ments for periods ranging from one month to one year and that his continuance in service was contingent on a result favourable to him in the review to be undertaken under circular ER/12 and on the availability of a post of Information Assistant in Teheran, the Tribunal fixes the compensation for the injury suffered by the Applicant at six months' net base salary and orders accordingly.

XXI. As the Tribunal has found that the periodic report for the period from 1 March 1970 to 28 February 1971 was prepared after the decision not to renew the Applicant's appointment and that certain of the Applicant's prior ratings seem to have been systematically lowered to justify the decision against renewal of appointment, the Tribunal orders in respect of plea No. 3 that the said periodic report be excluded from the Applicant's Official Status file.

XXII. Under plea No. 4 the Applicant requests the insertion in his files of a statement to the effect that there is no obstacle to his employment with the United Nations. The Tribunal has no powers to order such a measure. However, in view of the fact that unsubstantiated allegations concerning the conduct of the Applicant were included in confidential letters not brought to the notice of the Applicant and that such material is likely to prejudice the Applicant's prospects of employment with international organizations, the Tribunal directs that those letters be excluded from the Applicant's Official Status file.

XXIII. As the Tribunal has ordered that the Applicant should be compensated in lieu of specific performance, the Applicant's plea No. 5 based on the exercise by the Secretary-General of his option under article 9, paragraph 1, of the Statute of the Tribunal does not arise.

XXIV. The other pleas do not call for a ruling by the Tribunal.

(Signatures)

R. VENKATARAMAN
President

Roger STEVENS
Member

Francis T. P. PLIMPTON
Vice-President

Jean HARDY
Executive Secretary

New York, 24 April 1975

Judgement No. 200

(Original: English)

Case No. 179: Dearing

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

***Request for the reopening of a case by the** Advisory Board on Compensation Claims.*

***Discretion of the Secretary-General with regard** to the reopening of a case under article 9 of Appendix D of the Staff Rules and his obligation not to exercise it unjustly or unreasonably.—Judgement No. 103. —**Consideration of the validity of the recommendation** of the Advisory Board to reject the request for reopening of the case.—**Difference of opinion** between the Medical Director and the United Kingdom Medical Board regarding the assessment of the percentage of disability.—Arbitrary rejection of the report*

of the United Kingdom Medical Board by the Advisory Board.—Requirements of due process.—Due process involved recourse to an impartial medical examination of the Applicant to ascertain the extent, if any, of his disability.—Conclusion of the Tribunal that the recommendation of the Advisory Board was vitiated by a procedural flaw and that the Secretary-General's decision not to reopen the case suffers from the same infirmity.—The case should be remanded for carrying out a proper medical examination of the Applicant.—Appropriateness of adopting a procedure analogous to that provided in article 17, paragraph (b), *of Appendix D.*

Claim for the payment of continuing compensation on the basis of article 11.2 (d) *of Appendix D. —Claim rejected, the award of compensation having concluded the Applicant's right, subject to the procedure defined in article 9 of Appendix D.—Applicant's contention that since he was not reinstated he should be deemed to have been terminated from service on the ground of incapacity for further service and should therefore be awarded compensation.—Contention rejected, since the Applicant's contract did not entitle him to permanent or continuous service.—Applicant's contention that if he was not considered disabled for further service, he should have been reinstated.—Respondent's objections based on the contractual status of the Applicant and his acceptance of a withdrawal settlement from the Joint Staff Pension Fund.—No adverse inference can be drawn from that acceptance as regards the Applicant, since he was encouraged to adopt that course of action by an authority competent to deal with the matter.— Finding of the Tribunal that the Applicant had a legitimate expectancy of continuation in service but for his illness.—The Tribunal can draw no conclusion from that finding in the absence of evidence as to whether the Applicant was incapacitated for further service by reason of his disability.*

Decision of the Tribunal to determine the merits of the case, the Respondent having failed to request remand of the case.—Rescission of the Respondent's decision not to reopen the case.—Obligation of the Respondent to adopt a procedure analogous to that provided in article 17, paragraph (b), *of Appendix D.—Fixing of the amount of compensation to be paid to the Applicant for the injury sustained should the Secretary-General decide to compensate him under article 9, paragraph 1, of the Statute of the Tribunal.—Adoption of the method used in Judgement No. 120.—Exceptional character of the case.— Award to the Applicant of compensation equivalent to three years of his net base salary.*

Claim for compensation for procedural delays.—Rejected.—Claim for compensation for misleading statements made by the Respondent.—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 George A. Dearing, a former technical assistance expert of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 12 July 1973, 15 October 1973, 15 November 1973, 1 December 1973 and 31 December 1973 the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 December 1973, the Applicant filed the first part of his application, in which he requested the Tribunal to order the following preliminary measures:

"*(a)* Production by the Respondent of the letter from Mr. David Howell, M.P. to the United Nations Acting Director of Personnel, dated 6 June 1967;

"*(b)* Production by the Respondent of a copy of the rules of procedure of the Joint Appeals Board, or at least of those provisions of the rules which refer to the time limits governing both the written and the oral proceedings before the Board;

"*(c)* Production by the Respondent of a complete list of posts filled since November 1966 by the United Nations Industrial Development Organization for which the Applicant was qualified, together with evidence that the Applicant was considered for any of those posts.";

Whereas the Respondent filed his answer on 1 February 1974;

Whereas, on 3 July 1974, the Applicant filed the second part of his application, in which he requested the Tribunal to order the following measures:

"*(d)* Payment by the Respondent to the Applicant of adequate compensation for the procedural delays in his case caused by the Respondent and by the Joint Appeals Board.

"*(e)* Reopening of the Applicant's case by the Advisory Board on Compensation Claims and payment by the Respondent to the Applicant of continuing compensation under article 11.2 *(d)* of Appendix [D] to the Staff Rules, or, alternatively, payment by the Respondent to the Applicant of continuing compensation under article 11.2 *(d)* of Appendix D to the Staff Rules.

"*(f)* Payment by the Respondent to the Applicant of adequate compensation for the Respondent's failure to fulfil his obligation to reemploy the Applicant.

