

Judgement No. 213

(Original: French)

Case No. 203:
Johnson

Against: The Secretary-General
of the United Nations

Termination of the employment of a staff member holding a probationary appointment.

Objection of irreceivability based on the fact that the issues in dispute have been the subject of a favourable recommendation by the Joint Appeals Board which has been accepted by the Respondent.—Objection rejected, since that recommendation was not entirely favourable to the appeal of the Applicant.

Consideration of how the provisions of the Staff Regulations and Rules relating to the probationary contract were applied.—Duration of such a contract.—Staff Regulation 4.5 (b) and Staff Rules 104.12 (a) and 104.14 (f) (ii).—Unusual conditions in which the initial probationary period was extended in this case.—The Respondent deprived the Applicant of the opportunity of demonstrating during the period provided for in the Staff Regulations and Rules her suitability as an international civil servant.—Purpose of a probationary contract.—Change which occurred in the Applicant's duties during the probationary period of which she was not officially informed.—Procedure to be followed at the end of a probationary contract.—Failure in this case to observe the provisions of Administrative Instruction ST/AI/115.—Conclusion of the Tribunal that the Respondent failed in his obligations towards the holder of a probationary appointment.

Complaint of the Applicant that she was the victim of prejudice on the part of her supervisor which rendered a periodic report and various documents devoid of any legal validity.—Consideration of the complaint regarding the periodic report.—Circumstances in which the periodic report was prepared.—In view of the comments by the second reporting officer the periodic report taken as a whole cannot be regarded as devoid of any legal validity.—Consideration of the complaint regarding the various documents.—Idea of prejudice.—The Respondent's lack of vigilance allowed a situation to develop in which the Applicant may have felt in good faith that she was the victim of prejudice.

Conclusion of the Tribunal that the Respondent has not carried out the obligations which he assumed in granting a probationary appointment to the Applicant and that the latter was therefore denied the opportunity of obtaining permanent employment with the United Nations.—Impossibility of restoring the status quo ante between the parties.—Award to the Applicant of compensation equal to the amount of two years' net base salary, less the amount of the ex gratia payment already received.—Rejection of the pleas of the application that contributions be paid into the Pension Fund and interest paid.—Award to the Applicant of \$800 as costs.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Endre Ustor;

Whereas, on 17 February 1976, Ruth June Johnson, a former staff member of the United Nations Conference on Trade and Development, hereinafter called UNCTAD, filed an application the pleas of which read as follows:

"A. The Applicant respectfully requests the President of the Tribunal to order that oral proceedings be held for the presentation of her case and also for the examination of witnesses to be heard on all points of fact set out in her Explanatory memorandum, which would be contested by Respondent in his Rebuttal.

"B. The Applicant further requests that the Tribunal:

"1. rescind the contested decision notified to Applicant in Geneva on 19

November 1975, as well as the original decision of termination taken by Respondent on 25 November 1974; to declare that the following administrative actions or documents are devoid of any legal validity, on the ground that they are based on documentation or information supplied by Applicant's former supervisor, Mr. Schork, which were tainted with and vitiated by prejudice against Applicant, namely: Applicant's Periodic Report for 1973, the recommendations made by UNCTAD and the Personnel Division in Geneva to the Appointment and Promotion Committee; the latter's recommendation to the Appointment and Promotion Board; the latter's recommendation to Respondent;

"2. to order that Respondent shall determine *de novo* whether Applicant meets the criteria of suitability as international civil servant laid down in Staff Rule 104.13 (a) (i)—namely qualifications, performance and conduct, Applicant continuing her employment until such determination is made;

"3. failing such a determination within 30 days from the date of the Judgement; to order that Respondent:

"(a) shall pay to Applicant as compensation for his unlawful deprivation of her entitlement to a career appointment a sum equivalent to three years salary;

"(b) shall pay into the Pension Fund the Organization's contributions concerning Applicant for three years as from 4-1-75, last day of Applicant's former participation in the Fund, or the amount which the Pension Board will determine to ensure in favour of Applicant, at age 60, *pro rata* pension benefits calculated on a contributory service up to 4 January 1978, it being understood that Applicant would return to the Pension Fund her contributions reimbursed to her and would pay into the Fund her own contributions up to 4-1-78, Applicant being free, according to the Pension Fund Regulations to select instead the payment of the present actuarial value of such retirement benefits;

"(c) shall pay to Applicant a sum of \$1,500 as contribution towards the costs of the present litigation, including counsel's fees, and sundry expenditures;

"(d) shall pay to Applicant judicial interests at 8 per cent *per annum* on the above sums as from the date of the Judgement to be pronounced."

Whereas the Respondent filed his answer on 17 May 1976;

Whereas the Applicant filed written observations on 7 June 1976;

Whereas the Respondent filed an additional statement on 15 June 1976;

Whereas, at a hearing held on 6 July 1976, oral statements from two witnesses proposed by the Applicant were taken at Geneva by the first Vice-President of the Tribunal, designated for that purpose by the President in accordance with article 10, paragraph 3 of the Rules;

Whereas, on 7 July 1976, counsel for the Applicant filed incidental pleas in which he alleged that other witnesses proposed by the Applicant had been intimidated from appearing at that hearing, requested the Tribunal to investigate the matter and asked to be heard under oath as a witness thereon;

Whereas on 12 July 1976 the Respondent, having submitted a request for the hearing of witnesses, was invited to submit, if he so wished, written statements from the witnesses proposed by him within a time-limit of two weeks;

Whereas, on 14 July 1976, the Respondent filed an additional statement in reply to questions put to him by the Tribunal;

Whereas, on 23 July 1976, the Respondent informed the President that it was not his intention to submit written statements from his witnesses at that time;

Whereas, on 25 July 1976, the Applicant submitted a request that she be authorized to submit written statements from witnesses to be identified later, on the same

subject-matter on which the Respondent had been authorized to submit written statements;

Whereas, on 26 July 1976, the Respondent submitted observations on the incidental pleas filed by counsel for the Applicant on 7 July 1976;

Whereas, on 28 and 31 July 1976, the Applicant submitted observations on the additional statements filed by the Respondent on 15 June and 14 July 1976, on the Respondent's request for the hearing of witnesses, and on the oral statements taken at Geneva on 6 July 1976;

Whereas, on 5 August 1976, the Respondent objected to the request submitted by the Applicant on 25 July 1976;

Whereas, on 11 August 1976, the President ruled that oral proceedings without examination of new witnesses would be held in the case;

Whereas the Tribunal heard the parties at a public session held on 29 September 1976;

Whereas the facts in the case are as follows:

The Applicant was employed by the United Nations Office at Geneva as a Consultant from 5 October 1970 to 31 December 1970 and as a Librarian from 1 January 1971 to 31 May 1971. On 1 June 1971 she received a probationary appointment as an Associate Librarian at the P-2 level in the ECE (Economic Commission for Europe)/UNCTAD (United Nations Conference on Trade and Development) Joint Reference Unit. In a letter of 18 May 1971 offering her that appointment, the Chief of the Personnel Section of UNCTAD had stated *inter alia*:

"During the initial period, which will normally be two years, you will be on probation. This means that you will have to show within this period that you can make a successful career with the United Nations. The decision whether you should be given this opportunity will be taken at the end of your period of probation."

