbursement of expenses incurred by the Applicant totalling an amount of \$10,800.00;

“(f) To order payment of \$15,000.00 for the prejudice suffered;

“3. Should the Respondent decide to exercise the option given to him under Article 9.1 of the Statute:

“(a) To order payment of full salary to the Applicant from the date of the termination of his appointment to the date of the Respondent’s decision to exercise his option under Article 9.1 of the Statute;

“(b) To order payment of \$77,000.00 for the prejudice suffered;

“(c) To order the reimbursement of expenses incurred by the Applicant totalling an amount of \$10,800.00;

“(d) To order the release of all relevant documents to the Nigerian authorities so that the Applicant can receive an unqualified clearance from these authorities;

“4. Should the Tribunal uphold the decision transmitted to the Applicant by cable dated 8 July 1968 by which the Respondent terminated the services of the Applicant:

“(a) To order payment of a three months’ salary under the terms of ICAO Field Service Staff Rule 9.7 (b);

“(b) To order the reimbursement of expenses incurred by the Applicant totalling an amount of \$10,800.00;

“(c) To order payment of \$5,000.00 for the prejudice suffered;

“(d) To order the release of all relevant documents to the Nigerian authorities so that the Applicant can receive an unqualified clearance from these authorities;

“5. To hold oral proceedings for the purpose of hearing the parties.”;

Whereas the Respondent filed his answer on 28 August 1969;

Whereas the Applicant filed written observations on 9 September 1969;

Whereas, on 25 and 30 September 1969, the Respondent submitted, at the request of the President of the Tribunal, the additional documents and information referred to in paragraph 1 of the pleas of the application;

Whereas the Tribunal heard the parties at a public session held on 30 September 1969;

Whereas, on 6 October 1969, the Respondent submitted additional information at the request of the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of ICAO on 1 June 1966, under a one-year appointment governed by the ICAO Field Service Staff Rules, as a Pilot (Ground) Instructor with the Nigerian Civil Aviation Training Centre in Zaria (Nigeria), a project undertaken by ICAO acting as the Executing Agency for the United Nations Special Fund. Prior to the issue of the formal letter of appointment, the Director of the Technical Assistance Bureau of ICAO had explained to him the conditions under which he would serve in a letter of 2 March 1966 stating *inter alia*:

“... Your initial contract will be for a period of one year, renewable subject to satisfactory service and by mutual consent.”

On 1 June 1967 his appointment was extended for one year. From August 1967 to October 1967, the Applicant acted as Project Manager while the Principal of the Training Centre was on leave. During that period, the situation prevailing in the country made it necessary to curtail the activities of the Training Centre. Having been instructed by the Director of the Technical Assistance Bureau to evaluate the situation of the project, the Applicant prepared an evaluation report which he transmitted to the Director on 18 September 1967. In that report the Applicant, after an examination of several possible courses of action for the future, recommended a gradual resumption of the training programme. On 11 October 1967, the Applicant addressed to the Director of the Technical Assistance Bureau a request for reassignment as inspector of training or in another similar capacity. On 18 October 1967, the Director informed him that his request for a transfer to another duty station had been recorded. Toward the end of October 1967, charges of project mismanagement allegedly made by the Applicant to the Resident Representative of the United Nations Development Programme (UNDP) led to an investigation which found no evidence of mismanagement. As a result of views attributed to the Applicant in connexion with his evaluation report, the Nigerian members of the Board of Governors of the Training Centre appear to have raised objections to an extension of the Applicant’s contract.

On 16 February 1968, the Principal of the Training Centre requested the Director of the Technical Assistance Bureau "to endeavour to find another appointment for Mr. Dale" and "to look into the matter for his replacement".

On 5 March 1968 the Director replied as follows:

" . . .

"The question of non-renewal of Mr. Dale's contract could, if the Board of Governors so wishes, be made as a recommendation to the appropriate Nigerian Government authority. This should be based on information available to the Board and not on the ICAO confidential report of an investigation now closed. Naturally ICAO will respect the wishes of the Nigerian Government regarding Mr. Dale's continued employment in Nigeria.