"*(g)* Payment by the Respondent to the Applicant of adequate compensation for the Respondent's misleading statements to the Applicant concerning the alleged reasons for the latter's ineligibility for reemployment.";

Whereas the Respondent filed his answer on 29 October 1974;

Whereas the Applicant filed written observations on 31 January 1975;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 13 December 1951 as a Small Industries Expert under a fixed-term appointment of one year and was assigned to Indonesia. His appointment was renewed regularly until 31 December 1962. On 17 May 1955 he was detailed for three months to Ceylon and on 1 September 1959 he was transferred to Thailand. In September 1961 the medical examination required for the extension of the Applicant's appointment revealed that he had diabetes mellitus, and in November 1961 the Applicant was hospitalized for that condition. On 11 December 1961 the Health Service of the United Nations certified that there did not seem to be any medical contra-indication to extending the Applicant's appointment for one year in Thailand. On 7 February 1962 the Applicant's medical classification was changed from class 1-a to class 2. In a further medical examination taken in December 1962 the Applicant was found to have a pulmonary tuberculosis condition requiring his immediate repatriation. On 26 December 1962 the Applicant was placed on sick leave and on 8 January 1963 he was medically repatriated to the United Kingdom, his home country, where he was hospitalized until 17 May 1963. In the meantime his appointment had been extended to 28 February 1963, and it was further extended to 30 June 1963 and finally to 30 September 1963 upon the recommendation of the Medical Director of the United Nations. On 30 May 1963 the Applicant wrote to the Field Operations Service that, since the consultant's original estimate for the recuperative period was three months, he should be able to take up his appointment towards the end of August. By a letter of 13 June 1963 he was advised that the question of his further assignment had been given very careful study by the United Nations Medical Director in consultation with the Office of Personnel and the Bureau of Technical Assistance Operations and that for health reasons it had been decided not to recommend his return to Thailand to continue working in the project. The Applicant having expressed his disappointment at that turn of events and his intention to claim compensation, the Chief of the Administrative Section for Technical Assistance Operations sent him on 6 November 1963 a letter reading in part:

"Your contract expired on 31 December 1962. Pending receipt of the report of your medical examination necessary for an extension of this contract, you were given a two-month extension to 28 February 1963 to maintain you in pay status. Upon receipt of the medical report which revealed your unfortunate illness you were medically repatriated to the United Kingdom for convalescence. Your con-

tract could have expired on that date and any subsequent payments for salary and medical expenses would have been contingent upon the outcome of a compensation claim which you would have filed. However, without prejudging the outcome of any claim you might institute and without awaiting any action on your part, your contract was extended for four months through 30 June 1963 to permit continued salary payments and the reimbursement of medical expenses incurred during the then expected term of your convalescence. The action taken was almost without precedent and, among other things, was basically agreed out of consideration of your long service. A second extension of your contract to 30 September 1963 was consistent with the earlier extension prompted by information that this time was reasonably required for the completion of your convalescence.

"The foregoing actions, therefore, maintained you in salary status from the time of your medical repatriation on 8 January to 30 September 1963 with full sick leave benefits. These actions were taken to meet your situation as quickly as possible and seemed more realistic than the long and speculative prospects of a compensation claim. Naturally, due to the unusual nature of such actions, payments were unavoidably delayed to some extent.

"In the light of this information, if it is still your intention to submit a claim for compensation, you should proceed as guided by the detailings of Appendix 'D' to the staff rules attached. In addition, you should present your reasoning and that of a medical authority as to why you feel the illness was contracted as a direct result of the performance of official duties on behalf of the United Nations as distinct from an illness occurring during service with the Organization. You should also state the measure of your disability and any loss (and the proportion) of income resulting and the amount of compensation claimed."

On 7 August 1963 the Applicant's physician informed the Health Service that the Applicant would be able to "work part time as of that date, and full time in three months". On 14 November 1963 the physician reported that the Applicant was "now well, but continuing to take antituberculosis chemotherapy".

On 28 November 1963 the Applicant submitted to the Advisory Board on Compensation Claims a claim for "compensation for the loss of livelihood in [his] normal occupation, through a disability resulting from an illness attributed to the performance of official duties on behalf of the United Nations". On 7 January 1964, the Applicant having also raised the question of his eligibility for a disability benefit from the United Nations Joint Staff Pension Fund, the Secretary of the Fund advised him as follows:

"I have been into the question of your eligibility for a disability benefit under the Regulations of the Fund and obtained an opinion from the Director of the United Nations Health Service on your present state of health. I have also seen your claim for compensation under Appendix D of the Staff Regulations and Rules, the provisions of which, I should perhaps make clear now, are distinct from those of the Fund and are administered by a separate body applying quite different criteria.

"The essence of the provisions governing disability benefits is that the participant in the Fund must have 'become incapacitated for further service owing to serious physical or mental impairment of a permanent or long-term character.' The opinion of the Health Service on your case, however—which is based directly upon the report of your own physician—is that, although you were temporarily incapacitated, you nevertheless made a good recovery and are now quite able to return to full time duty. In these circumstances I am sure you will appreciate that it would be somewhat pointless to submit a disability claim to the Staff Pension Committee, particularly if—as I understand the position—you do not contend either that you are now disabled or that you cannot earn a living at all. I appreciate,

of course, the point made in your claim for compensation that as a result of your illness the occupation which you had previously been following may now no longer be open to you, and that in consequence—if it is recognized that the illness is indeed attributable to service in Bangkok—you have sustained a loss assessable perhaps in terms of the decrease in your earning capacity. This criterion, however, is not one which is applicable to disability benefits payable by the Pension Fund, eligibility for which is determined according to the formula which I have mentioned above.

"In sum, therefore, while I am quite ready to put the matter to the Staff Pension Committee I am able to hold out very little hope of a disability benefit being granted. In view of this you may wish to consider whether acceptance of the normal withdrawal settlement from the Fund would not be in your best interests."

The Applicant subsequently accepted a withdrawal settlement of the Fund. In early 1964 the Applicant applied for a post with the International Labour Organisation (ILO) in Tanganyika. After undergoing a medical examination, he was advised on 13 March 1964 that the Medical Director of ILO could not recommend him for any field assignment. The Medical Director subsequently explained to the Applicant's physician that:

"Before they can take on anybody to work in the ILO, they require evidence that the pulmonary tuberculosis has been healed and stable for a period of at least three years."