In a periodic report covering the period from 1 June 1971 to 31 December 1972, Mr. Bonny, Chief of the ECE/UNCTAD Joint Reference Unit, gave the Applicant the top rating on 11 items (professional knowledge and skill, power of analysis, skill in producing a solution, oral expression in working language, industry, quality of work accomplished, quantity of work accomplished, sense of responsibility, initiative, punctuality, and personal relations with others) and the second rating on two items (judgement, written expression in working language); he also gave the Applicant the top rating on the two items regarding performance as a supervisor (effectiveness in supervising staff, organization of work), and commented:

"Mrs. Johnson is a diligent officer who gained the confidence of both readers and staff. The success of our Reading Room has been due to her efforts.

"She has also accepted willingly other administrative and technical duties.

"She is exceptionally good at staff training."

As second reporting officer, the Chief of the Office of Administration of UNCTAD rated the Applicant as "an exceptionally competent staff member of unusual merit" and noted: "In the transition period from individual units to a central service we have relied heavily on Mrs. Johnson's technical and administrative talents." On 1 January 1973 Mr. Schork became Chief of the ECE/UNCTAD Joint Reference Unit. On 13 March 1973 a new job description was issued for the post of the Applicant. By a memorandum dated 16 May 1973 the Chief of the Personnel Section of UNCTAD informed a Senior Personnel Officer in the Office of Personnel Services of the United Nations that the Secretary-General of UNCTAD recommended that the Applicant's period of proba-

tionary service be extended for one additional year under Staff Rule 104.12 (a) on the following grounds:

“ . . .

“2. The contractual status of Mrs. Johnson has been under careful consideration since February of this year by her immediate supervisors, Mr. Francis Schork, the newly-appointed Chief of the ECE/UNCTAD Reference Unit, and Mr. Nathaniel Groby, Chief, Office of Administration. They have taken into account:

“(a) the duties that Mrs. Johnson was expected to discharge at the time of her appointment in June 1971 (job description attached);

“(b) Mrs. Johnson’s performance under the direction of the former Chief of the Reference Unit, up to December 1972;

“(c) her potentialities for a career in the United Nations in general up to retirement age (over 10 years);

“(d) the contribution that she could make in the future to the changing work programme of the ECE/UNCTAD Reference Unit under the collective pressing mandate of completing the organization of the Unit in such a manner that its services would provide optimum service to ECE and UNCTAD.

“3. In connexion with the more general considerations listed above, Mrs. Johnson’s first two years on probation have been satisfactory, as attested by her periodic report covering her performance up to December 1972. Notwithstanding, a third year of probation would appear to be advisable in the light of the particular circumstances outlined in (d) above. Indeed, this cautious approach has also been taken when appointing on a fixed-term basis the new Chief of the Unit himself, as well as the three librarians that have joined or are about to join the Unit in 1973.

“4. The recommendation made here has been discussed with Mrs. Johnson by the Chief of the Office of Administration of UNCTAD. She has been made aware on that occasion of the appreciation that UNCTAD and ECE have for the services rendered by her under trying circumstances up to the end of 1972. At the same time, it has been impressed upon Mrs. Johnson that in the future she will be expected to adjust to the requirements outlined in her revised job description which, in turn, reflect an over-all effort to improve procedures and to sharpen the objectives pursued by the Unit. Mrs. Johnson’s positive response to the discussion should lead to the successful conclusion of the proposed period of extended probation. With this goal in mind, the Chief of the Reference Unit, at his initiative, will hold periodic meetings with the Chief of the Office of Administration, the Executive Officer of ECE and the Chief of the Personnel Section of UNCTAD to review Mrs. Johnson’s performance between June 1973 and May 1974, keeping her informed of the outcome of each ‘checking’ review as appropriate.

“ . . .”

In a reply dated 29 June 1973 a Personnel Officer in the Office of Personnel Services objected that:

“ . . .

“2. Your recommendation for a one year extension of Mrs. Johnson’s probationary appointment is based only on a new work programme which the staff member is expected to carry out in the future and which differs from her present job. It is noted that Mrs. Johnson’s performance during her probation, as reflected in her periodic report, was very impressive and she was rated as ‘an exceptionally competent staff member of unusual merit’. To justify your recommendation you submitted a new job description dated 13 March 1973 for the post now occupied

by Mrs. Johnson. However, it seems to me that you did not describe all the relevant circumstances.

“ . . . ”

On 5 July 1973 the Chief of the Office of Administration of UNCTAD sent a cable to the Senior Personnel Officer explaining that:

“ . . . change of supervisors with new orientation of work made extension probationary appointment for additional year appear desirable after intensive discussions between Schork, Caballeromarsal [Chief of the Personnel Section of UNCTAD], Johnson and me subsequently cleared by SG/UNCTAD. I wish to reassure you that decision to request additional year probation was not taken without extensive review and agreed conclusion on part of supervisor and Administration . . . ”

The Appointment and Promotion Committee considered the Applicant's case on 6 September 1973, having before it a recommendation by the Office of Personnel Services that the Applicant's probationary appointment be extended for an additional year. The Committee, realizing that it could not pronounce itself on the recommendation without any evidence in the form of a new periodic report, decided to defer consideration of the case until such a report was prepared. A periodic report on the Applicant's performance from 1 January 1973 to 30 November 1973 was prepared at the request of the Office of Personnel Services on 17 December 1973 and the Applicant, who had been assigned to the Insurance Branch of UNCTAD as Research Assistant on 1 January 1974, submitted a rebuttal to the periodic report on 7 January 1974. As the reporting officers had failed to rate the Applicant under some items of section I and under section II, however, the report was found unacceptable by the Office of Personnel Services. In a revised periodic report, which was issued on 26 February 1974 and covered the period from 1 January 1973 to 31 December 1973, Mr. Schork rated the Applicant average on seven items (professional knowledge and skill, power of analysis, skill in producing a solution, written expression in working language, quantity of work accomplished, sense of responsibility, punctuality), above average on three (oral expression in working language, industry, initiative), and below average on three (judgement, quality of work accomplished, personal relations with others); he rated the Applicant below average as a supervisor and added:

