

2. In other respects, the Application is rejected.

(Signatures):

Suzanne BASTID  
*Vice-President, presiding*  
 Francis T. P. PLIMPTON  
*Vice-President*  
 Geneva, 6 April 1973

Roger STEVENS  
*Member*  
 Jean HARDY  
*Executive Secretary*

## Judgement No. 175

(Original: English)

Case No. 152:  
 Garnett

Against: The Secretary-General  
 of the United Nations

*Request for interpretation of Judgement No. 156.*

*Staff Rule 103.9 (i).—Recomputation effected by the Respondent pursuant to Judgement No. 156.—Question whether post adjustment should be taken into account in the computation of the "salary" received by the staff member in the post to which he or she has been promoted.—No basis for the Applicant's contention that the term "salary" means in this case only base salary.—General rule implicit in paragraph 9 of annex I to the Staff Regulations, that post adjustments are factors in calculating Professional category salaries.—The purpose is to ensure that a staff member shall not suffer financially by reason of a promotion.—Need to include all sums actually received in comparing remuneration in the new position with remuneration in the old.—Since the salaries of both General Service and Professional staff are related to the cost of living, to omit post adjustment would be to compare unlikes.—Conclusion of the Tribunal that post adjustment should be taken into account in calculations under Staff Rule 103.9 (i).—Contention of the Applicant relating to the methods used by the Respondent in making the recomputations called for by Judgement No. 156.—Consideration of those methods.—Conclusion of the Tribunal that the recomputation of the Applicant's salary made by the Respondent complied with Staff Rule 103.9 (i).—Application rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mme Paul Bastid, Vice-President, presiding; Mr. Francis T. P. Plimpton, Vice-President; Mr. Mutuale-Tshikantshe;

Whereas, on 6 October 1971, Miss Betty Garnett, a staff member of the United Nations, filed an application requesting the Tribunal:

"1. To rescind the decision not to adjust my salary, in order that, during the period 1 September 1969 to 1 September 1970, that is, the first year following my promotion from G-5 step IX to P-2 step I, my salary would remain equivalent of one full step more than I would have received without promotion and this in accordance with the provisions of Staff Rule 103.9 (i);

"2. To order that the necessary measures be taken so that my salary during

the first year following promotion (viz. 1 September 1969 to 1 September 1970) is in accordance with Staff Rule 103.9 (i).”

Whereas, by Judgement No. 156 delivered on 20 April 1972, the Tribunal rescinded the Respondent’s contested decision and ordered him to re-compute the Applicant’s salary for the year 1 September 1969–1 September 1970 in accordance with Staff Rule 103.9 (i) as construed by the Tribunal, taking into account all increases during the year in the salary scale of either her prior position or the position to which she was promoted;

Whereas, on 7 July 1972, the Officer-in-Charge of the Office of Personnel informed the Applicant that in accordance with Judgement No. 156 the Office of Personnel had re-computed her salary for the year following her promotion (1 September 1969 to 1 September 1970) taking into account all changes in the salary scales which had come into effect both in the level from which she had been promoted and in the promotion level during that year, that, as a result of the re-computation, the date of her next increment after promotion would be 1 July 1970 instead of 1 September 1970, and that, accordingly, the difference between the salary she would have received at the G-5 level if she had not been promoted (\$9,390.66) and her salary in the promotion (P-2) level during the year following the promotion as re-computed (\$9,643.82) was now \$253.16, which was more than the amount of one full step in the promotion level (\$241.00);

Whereas the Chief of the Rules and Procedures Section, Office of Personnel Services, explained the method used for re-computing the Applicant’s salary in a memorandum addressed to her counsel on 29 December 1972;

Whereas, on 12 March 1973, the Applicant filed a motion for the interpretation of Judgement No. 156, requesting the Tribunal to state that, in terms of that judgement, the “computation continuing throughout the [first] year [following promotion]”, necessitates a re-computation of her salary as of 1 January 1970;

Whereas, on 10 April 1973, the Respondent submitted observations on the motion for the interpretation of Judgement No. 156;

Whereas the Applicant’s principal contentions are:

1. As re-computed, the amount that the Applicant received in salary during the period 1 January to 1 July 1970 was not in the amount of one full step in the P-2 level more than she would have received without promotion; since the annual salary scale in her old post was raised as of 1 January 1970 to an amount (\$9,701) which was more than her annual promotion scale (\$9,593), her salary should have been re-calculated as of that date regardless of the excess of prior payments to her over the requirements of Staff Rule 103.9 (i) up to that time.