On 13 April 1965 the Secretary of the Advisory Board on Compensation Claims asked the Applicant to advise the Board of his current employment status. On 22 April 1965 the Applicant informed the Secretary of the Advisory Board that his efforts to obtain some new form of employment had been entirely unsuccessful and that he had been advised by the United Kingdom Ministry of Overseas Development "that since [his] failure to pass the Joint UN/ILO Medical Examination, it would be pointless for [him] to make application for any positions vacant in [his] normal field of work". On 10 June 1965 the Secretary of the Advisory Board advised the Applicant that the Board had adopted, and the Secretary-General approved, the following recommendation:

"*The Advisory Board on Compensation Claims,*

"*Having considered* the claim submitted by Mr. George A. Dearing at its 114th, 119th, 121st and 123rd meetings;

"*Noting* the opinion of the Medical Director and other medical information submitted;

"*Noting* that under national practice, in particular that in the claimant's home country, the illness would be recognized as attributable to service;

"*Noting* that the claimant had been declared to have recovered in November 1963;

"*Considering* that there were sufficient elements in this case to establish connection between the illness and the claimant's employment in Thailand on behalf of the United Nations;

"*Recommends to the Secretary-General* that

"*(a)* the illness be recognized as being attributable to service;

"*(b)* compensation, as provided in Article 11.1 *(b)* (ii), be paid; and

"*(c)* further consideration be given to the question of the alleged loss of earning capacity."

The Secretary of the Advisory Board added: "The effect of this decision is to permit the continuation of your salary for one calendar year from the date of your first absence from duty, i.e. to 25 December 1963, and to convert any annual leave used during this

period to sick leave." In a letter dated 17 June 1965 to the Secretary of the Advisory Board, the Applicant questioned the accuracy of the statement in the recommendation regarding his recovery and recalled that in February 1964 he had been declared unfit for service with ILO because of the tuberculosis. In an informal reply dated 4 August 1965, the Secretary referred to the medical reports of 7 August 1963 and 14 November 1963 from the Applicant's physician and pointed out that ILO's refusal to employ the Applicant did not mean that he was still ill but that he did not qualify under the general medical standards laid down. On 9 August 1965, in a further letter to the Secretary of the Advisory Board, the Applicant summarized his views as follows:

"1. The United Nations terminated my services solely because of a service incurred illness. The same illness has disqualified me from pursuing similar work with any other organization. This disqualification is upheld by the authorities concerned in spite of my own doctors's opinion that I am well.

"2. The refusal of the ILO to accept my services because of my T.B. does not only indicate but definitely substantiates the disability.

"3. My inability to secure employment in my normal field, which at the present time has much scope and opportunity for me, is solely due to my service incurred illness."

On 1 September 1965 the Applicant's physician sent the following report to the Secretary of the Advisory Board:

". . .

"We have now stopped his treatment with antibacterial drugs, and he is very well indeed, and I am sure fit to undertake work anywhere. You will recall that in my reports of 7th August, 1963, and 14th, November, 1963, I have said that I thought he would be able to return to full activity. It is, however, true that because of the now stable and healed lesion in his lung, although he could be regarded as fit to return to duty with United Nations, it is unlikely that any other such Organization would employ him as a new member of their staff.

"I am sure that Mr. Dearing could now return to his old employment with United Nations."

On 14 January 1966 the Secretary of the Advisory Board advised the Applicant that the Board had adopted, and the Secretary-General approved on 12 January 1966, the following further recommendation:

"*The Advisory Board on Compensation Claims,*

"*Having considered* at its 131st meeting, further information concerning Mr. George A. Dearing's claim for loss of earning capacity resulting from his illness, which had been recognized as attributable to service;

"*Noting* that there was good reason to believe that his employment in Thailand would have continued had he not become ill;

"*Further noting* that the claimant had been unable to obtain any employment in the United Kingdom and that he was barred from consideration for employment by the United Nations or the specialized agencies for a period of three years from the date of his recovery;

"*Considering* the opinion of competent authorities in the United Kingdom as to the remuneration which would correspond to the claimant's qualifications in his home country;

"*Recommends to the Secretary-General* that Mr. George A. Dearing be granted compensation for loss of earning capacity in an amount of £2,500 per annum for a period ending three years from the date of his recovery (November 1963), commencing from the date on which salary paid under Article 11.2 *(b)* of

Appendix D ceased (26 December 1963) or until such time as Mr. Dearing is gainfully employed, whichever period is the shorter."

On 26 July 1966 the Applicant addressed the following letter to the Secretary of the Advisory Board:

". . .

"During a periodic medical examination on the 28th April this year, I took the opportunity of drawing the doctor's attention to the I.L.O.'s ruling that they could not consider me for employment until the pulmonary tuberculosis had been healed and stable for at least three years and I asked from when this should be calculated. He suggested the date of my discharge from hospital which was the 17th May 1963.

"I immediately informed the Ministry of Overseas Development of this and requested that I be considered for any assignment in small-scale industries development, my normal occupation. This they agreed to do and recommended my services to I.L.O.

"This morning I received a letter from the Ministry from which I quote . . .

" 'I am sorry to say it appears that after reviewing your case and checking with their medical services, I.L.O have ruled that they cannot proceed with your candidature because the chances of a medical clearance are extremely remote.'

"As the above decision is only further evidence of the extent of disability and reaffirms my physician's opinion that it is unlikely that any other organization would employ me as a new member of their staff, I request that the compensation now being paid to me be placed on a permanent basis.

". . ."

On 8 August 1966 the Secretary replied that:

". . . The fact that the International Labour Organisation has not accepted your candidature does not establish that you are disabled, but merely indicates that the I.L.O. does not wish to take the risk of your becoming re-infected through possible further exposure to the disease during any assignment for which your services might be utilized."

The Applicant then pointed out, in a letter of 18 August 1966 to the Secretary of the Advisory Board, that:

". . . The risk is not, as you appear to think, one of re-infection as it is an established fact that such a risk is virtually non-existent. The risk of a reactivation of the original infection however is entirely another matter.

"This was the basis of Dr. Nicholson [the Applicant's physician]'s reports where he stated that I was well and could return to duty with the United Nations, *not because I am considered cured,* but simply because environment would have no bearing on a reactivation of the disease. Also, as the original infection was service incurred, any reactivation would be a continuing liability of the organization. They would therefore be incurring no additional responsibility by continuing to employ me. This would not be the case with any other employer and is the reason for Dr. Nicholson's statement in his last report, which reads: . . .'it is unlikely that any other such organization would employ him as a new member of their staff.' This situation has proved to be true in my efforts to obtain further employment. I therefore maintain that it is a very real and continuing disability.