“After my arrival in January 1973, it became clear to me that the basic jobs in librarianship—proper indexing and location of materials—depended on improving the organization of the Unit with consequent reallocation of work to make the best use of staff skills and redefinition of their duties. In the course of the necessary establishment of bibliographical control and of effective work routines, Mrs. Johnson at first did not respond, then resisted, and finally opposed the group effort to establish effective and essential procedures within the Unit.”

The Chief of the Office of Administration of UNCTAD, as second reporting officer, rated the Applicant as “a staff member whose usefulness to the Joint Reference Unit has been compromised by her relationship with her supervisor” and commented:

“I am indebted to Mrs. Johnson for having carried the Unit during the interregnum between Chiefs. I sincerely regret the lack of harmonious relations with her new Chief which are essential to the proper functioning of the Unit as a whole. This situation, which is reflected above, has been discussed with Mrs. Johnson on various occasions during the period covered by this report.”

On 4 March 1974 the Applicant submitted a rebuttal to the revised periodic report. The Deputy Secretary-General of UNCTAD reviewed the report and the Applicant's rebuttal on behalf of the Secretary-General of UNCTAD and filed on 19 March 1974 an appraisal in which he concluded that the report should remain unchanged. The Appointment and Promotion Committee resumed consideration of the Applicant's case

on 21 May 1974. On 23 May 1974 the Chairman of the Committee informed the Applicant that in the interest of due process the Committee had decided to give her the opportunity to state in writing her own point of view and any facts she considered relevant to the issue. On 31 May 1974 the Applicant accordingly presented her viewpoint in a letter addressed to the Chairman of the Committee. On 13 June 1974 the Committee considered again the Applicant's case. The Committee was requested by UNCTAD, first, to approve retroactively the extension of the Applicant's probationary appointment for an additional year and, second, to consider the contractual status of the Applicant in the light of UNCTAD's opinion that she had failed to meet the requirements laid down in Staff Rule 104.13 (a) (i). The Committee stated at the outset its dissatisfaction with the poor handling of the case by UNCTAD which had not come up, from the beginning, with a clear and unequivocal solution to the case and had allowed the situation, instead, to deteriorate to the extent that charges of "non-cooperation", "undermining" and "sabotage" had been made and that the staff of the Unit had become divided into two rival factions and petitions had been written. Concerning the first request of UNCTAD, the Committee, while deploring UNCTAD's inaction which had resulted in an unfortunate delay, found no other alternative but to recommend approval retroactively of the extension of the Applicant's appointment for an additional year since the period in question had been worn out. On the second point raised by UNCTAD, the Committee was satisfied that it was clearly established that the Unit, under the supervision of the new Chief, had been undergoing new, beneficial and long over-due changes which had been resented by the Applicant. The Committee concluded on that point that the usefulness of the Applicant's services had been reduced to its minimum and therefore recommended that she be separated in accordance with Staff Rule 104.12 (a) for having failed to meet the standards laid down in Staff Rule 104.13 (a) (i). From July 1974 the Applicant, while remaining assigned to the Insurance Branch of UNCTAD, also worked part-time for the Transfer of Technology Branch of UNCTAD. On 9 August 1974 the Appointment and Promotion Board endorsed the report of the Committee and recommended to the Secretary-General the separation of the Applicant from the service. On 3 November 1974 the Under-Secretary-General for Administration and Management approved that recommendation on behalf of the Secretary-General. By a notice of termination dated 25 November 1974, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided, on the basis of the recommendations of the Appointment and Promotion Committee and Board, to terminate her probationary appointment under the provisions of Staff Regulation 9.1 (c), that is, in the interest of the United Nations, and to pay her compensation in lieu of one month's notice in accordance with paragraph (c) of Staff Rule 109.3. The notice of termination having been delivered to the Applicant on 4 December 1974, she was separated from the service on that date. On 30 December 1974, the Applicant wrote to the Secretary-General requesting that the decision to terminate her probationary appointment be reviewed and that the appointment be extended. Having been advised in the notice of termination that she was entitled to receive excerpts from the recommendation of the Appointment and Promotion Board to the Secretary-General, the Applicant informed the Assistant Secretary-General for Personnel Services on 27 January 1975 that she was interested in receiving the relevant portions of the recommendations in question, adding that the termination decision had been extremely startling especially since the entire period from 1 January 1974 to 4 December 1974 had never been covered by a periodic report. On 25 February 1975 the Applicant's performance from 1 January 1974 to 4 December 1974 was evaluated in a periodic report in which the Chief of the Insurance Branch of UNCTAD expressed his high opinion of the Applicant and rated her "an efficient staff member giving complete satisfaction". On 28 February 1975 the Applicant lodged an appeal with the Joint Appeals Board. On 16 March 1975 the Assistant Secretary-General for

Personnel Services sent her three memorandums which he regarded as the relevant portions of the recommendation of the Appointment and Promotion Board to the Secretary-General. The Joint Appeals Board submitted its report on 7 August 1975. The Board's recommendations read as follows:

"IX. Recommendations of the Board

"59. Considering . . . that damages have been inflicted on the Appellant as the result of managerial and procedural defects in the handling of her case, the Board recommends to the Secretary-General that the Appellant be granted an indemnity equivalent to four months' base salary at the grade and last step of her appointment as representing adequate compensation.

"60. Considering the likelihood that the Appellant, given another chance, would demonstrate her full suitability as an international civil servant in her field of competence, the Board further recommends that sympathetic consideration be given by the Secretary-General to any request by the Appellant for re-employment with the United Nations, even by waiving, if necessary, the fifty-years-of-age limitation clause for granting a permanent appointment, or for assistance in finding employment elsewhere in the United Nations system of organizations."

