

Representative in the UNDP Office in Rabat "revealing undeniably the truth with regard to the contested agreement".

The Respondent contests the receivability of the application and also the authenticity and legal effect of the alleged memorandum.

Article 12 of the Statute of the Tribunal reads in part:

"The application [for revision] must be made within thirty days of the discovery of the [new] fact and within one year of the date of the judgement."

The time-limits fixed in that provision are mandatory and the Tribunal has no power either to extend them or condone any delay.

Since the application has not been made within one year of the date (26 October 1970) of Judgement No. 135 which the Applicant in substance seeks to revise, the application is not receivable and must be rejected.

II. It is therefore not necessary to consider the authenticity or legal effect of the alleged memorandum, both of which are questioned by the Respondent.

III. For the above reasons the application is rejected.

(Signatures)

R. VENKATARAMAN  
President

Francis T. P. PLIMPTON  
Vice-President

New York, 11 October 1972

Zenon ROSSIDES  
Member

Jean HARDY  
Executive Secretary

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**Judgement No. 164**

(Original: English)

**Case No. 154:**  
**Sabillo**

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

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*Termination on the ground of abolition of post of a local employee holding a temporary indefinite appointment.—Request for miscellaneous compensation, deriving from the fact that only belatedly did the Respondent acknowledge that the Applicant was a staff member.*

*Acknowledgement by the Respondent that the Applicant's employment was governed by the Staff Regulations and by the 100 Series of the Staff Rules, while he had previously taken the position that it was governed by rules applicable to temporary employees of the local Government.—The Tribunal has to consider the application on the basis of the Staff Regulations and Rules applicable to holders of temporary indefinite appointments.*

*Request for rescission of the termination decision.—Staff Regulation 9.1 (c).—The decision conformed to Staff Rule 109.1 (c).—Request rejected.*

*Request for compensation for the Respondent's failure to comply with certain provisions of the Staff Regulations and Rules.—Statement by the Tribunal taking note of the undertaking by the Respondent to pay to the Applicant the money equivalent*

*of the annual leave accrued by him upon termination.—Award to the Applicant of the difference between the salary due to him under the salary scale in effect and the salary actually paid.—Award to the Applicant of the statutory dependency allowances.—Award to the Applicant of interest at the rate of 6 per cent per annum on the sums due to him.*

*Request for compensation as a result of the Applicant's being deprived of the status of United Nations staff member.—This claim is considered in connexion with the fixing of compensation to the Applicant for the injury sustained by reason of the Respondent's failure to inform the Applicant of his rights under the Staff Regulations and Rules and the Respondent's furnishing to him incorrect information.—Award to the Applicant of an amount equal to one year's net base salary in compensation for such injury.*

*Statement by the Tribunal noting that the Respondent has agreed to pay the Applicant 800 pesos for legal expenses.*

*The other pleas are rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Vice-President;

Whereas, at the request of Francisco Sabillo, a former local employee of the Technical Assistance Board/Special Fund (TAB/SF) Office at Manila, Philippines, the President of the Tribunal, with the agreement of the Respondent, extended to 31 October 1971 and again to 15 December 1971 the time-limit for the filing of an application to the Tribunal;

Whereas, on 7 December 1971, the Applicant filed the first part of an application, in which he requested the Tribunal, under article 7.3 (a) of its Rules, to order, as a preliminary measure, the production by the Respondent of a complete set of the rules governing the Applicant's employment, including copies of any applicable local laws of the Philippines;

Whereas the Respondent filed his answer on 9 February 1972, stating that on the basis of the data presently available to him, he was of the opinion that the Applicant's employment with the Organization had been governed by the Staff Regulations and the 100 Series of the Staff Rules;

Whereas, on 19 May 1972, the Applicant filed the second part of his application, in which he requested the Tribunal to order:

“(a) Payment of appropriate compensation to the Applicant for Respondent's failure to inform the Applicant that his employment was governed by the Staff Regulations and the 100 Series of the Staff Rules, as well as for the misinformation of the Applicant by the Respondent that his employment was allegedly governed by rules applicable to temporary employees of the Philippine Government.

“(b) Payment of appropriate compensation to the Applicant for Respondent's illegal waiver of Applicant's privileges and immunities as a UN staff member when Applicant became involved in a vehicle accident during the performance of his official duties on 13 July 1962.