" . . ."

On 24 April 1968, the Director of the Technical Assistance Bureau addressed the following cable to the Principal of the Training Centre:

"Request urgent advice regarding renewal termination Dales contract Stop Suggest priority consideration training requirements while formulating your advice since no replacement available immediately"

On 30 April 1968 the Principal replied:

"Recommend renewal contract Stop Will confirm Chairmans agreement by cable for [from?] Lagos on 6 May"

On 7 May the UNDP office in Lagos addressed to the Director a cable reading in part: "Board of Governors approves extension contract ground instructor Dale". On 13 May 1968, however, the Director of the Technical Assistance Bureau cabled to the Principal of the Training Centre:

"Have received Board Governors approval Dales contract renewal Stop In view your confidential report I have doubts offering one year renewal but would agree extension till end scholastic year Stop would appreciate your cabled advice before making final decision"

The confidential report referred to in that cable is a report on the Applicant's work and conduct for the period from 14 February 1967 to 13 March 1968. In that report the Principal of the Training Centre rated the Applicant "a satisfactory Technical Assistance Officer" while, in an earlier report covering the period from June 1966 to 9 March 1967, the Applicant had been rated "a very able and effective officer". On 16 May 1968 the Principal cabled his advice to the Director of the Technical Assistance Bureau recommending an extension of the Applicant's contract up to the end of the scholastic year. In a subsequent letter addressed on 30 May 1968 to the Director, he explained that he had recommended the only alternative that seemed possible and had literally followed the Director's instructions; he pointed out that he had not given the Applicant an unsatisfactory report, and concluded that it would be more appropriate for the Director to take the final decision regarding the Applicant's future. In the meantime, on 27 May 1968, the Director of the Technical Assistance Bureau had transmitted to the Applicant a letter from the Secretary General of ICAO, dated 21 May 1968, offering to the Applicant an extension of his appointment from 1 June 1968 to 31 July 1968; in his letter of transmittal, the Director stated:

"This short-term extension of your contract is offered as an interim measure pending final determination in respect of a longer extension of your service in Zaria."

On 13 June 1968, the Applicant wrote to the Director of the Technical Assistance Bureau that he was unable to accept a two-month extension of his contract; he explained that in order to accept an appointment with ICAO it had been necessary for him to secure an early release from the Royal Canadian Air Force with consequent losses in pension benefits, and that he had planned his family's future on the basis that subsequent contract renewals would be contingent on satisfactory service; finally, pointing out that the delay in renewing his contract was due to the fact that the Government of Nigeria erroneously believed that he had recommended the closing of the Training Centre during the 1967 state of emergency, he asked the Director to provide the Government with the relevant documents so that he might be given an unqualified clearance. The Director replied by the following cable, dated 20 June 1968:

"Impossible retain your services without contract Stop If you do not accept short contract extension pending determination your case you must separate from service by 30 June Stop Recommend you cable acceptance contract offered"

On 26 June 1968 the Applicant cabled to the Director: "Your 797 stipulation now necessitates acceptance of [interim] contract June/Jul". In the meantime, a Technical Assistance Training Officer had been sent to Zaria and instructed to look into the personnel situation in the Training Centre. By a letter dated 28 June 1968 and a cable dated 1 July 1968, he recommended to the Director of the Technical Assistance Bureau that the Applicant's assignment in Zaria be terminated on 31 July 1968 and that the Applicant be transferred to another post if possible. On 8 July 1968 the Director cabled to the Applicant:

"Regret will not extend offer employment Dale in Zaria beyond expiration present contract thirtyone July Stop also regret no other suitable post presently available TA [Technical Assistance] programming":

On 10 July 1968 he confirmed the cable, adding:

"We have given consideration to the possibility of offering you another post, elsewhere, in our programme but, as stated in my cable, there is no vacant post at present suitable to your qualifications. I will keep your name in our roster, if you so desire, for consideration when a suitable vacancy occurs in the future.