". . ."

On 31 August 1966, having been requested by the Applicant to provide the Advisory Board with an authoritative statement to the effect that there was no chance of his

continuing his normal occupation, an official of the United Kingdom Ministry of Overseas Development wrote to the Secretary of the Advisory Board a letter stating in part:

". . .

"I am, of course, in a position to comment only in regard to Mr. Dearing's occupation as an international expert, but as he had served in this capacity with the United Nations for 12 years before contracting T.B., I think it reasonable to say that this is, in fact, his normal occupation. As such, the only employers with whom he would, in the light of our knowledge, be eligible to work are the United Nations and the International Labour Office. We recently asked the latter whether they would be prepared to engage Mr. Dearing as an expert but I regret to say that on medical grounds they were not prepared to proceed with his candidature. As regards the United Nations, you are of course as well aware of the position as I am. It is therefore impossible to avoid the fact that Mr. Dearing is, in fact, precluded from continuing his normal occupation in which he has been engaged since 1951.

"It would not be appropriate for this office to enter into a controversy which hinges on technical medical questions although as I think you are aware, we feel very sympathetic towards Mr. Dearing. At the same time, I feel I must put in on record that I am concerned at the apparent lack of sincerity in the attitude of the United Nations. It seems that on the one hand, when it is a question of paying compensation for a disability incurred on service you suggest that he is 'cured' and 'completely well'. When, however, he asks to be re-engaged for work (which he would far prefer to simply drawing compensation), you say he is ineligible as a medical risk. If he is genuinely cured and completely well he should be given his job back; if, however, he is not regarded as fit for work on medical grounds he should be entitled to compensation.

". . ."

On 28 September 1966 the Applicant submitted to the Secretary of the Advisory Board a letter from the United Kingdom Ministry of Labour indicating that the London Employment Exchange had been unable to find suitable employment for the Applicant since May 1964 due to his disability. On 13 December 1966 he also submitted a medical report dated 9 December 1966 from Professor J. G. Scadding, who wrote in part:

". . . He now feels well and his general condition is good.

"On examination, there is some restriction of movement at the apices of both lungs, but no other abnormal physical signs. Radiologically, there is considerable fibrosis in the upper one-third of the left lung and scattered scarring in the upper half of the right lung. This must represent the loss of a considerable amount of functioning lung, although, since he has given up smoking, his capacity for exertion is not at present seriously impaired.

"In my view, there is certainly very considerable residual fibrosis in the upper lobe of the left lung, and to a less extent in the upper lobe of the right lung. I understand that this disability is regarded as debarring him from further work in the tropics, and consequently from continuing in what has been his usual occupation for the past 20 years. This being so, it clearly constitutes a very serious disability from the point of view of his earning capacity."

On 9 February 1967 the Secretary of the Advisory Board advised the Applicant that he had discussed the matter with the Board which, however, had felt that it was unable to recommend to the Secretary-General that the case be reopened for further consideration. Having been requested by the Applicant to furnish him with the reasoning behind the Board's decision, the Secretary of the Board replied on 30 March 1967 that:

". . . the Advisory Board on Compensation Claims considered that in the absence of evidence before it to indicate that changes had occurred in the conditions on which the previous decision by the Secretary-General dated 12 January 1966 was based, the circumstances did not warrant that the Board recommend to the Secretary-General that the case be re-opened under Article 9 of Appendix D, and that the previous award be amended with respect to further payments."

On 8 April 1967 the Applicant informed the Secretary of the Advisory Board that he had discussed the matter with his Member of Parliament as a result of which the United Kingdom Government was considering taking up his claim officially. On 6 June 1967 a Member of the House of Commons with whom the Acting Director of Personnel had discussed the Applicant's case wrote to the Acting Director requesting further clarification on the case. On 5 July 1967 the Acting Director of Personnel explained to him that the Applicant had received the same compensation for illness attributable to the performance of his official duties as any staff member with a permanent appointment, that this compensation had been discontinued only after his treatment had stopped and his own physician had certified that he was able to return to full activity, and that, in the absence of permanent compensation for indefinite loss of employment, he seemed to claim further employment with the United Nations, whereas the United Nations had found no opening for which he had been considered suitable. On 31 December 1968 the Applicant submitted to the Secretary-General a request, in accordance with article 9 of Appendix D to the Staff Rules, that his claim for a continuing pension under article 11.2 *(d)* be reopened. The request was supported, among other evidence, by a report dated 7 May 1968 of a medical board established by the United Kingdom Ministry of Overseas Development and consisting of two physicians who examined the Applicant. This report read in part:

"At present Mr. Dearing's x-rays show scarring of both upper lungs with considerable distortion on the left. This reduces his respiratory reserve. In addition, though his sputum is now clear of bacilli, there is a possibility of breakdown under particularly stressful conditions. Clinically he appears reasonably well, though there is some reduction in air entry at the apices. The most important feature, however, is that no overseas organization (UNO, ILO) is willing to employ Mr. Dearing in view of his history of tuberculosis and the risk of his breaking down again. As, in view of his specialist work in South East Asia, he is now completely out of touch with production engineering in this country this refusal to employ him on overseas work makes it impossible for him to obtain suitable employment.

"The Board consider, therefore, that Mr. Dearing must be regarded as having a considerable degree of residual disability following his tuberculosis infection, and that this disability seriously lowers his capacity to earn a living. They would assess the percentage disability as 75 per cent."

On 30 January 1969 the Secretary of the Advisory Board informed the Applicant that:

". . . your request to re-open your case under Article 9 of Appendix [D] to the Staff Rules was considered by the Advisory Board on Compensation Claims at its meeting on 15 January 1969.

"The Board noted that your letter contained no information that was previously unknown to it, and therefore considered that no grounds existed to warrant re-opening the case. Its recommendation to this effect was approved by the Secretary-General on 29 January 1969."

On 23 July 1969 the Applicant requested the Secretary-General to review that decision. On 14 August 1969 the Under-Secretary-General for Administration and Management replied:

". . .