“(c) Payment of appropriate compensation to the Applicant for Respondent's failure to pay to the Applicant a salary based on the salary scale for staff members in the Manual Workers category at the UNTAB/SF

office in Manila, and for paying to him instead a lower salary arbitrarily set by the Respondent.

“(d) Payment of appropriate compensation to the Applicant for Respondent’s failure to issue to the Applicant a Letter of Appointment.

“(e) Payment of appropriate compensation to the Applicant for Respondent’s failure to allow annual leave to the Applicant.

“(f) Payment of appropriate compensation to the Applicant for Respondent’s failure to make provision for Applicant’s participation in the United Nations Joint Staff Pension Fund.

“(g) Payment of appropriate compensation to the Applicant for Respondent’s failure to provide to the Applicant access to the scheme of social security for UN staff members.

“(h) Payment of appropriate compensation to the Applicant for Respondent’s failure to permit Applicant to participate in the election of staff representatives.

“(i) Payment of appropriate compensation to the Applicant for Respondent’s failure to provide Applicant with periodic service and conduct reports.

“(j) Rescission of the decision terminating Applicant’s employment, and payment of appropriate compensation to the Applicant for injury and prejudice suffered as a result of that decision.

“(k) Payment of one year’s salary to the Applicant as compensation for the undue prolongation of the present litigation caused by the Respondent.

“(l) Payment to the Applicant of P800 to cover legal expenses which again were caused by the Respondent.”;

Whereas the Respondent filed his answer to the second part of the application on 24 August 1972;

Whereas, on 25 September 1972, the Applicant filed written observations in which he requested the Tribunal to disregard pleas (f) and (l) of his application;

Whereas the facts in the case are as follows:

The Applicant, a national of the Philippines, was appointed as a Driver by the Assistant Resident Representative of the Technical Assistance Board in the Philippines on 17 January 1960. After a trial period of one month, it was recommended that he be put on a monthly salary basis on account of his satisfactory performance. On 17 August 1960 the Assistant Resident Representative sent a letter of reprimand to the Applicant, expressing concern about his performance and stating that unless there was improvement in his work, the Office would be compelled to terminate his services. On 1 February 1961 and again on 1 February 1962, however, the Assistant Resident Representative authorized annual salary increments for the Applicant in view of his satisfactory services. On 13 July 1962, a United Nations car driven by the Applicant was involved in a traffic accident and the Applicant was injured. On 30 July 1962, the Assistant Resident Representative (who at that time was acting as Resident Representative) informed him that an Administrative Investigating Committee had been formed to investigate the circumstances leading to the accident. The Committee, which consisted of the Assistant Resident Representative himself, an expert of the International Labour Organisation, a Driver and an Assistant

Accountant in the Resident Representative's Office, met on 2 August 1962 and interviewed the Applicant and an expert who had been a passenger in the United Nations car at the time of the accident. Following this meeting the Assistant Resident Representative, in a letter dated 2 August 1962, informed the Applicant that the Committee had not been able to determine the degree of his responsibility for the accident, adding:

"Since the matter is already before the Manila City Fiscal's Office and you have been charged with damage to property through reckless imprudence, the Committee recommends your suspension from assignment as UN driver until such time when the case is decided by the court.

"In view of the above decision of the Committee, I regret to inform you that you are suspended from this office effective 3 August 1962. The matter will be further reviewed after a decision has been made by the court."

The Committee held a second meeting on 22 August 1962 and decided that the Applicant should be reinstated and be paid his salary for the period of suspension. At the same meeting the members agreed that the Applicant's appointment should be terminated as of 1 September 1962 on the ground of redundancy. The Assistant Resident Representative informed the Applicant of these decisions in two letters. In the first letter, dated 22 August 1962, he wrote:

"I understand you appeared in court on 9th August 1962. I also understand from Atty. Mella that the Fiscal has not given his ruling on this case yet. The Committee, however, feel that since your suspension from the Office, in accordance with Government rules, cannot be extended for more than one month, that [*sic*] they should, in consequence thereof, reconsider the situation.

"In view of the circumstances, the Committee has decided to reinstate you effective immediately and your salary will be paid for the period of your suspension."

