1969. Thus, since the request for a review for the purpose of appeal was submitted to the Administration on 30 September 1970, it is clear that a review of the claim in question was not requested within the time-limit laid down in Staff Rule 111.3 (*a*), as moreover is emphasized by the letter of 16 October 1970.

The Tribunal accordingly declares the claim unreceivable. It further notes that paragraph (*c*) of Staff Rule 203.10, invoked by the Applicant, was added to that rule in April 1968 and was thus not in force at the time of the events.

IV. Concerning the claim for payment of a fourth month's sick leave as a result of the Applicant's mission, the Tribunal notes the terms of the letter of 16 October 1970 whereby the Director of Personnel offered the Applicant the option of applying for an extension of his contract by producing a medical certificate and a certificate issued by the French Administration.

V. For the above reasons the Tribunal rules that the application is not receivable.

(*Signatures*)

Suzanne BASTID
Vice-President, presiding

MUTUALE-TSHIKANTSHE
Member

F. A. FORTEZA
Member

Jean HARDY
Executive Secretary

New York, 4 October 1972

Judgement No. 160

(*Original: English*)

Case No. 162: Acinapura

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

Request for the payment of post adjustment at the dependency rate.

Staff Rule 103.7 (b) (*i*).*—Definition of "child" appearing in Staff Rule 103.24* (b). *—Applicability of that definition to the entire Staff Regulations and Rules, including Staff Rule 103.7* (b) (*i*) *which admits of no exceptions like those appearing in Staff Rules 103.20 and 107.5* (b).*—Absurd result to which the Applicant's claim would lead.—As the Applicant's daughter is not a "child" according to the above-mentioned definition, the claim fails.*

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Mutuale-Tshikantshe; Sir Roger Stevens;

Whereas, at the request of Frank L. Acinapura, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Re-

spondent, extended to 30 June 1972 the time-limit for the filing of an application to the Tribunal;

Whereas, on 30 June 1972, the Applicant filed an application requesting the Tribunal to order:

"1. Rescission of decision to change the rate of his post adjustment to the single rate as of 5 November 1971, taken by the Office of Personnel. . . .

"2. Continuation of Applicant's post adjustment at the dependency rate until June 1973, in keeping with Rule 103.7 (*b*) (i).";

Whereas the Respondent filed his answer on 10 August 1972;

Whereas the Applicant filed written observation on 29 September 1972;

Whereas the facts in the case are as follows:

On 23 March 1971 the Applicant, who received post adjustment at the dependency rate on account of his daughter, asked the Office of Personnel whether his post adjustment would continue to be paid at the dependency rate after 5 November 1971, the date on which his daughter, who was attending a university, would become 21 years of age. On 16 April 1971 he received a negative reply. On 7 May 1971 he requested the Secretary-General to review that decision. The decision was confirmed on behalf of the Secretary-General on 1 June 1971, however, and on 10 September 1971 the Applicant lodged an appeal with the Joint Appeals Board. The Board submitted its report on 1 February 1972. The Board's conclusions and recommendations read as follows:

"Conclusions and Recommendations

"15. The Board finds that it is the intention of Rule 103.7 to restrict eligibility for post adjustment at the dependency rate to staff members who provide substantial and continuing support for a son or daughter who is a 'child' in terms of the definition in Rule 103.24 (*b*), i.e., who is 'the unmarried child of a staff member, under the age of 18 years, or if . . . in full-time attendance at a school or university (or similar educational institution) under the age of 21 years'. The Board finds further that the text of Rule 103.7 (*b*)(i), when read in conjunction with Rule 103.24 (*b*), expresses that intention. Accordingly, the Board recommends that the Secretary-General reaffirm his decision to deny the appellant's claim."

The Secretary-General having decided on 25 February 1972 to maintain his decision, the Applicant filed on 30 June 1972 the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. In dealing with the subject of eligibility for the higher rate of post adjustment, Staff Rule 103.7 (*b*)(i) establishes two separate criteria. For cases where eligibility is based on the fact of supporting a spouse the Rule provides that this fact would be confirmed if such spouse "is recognized as a dependant under Rule 103.24". For cases where eligibility is based on the fact of supporting a child, however, the Rule provides that, rather than to depend on recognition as a dependant under Rule 103.24, the fact would be confirmed "if it is recognized that the staff member provides substantial and continuing support of one or more of his children". And far from being accidental and haphazard, the formulation of Rule 103.7 was actually established after careful consideration in different bodies

and therefore represents a deliberate choice by the Secretary-General and by the General Assembly.

2. Staff Rule 103.7 (*b*)(i) is perfectly clear and consistent with its purpose of enhancing the remuneration of staff members who have a factual family burden to carry (as distinct from other, more formalistic, criteria introduced for other purposes, such as children's allowances, etc.). Should there be confusion and inconsistency in the Staff Rules, however, the staff member should not be made the sole victim of the consequences of such confusion.

3. On the basis of the unambiguous text of Staff Rule 103.7 (*b*)(i)—the only relevant Rule—the Applicant had every reason and right to build his family arrangements, including full support for his daughter until June 1973 while she was completing her undergraduate studies, on the expectation of a salary at a level enhanced, as it has been all along, by the higher rate of post allowance.

Whereas the Respondent's principal contentions are:

1. The Applicant's contention that reference to a child's age was deliberately omitted as a criterion for post adjustment at the dependency rate is contradicted by the legislative history of the text. The clearly indicated intention was that "child" or "children" should be given the same meaning when determining entitlement to dependency allowances as when determining entitlement to dependency rates. Financial support by the parent staff member was dealt with as a separate eligibility element, with a more stringent criterion being adopted for dependency rate of post adjustment than for dependency allowance.