"I wish to thank you for the good work you carried out during your assignment to the Zaria SF [Special Fund] Project and, particularly, for your valuable cooperation during the period you acted as Project Manager, under very strenuous local conditions."

On 15 July 1968, the Applicant addressed a memorandum to the Secretary General to "appeal the decision to discontinue my services". The Secretary General having confirmed the decision, the Applicant lodged an appeal with the Advisory Joint Appeals Board, which handed down its Opinion (Opinion No. 32) on 18 December 1968. The Board's recommendation read as follows:

"In view of the findings, and the conclusion stated above, the Board considers that although the administration had the right not to renew the Appellant's normal contract which expired at the end of May 1968, it had the major responsibility for creating a legitimate and reasonable expectation

in the mind of the Appellant that he would in due course receive another one-year contract commencing from 1 June 1968. It seems obvious that the Appellant accepted the last contract for two months only after he received the cable of 20 June from the Director, Technical Assistance Bureau, worded in a way that led the Appellant to believe that the two months' contract would be extended at its expiration. The Board recognizes that the Organization had the authority to terminate such a contract before its expiry for any of the reasons stated in Rule 9.4 of the Rules. The Secretary General in fact refused to reverse the earlier decision taken by the Director, Technical Assistance Bureau, when considering a request for review submitted by the Appellant on 15 July 1968, on the ground that the original decision was 'in the interest of the Organization' (endorsement dated 2 September on a memorandum dated 27 August from the Director). The Board considers that the refusal to extend the employment of the Appellant after 31 July 1968 for the remaining period of 10 months, which would have concluded his one year of further service from 1 June 1968 which the Appellant had reasonably expected, should be regarded as termination, thus attracting the provision in Rule 9.7 (b) in regard to indemnities on termination, and the Board recommends accordingly, that is to say, that the Appellant be paid indemnity at the rate of one week's net salary for each month of uncompleted service, which in this case amounted to 10 months. In regard to claims made by the Appellant or his Representative, for compensation to the extent of 10 months' salary, plus 6 months' salary for damages, no specific or direct evidence has been adduced as to the quantum of the claims and therefore the appeal to that extent must fail, and it is so recommended."

As the Secretary-General rejected the Board's recommendation on 6 January 1969, the Applicant filed on 28 July 1969 the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent had no right to terminate the services of the Applicant as long as the Applicant's working performance was satisfactory, and such performance has always been at least satisfactory.

2. The termination of the Applicant's services was not in the interest of ICAO.

3. The action taken by the Respondent was in violation of the contract, *mala fide* and influenced by extraneous circumstances:

(a) By his decision not to extend the Applicant's contract the Respondent violated his contractual obligations towards the Applicant; in any event, he created by his action a reasonable and legitimate expectation that the Applicant would in due course receive another one-year contract on 1 June 1968;

(b) In secretly investigating and evaluating the Applicant's working performance, the Respondent denied due process to the Applicant; the whole action with regard to the termination of the Applicant's contract was done without the Applicant's knowledge;

(c) The Respondent violated his legal and moral obligations by his failure to provide the Applicant with an alternative assignment;

(d) The contested decision of the Respondent can only be explained by prejudicial and extraneous circumstances and was not, therefore, taken *bona fide*.

Whereas the Respondent's principal contentions are:

1. The decision not to renew the Applicant's contract was within the Respondent's discretion; it could not impair any right or legitimate expectations in view of the provisions of Rule 2.3 (c) of the Field Service Staff Rules.

2. There are no grounds for examining the presumed or possible motives for non-renewal since the Respondent's decision does not impair a right or a legitimate expectation.

3. A plea of reasonable expectation of renewal of contract is irrelevant and legally inadmissible.

4. In any event, in the facts and circumstances of the case the Applicant did not have, and could not have had, reasonably, a legal expectation of renewal of contract.