"It should be noted that both under the Rule of the Joint Staff Pension Fund and under the Compensation Rules (Appendix D), your claim for permanent disability was not recognized, and that these decisions were based on the official statements of your own physician. I therefore feel that, with the award of compensation for a period of three years following the stabilization of your condition, your claim was dealt with fully and fairly. Under such circumstances, a further review could not result in any change in the Secretary-General's decision."

On 29 August 1969 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 21 December 1972. The report concluded as follows:

"Conclusions and recommendations

"54. The Board finds that the appellant's name was kept on the roster of technical assistance experts in his field, that the technical assistance recruitment officers were not aware of his medical classification, and that consequently the absence of offers of employment by the United Nations after November 1966 was not attributable to the appellant's service-incurred illness.

"55. The Board finds further that the appellant was considered ineligible for appointment by the ILO as a technical assistance expert in tropical areas in 1966 because of his diabetes and digestive difficulties rather than because of his service-incurred illness.

"56. The Board holds that under the Staff Regulations and Rules governing his employment as a technical assistance expert the appellant had no expectation of renewal of his fixed-term appointment and that the expiration of his appointment on 30 September 1963 may not be regarded as a termination for reasons of health.

"57. Nevertheless, the Board finds that, in view of the medical reports submitted by the appellant in support of his request for a reopening of his case under article 9 of appendix D to the Staff Rules, the respondent should have obtained an impartial, up-to-date assessment of the appellant's medical condition in order to determine whether or not there was any basis for reopening his case.

"58. The Board recommends that the respondent arrange for a medical examination of the appellant with a view to determining whether or not he now suffers from any disability arising out of his service-incurred illness in a manner which adversely affects his earning capacity as a technical assistance expert or in an equivalent occupation. The Board recommends that this examination be carried out by an impartial physician or impartial physicians selected by agreement between the parties. As in its opinion such an examination should have been made earlier, the Board recommends that the costs of the examination be borne entirely by the respondent. The Board recommends further that the report on this examination be communicated to the parties, and that on the basis of this report the respondent should decide whether or not to reopen the case under article 9 of appendix D to the Staff Rules.

"59. The Board, considering that the appellant was not informed of the grounds for his ineligibility for employment in 1966 until he brought this appeal, recommends that the medical examination also be directed to determining whether or not there is any basis for changing the appellant's medical classification so that he may become eligible for employment as a technical assistance expert in tropical areas.

"60. The Board recommends lastly that, should the respondent decide not to reopen the case under article 9 of appendix D, he should grant to the appellant

an *ex gratia* payment equivalent to three months' base salary in recognition of the moral obligation he bears for the prolongation of the proceedings."

On 7 March 1973 the Officer-in-Charge of Personnel Services informed the Applicant that the Secretary-General had taken the following decisions on the appeal:

"The Secretary-General has reviewed the case in the light of the Board's report under Article 9 of Appendix D. The decision whether to reopen a case is a matter within the discretionary authority of the Secretary-General acting on the advice of the Advisory Board on Compensation Claims. Unlike Article 17 of Appendix D, giving the appeal procedure in cases of injury or illness, Article 9 makes no provision for the institution of an independent medical review as a prerequisite for the Secretary-General's decision. The recommendation made by the Joint Appeals Board appears therefore to be based on a confusion between two distinct procedures and seeks to interpose an independent medical review where none is required by Article 9 of Appendix D.

"Considering the case from another angle, the Secretary-General has observed that although Article 9 does not call for a preliminary medical review, nothing in the said article prevents him from adopting this procedure in exceptional cases where there are demonstrably serious defects, in the procedure followed by the Advisory Board on Compensation Claims. He has further observed, however, that in your case the Joint Appeals Board has neither made any finding of procedural errors nor brought out any new elements that had not previously been taken into account by the Advisory Board on Compensation Claims. In particular the British medical report, to which the Board seemed to attach great importance, was duly taken into consideration by the Advisory Board on Compensation Claims together with the advice of the Medical Director. Therefore, both as a matter of principle and in the particular circumstances of the case, no justification was found for an independent medical review as a basic for reconsidering whether your case should be reopened.

"For the above reasons the Secretary-General has decided to maintain the decision not to reopen your case.

"The Secretary-General has further decided not to accept the Board's recommendation concerning an *ex gratia* payment to compensate you for the delay in the proceedings. While the prolongation in the appeal proceedings is regrettable, the Board did not support its recommendation with a positive showing that the delay, which was due to the tardiness in the submitting of written statements by both parties, has had any prejudicial effect on your case."

On 31 December 1973 the Applicant filed with the Tribunal the first part of the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The procedural delay caused by the Respondent inflicted acute emotional suffering to the Applicant, gravely prejudiced his chances of resuming his normal occupation and impeded the speedy and effective presentation of his case. The inordinate delay with which the Joint Appeals Board submitted its report, in addition to constituting a new source of anguish and emotional suffering for the Applicant, was directly responsible for the subsequent delays in the presentation of his case to the Tribunal.

2. The Respondent has not given proper consideration to the Applicant's request for a reopening of his case and for an amendment of the award. The report of the medical board established by the United Kingdom Ministry of Overseas Development, in particular, should not have been rejected out of hand.

3. In view of the fact that the Applicant's normal occupation was that of a small

industries technical assistance expert, and in view of the further fact that the Applicant could be employed in that function only by the United Nations or the International Labour Office, the United Nations had an obligation to reemploy him once it came to the conclusion that he was not incapacitated by reasons of health for further service.

4. There were dozens of posts which required the Applicant's expertise in the field of small industries but for which the Applicant was never considered.

5. The Applicant has fully met and continues to meet the conditions which article 11.2 *(d)* of Appendix D to the Staff Rules imposes for the award of compensation. The fact that the Applicant today is not employed as a United Nations small industries technical assistance expert unquestionably is "a result of" the fact that he contracted the service-incurred illness of tuberculosis in 1962. The pre-existing "other conditions" alleged to have barred the Applicant's reemployment became an obstacle to his employment only after his employment had come to an end because of his tuberculosis. The Applicant's ineligibility for employment was thus directly "a result of" his service-incurred illness and would not have existed if that illness had not occurred. The same reasoning applies to the case of ILO.

6. Through the Respondent's actions, the Applicant was led to believe that his candidacy for the ILO post in 1966 had been rejected because of his tuberculosis, and was thus effectively prevented from taking decisive steps towards regaining employment in his normal occupation.