In the second letter, dated 23 August 1962, he wrote:

"This Office has been considering the question of drivers in relation to the number of experts and vehicles available for the UNTAB Mission. In view of the reduced number of experts and vehicles, we find that we have surplus drivers, and in consequence thereof, the Committee reviewed your qualifications with the other drivers in the TAB Car Pool and I regretfully have to inform you that the Committee decided to terminate your services effective 1st September 1962. The Committee also decided that we should, as an exceptional case and without precedent, give you the full salary for the month of September in lieu of notice of termination."

On 27 September 1962 the Applicant sent the following letter to the Assistant Resident Representative:

"This is to inform you that I intend to file a reconsideration/appeal on the suspension/termination of my contract of service with UNTAB.

"I would like to request from you a copy of the rules or regulations governing my appointment with your office."

On 2 October 1962 the Assistant Resident Representative replied as follows:

". . . I wish to inform you that the decision to terminate your services was based on the unanimous opinion of the Investigation Committee which was set up by this office to investigate the circumstances leading to the

accident to one of the official cars driven by you. The committee had reviewed your qualifications with other drivers working in this office and was of the opinion they were more qualified and had a better record of safe driving than yours during the course of your appointment in this office.

“Your appointment, as you know, was a temporary appointment governed by rules applicable to temporary employees of the Government. In accordance with these rules, project personnel hired by this office from Government funds are employed on a temporary basis and their appointments may be terminated on one week’s notice.

“In view of the abovementioned facts, I regret that there is no copy of rules which I can furnish you pertaining to your appointment.”

In May 1963 the Applicant filed with the Philippine Department of Labor a claim against the UNTAB for compensation for the accident. As the UNTAB did not reply, on 9 December 1963 the Applicant, through a local counsel, filed with the Philippine Workmen’s Compensation Commission a complaint against the UNTAB for payment of medical expenses, compensation, attorney’s fees and miscellaneous expenses. The Deputy Resident Representative having asserted the immunities of the United Nations from every form of legal process, the Chief Hearing Officer of the Workmen’s Compensation Commission dismissed the complaint on 18 February 1964 on the ground that the Commission could not acquire jurisdiction over the person of the respondent. On 9 March 1964 the Applicant, through his local counsel, filed with the Commission a petition for review of the order dismissing the complaint; in his petition he asserted *inter alia* that the UNTAB had failed to inform the Applicant at the inception of his employment that, in case of accidents arising out of and in the course of employment, it could not be sued. In a decision rendered on 31 May 1966, the Chairman of the Commission affirmed the order dismissing the complaint but commented as follows:

“But there is a point raised by the claimant which we cannot ignore—that the immunity claimed by the respondent to evade a just liability runs counter to the lofty and humanitarian principles for which it stands for [*sic*]. It is believed that the respondent will not only dispel this erroneous impression but also alleviate to some measure the sufferings of the claimant if it could extend financial aid to him in any other way, by reason of the accident.”

On 28 June 1966, in a letter addressed to the Resident Representative, the Applicant referred to that decision and requested an administrative review by a committee of impartial members. On 25 November 1966 the Resident Representative replied that the United Nations Advisory Board on Compensation Claims had agreed to review his case. Among the documents submitted by the Applicant in support of his claim was a statement dated 8 December 1966 in which he asserted that his dismissal from the service was unjustified because he had not been found criminally responsible for the accident after due investigation by the UNTAB Office and the Office of the Manila City Fiscal. The Advisory Board on Compensation Claims awarded the Applicant P407 for medical expenses and a lump-sum compensation of P2,869.52 for 20 per cent loss of function of the left arm. On 7 March 1967, in a letter to the Resident Representative, the Applicant contended that his dismissal was unjust and asked to be reinstated in his former post. On 14 March 1967 the Resident Representative replied that “we do not have any vacancies in your field of work at present and . . . none is likely to occur in the near future”. On 17 October 1967 the Secretary of the