On 10 November 1975 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken the following decisions on the appeal:

" . . . The Secretary-General has re-examined your complaint in the light of the findings and conclusions of the Board and has decided to accept the Board's recommendation contained in paragraph 59 of the Report and to authorize an *ex gratia* payment to you, equivalent to four months' base salary at the grade and last step of your appointment as adequate compensation for whatever damages you may have suffered.

"The Secretary-General has also decided to take note of the Board's recommendation that sympathetic consideration be given to any request by you for re-employment with the United Nations and for assistance in finding employment elsewhere in the United Nations system of organizations, as stated in paragraph 60 of the Report. In taking note of this recommendation, the Secretary-General was aware of the fact that before the termination of your service, the possibilities of your reassignment to the main Library of the Geneva Office and the Library at Headquarters had been fully explored but that your candidature was unfortunately unacceptable to both. It seemed to the Secretary-General, therefore, that there was little likelihood of your re-employment with the United Nations in your field of competence. As regards possible employment with other organizations, the Office of Personnel Services will, on behalf of the Secretary-General, render as much help as possible in response to any request from you for assistance. In making such requests, you will no doubt advise us of specific applications that you make in due course to any organization within the United Nations system."

On 14 January 1976 the Applicant accepted the *ex gratia* payment made to her "without prejudice to any of [her] rights". On 17 February 1976 she filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The legal basis for the termination of a staff member on probation, after completion of the probation, is the criterion of suitability to become an international civil servant from the point of view of qualifications, performance and conduct. The legal basis of such a termination is not Staff Regulation 9.1 (c). Therefore, the Respondent's power of termination in such a case is not discretionary and is open to scrutiny as to its factual and legal basis and as to its motives.

2. The recommendation of the Appointment and Promotion Committee and the Respondent's subsequent decision were not only based on insufficient evidence, as found by the Joint Appeals Board, but also on biased or spurious evidence. Consequently, all administrative actions or decisions in the case should be declared legally invalid.

3. Remanding the case for correction of procedure would be an exercise in futility since the defects of procedure in this case take only second place, far behind the substantive vices affecting the deliberations of the Appointment and Promotion Committee. To limit the case to consideration of matters of "due process" would be a failure to tackle the real problem, namely the existence of a bias, prejudice and animosity against the Applicant on the part of her supervisor.

4. The termination decision should be rescinded and as a result of such rescission the Applicant should be placed back in the same legal situation as if no termination had occurred, i.e., in a situation where her suitability to become an international civil servant must be assessed *de novo* by the Respondent. The Tribunal should therefore order the Respondent to reassess the Applicant's suitability and further order him to pay adequate compensation if he refuses to do so within a given period of time.

5. Such compensation should be calculated in a manner similar to that provided with respect to permanent appointments since the violation of a right to permanent career service entails damages of the same order of magnitude. In the case of the Applicant, these damages are even higher since she is over fifty years of age—the age limit beyond which a permanent appointment may not be granted by international organizations—and since she is henceforth barred from acquiring any right to a pension.

6. The suitability contemplated in Staff Rule 104.13 (a) (i) is "suitability as international civil servant", not "suitability to humour an ill-disposed supervisor".

7. The Respondent himself has shown that he is aware that the Applicant meets the criteria for career service.

Whereas the Respondent's principal contentions are:

1. The application is not receivable in that the issues before the Tribunal have been the subject of a favourable recommendation by the Joint Appeals Board and have been accepted by the Respondent.

2. The Applicant had no right or legal expectancy to a permanent appointment upon completion of her probationary service:

(a) The Applicant's probationary appointment was of a conditional nature: the Applicant was aware that it carried no right or legal expectancy to a permanent appointment;

(b) It was within the power of the Secretary-General to terminate the appointment of the Applicant at any time in the interest of the United Nations;

(c) The Respondent acted in good faith in invoking Staff Regulation 9.1 (c).

3. The Respondent accepts the determination of the Joint Appeals Board and as to the facts of the case considers that the determination of the case should be limited to the questions before that body:

(a) All matters relevant to the case were before the Joint Appeals Board;

(b) Certain allegations presented by the Applicant are so prejudicial and detrimental to a just determination of the case as to be stricken from the pleadings.

4. There should be no remand for correction of procedure in this case, it being agreed by both the Applicant and the Respondent that remand would not serve the course of justice.

5. The Applicant's pleas for rescission of the contested decision of the Respondent and, in lieu thereof, compensation for damages allegedly suffered by her must be rejected *in toto*:

(a) The Respondent's actions, upon the recommendations of the Joint Appeals Board, are adequate in all respects with regard to the alleged damages suffered by the Applicant;

(b) No further actions or payments in compensation for damages allegedly suffered by the Applicant should be granted. There exists no opportunity to restore the *status quo ante*; the Applicant's claim for a sum equivalent to three years' salary is excessive, in violation of article 9.1 of the Statute of the Tribunal, and based on a false and misleading premise; and the Applicant's plea for compensation in the form of payments into the Pension Fund on her behalf must be rejected on the basis of the principle enunciated by the Tribunal in the *Levcik* case.

The Tribunal, having deliberated from 29 September 1976 to 14 October 1976, now pronounces the following judgement:

I. The Respondent contends that the application is not receivable because the issues before the Tribunal have been the subject of a favourable recommendation by the Joint Appeals Board and have been accepted by the Respondent.

The Tribunal observes that when the Applicant appealed to the Joint Appeals Board, she attacked the termination letter of 25 November 1974. Essentially, she requested that she be reinstated and be granted a permanent contract, and she stressed that the award of damages for improper termination would not suffice to render her justice.

The Tribunal notes that the recommendations of the Joint Appeals Board, in so far as they were accepted by the Secretary-General in the decision of 10 November 1975, are not entirely favourable to the appeal of the Applicant. In those circumstances, pursuant to article 7.3 of the Statute of the Tribunal, the application must be declared receivable.

II. The Applicant requests the Tribunal to rescind the decision notified to her on 10 November 1975 as well as the original decision of termination taken on 25 November 1974. She also requests the Tribunal to declare various administrative documents and actions to be devoid of any legal validity: the periodic report of the Applicant for 1973; the recommendations of UNCTAD and of the Geneva Personnel Division to the Appointment and Promotion Committee; the recommendation of the said Committee to the Appointment and Promotion Board; and the recommendation of the said Board to the Respondent. She contends that, since they were based on information provided by her former supervisor, they are vitiated because of the latter's prejudice against her.