Whereas the Respondent's principal contentions are:

1. Far from having undertaken to reemploy the Applicant, the Respondent expressly provided, in the letters of appointment, for the exclusion of such an obligation. Nor could the Applicant—who in fact accepted a withdrawal settlement from the Pension Fund—reasonably entertain expectancy of reemployment since such expectancy had to presuppose his continuing fitness to perform the duties of his field assignment. The fact of the Applicant having incurred illness in the service of the United Nations was obviously known to him; it was that which entitled him to the same compensation for illness attributable to the performance of his official duties as any staff member with a permanent appointment. That is precisely what he received, and compensation was discontinued only after his treatment had stopped and his own physician had certified that he was able to return to full activity.

2. The decision whether or not to reopen a case is left to the Respondent's discretion. His exercise of such discretion was neither unreasonable nor unjust. Because the British medical report the consideration of which has prompted the Applicant's plea for reopening has already been considered, no useful purpose would be served by reopening the case.

3. The Applicant's assumption that his history of tuberculosis was an impediment to his reemployment was correct and the Respondent did not mislead him by allowing him to persist in that assumption. But there were also other factors against his reemployment such as his diabetic condition, his advancing years and the protracted period which had elapsed since he last undertook the type of work for which he had applied.

4. Procedural delay did occur due to tardiness by both sides in the handling of the case. Since, however, such tardiness could not have caused the Applicant any damage for which he may claim compensation inasmuch as he had no legal right to be reemployed, no basis exists on which the Applicant may be compensated because of such procedural delay as occurred. Such hardships as may have been suffered by the Applicant were due to his unemployment and the United Nations rules carry no provisions for unemployment benefits.

The Tribunal, having deliberated from 3 to 24 April 1975, now pronounces the following judgement:

I. The Applicant requests the reopening of his case by the Advisory Board on Compensation Claims and payment by the Respondent of continuing compensation under article 11.2 *(d)* of Appendix D to the Staff Rules on the plea that proper consideration had not been given to his request by the Advisory Board. The Tribunal observes that under article 9 of Appendix D to the Staff Rules, it is within the discretion of the Secretary-General to reopen a case relating to compensation under these rules and amend the award with respect to future payments. Such discretion, however, as the Respondent acknowledges in his answer, must not be exercised unjustly or unreasonably. In its Judgement No. 103 the Tribunal has held as follows:

> "Article 9 gives the Respondent wide power to reopen a case and consequently to the Board to recommend that it be reopened. Since the new decision of the Respondent is taken on the recommendation of the Board, the latter must observe the requirements of due process in arriving at that recommendation."

The Tribunal must therefore consider whether the recommendation made by the Board at its meeting on 15 January 1969 to the effect that "your letter contained no information that was previously unknown to it" and that "no grounds existed to warrant re-opening the case", which was accepted by the Secretary-General on 29 January 1969, was vitiated by lack of due process.

II. The Tribunal notes that while considering in January 1966 the Applicant's request for compensation for loss of earning capacity the Board had three medical reports from the Applicant's physician, one dated 7 August 1963 stating that the Applicant would be able "to work part time as of that date, and full time in three months", another dated 14 November 1963 reporting that the Applicant was "now well, but continuing to take antituberculosis chemotherapy", and a third dated 1 September 1965 stating that "we have now stopped his treatment with antibacterial drugs, and he is very well indeed, and I am sure fit to undertake work anywhere . . . It is, however, true that because of the now stable and healed lesion in his lung, although he could be regarded as fit to return to duty with United Nations, it is unlikely that any other such Organization would employ him as a new member of their staff. I am sure that Mr. Dearing could now return to his old employment with United Nations." The Board had also before it the views of the Medical Director of ILO that before that Organization could take on anybody to work with them they would require evidence that "the pulmonary tuberculosis has been healed and stable for a period of at least three years".

III. Thus the Board decided to award compensation to the Applicant for a period of three years on the basis that, since November 1963 when he recovered from his illness, he had been unable to obtain any employment in the United Kingdom and that he was barred from consideration for employment by the United Nations and specialized agencies for a period of three years from the date of his recovery.

IV. Although the Applicant had contested in letters dated 17 June 1965 and 4 September 1965 the statement that he had recovered from the illness, no medical examination to determine the type and degree of disability as contemplated in article 13 of Appendix D was considered necessary by the Board; instead the Secretary of the Board contented himself by saying in his letter of 4 August 1965: "on the point of your recovery . . . the Board's finding was based on two reports [quoted above] from Dr. Nicholson . . . dated 7 August 1963 . . . and 14 November 1963".

V. Before rejecting on 15 January 1969 the Applicant's request for reconsidering the decision refusing payment of compensation on a permanent basis, the Board had before it further medical reports, one from Dr. A. T. Broadbridge dated 20 September 1966 stating that:

> "There is fairly widespread disease in the left upper zone, very possibly with

cavitation and shrinkage of the left upper lobe . . .; judging from my report in 1964 there could well have been little change since that time",

and another report from Prof. J. G. Scadding dated 9 December 1966 which, after stating that "He [the Applicant] now feels well and his general condition is good", concluded as follows:

"In my view, there is certainly very considerable residual fibrosis in the upper lobe of the left lung, and to a less extent in the upper lobe of the right lung. I understand that this disability is regarded as debarring him from further work in the tropics, and consequently from continuing in what has been his usual occupation for the past 20 years. This being so, it clearly constitutes a very serious disability from the point of view of his earning capacity."

The Board also received from the Applicant a report dated 7 May 1968 of the Medical Board established by the United Kingdom Ministry of Overseas Development and consisting of two physicians; this report stated *inter alia* that "Mr. Dearing must be regarded as having a considerable degree of residual disability following his tuberculosis infection, and that this disability seriously lowers his capacity to earn a living. They would assess the percentage disability as 75%."

VI. In his oral evidence before the Joint Appeals Board the Medical Director of the United Nations stated that all the medical reports submitted by the Applicant had been given due consideration by the Advisory Board but that the Advisory Board "had not been very impressed by it [the report of the Medical Board set up by the Ministry of Overseas Development] and had considered it of little importance". The Medical Director expressed his reservations over the assessment of the disability at 75 per cent by the United Kingdom Medical Board, saying that he could not equate a finding of 75 per cent disability with a situation where the patient was clinically well and no pulmonary function tests had apparently been made.