Advisory Board on Compensation Claims advised the Applicant that his claim for loss of earnings had been denied because his unemployment was probably due to circumstances other than the injury he had received, but that the question could be reconsidered if he were able to provide some evidence that his injury had prevented him from getting a job. In a reply dated 14 November 1967, the Applicant questioned the legality of his dismissal from the service and requested reinstatement in his former post. On 24 May 1968 the Secretary informed him that the Advisory Board on Compensation Claims was not empowered to deal with questions concerning his separation from service. On 13 June 1968 the Secretary suggested that the Applicant might address himself to the Chief of Personnel, UNDP (United Nations Development Programme), for further guidance. On 24 June 1968 the Applicant requested the Chief of Personnel, UNDP, to review the aspect of his case concerned with illegal dismissal. Having received no reply, the Applicant again wrote to the Chief of Personnel on 9 September 1968, asking him to submit the case to the Secretary of the Joint Appeals Board. On 25 September 1968 the Chief of the Policy and Agreements Section, Bureau of Administrative Management and Budget, UNDP, sent to the Applicant the Staff Rules of the United Nations and an information circular concerning the Joint Appeals Board, but advised him that UNDP would oppose his appeal on the ground that the time prescribed for its submission had long since expired. On 25 October 1968 the Applicant asked the "Assistant Secretary-General, Administrative and Financial Services", to review the decision of dismissal. On 25 November 1968 the Director of the Bureau of Administrative Management and Budget, UNDP, replied that the matter of the Applicant's termination had again been reviewed and that the UNDP Administrator, on behalf of the Secretary-General, did not deviate from the position set forth in the letter of 25 September 1968 from the Chief of the Policy and Agreements Section. On 6 December 1968 the Applicant lodged an appeal with the Joint Appeals Board. The Board submitted its report on 26 October 1970. The Board's conclusions and recommendations read as follows:

*"Conclusions and Recommendations*

"53. The Board finds that the contested decision of termination was properly taken and makes no recommendation in support of the appellant's request for rescission of that decision or for damages arising out of wrongful dismissal. On the other hand, the Board considers that the uncertainty about the rules governing the appellant's employment and the respondent's failure to inform the appellant of the rules governing his employment or of the proper channels of appeal unnecessarily delayed for many years the consideration of the appellant's claim for compensation for his service-incurred injury and of his appeal against the termination decision, and compelled him to spend money for local counsel fees and for litigation costs. Having regard to all the circumstances of the case and to the fact that the prolongation of the litigation is due mainly to the attitude taken by the respondent, the Board recommends that the respondent should make an *ex gratia* payment to the appellant in an amount equivalent to one year's salary plus P800 to cover expenses in connexion with the submission of his appeal."

The Secretary-General having decided on 1 July 1971 to maintain the termination decision and not to accept the Board's recommendation for an *ex gratia* payment, the Applicant filed on 7 December 1971 the first part of the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's rights and entitlements under the Staff Rules and Regulations were violated or disregarded by the Respondent in a number of grave instances:

(a) The Respondent not only failed to inform the Applicant that his employment was governed by the Staff Regulations and the 100 Series of the Staff Rules, but also actually misinformed him that his employment was allegedly governed by rules applicable to temporary employees of the Philippine Government; the Respondent persisted in this attitude for almost ten years;

(b) When the Applicant became involved in a vehicle accident during the performance of his official duties, the Assistant Resident Representative waived the Applicant's privileges and immunities as a United Nations staff member in violation of Staff Regulation 1.8;

(c) The Respondent failed to pay to the Applicant a salary based on the salary scale for staff members of his category;

(d) The Respondent failed to issue a Letter of Appointment to the Applicant;

(e) The Respondent failed to allow annual leave to the Applicant;

(f) The Respondent failed to make provision for the Applicant's participation in the Joint Staff Pension Fund;

(g) The Respondent barred the Applicant from benefiting from the scheme of social security;

(h) The Respondent barred the Applicant from participating in the election of staff representatives;

(i) The Respondent failed to provide the Applicant with periodic service and conduct reports.

2. The termination decision is invalid. It was not taken by the Secretary-General but by an official at the P-2 level, and was not preceded by a complete, fair and reasonable procedure. In view of its terms of reference, its composition and the way it was appointed, the "Administrative Investigating Committee" was not an impartial joint advisory body, and in any event its proceedings and recommendations would have been null and void. Furthermore, the "Committee" was in no way able to pronounce itself on the Applicant's "relative competence" since the Respondent had failed to provide the Applicant with periodic reports and since no effort was made to obtain authoritative assessments of his performance. Moreover, the Assistant Resident Representative repeatedly manifested his prejudice against the Applicant during the proceedings in the "Committee".