III. The Tribunal observes that the present case concerns the legal consequences of the termination of a staff member holding a probationary contract. The probationary appointment was granted for a post as Associate Librarian in the ECE/UNCTAD Joint Reference Unit. It was an appointment in a unit with a staff consisting of less than 20 persons, only a few of whom belonged to the Professional category. The purpose of this unit is essentially to provide staff members of ECE and UNCTAD, who are doing research, with publications and documents relating to their subjects, including those of which they might personally have no knowledge.

The termination of the Applicant's appointment took place following the procedures laid down in Staff Rule 104.13 and on the basis of the recommendations of the Appointment and Promotion Board. The Tribunal must therefore consider first of all how the provisions of the Staff Regulations and Rules relating to the probationary contract were applied in this case.

This contract derives its specific nature from three characteristics: its duration, its purpose, and the procedure to be followed in taking the decision concerning the granting of a permanent contract.

IV. With regard to duration, the terms of the Regulations and Rules are very precise: "The probationary period for granting . . . a permanent appointment shall normally not exceed two years, provided that in individual cases the Secretary-General may extend the probationary period for not more than one additional year" (Staff Regulation 4.5 (b)). According to Staff Rule 104.12 (a): "The period of probationary service under such an appointment shall normally be two years. In exceptional circumstances, it may be reduced or extended for not more than one additional year." It is further provided that the Appointment and Promotion Board may make recommendations to the Secretary-General in respect of the "extension of the probationary period for one additional year" (Staff Rule 104.14 (f) (ii)).

In the present case, the Applicant received her probationary appointment on 1 June 1971. The letter offering this appointment stated that the probationary period would normally be for two years. The letter of appointment reproduced word for word the terms of Staff Rule 104.12 (a). However, the Applicant was informed, by a notice of termination dated 25 November 1974, which took effect on 4 December 1974, that her appointment had been terminated on the basis of Staff Regulation 9.1 (c). If the one month's notice of termination is taken into account, it will be seen that the Applicant, who held a probationary contract, was employed for three years and seven months, although the probationary period should have ended on 31 May 1974 at the latest.

This situation originated in the unusual conditions in which the initial probationary period was extended. The one-year extension was requested in a memorandum of 16 May 1973 by the Chief of the UNCTAD Personnel Section in the terms reproduced earlier in this judgement.

This memorandum acknowledges that the Applicant's "first two years on probation" were satisfactory; it gives a favourable evaluation of the Applicant's performance under difficult conditions until the end of 1972. However, it stresses that "particular circumstances" must be taken into account. One of those circumstances is specifically set forth, namely, the fact that the "work programme" of the ECE/UNCTAD Joint Reference Unit had been changed and that a "cautious approach" was required. Another is also mentioned, namely, the presence, since January 1973, of a new Chief of the Joint Reference Unit, regarding whom it is stated that the Administration has demonstrated the same cautious approach by appointing him on a fixed-term basis.

This document shows that the purpose was not so much to test the professional skills of the Applicant for an additional year as to test her adaptation "to the requirements outlined in her revised job description", and her ability to participate in an "over-all effort to improve procedures and to sharpen the objectives pursued by the Unit", that is, basically, her ability to get along with the new Chief of the Unit.

Furthermore, it was stated that during the last probationary year periodic meetings would be held between the Chief of the Unit, members of the administrative services of UNCTAD and ECE and the Chief of the UNCTAD Personnel Section to review the performance of the Applicant, who would be kept informed in that regard.

Thus everything took place as though a new probationary period were beginning within the context of a new administrative structure—whose form was rather ill-defined—and with a new chief.

V. The file shows that the conditions in which the extension was requested gave rise to strong resistance on the part of the relevant services in New York. When the Office of Personnel Services finally recommended the extension to the Appointment and

Promotion Committee, the latter decided, on 6 September 1973, to defer consideration of the case until it had before it a periodic report for the period January-August 1973.

When the Committee resumed its consideration of the case in May 1974, it had before it a request for retroactive approval of the extension of the probationary period, a request which it finally granted under the pressure of necessity "since the period in question had been worn out".

VI. The Tribunal notes that this irregular procedure originated in the unusual conduct of the Respondent at the time of the initial request for extension and more particularly in the lack of a periodic report at the end of the initial two-year period. Moreover, this *de facto* extension did not in fact result in an additional one-year probationary period, since it was considered that the new assignment of the Applicant from 1 January 1974 could not be taken into account in evaluating her skills with a view to the granting of a permanent contract.

In conclusion, as a result of the changes in the organization of the Joint Reference Unit from 1 January 1973 onwards, the initial 19 months of probation—described by the Respondent himself in the memorandum of 16 May 1973 as "first two years on probation"—were not considered pertinent to the evaluation of the Applicant's performance, and the same was true of the last five months of the three years finally fixed for the probationary period. The Applicant was thus deprived of the opportunity of demonstrating during the period provided for in the Staff Regulations and Rules her suitability as an international civil servant.

VII. The very purpose of a probationary contract is set out in Staff Rule 104.13 (a) (i), according to which:

"The permanent appointment may be granted to staff members who are holders of a probationary appointment and who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the high standards of efficiency, competence and integrity established in the Charter."

To be granted a permanent appointment, the staff member must have "met the requirements" (Staff Rule 104.13 (c) (i)) and have the "suitability" (Staff Rule 104.14 (f) (ii)) for such appointment. This requirement cannot be satisfied in an abstract and general way; the probationary contract concerns specified functions: those are the functions for which the holder of the probationary contract must demonstrate that he possesses the required suitability. The Applicant received her contract as Associate Librarian at the P-2 level in the ECE/UNCTAD Joint Reference Unit. The job description was known to her. The periodic report prepared for the 19 months from 1 June 1971 to 31 December 1972 shows her complete adjustment to the duties assigned to her and demonstrates her administrative and technical qualifications, her ability to establish good relationships with the readers and the staff and to manage the staff. The opinion of her chief and of the second reporting officer coincide. The latter notes "an exceptionally competent staff member of unusual merit" while pointing out the services she performed during the transition period that preceded the regrouping of individual units into a central service. Thus, not only did the Applicant demonstrate her suitability for performing the duties for which she was recruited, but she also gave evidence of her adaptability at a time when a reorganization of the service was beginning.

The Respondent, in fact, replied to a question of the Tribunal that the reorganization plan had been recommended by an outside consultant and an "administrative inspection body", that it had been accepted by ECE and UNCTAD and that its implementation had begun under the predecessors of Mr. Schork, the new chief.