2. The Respondent is wrong in maintaining that the re-calculation that has to be made each time there is a change in the salary received before or after promotion should not result in the Applicant’s receiving more than a certain amount over the period of the first year following promotion: the re-calculation should take place *as* and *when* the fluctuations occur.

3. (a) Post adjustment does not form part of “salary” as understood in Staff Rule 103.9 (i). Therefore, the only re-calculation warranted in the Applicant’s case should have taken place on 1 January 1970, because it was at that time that Staff Rule 103.9 (i) was not being respected;

(b) Even if post adjustment were to be considered as coming within that meaning of “salary”, the result would not be that reached by the Respondent in view of the fact that a change in salary from P-2 step I to step II or III as of 1 January 1970 would have moved the date of her next increment to 1 January 1971, since a re-calculation upon change in post adjustment would only have been warranted had the Applicant’s new salary not been more than one full step in excess of her salary without promotion.

Whereas the Respondent's principal contentions are:

1. By moving the Applicant's date of salary increment during the year following her promotion from 1 September 1970 to 1 July 1970, the Respondent complied with Staff Rule 103.9 (i) as interpreted by the Tribunal since this corrective action resulted in the Applicant receiving during the year following her promotion "compensation in the amount of one step in the new position's salary scale more than [she] would have received in the prior position during that year", as called for in paragraph II of Judgement No. 156.

2. The language of paragraph 9 of Annex I to the Staff Regulations implies that as a general rule post adjustments are factors in calculating salaries in the professional category. This applies particularly to the calculation required under Staff Rule 103.9 (i) since general service salary scales are related to local costs of living.

3. The Applicant's claim that, *for each month of the year following her promotion*, the difference between her annual salary rate at the promotion level and her annual salary rate at the pre-promotion level should be equal to at least the amount of one full step at the promotion level has no basis in Staff Rule 103.9 (i) or in Judgement No. 156.

The Tribunal, having deliberated from 4 to 11 October 1973, now pronounces the following judgement:

I. This case involves the interpretation of Staff Rule 103.9 (i), which reads as follows:

"(i) During the first year following promotion a staff member in continuous service shall receive in salary the amount of one full step in the level to which he has been promoted more than he would have received without promotion, except where promotion to the lowest step of the level yields a greater amount. The step rate and date of salary increment in the higher salary level shall be adjusted to achieve this end."

II. The Tribunal notes that the Respondent, in his re-computation pursuant to Judgement No. 156, included, in the salary received by the Applicant during the year following her promotion, amounts received by her by way of the post adjustments applicable to all P levels. The re-computation gave effect (a) as of 1 December 1969 to the change in the New York post adjustment classification from class 6 to class 7; (b) as of 1 January 1970 to the salary increase in the General Service category; (c) as of 1 January 1970, to what would have been the Applicant's change in her old post from step IX to step X; (d) as of 1 June 1970 to the change in the New York post adjustment classification from class 7 to class 8; and (e) as of 1 July 1970 to changing the Applicant from P-2 step I to P-2 step II to ensure that during the first year following her promotion she would receive, in accordance with Staff Rule 103.9 (i), the amount of one full step in her new level more than she would have received without promotion.

Such re-computation resulted in the Applicant's receiving, in her promotion post during the period 1 September 1969 to 31 December 1969, an amount which exceeded what she would have received during that period in her old post. The difference exceeded the portion of one full step in the P-2 level which would have been allocable to that period.

As to the period 1 January 1970 to 30 June 1970, the re-computation resulted in the Applicant's receiving in her promotion post an amount which she claims was less than what she would have received during that period in her old post after adding thereto the portion of one full step in the P-2 level which would have been allocable to that period.

The excess referred to above in respect of the period 1 September 1969 to 31 December 1969 and the excess in respect of the period 1 July 1970 to 31 August 1970

more than made up for the claimed deficiency in respect of the period 1 January 1970 to 30 June 1970.

III. The first question is whether, in the calculations incident to the application of Staff Rule 103.9 (i), post adjustment should be taken into account in the computation of the "salary" received by the staff member in the post to which he or she has been promoted.

Staff Rule 103.9 (i) does not specifically define "salary", and there is no basis for the Applicant's contention that the term, as used in comparing General Service remuneration and Professional category remuneration, means only base salary prior to post adjustment. Furthermore, Annex I, paragraph 9 to the Staff Regulations implies that as a general rule post adjustments are factors in calculating Professional category salaries.

Furthermore, the obvious purpose of Staff Rule 103.9 (i) is to ensure that a staff member shall not suffer financially by reason of a promotion. It provides in effect that during the first year of service in the new position the staff member's remuneration shall exceed the remuneration which would have been received during that year in the old position by the amount of one full step in the new position—in other words, that the year shall yield the staff member an increment equal to one step in the new position over what would have been received during the year in the old position.