5. The Applicant was professionally competent but this point is not at issue.

6. The Applicant's views as to the interest of ICAO are forensically irrelevant; his allegation that the Respondent's action was *mala fide* and influenced by extraneous circumstances is equally irrelevant, besides being baseless.

7. The possibility of re-employing the Applicant was looked into, but the Applicant has no legal right in this matter.

The Tribunal, having deliberated until 10 October 1969, now pronounces the following judgement:

I. The Applicant requests the Tribunal:

"(a) To rescind the decision transmitted to the Applicant by cable dated 8 July 1968 by which the Respondent terminated the services of the Applicant under the terms of ICAO Field Service Staff Rule 9.4 (d);

"(b) To rescind the decision of 6 January 1969 by which the Respondent, after consideration of the conclusions and recommendations of the Advisory Appeals Board, maintained the aforementioned administrative decision;

"(c) To order the Respondent to reinstate the Applicant in the services of ICAO."

The Applicant also requests various indemnities for the injury he considers he sustained as a result of the contested decisions.

II. The Tribunal notes that the cable dated 8 July 1968 from the Director of the Technical Assistance Bureau does not announce the termination of the Applicant's contract and does not refer to ICAO Field Service Staff Rule 9.4 (d). The cable reads: "Regret will not extend offer employment Dale in Zaria beyond expiration present contract 31 July . . .". The Director of the Technical Assistance Bureau thus seems merely to rely on ICAO Field Service Staff Rule 9.2 (a) which reads:

"A fixed-term appointment shall expire, unless extended or converted, on the date specified in the staff member's contract of employment."

The cable continues:

"Also regret no other suitable post presently available TA [Technical Assistance] programming."

In a letter of 10 July 1968 reproducing the cable, the Director of the Technical Assistance Bureau further states: "We have given consideration to the possibility

of offering you another post, elsewhere”, and continues: “there is no vacant post at present suitable to your qualifications”.

It thus appears that, in the Respondent's view, the Applicant's fixed-term contract had expired and it was neither possible to renew the contract in Zaria nor to assign the Applicant to another post.

The Applicant's request for rescission can therefore only be directed against the decision refusing to extend the contract beyond its expiration date, i.e. against the refusal to conclude a new contract.

III. The Respondent has contended that the conclusion of a new contract was within his discretionary powers. Relying on Judgement No. 112 (*Yáñez*), he has asserted that the Tribunal could not enter into the reasons or grounds for the decision not to renew the contract.

The Applicant has argued that Judgement No. 112 recognizes the possibility of the Tribunal undertaking an examination of the reasons for a discretionary decision when such decision affects a right or legitimate expectation, and he pleads that the present case involves a right or legitimate expectation of renewal.

The Tribunal must therefore consider whether, in the circumstances of the case, the Respondent was under an obligation to renew the Applicant's contract upon its expiration.

IV. The Applicant has sought to prove that the Respondent was under such an obligation from the time when the Applicant entered upon his duties with a one-year contract beginning on 1 June 1966. He bases his argument, in particular, on the letter from the Director of the Technical Assistance Bureau dated 2 March 1966 specifying the conditions of service under which the Applicant would serve, which states:

“As you were informed by the Field Personnel Officer, your initial contract will be for a period of one year, renewable subject to satisfactory service and by mutual consent.”

The Applicant also relies on the fact that his contract was renewed for one year on 1 June 1967 and he considers that since his services were acknowledged to be satisfactory, the Respondent was under an obligation to renew for one year the contract expiring on 31 May 1968.

V. The Tribunal observes that the ICAO Field Service Staff Rules provide for fixed-term appointments of varying duration as well as for the possible extension of those appointments and their conversion from one type to another. The Tribunal notes that the aforementioned letter from the Director of the Technical Assistance Bureau expressly mentioned the possibility of renewal subject to satisfactory service, but that the reference to “mutual consent” implies that the Administration reserved the right to withhold its consent. It may be observed, however, from the list of field experts hired or extended by ICAO during the period from September 1968 to August 1969, produced by the Respondent at the request of the Tribunal, that renewal is a normal practice in the case of such experts.