It cannot, however, be contested that it was in the months following the time when

the new chief took up his duties that the Applicant was considered to have ceased to meet the required conditions.

VIII. The Tribunal endeavoured to find the explanation for the change.

It appears from the file and in particular from the memorandum of 16 May 1973 addressed to the Office of Personnel Services of the United Nations, that it was decided to "change" the "work programme" of the Joint Reference Unit so that "its services would provide optimum service to ECE and UNCTAD". Reference is also made in the memorandum to an "over-all effort to improve procedures and to sharpen the objectives pursued by the Unit".

It was in consequence of this situation that the memorandum stated that in future the Applicant would "be expected to adjust to the requirements outlined in her revised job description".

It is thus clearly recognized by the Respondent that the Applicant was faced with new occupational requirements. The connexion established in the memorandum between this new situation and the fact that the granting of a permanent contract would result in her spending more than 10 years in the service of the United Nations must be noted.

The Tribunal must, however, point out that the new job description had not been communicated to the Applicant at the time and that she did not become aware of it until after her termination when she consulted her official file. Thus, the Respondent, while admitting that the probationary objectives had changed, did not find it necessary to inform the person concerned in an official and precise manner. In other words, she did not receive in writing any guidance with regard to the new duties of her post.

It cannot be denied that a comparison between the job description prepared in 1973 and the one which had been the basis for the Applicant's appointment in 1971 reveals important changes.

The Tribunal simply notes that the extent of the change in duties during the probationary period was not brought to the Applicant's attention in the systematic form of a new job description. Consequently, the tasks which were assigned to her—and which differed from those which she had up to that time performed satisfactorily—may have aroused reservations and even resentment on her part.

A point which the Tribunal finds it hard to understand is that, if a new chief of service was concerned about making the best use of the skills of the staff, he would have eliminated all contact with the readers in the case of a person about whom his predecessor had said: "The success of our Reading Room has been due to her efforts."

In any event, the Applicant's superiors recognized that the probationary framework itself had changed, since, in requesting an extension, they announced a procedure for the periodic review of the Applicant's performance by her chief with the participation of the administrative staff concerned.

The situation thus appears similar to that of the *Quémerais* case, in which "a new orientation" was given to a UNICEF operational activity without any change in the number of posts budgeted or any reduction in the number of persons employed (Judgement No. 172, para. VI). In that case, which concerned a holder of a regular appointment, the Tribunal considered that the Respondent could, in the event of the complete elimination of a previous activity, terminate the staff member's appointment on the ground of abolition of post, but that it was obliged to observe Staff Rule 109.1 (c).

In the case of a probationary appointment, such a change, occurring as from the twentieth month of the probationary period, radically affected, by reason of the action of the Respondent, the very scope of the commitment made by the Respondent.

IX. It must further be noted that the probationary objective was nullified during

the final five months of the third year of probation as the result of the Applicant's assignment to the Insurance Branch of UNCTAD. This assignment as Research Assistant at the G.6 level was not taken into consideration in evaluating the suitability of the Applicant because she had not been working within the framework of the post for which the recruitment had taken place.

Thus, the favourable evaluations contained in the report prepared after the end of the Applicant's duties in connexion with the work done in that section and later, as from July 1974, in the Transfer of Technology Branch of UNCTAD were not taken into consideration for the purposes of granting a permanent appointment.

In conclusion, the decision in that regard was taken solely in respect of the duties performed during one year without the Applicant having been aware, at that time, of the job description for her duties in a unit that was undergoing a complete structural change.

X. Finally, the procedure followed for preparing the decision at the end of the probationary period engaged the Tribunal's attention.

The decision of 25 November 1974 terminating the Applicant's appointment refers both to Staff Regulation 9.1 (c) and to the recommendations made by the Appointment and Promotion Board. The Respondent affirmed in his answer the right to rely on Staff Regulation 9.1 (c) and on a discretionary power of termination. He concluded from this that the Tribunal must limit itself to considering whether the Respondent had acted in good faith. However, in the course of the oral proceedings, the Respondent indicated that, when faced with an anomalous situation, it was appropriate to rely both on Staff Regulation 9.1 (c) and on Staff Rule 104.13.

The Tribunal notes that the decision terminating the appointment came after the maximum period of three years had expired and at a time when the Applicant's employment with the Secretariat was no longer being taken into consideration for purposes of the granting of a permanent appointment. Prior to the expiration of the three-year period, however, the Respondent had set in motion the proceedings provided for in Staff Rule 104.13 for the termination of probationary appointments, and those proceedings resulted in the recommendation referred to in the termination decision. This action makes evident the Respondent's belief that the Applicant's appointment could not be terminated on the basis of Staff Regulation 9.1 (c) alone and that the Applicant was entitled to the guarantees provided for at the expiration of a probationary period.

In Judgement No. 93 (*Cooperman*), paragraph VI, the Tribunal recognized that during the period of probation the Secretary-General has a broad authority to terminate the appointment by virtue of Staff Regulation 9.1 (c) without reference to the Appointment and Promotion Board. On the other hand, in the *Lane* case (Judgement No. 198, para. VI), where the Applicant's appointment had been terminated long after the expiry of the probationary period, the Tribunal held that "the Applicant, having completed his probationary period, was entitled to due process for the assessment of his suitability for a permanent appointment".

Accordingly, as the Joint Appeals Board noted, the Respondent had to comply with the provisions of Administrative Instruction ST/AI/115 (cf. Judgement No. 138, *Peynado*, para. VII).

XI. The Joint Appeals Board noted several instances where the requirements of that administrative instruction had not been met. The Appointment and Promotion Committee did not have a periodic report for the period after December 1973 nor the special report prescribed by the administrative instruction.

The Tribunal notes that the observations made by the Deputy Secretary-General of UNCTAD in reply to the Applicant's rebuttal to the revised periodic report for 1973

were submitted to the Committee. The Tribunal doubts, however, whether that document meets the requirements of Administrative Instruction ST/AI/115. Whereas the Applicant noted the contradictions between the evaluations in the revised periodic report and those previously made regarding her, the Deputy Secretary-General states that the evaluation of the new chief is independent. He emphasizes the change in working conditions and the new leadership brought by Mr. Schork ("strong and creative leadership"), to which, he asserts, the Applicant did not respond. He makes it quite clear that he is supporting the chief ("more essential staff member") and that, pending a final decision on her contractual status, the Applicant has been temporarily transferred. No reference is made to the periodic review of the Applicant's performance called for in the communication requesting extension of the probationary appointment. The inquiry required by the administrative instruction seems to have been confined to conversations with the Applicant and her chiefs.