In comparing remuneration in the new position with remuneration in the old, the Rule must have intended in both cases to include all amounts actually received, whether by way of base salary or cost of living allowances. General Service salary scales are related to local costs of living, since they are based on the best prevailing conditions of employment in the locality concerned (see Staff Regulations, Annex I, paragraph 7, and witness the upward revision of the General Service salary scale as of 1 January 1970), and Professional category remuneration is similarly related through post adjustment. To omit the latter in calculations under Staff Rule 103.9 (i) would be to compare unlikes, and would distort the purpose of the Rule.

The Tribunal accordingly holds that the receipt of post adjustment by Professional category personnel should be taken into account in calculations under Staff Rule 103.9 (i).

IV. The Applicant's other contentions relate to the methods used by the Respondent in making the re-computations called for by Judgement No. 156, which required that all increases during the year after the Applicant's promotion in the salary scales of either her old position or her new position be taken into account.

In broad result the re-computation made by the Respondent clearly complied with Staff Rule 103.9 (i), since the \$9,643.82 actually received by the Applicant for such year pursuant to the re-computation exceeded \$9,390.66, the amount she would have received during the year in her old position, by \$253.16, or \$12.16 more than \$241.00, i.e., one full step in her new position.

The Applicant claims, however, that because on 1 January 1970 the salary scale in her old post rose, by reason of a general salary increase and what would have been her next salary increment, from \$8,770 to \$9,701, whereas at that date her new salary scale (including post adjustment) at P-2 step I was \$9,593, she should have been changed to P-2 step II or III as of that date.

This contention loses sight of the fact that from 1 September 1969 to 31 December 1969, while her old salary was at the rate of \$8,770, she had been receiving, at the P-2 step I level, salary at the rate of \$9,593 (giving effect to the increase in post adjustment as of 1 December 1969), which was substantially more than the requirement of Staff Rule 103.9 (i) for the period. Obviously there was no need to change her P-2 step I status at 1 January 1970 when the requirement of the Rule to date had been more than

met. Nor can the period 1 January 1970 to 1 July 1970 be considered, as the Applicant does, without regard to what happened from 1 September 1969 to 31 December 1969, nor without regard to what happened on 1 June 1970 and from 1 July 1970 to 1 September 1970.

Indeed, there would be no reason to change the Applicant's status as of the beginning of a month unless, calculated cumulatively from the beginning of the year to date, her receipts in her new post during that period had not exceeded what she would have received in her old post during the period by an amount equal to the prorated portion of one full step in the new post allocable to the period.

The Respondent's change of the Applicant as at 1 July 1970 from P-2 step I to P-2 step II had the effect of curing whatever slight pro rata deficiency there might have been by way of cumulative compliance with the Rule, and resulted in the Applicant's receiving by the end of the year slightly *more* than the amount required by the Rule.

The Applicant's contentions as to the methods used by the Respondent in the re-calculation are therefore overruled.

V. For the above reasons the application is rejected.

*(Signatures):*

Suzanne BASTID  
*Vice-President, presiding*

Francis T. P. PLIMPTON  
*Vice-President*

*New York, 11 October 1973*

MUTUALE-TSHIKANTSHE  
Member

Jean HARDY  
*Executive Secretary*

---

## Judgement No. 176

*(Original: French)*

**Case No. 170:**  
**Fayad**

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

---

*Request by a technical assistance expert for validation by the Joint Staff Pension Fund of service completed before his participation in the Fund, as a judge in the Republic of the Congo.*

*Agreement between the Applicant and the Respondent that the application should be submitted directly to the Tribunal, notwithstanding that any decision upon the case must take account of the terms of the judiciary contract concluded between the Applicant and the Respondent, which provides that disputes shall be settled by recourse to an arbitration procedure.—Competence of the Tribunal to pass judgement on all aspects of the application.*

*Impossibility of judging the request for validation solely by reference to the Pension Fund Regulations.—Need to take account of the terms of the judiciary contract.—Examination of the scope of that contract.—Respondent's contention that the Applicant was not employed by the United Nations.—Contract clause indicating that the Applicant was not a member of the United Nations Secretariat.—Impossibility of deriving from that clause decisive proof that the Applicant was not employed by the United Nations.—Clause stating that the Congolese Government could be substituted for the United Nations as co-contractor after the contract had been in force for one year.—Consequently, the Applicant was not in the service of the United Nations.—Respondent's contention that the Applicant's appointment was not*