2. The separation of the two elements for recognizing a "child" as a "dependant" is expressed in Staff Rule 103.24 (*b*) which, in its first paragraph, defines the term "child" "for the purposes of the Staff Regulations and the Staff Rules" and then, in the next paragraph, sets forth the "continuing support" condition of dependency of a child "for purposes of Staff Regulation 3.4". The difference between such "continuing support" and the "substantial and continuing support" required under Staff Rule 103.7 (*b*)(i) is not in issue but explains why the latter provision does not contain a cross-reference to Staff Rule 103.24 in respect of a child recognized as dependent.

3. The generally accepted meaning of the term "children" within the frame of reference of family benefits, children's allowances and the like does not usually encompass adult and capable sons and daughters.

The Tribunal, having deliberated from 2 to 9 October 1972, now pronounces the following judgement:

I. The Applicant claims entitlement to receive post adjustment at the "dependency rate" instead of at the "single rate". That the Applicant's daughter is 21 years of age and that the Applicant provides substantial and continuing support to her are not in dispute. The Applicant's claim rests on an interpretation of Staff Rule 103.7 (*b*)(i) which reads as follows:

> "(*b*) (i) The rate of post adjustment shown on the schedules for staff members with dependants shall apply to a staff member if his spouse is recognized as a dependant under Rule 103.24 or if it is recognized that the staff member provides substantial and continuing support of one or more of his children."

The Applicant interprets the above rule to mean that post adjustment at the dependency rate is payable to a staff member:

(*a*) if his spouse is recognized as a dependant as defined in Staff Rule 103.24, or

(*b*) if he provides substantial and continuing support of one or more of his children.

He interprets the word "children" to mean offspring regardless of age or dependency status.

II. Staff Rule 103.24 (*b*) defines the "child" as follows:

> "For the purposes of the Staff Regulations and the Staff Rules a 'child' shall be the unmarried child of a staff member, under the age of 18 years, or if the child is in full-time attendance at a school or university (or similar educational institution) under the age of 21 years. If the child is totally and permanently disabled the requirements as to school attendance and age shall be waived."

The clause just quoted is a definition clause which applies to the entire Staff Regulations and Rules. It states specifically that "For the purposes of the Staff Regulations and the Staff Rules" the word "child" shall bear the meaning given therein. Since Rule 103.7 is part of the Staff Rules, the definition of "child" in Staff Rule 103.24 (*b*) must govern the words "of one or more of his children" in Staff Rule 103.7 (*b*)(i).

III. From the omission of any reference to Staff Rule 103.24 in the clause relating to "one or more of his children" in Staff Rule 103.7 (*b*)(i) the Applicant urges that these words should be interpreted as meaning sons and daughters regardless of age. But the Tribunal finds that the term "child" has been defined in Staff Rule 103.24 (*b*) not for the purposes of any particular section but "for the purposes of the Staff Regulations and the Staff Rules", and that this definition should apply wherever the expression "child" is used in the Staff Regulations and Rules. Hence the words "one or more of his children" in Staff Rule 103.7 (*b*)(i) mean and include only those who fall under the definition of "child" in Staff Rule 103.24 (*b*).

IV. An examination of the Staff Rules shows that wherever exceptions are made they are specifically stated. For instance, Staff Rule 103.20 stipulates that the education grant is payable beyond the age of 21 years up to the end of the respective school year. Similarly, under Staff Rule 107.5 (*b*) payment of the travel expenses of a child for one trip to the staff member's duty station or to his home country may be authorized beyond the age when the dependency status of the child would cease.

But no such provision has been made in the Staff Rules for the grant of post adjustment at the dependency rate for a child in full-time attendance at a university beyond the age when dependency status ceases as urged by the Applicant.

V. Furthermore, the Applicant's interpretation of Staff Rule 103.7 (*b*)(i) would lead to an absurd result since it would allow a staff member to claim indefinitely post adjustment at the higher rate on the ground that he provides substantial and continuing support to one or more of his children.

VI. As Staff Rule 103.7 (*b*)(i) is clear that only a staff member providing substantial and continuing support to one or more of his children is eligible for

post adjustment at the dependency rate and as the Applicant's daughter is not a "child" according to the definition of Staff Rule 103.24 (*b*), the claim fails.

VII. The application is rejected.

(*Signatures*)

R. VENKATARAMAN
President

Roger STEVENS
Member

MUTUALE-TSHIKANTSHE
Member

Jean HARDY
Executive Secretary

New York, 9 October 1972

Judgement No. 161

(*Original: English*)

Case No. 159: Noel

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

Termination on the ground of abolition of post of a locally recruited staff member holding a permanent appointment.

Contention that the Joint Appeals Board was improperly constituted.—Objection based on alleged relation between the Applicant and a member of the Board.—Applicant's objection overruled by the Chairman of the Board, under the discretion granted to him by Staff Rule 111.2 (e).*—Contention that the fourth staff-elected Alternate had sat while the member elected by the Staff had stated he was available.—Need to take account of the practical realities of a situation in which, owing to the number of appeals, recourse has to be had to all the alternates if unnecessary delays are to be avoided.—Contention rejected.*

Contention that Staff Rule 109.1 (c) *was not complied with.—Scope of Staff Rule 109.1* (c) (*ii*) (a), *applicable to the Applicant.—Contention rejected because Applicant had been offered and had refused a post and because the Respondent had made a search for alternative posts in good faith and over a considerable period of time.*

Contention of prejudice and detrimental allegations.—Contention rejected, because of lack of evidence.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Sir Roger Stevens;

Whereas, at the request of Edwin E. Noel, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 21 April 1972 the time-limit for the filing of an application to the Tribunal;