The Deputy Secretary-General of UNCTAD seems to hold that the finding of differences of opinion between the Applicant and her chief justifies the notations made in the periodic report.

Finally, although the Applicant was requested by the Chairman of the Appointment and Promotion Committee to make known her views, she was not, contrary to the requirements of the administrative instruction, officially informed that Geneva had proposed the termination of her appointment and she was not given an opportunity to offer an explanation on the specific complaints made against her, as the Joint Appeals Board pointed out.

In conclusion, the Committee did not go beyond considering the evaluation made of the Applicant's work in the new situation resulting from the change in the unit to which she was assigned. It did not undertake an over-all review of the Applicant's suitability as an international civil servant.

Finally, the Committee recognized that the final requirement for the granting of a permanent contract was a good relationship with the new chief of the Joint Reference Unit.

XII. The Tribunal concludes that, in view of the circumstances in which the decision to terminate was taken, the Respondent failed in his obligations towards the holder of a probationary appointment.

XIII. According to the Respondent, the change in the duties required of the Applicant was decided on in the interest of the service. Because her inability to meet the new requirements and her reactions to them had created great difficulties, the Respondent claims that, in assigning her to a different unit, he was trying to reduce the harmful consequences and that, in accepting the greater part of the Joint Appeals Board's recommendation, he has made suitable reparation for the procedural irregularities.

According to the Applicant, there was a more serious ground for the Respondent's failure to meet his obligations: she claims to have been the victim of prejudice on the part of the Chief of the Joint Reference Unit which rendered devoid of any legal validity the periodic report for 1973 and the various documents based on that report or on the opinion of her superior.

The Tribunal must first consider whether the periodic report for 1973 is vitiated by prejudice and whether it should be declared devoid of any legal validity as an official document.

XIV. The periodic report for 1973 was prepared in very special circumstances. Inasmuch as the probationary appointment had begun on 1 June 1971, the date on which the Applicant's situation should have been reviewed was 1 June 1973. At that time, however, only the period from 1 June 1971 to 31 December 1972 was covered

by a periodic report, which was very favourable. On 16 May 1973 that report was brought to the attention of the Office of Personnel Services in New York, to which the Secretary-General of UNCTAD made a recommendation for extension of the probationary period. Although the Office of Personnel Services eventually made a similar recommendation to the Appointment and Promotion Committee, the latter decided, on 6 September 1973, to postpone consideration of the case until a further periodic report had been prepared. The new report covered the period from 1 January 1973 to 30 November 1973 and was received by the Office of Personnel Services on 18 January 1974. The office noted that the report was incomplete and that most of the sections were not filled in. It was pointed out that this was "not permissible and" was "in defiance of instructions for completing periodic reports". A request for a properly completed report was therefore made to Geneva.

Such a report was prepared on 26 February 1974, covering the period from 1 January to 31 December 1973. This is the document which the Applicant requests should be declared devoid of any legal validity on the ground of the prejudice which it allegedly displays against her.

XV. The Tribunal notes that on the date when this report was prepared the Applicant had not been working in the ECE/UNCTAD Joint Reference Unit for nearly two months, but this fact was not mentioned by the reporting officers.

A scrutiny of the written comments of the Chief of the Unit, Mr. Schork, discloses a very unfavourable appraisal of the Applicant as regards both her abilities and her character. The changes made in the printed text leave no doubt on this point. Where the text reads "Has initiative and exercises it constructively", the word "constructively" is struck out. Under the heading "Sense of responsibility", the wording "Reasonably conscientious" becomes "Conscientious according to her own lights". Whereas the periodic report for 1971-1972 mentioned "Has some knowledge of French, German and Spanish", this is omitted in the report for 1973.

The general assessment of the Chief of the Joint Reference Unit clearly reveals his point of view. The first version stated that the Applicant had not been co-operative in the face of the reorganization and reorientation of the work of the Unit under a new chief but that her abilities as a librarian were recognized; on the other hand, the report which was finally produced is much more explicit, for the Chief states his views on what he planned to do in the Joint Reference Unit and also describes the attitude of the Applicant as unco-operative, showing resistance and finally opposing "the group effort to establish effective . . . procedures within the Unit". All reference to her abilities has disappeared.

The Tribunal recognizes that these assessments seem difficult to reconcile with those which had been made in the first periodic report or in that prepared in another service and covering the year 1974. They do, however, have a certain coherence, although it is surprising that in the reorganization of the service a suitable post could not be found for a person whose report, written in December 1973 by Mr. Schork himself, recognized her competence as a librarian.

It is clear in any case that Mr. Schork did not feel it possible to use the services of the Applicant and that he said so without ambiguity.

XVI. The Tribunal must, however, note that the Chief of the Office of Administration of UNCTAD, as the second reporting officer, stated his opinion clearly: he recalled the previous services rendered by the Applicant and observed the difficulties arising from her poor relationship with her Chief and the fact that her usefulness to the Joint Reference Unit had been compromised.

In these circumstances, the Tribunal notes that the comments by the second reporting officer make it possible to evaluate the situation more accurately. Even

supposing that the assessments of the first reporting officer can be regarded as based on prejudice, the periodic report taken as a whole cannot, as an administrative document, be regarded as devoid of any legal validity.

XVII. The recommendations of UNCTAD and of the Personnel Division of the United Nations Office at Geneva, which the Applicant requests should be declared devoid of any legal validity, are not otherwise specified in the application. With reference to the memorandum of 16 May 1973 from the Chief of the Personnel Section of UNCTAD to the Office of Personnel Services of the United Nations concerning the request of the Secretary-General of UNCTAD for extension of the Applicant's probationary period, the Tribunal recognizes that the opinion of the Chief of the Joint Reference Unit was taken into consideration, but it notes that the services rendered up to the end of 1972 were noted favourably.

On the other hand, there is no doubt that the opinion of the Chief of the Unit was alone taken into consideration in the various documents relating to the suitability of the Applicant that were drawn up at the time of implementation of the procedure for reviewing her probationary appointment. If the charge of prejudice could be established, it would affect in itself the validity of the recommendations made to the Secretary-General and his decision.