Whereas the Respondent's principal contentions are:

1. The Secretary-General's decision to terminate the Applicant's temporary indefinite appointment was properly grounded, pursuant to Staff Regulation 9.1 (c), on redundancy.

2. The Secretary-General violated no procedural right of the Applicant in terminating his appointment and the contested decision was not motivated by prejudice. The requirement under Staff Rule 109.1 (c) to have due regard "to relative competence, to integrity, and to length of service" of the staff members concerned was duly satisfied in the course of the procedure before the Investigation Committee, a procedure which was not mandatory but was designed to, and did in fact, provide an effective safeguard against the possibility of arbitrary administrative action. The absence of any prejudice toward the Applicant also appears clearly from the record.

3. (a) As to point 1 (a) in the Applicant's principal contentions: The communication of such erroneous information to the Applicant does not in and of itself entitle him to any redress from the Tribunal;

(b) As to point 1 (b): The Applicant has no standing to complain of the waiver of privileges and immunities since entitlement to the latter rests with the Organization;

(c) As to point 1 (c): The salary paid to the Applicant was fixed on the basis of the salaries paid by the Government to its employees performing comparable duties, and such action was in conformity with Staff Rule 103.2;

(d) As to points 1 (d), (h) and (i): An order for the specific performance of the relevant obligations cannot be executed, and any prejudice suffered by the Applicant could not properly be evaluated in monetary terms;

(e) As to point 1 (e): The Respondent acknowledges his obligation to pay the money equivalent of the Applicant's annual leave;

(f) As to point 1 (f): The Applicant would not have been entitled to any benefits from the Pension Fund;

(g) As to point 1 (g): The Applicant was fully compensated for his service-incurred injury.

The Tribunal, having deliberated from 27 September to 12 October 1972, now pronounces the following judgement:

I. The Applicant, a driver employed by the TAB/SF Office at Manila, was injured in a traffic accident in 1962 while driving a car in the performance of his official duties. His appointment was subsequently terminated on the ground of redundancy. He sought reinstatement and compensation for his injuries. The settlement of his claims, however, was delayed by reason of the Respondent's failure to provide him with accurate information as to his contractual status.

II. The Respondent, in his answer filed on 9 February 1972, takes the position and concedes that the Applicant's employment from 17 January 1960 to 1 September 1962 was governed by the Staff Regulations and by the 100 Series of the Staff Rules. Previously the Respondent took the position and told the Applicant that his employment was governed by rules applicable to temporary employees of the Philippine Government; the Respondent never furnished the Applicant with the rules relating to temporary employment with the Philippine Government and never complied with any of the provisions of the Staff Regulations and Rules now conceded to have been applicable to the Applicant. The Tribunal has therefore to consider the application on the basis of the Staff Regulations and Rules which were applicable to the Applicant as the holder of a temporary indefinite appointment.

III. The contested decision by the Respondent to terminate the Applicant's temporary indefinite appointment on account of redundancy falls under Staff Regulation 9.1 (c), which in effect provides that in the case of staff members holding such appointments the Secretary-General may terminate the appointment if, in his opinion, such action would be in the interest of the United Nations. No advisory board was called for. However objectionable the creation, composition and procedure of the Administrative Investigating Committee may have been, it is clear from the record that, given the surplus of drivers, it was the opinion of the Acting Resident Representative himself, after considering the relative qualifications and length of service of all drivers, that the Applicant's appointment was



the one to be terminated. The termination decision therefore complied with the provisions of Staff Rule 109.1 (c), recognized as applicable by the Respondent, that where reduction in staff is involved "due regard shall be had in all cases to relative competence, to integrity, and to length of service".

The contested decision was within the authority of the Secretary-General and no prejudice was shown; the decision will therefore stand.

IV. The Applicant claims compensation for the Respondent's failure to comply with the provisions of the Staff Regulations and Rules applicable to the Applicant's employment in certain material respects.

(a) The Tribunal takes note of the undertaking by the Respondent to pay to the Applicant the money equivalent of the annual leave accrued by him upon termination at the rate of 30 days a year.