Furthermore, the legal position of the Applicant on the date of the contested decision was no longer governed solely by the contract of 1 June 1966 which had been extended for one year on 1 June 1967. Certain other obligations had been assumed by the Respondent and it is therefore necessary to take into account all the circumstances and special features of the case for an evaluation of such legal position.

VI. Owing to problems resulting from the political situation in the country and their impact on the Zaria Centre, consultations between the Applicant's superiors concerning the renewal of his contract and his retention in the same post were not finalized when the second one-year period was about to expire. The Respondent, whose primary concern was to ensure that training continued until the end of the scholastic year, offered to extend the Applicant's contract for two months in a letter of 21 May 1968 stating that all other terms and conditions of employment remained unchanged.

The Tribunal notes that the letter of 21 May 1968, signed by the Secretary General of ICAO, was accompanied by a letter to the Applicant dated 27 May 1968 and signed by the Director of the Technical Assistance Bureau. This letter first of all requests the Applicant to sign the two-month contract and return it as soon as possible. It contains a second paragraph, the wording of which is of particular significance:

"This short-term extension of your contract is offered as an interim measure pending final determination in respect of a longer extension of your service in Zaria."

The Tribunal observes that the granting of a two-month contract is connected with a certain plan of action described by the Director and on which the Applicant is entitled to rely. This plan of action comprises an interim measure (the two-month contract), the prospect of a longer extension and the employment of the Applicant at Zaria in the same post. The Respondent doubtless retains a certain measure of discretion as to the date and duration of the extension. Nevertheless the two-month contract cannot be considered as an isolated short-term contract expiring at the end of its anticipated duration. What is envisaged is an interim solution pending the establishment of a more stable situation, the essential features of which are indicated by the Respondent himself in the letter of 27 May 1968.

VII. That position was confirmed by the subsequent behaviour of the Respondent.

The Applicant, in a memorandum dated 13 June 1968, states that he is unable to accept a two-month extension. He explains that he made certain career sacrifices in order to join ICAO because of good prospects for continuing employment. He then states that it is evident that the delay in renewing his contract is due to the position taken by the Government of Nigeria, which had been misinformed about his proposals concerning the future of the Zaria Centre, and he requests that the documents which could explain his position be communicated to the Government.

In reply to that memorandum, two cables were sent by the Director of the Technical Assistance Bureau on 20 and 26 June 1968 respectively. These cables were designed to apply pressure on the Applicant so that he would accept a two-month contract. He was thereby informed that it would be "impossible" to "retain" his "services without contract" and hence that, if he did not accept the "short contract extension", he would be separated from the service on 30 June 1968. The cable of 20 June 1968 "recommends" acceptance, by cable, of the contract offered. The cable of 26 June 1968 requests a cabled reply as a matter of urgency, and twice reminds the Applicant that unless he accepts the contract his services will be terminated on 30 June 1968.

The Tribunal draws attention to the terms used by the Director of the Technical Assistance Bureau in both cables. The Director requests the Applicant

urgently to accept the two-month contract "pending determination of [his] case". Thus the Respondent, after having received the memorandum of 13 June 1968, explicitly acknowledged that the Applicant's rights were not limited to those resulting from the two-month contract, but also related to the Applicant's future.

When the Applicant finally gave his consent, he did so in the light of the terms of the cable of 20 June 1968 and he used the term "interim" contract which had been used in the letter of 27 May 1968. It is thus obvious that the Applicant reluctantly consented to an interim measure only because there was prospect of a more durable solution.

VIII. The Tribunal therefore considers that, after the Applicant had accepted the two-month extension of his contract, the legal relations between the parties comprised, on the one hand, the contract which expired on 31 July 1968 and, on the other, the obligations assumed by the Respondent when he proposed the two-month extension.