VII. It is observed that there was a difference of opinion between the Medical Director and the United Kingdom Medical Board regarding the assessment of the percentage of disability. It is further noted that while the United Kingdom Medical Board based its report after a personal examination of the Applicant, the Advisory Board reached its conclusion by merely examining the medical reports of the physicians treating the Applicant. Furthermore, the Medical Director, in his oral evidence before the Joint Appeals Board, admitted that no medical examination of the Applicant had been made by the United Nations after 12 December 1962. The Tribunal also considers that in the absence of independent testimony relating to the medical condition of the Applicant, the rejection of the report of the United Kingdom Medical Board by the Advisory Board as "of little importance" was arbitrary.

VIII. In the view of the Tribunal, due process requires that an authority competent to make recommendations or decisions should arrive at its conclusions without factual errors or prejudice on the matter placed before it.

The Tribunal considers that in the present case where there was a difference of opinion between the Medical Director of the United Nations and the Applicant's physicians over the latter's medical reports, the requirements of due process involved recourse to an impartial medical examination of the Applicant to ascertain the extent, if any, of his disability before recommending to the Secretary-General the rejection of the Applicant's request for reopening the case.

IX. For the foregoing reasons the Tribunal holds that the recommendation of the Advisory Board to reject the Applicant's request is vitiated by lack of due process and that the Secretary-General's decision not to reopen the case based on such recommendation suffers from the same infirmity.

X. It is not for the Tribunal to make an assessment of the medical reports and

determine whether the Applicant was disabled in a manner affecting his earning capacity. As the matter is within the competence of medical experts, the Tribunal reached the conclusion that the case should be remanded for carrying out a proper medical examination of the Applicant for the purpose of assessing his disability, if any, for further employment and for the loss of his earning capacity since November 1966 when his compensation for loss of earning capacity ceased.

XI. In the circumstances of the case the Tribunal holds that, before the Advisory Board makes a recommendation to the Secretary-General as to whether or not to reopen the case under article 9 of Appendix D to the Staff Rules, the adoption of a procedure analogous to that provided in article 17, paragraph *(b)* of Appendix D would be appropriate.

XII. The Applicant claims that in view of the delay which would be involved in the reopening of a case which has already been very protected, the Tribunal should order payment of continuing compensation on the basis of article 11.2 *(d)* of Appendix D to the Staff Rules. Article 11.2 *(d)* reads as follows:

> "Where, upon the separation of a staff member from United Nations service, it is determined that he is partially disabled as a result of the injury or illness in a manner which adversely affects his earning capacity, he shall be entitled to receive such proportion of the annual compensation provided for under article 11.1 *(c)* as corresponds with the degree of the staff member's disability, assessed on the basis of medical evidence and in relation to loss of earning capacity in his normal occupation or an equivalent occupation appropriate to his qualifications and experience."

The Applicant contends that as he was disabled as a result of a service-incurred illness and as it has adversely affected his earning capacity, he is entitled to compensation as set out in that article.

XIII. The Tribunal observes that the award of compensation for three years based on certain premises mentioned earlier concluded the Applicant's right to compensation for service-incurred illness, subject to the procedure for amending the award with respect to future payments defined in article 9 of Appendix D as follows:

> "The Secretary-General, on his own initiative or upon the request of a person entitled to or claiming to be entitled to compensation under these rules, may reopen any case under these rules, and may, where the circumstances so warrant, amend in accordance with these rules any previous award with respect to future payments."

Thus unless the Respondent agrees to amend the previous award made on 12 January 1966, the Applicant cannot secure under article 11.2 *(d)* another award relating to future payments.

XIV. The Applicant argues further that article 11.1 *(b)* and article 11.2 *(b)* envisage two possibilities, one where the staff member is incapacitated from service by illness resulting from the performance of his official duties and later returns to duty, and the other where the staff member does not return to duty by reason of his disability and the termination of his appointment. He contends that, as the Respondent failed to reinstate him, the Applicant should be deemed to have been terminated from service on the ground of incapacity for further service and should therefore be awarded compensation. Alternatively the Applicant pleads that if he was not permanently incapacitated, he should have been reinstated in service. In further support of his claim the Applicant relies on Staff Rule 206.4 *(h)* as it stood at the relevant time to show that project personnel of intermediate and long-term status were equated for the purposes of compensation under Appendix D to career staff with permanent appointment.

XV. The Applicant's contention that, as he was not reinstated, he should be

deemed to have been disabled from further service and paid continuing compensation presupposes an obligation on the part of the Respondent to employ the Applicant when his disability ceased and ignores his employment status, which was one of successive fixed-term appointments. The Applicant's contract did not entitle him to permanent or continuous service. In the circumstances, no inferences of disability for further service can be drawn solely from the fact of his non-employment by the Organization.

The Tribunal therefore holds that the disability, if any, with respect to the Applicant's earning capacity would need to be established through a medical assessment and not by inference from the fact of his non-employment.

XVI. The Applicant conversely argues that if he was not considered disabled for further service, he should have been reinstated or re-employed by the Respondent. The Respondent resists the plea on the grounds that the Applicant was on a fixed-term appointment which carried no expectancy of renewal or of conversion to any other type of appointment and that the Applicant had no reasonable expectancy of renewal or re-employment. In support of his contention the Respondent argues that the acceptance by the Applicant of a withdrawal settlement from the Pension Fund "indicated that he entertained no expectation of continuing employment with the United Nations."

The Tribunal finds that the Applicant effected the withdrawal settlement from the Pension Fund on the advice of the Secretary of the Joint Staff Pension Fund contained in his letter dated 7 January 1964. Since the Applicant was encouraged to adopt this course of action by an authority competent to deal with the matter, the Respondent cannot draw any adverse inference from the Applicant's action.

The Tribunal also observes that at the time when the Applicant's appointment expired on 30 September 1963, the post in Thailand was not only still available but the Applicant's services were sought by the Government of Thailand. This has been recognized by the Advisory Board in its resolution approved on 12 January 1966 stating "that there was good reason to believe that his [the Applicant's] employment in Thailand would have continued had he not become ill".

The Tribunal therefore finds that the Applicant had a legitimate expectancy of continuation in service but for his illness. The Tribunal, however, can draw no conclusion from that finding in the absence of evidence as to whether the Applicant was incapacitated for further service by reason of his disability as contended by him.