(b) The Applicant was not paid according to the salary scale for manual workers then in effect at the TAB/SF Office at Manila. The Tribunal orders the Respondent to pay the Applicant the difference between the salary due to him under that salary scale and the salary actually paid.

(c) The Applicant did not receive during his employment the dependency allowances paid at the time to the Manila Office employees of his category. The Tribunal orders the Respondent to pay to the Applicant any such allowances due to him.

(d) In view of the undue prolongation of the litigation, largely attributable to the Respondent, the Tribunal awards to the Applicant interest at the rate of 6 per cent per annum, from the date of his termination to the date of payment, on the sums due to him under (a), (b) and (c) above.

V. The Applicant also claims compensation for injury suffered as a result of being deprived of the status of United Nations staff member. The Tribunal notes that the Applicant was not accorded the privileges and immunities of a United Nations staff member; he never received a letter of appointment or periodic service and conduct reports; he did not participate in the election of staff representatives. While specific money damages would be inappropriate, this claim may be considered in connexion with the fixing of compensation to the Applicant for the injury sustained by reason of the Respondent's failure to inform the Applicant of his rights under the Staff Regulations and Rules and the Respondent's furnishing to him incorrect information. That failure and that misinformation, persisted in for almost ten years in disregard of the Applicant's contractual rights, obviously caused the Applicant material injury, impeding his attempts to obtain a review of the administrative decision and subjecting him to protracted and unnecessary delay, frustration and concern. The Tribunal fixes the amount of compensation to be paid to the Applicant for such injury at an amount equal to one year's net base salary calculated at the rate applicable at the termination of his employment.

VI. The Tribunal notes that the Respondent has agreed to pay the Applicant P800 for legal expenses.

VII. Since the Applicant has not furnished an evaluation of any prejudice suffered by him on account of being denied access to the scheme of social security for United Nations staff members, his claim on that account cannot be sustained.

VIII. For the above reasons the Tribunal:

(1) Rejects the Applicant's plea that the decision terminating his employment be rescinded;

(2) Takes note of the Respondent's undertaking referred to in paragraph IV (a) above with regard to the Applicant's entitlement to annual leave;

(3) Orders the Respondent to pay to the Applicant the amounts in respect of salary and dependency allowance specified in paragraphs IV (b) and IV (c) above, together with the interest specified in paragraph IV (d) above;

(4) Orders the Respondent to pay to the Applicant the compensation awarded under paragraph V above;

(5) Notes the Respondent's agreement to pay the Applicant legal expenses as specified in paragraph VI above;

(6) Rejects the Applicant's other pleas.

(Signatures)

R. VENKATARAMAN  
President

Suzanne BASTID  
Vice-President

Francis T. P. PLIMPTON  
Vice-President

Jean HARDY  
Executive Secretary

New York, 12 October 1972

### Judgement No. 165

(Original: English)

Case No. 153:  
Kahale (Conditions of service  
and reassignment)

Against: The Secretary-General  
of the United Nations

*Request for compensation for conditions of service deemed to be contrary to terms of appointment.—Request for compensation for a reassignment decision and request for reinstatement of the staff member in his former post.*

*Applicant's complaints regarding his conditions of service.—Scope of the request before the Tribunal.—Staff Regulation 11.1—Staff Rule 111.3 (a).—Not having fulfilled the prior condition required under that Staff Rule, the Applicant had no basis for an appeal before the Joint Appeals Board.—Letter from the Applicant to the Secretary-General asking for an investigation outside the procedures contemplated by the Staff Rules.—Article 7.1 of the Statute of the Tribunal.—The alleged violations of the Applicant's conditions of service cannot be deemed to have been previously submitted to the Joint Appeals Board and accordingly they have not been properly raised before the Tribunal.—Examination of the substance and rejection of the more serious charges enumerated by the Applicant.—The conditions of service allegedly imposed on the Applicant did not constitute disciplinary measures obliging the Respondent to follow the procedures prescribed in chapter X of the Staff Regulations and Rules.—Tribunal's finding that the charges of violations of the Applicant's terms of appointment have not been established.—Request for the case to be remanded to the Joint Appeals Board for correction of procedure.—Request rejected.—Request for compensation under article 9.1 of the Statute of the Tribunal.—Request rejected.*