Hence, the Tribunal must consider whether the Respondent fulfilled the obligations he assumed in his relations with the Applicant.

IX. The decision concerning the Applicant's separation from service contained in the cable of 8 July 1968 consists of two elements: the refusal to extend his employment at Zaria after 31 July 1968, and the statement that no other suitable post is available. This statement was elaborated in the letter of 10 July 1968 saying: "We have given consideration to the possibility of offering you another post". The same letter also contained the proposal to keep the Applicant's name "in our roster... for consideration when a suitable vacancy occurs in the future".

It is clear that the solution thus envisaged has not materialized since that time and that no practical steps have been taken to give effect to the intention expressed by the Respondent when he proposed the two-month contract as an "interim measure".

X. It appears from the file that the information obtained by the Respondent after 27 May 1968 on the situation in the Zaria Centre may have led him to consider that it would not be advisable to retain the Applicant in his post after 31 July 1968. This assessment was within the Respondent's discretion. But at the same time he had to fulfil in some other manner the obligations assumed by him in his letter of 27 May 1968 and confirmed in his cables of 20 and 26 June 1968.

The Respondent has recognized his obligations by indicating that he considered the possibility of assigning the Applicant to another post. Therefore the only point at issue is whether the mere statement that no post was available constitutes an acceptable discharge of the obligations assumed by the Respondent.

XI. The Tribunal requested from the Respondent information on the procedure followed while choosing a person for a post in the ICAO field service from among several eligible candidates. The Tribunal also asked the Respondent what were the posts for which the Applicant had been considered before 8 July 1968.

It appears from the information submitted by the Respondent that the Applicant has been considered for one post only; this was in December 1967, that is, long before the question of his leaving Zaria arose. It also appears that after it became evident that the continuation of the Applicant's service in Zaria was not feasible, the Respondent did not consider the Applicant for any vacancy,

nor did he make any search for a suitable post, before 8 July 1968. Furthermore, the Respondent has not given any indication that attempts have been made to find a post for the Applicant after that date. If the difficulties to reassign the Applicant to another post were as insuperable as the Respondent asserts, the Tribunal is unable to understand why the Respondent agreed to consider the Applicant for another post. Consequently, the contested decisions must be considered as irregular in so far as they disregard the Respondent's obligations.

XII. The Tribunal decides that the Respondent is called upon to execute the commitments undertaken by him, in the form of a *bona fide* search for a suitable post.

XIII. Should the Respondent decide under article 9, paragraph 1, of the Statute of the Tribunal, in the interest of the Organization, to compensate the Applicant for the injury sustained, the Tribunal must fix the amount of compensation to be paid to the Applicant. According to normal practice, the Applicant could anticipate the granting of a one-year contract. In the absence of the effective performance of duties, the situation may be assimilated to the case of a one-year fixed-term contract which is terminated 12 months before its date of expiration. In such a case the Applicant would have been entitled to a termination indemnity of one week's salary for each month of uncompleted service. Taking into account the Applicant's net base salary at Zaria, the Tribunal fixes at 3,000 dollars the compensation to be paid to the Applicant.

XIV. The Applicant requests the Tribunal "to order the release of all relevant documents to the Nigerian authorities so that the Applicant can receive an unqualified clearance from these authorities".

The Applicant's request lacks legal basis as it is not related to the applicable terms of employment. It is therefore rejected.

XV. The Tribunal rejects the other pleas of the application.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Member

Louis IGNACIO-PINTO
Member

New York, 10 October 1969

Zenon ROSSIDES
Alternate Member
Jean HARDY
Executive Secretary

Judgement No. 133

(Original: English)

Case No. 133:
Frias

Against: The Secretary-General
of the United Nations

*Request for the rescission of a decision refusing to grant a special post allowance.
Request for oral proceedings.—The request is declined as the determination of the case rested on the interpretation of Staff Rules and Administrative Circulars.*