XVIII. The idea of prejudice is related to behaviour towards an individual. The Applicant stressed the fact, confirmed by the Respondent, that all the Professional staff had left the Unit since Mr. Schork had taken up his post. This fact in itself does not help to prove prejudice any more than the evidence submitted by the Applicant concerning certain attitudes towards several members of the staff.

On the other hand, it appears to be established that at no time did the Chief of the Unit express the conviction that the Applicant could play any useful part in the restructuring of the service, and he seems to have been incapable of explaining to her what he expected from her. The Tribunal is not in a position to determine whether this incapability was the result of personal animosity or of a general attitude towards all the staff. Things had reached a point where an administrative inquiry should have been conducted into the situation, but it appears that the Respondent was willing to place unlimited confidence in the Chief who was responsible for a reorganization within the Unit.

The existence of the petition concerning the Applicant does not seem to be in doubt. In this anomalous situation, the evidence of appropriate vigilance on the part of the Respondent is lacking.

Without ruling directly on the charge of prejudice in so far as concerns the documents referred to in the preceding paragraph, the Tribunal notes that at no time does it appear that sufficient attention was paid by the Respondent to the causes of a situation which he merely noted, namely a lack of co-operation between the Applicant and her chief of service. Although machinery had been devised for a periodic review of the situation, it was not put into effect, and there seems to have been no attempt to show that any effort was made to enable Mr. Schork to give a practical explanation of the state of his relations with the Applicant.

In these circumstances, the Tribunal notes that the Respondent's lack of vigilance allowed a situation to develop in which the Applicant may have felt in good faith that she was the victim of prejudice.

XIX. In conclusion, the Tribunal decides that the Respondent has not carried out the obligations which he assumed in granting a probationary appointment to the Applicant.

XX. The Tribunal notes that, with the exception of Mr. Schork, all the Applicant's superiors assessed her abilities and her behaviour favourably and that, in a memoran-

dum of 19 March 1974 addressed to the Office of Personnel Services of the United Nations, the Chief of the Personnel Section of UNCTAD stated categorically, with reference to the Applicant's work in the Insurance Branch of UNCTAD, that: "Her performance in that assignment confirms that Mrs. Johnson could be a useful staff member at the P-2 level." The Tribunal therefore concludes that the Applicant was denied the opportunity of obtaining permanent employment with the United Nations by reason of the Respondent's failure to carry out the obligations incumbent upon him in that regard.

Article 9.1 of the Statute of the Tribunal provides that if the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. The Tribunal recognizes that in the present case it would be pointless to render a decision requiring a new evaluation of the Applicant's suitability for permanent employment in the service for which she was recruited, since the administrative situation in which she completed 19 months of probation has completely changed. It is therefore impossible to restore the *status quo ante* between the parties.

In accordance with the jurisprudence of the Tribunal, compensation in lieu of specific performance may in the circumstances prove an adequate and proper relief.

XXI. In the present case, the Applicant could have expected to remain in service until superannuation on 30 September 1983, that is, for approximately 105 months from the date on which her employment was terminated. In Judgement No. 132 (*Dale*), the Tribunal decided that, in the absence of the effective performance of duties during the period under consideration, the situation might be assimilated to the case of a fixed-term contract which is terminated immediately after renewal. In such a case the person concerned would have been entitled to a termination indemnity of one week's salary for each month of uncompleted service. In Judgement No. 142 (*Bhattacharyya*), the Tribunal held that the person concerned could have anticipated continuation in service until superannuation, and, by analogy with Judgement No. 132, it also held that the situation might be assimilated to a case where services were terminated immediately after renewal of the contract, and it awarded a termination indemnity of one week's salary for each month of uncompleted service. Relying on those precedents, the Tribunal awards the Applicant compensation equal to the amount of two years' net base salary, less the amount of the *ex gratia* payment already received following the recommendation of the Joint Appeals Board. This compensation will be payable in a manner to be agreed upon by the parties.

XXII. In view of the compensation in lieu of specific performance granted to the Applicant, the Tribunal rejects the pleas of the application that contributions should be paid into the Pension Fund. In the absence of specific grounds invoked by the Applicant, the Tribunal also rejects the pleas for the payment of interest.

XXIII. The Tribunal considers it pointless to rule on the Applicant's incidental pleas of 7 July 1976 for her counsel to be heard under oath as a witness, inasmuch as counsel did not refer to these pleas in the course of the oral proceedings. The Tribunal likewise considers it pointless to rule on the Applicant's request of 25 July 1976 that she be authorized to submit written statements from witnesses to be identified later, inasmuch as the Applicant did not reveal the identity of such witnesses to the Tribunal.

XXIV. While recognizing that the Applicant could have availed herself of the assistance of counsel from the panel, the Tribunal, considering the circumstances of the case, decides to award her \$800 as costs.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

New York, 14 October 1976

Endre USTOR
Member

Jean HARDY
Executive Secretary

STATEMENT BY MR. R. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

New York, 14 October 1976

(Signature)
R. VENKATARAMAN

Judgement No. 214

(Original: English)

Case No. 196:
El-Naggar

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

Non-renewal of a fixed-term appointment.

Measures taken by the Respondent in application of Judgement No. 205.—Technical assistance posts offered to and refused by the Applicant.—Consideration of the question whether the offer of those posts constitutes compliance with Judgement No. 205 and whether by refusing to consider those offers the Applicant has forfeited his claims against the Respondent.—Previous decision of the Tribunal that the offer of certain technical assistance posts did not conclude the Applicant's rights in the absence of details regarding the emoluments, rank and nature of those posts.—The infirmity which the Tribunal noted in the earlier offers of technical assistance posts has been cured, details regarding their emoluments, rank and nature having been provided by the Respondent.—Fact that the Respondent made a search for a post for the Applicant under the 100 Series of the Staff Rules.—It cannot be inferred from this that the Respondent has conceded that the offer of technical assistance posts under the 200 Series did not amount to compliance with the judgement.—Contention of the Applicant that the offer of two posts was not bona fide.—Consideration and rejection of the contention.—Conclusion of the Tribunal that, in making the offer of the technical assistance posts, the Respondent has fulfilled the obligations imposed on him by Judgement No. 205.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 21 February 1975, Said El-Naggar, a staff member of the United Nations Conference on Trade and Development, hereinafter called UNCTAD, filed with the Tribunal an application requesting *inter alia* that he be placed by the Respondent in an appropriate established D-2 post for a period of five years;