XVII. Having reached the conclusion that the Applicant had been denied due process in the consideration of his application for review under article 9 of Appendix D to the Staff Rules and having indicated the kind of medical examination appropriate to the case in paragraph XI above, the Tribunal, prior to the determination of the merits, decided to enquire whether the Respondent wished to request remand of the case for institution or correction of the required procedure.

In a memorandum dated 22 April 1975, the Respondent indicated that he did not wish to request remand of the case under article 9, paragraph 2 of the Statute of the Tribunal.

The Tribunal accordingly proceeds to the determination of the merits of the case.

XVIII. In paragraph IX above the Tribunal has reached the conclusion that the decision of the Respondent not to reopen the case under article 9 of Appendix D to the Staff Rules was based on a recommendation of the Advisory Board which was vitiated by lack of due process. In consequence the Respondent's decision suffers from the same infirmity and must be rescinded.

The decision of the Respondent having been rescinded by the Tribunal, the Respondent must take action in conformity with the requirements of due process, that is

to say, in this case, by adopting a procedure analogous to that provided in article 17, paragraph *(b)* of Appendix D as indicated in paragraph XI above.

XIX. The Tribunal is required under article 9, paragraph 1, of its Statute to fix the amount of compensation to be paid to the Applicant for the injury sustained should the Secretary-General, within 30 days of the notification of the judgement, decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in his case. Accordingly, the Tribunal proceeds to fix the amount of compensation due to the Applicant for the injury sustained.

The Tribunal considers that the improper rejection of the Applicant's request for reopening the case resulted in the possible loss by the Applicant of compensation payments since November 1966, the date when he ceased to receive the annual compensation of £2,500 awarded to him by the Secretary-General's decision of 12 January 1966.

The Tribunal considers that the injury sustained by the Applicant must be estimated in relation to the sums which he would have received since November 1966 under article 11.2 *(d)* of Appendix D had his request been successful. As there has been no agreed assessment of the extent of the Applicant's disability either at the time when the compensation was fixed or later, the Tribunal deems it appropriate to follow Judgement No. 120 *(Khederian)* on this point and determine the lump sum to be paid by the Respondent to the Applicant.

The Tribunal notes that for the period from November 1963 to November 1966 the Applicant was granted compensation at an annual rate of £2,500 and that this figure was not challenged by the Applicant. The Tribunal also notes that the Respondent has not contested the evidence produced by the Applicant to the effect that, having failed to find suitable employment, he had been reduced to accepting a post in which his professional qualifications had no relevance at a salary of some £900 a year.

XX. Having taken into account the Applicant's long and satisfactory service with the Organization, his service-incurred illness which deprived him at the age of 46 of career and promotion prospects, and his inability following a long period of unemployment to find a post suitable to his qualifications; the failure of the Respondent to order a medical examination of the Applicant since 1962, the rejection by the Advisory Board without proper consideration of the report of the United Kingdom Medical Board, the Respondent's persistent failure to satisfy himself as to the medical condition of the Applicant by obtaining independent medical reports and his repeated refusal to make an assessment of the Applicant's loss of earning capacity since November 1966; the total sums which the Applicant would have earned had he continued in service given that his net base salary when separated in 1963 was $12,500 per annum; alternatively, that had he been awarded compensation on a continuing basis at the rate of £2,500 a year it would have totalled over £20,000 up to the present, the Tribunal concludes that this is an exceptional case. The Tribunal accordingly awards as compensation to the Applicant a sum equivalent to three years of his net base salary, to be paid in such manner as may be agreed between the parties.

XXI. In his plea *(d)* the Applicant claims compensation for procedural delays in the case. The Tribunal is deeply disturbed by the fact that the Respondent took 15 months to file his reply before the Joint Appeals Board and that the Joint Appeals Board took about 12 months to submit its report. The Respondent's contention that the Applicant could not have suffered damages because he had no legal right to re-employment is not convincing as the Applicant had other claims such as payment of compensation for disability on a continuing basis. Nor did the Respondent's view that the Applicant had no case justify the Respondent's unconscionable delays in handling the matter. But the Respondent's contention that there was "tardiness by both

sides in the handling of the case" has some validity and therefore the Tribunal decides not to order any compensation for procedural delays.

XXII. The Applicant claims in his plea *(g)* compensation for misleading statements regarding the ground for rejection of his candidature by ILO which led him to believe that the rejection was due to his tuberculosis condition while it transpired during the consideration of the case by the Joint Appeals Board that the rejection was on other medical grounds. The Tribunal observes that the statements complained of by the Applicant, although erroneous, do not, in the absence of other elements like a duty to disclose, misrepresentation, or fraud, give rise to legal claims for damages. The claim is therefore rejected.

XXIII. For the foregoing reasons:

(1) The Tribunal rescinds the decision of the Secretary-General dated 29 January 1969 refusing to reopen the Applicant's case;

(2) Should the Secretary-General, within 30 days of the notification of the judgement, decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in his case, the Tribunal orders the Respondent to pay to the Applicant compensation in the amount of three years' net base salary as specified in paragraph XX above;

(3) The Tribunal rejects the Applicant's other pleas.

(Signatures)

R. VENKATARAMAN
President

Roger STEVENS
Member

Suzanne BASTID
Vice-President

Jean HARDY
Executive Secretary

New York, 24 April 1975

Judgement No. 201

(Original: French)

Case No. 182: Branckaert

Against: **The United Nations Joint Staff Pension Board**

Request by a technical assistance expert of FAO for validation by the Joint Staff Pension Fund of service completed before his participation in the Fund.

Decision by the Tribunal to disregard in its consideration of the case a page which was missing from the copy of the Respondent's answer sent to the Applicant.

Request for rescission of the decision of the Joint Staff Pension Board rejecting the Applicant's request for validation on the ground that it was submitted after the expiration of the statutory one-year time-limit.—Article 23 (a) *of the Pension Fund Regulations.—The Applicant's failure to take action regarding the notice at the bottom of his "Participant's Declaration".—Applicant's acknowledgement of his own negligence.—Seriousness of this negligence.—Conclusion of the Tribunal that the aforementioned notice was sufficient to inform the Applicant of the existence of time-limits for the submission of*