

derived from the civil law of certain countries. However, Judgement No. 213 is based on the termination indemnity system established by the Staff Regulations. Furthermore, the Respondent cannot be held responsible for any abnormal procedural delays. That being so, the plea must be rejected.

IX. Having rejected the Applicant's principal plea that the compensation awarded by the Tribunal should be calculated at the exchange rate prevailing on the date of her termination, the Tribunal rejects the plea concerning a contribution to her judicial costs.

X. For these reasons the Tribunal:

- (1) Orders the Respondent to recalculate the amount of the compensation due to the Applicant in accordance with paragraph V above;
- (2) Orders the Respondent to refund to the Applicant the sum of 950 dollars; and
- (3) Rejects all other pleas.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

New York, 18 October 1978

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.

(Signature)

R. VENKATARAMAN

New York, 18 October 1978

Judgement No. 235

(Original: English)

Case No. 220:
Mathur

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

*Request that the procedure and report of a Board of Inquiry be declared null and void.
Decision of the Joint Appeals Board that the appeal was not receivable owing to non-observance of the prescribed time-limits.—Scope of the appeal to the Board and the application to the Tribunal.—*

Consideration of the circumstances in which the delays occurred.—Reasons why the Applicant did not comply with the prescribed time-limits.—Absence of exceptional circumstances beyond his control.—The Tribunal concludes that the non-compliance with the prescribed time-limits was the responsibility of the Applicant.—Validity of the decision of the Joint Appeals Board.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francisco A. Forteza; Sir Roger Stevens;

Whereas, on 21 February 1978, Om Prakash Mathur, a staff member of International Trade Centre UNCTAD (United Nations Conference on Trade and Development)/GATT (General Agreement on Tariffs and Trade), filed an application the pleas of which read as follows:

“1. As a preliminary measure, the Tribunal is respectfully requested to order the production of the following documents for they would assist the Applicant in the preparation of his application:

“(a) Copies of the letters dated 16 October 1974 (or thereabouts) from [Mr. V. Winspeare Guicciardi] the Director-General of the Office of the United Nations at Geneva to the Director-General of GATT, the Secretary-General of the United Nations Conference on Trade and Development and the Director of the International Trade Centre UNCTAD/GATT concerning the findings and conclusions of the administrative inquiry conducted by a Board of Enquiry, designated by the Director-General of UNOG, and containing serious misinterpretations and misdirections as to facts.

“(b) Copies of all the documentation relevant to the matters that are referred to in the memorandum of 11 December 1974 from the Director (ITC) to the Applicant, and in particular relating to (i) the request by the Director-General of GATT to the Director-General of UNOG to undertake an administrative inquiry and (ii) the clearance and advice of the Director-General of GATT and the Director-General of UNOG to the warning and a reprimand.

“(c) A copy of the terms of reference provided to the Board of Enquiry by the Director-General of UNOG and of any pertinent internal administrative directives or standing instructions relied upon in the determination of his authority, and governing the appointment and composition of the Board, that may shed light on the specific procedure adopted by the Board as regards the manner in which its oral proceedings and deliberations were conducted. (This information is necessary for an understanding of the *ad hoc* procedures followed by the Administration and the investigating group which were obviously outside the procedures contemplated by the Staff Rules.)

“(d) A series of other documents so far withheld by the Administration may also be required, but Applicant would defer any such request pending Respondent's answer to this application.

“2. The Applicant, having exhausted all other means of obtaining justice and having failed to receive so far any satisfaction in respect of the substance of his case, respectfully submits the following pleas:

“(a) The Applicant respectfully requests the Tribunal to rule that the Joint Appeals Board’s decision that the Applicant’s appeal was not receivable as invalid as the decision of the Board is vitiated by errors of fact that have characterized its findings and conclusions and not all the essential facts were considered by the Board in reaching its decision. Should the appeal be considered non-receivable, Applicant would be debarred from his claim for an equitable relief for the injuries sustained by him and justice would be denied notwithstanding the flagrant character of the case. Furthermore, the Applicant, by virtue of his right to an effective remedy for acts violating the fundamental rights recognized by the Universal Declaration of Human Rights, respectfully requests the Tribunal, which has competence to settle the matter, to rule on the substance of his appeal.

“(b) The Applicant respectfully requests the Tribunal to rule that the proceedings, and the report, of the Board of Enquiry designated by the Director-General of the United Nations Office at Geneva were vitiated by fundamental errors of procedure and, having violated the generally recognized requirements of due process, be considered null and void and all administrative actions and decisions based thereon, as exceeding the measure of power and authority falling within the discretion of the Administration, should be deemed null and void.

“(c) As an indemnity for the moral injury, professional injury and injury to his reputation caused through:

- “(i) the circulation of the report of the Board of Enquiry which also included a transcript of statements attributed to the Applicant but in fact containing inaccuracies as to facts and obviously recorded negligently and carelessly to persons within and outside the Organization and thereby causing defamation;
- “(ii) the written reprimand administered to the Applicant by the Director ITC, on 11 December 1974, based on absurdities and misunderstandings, and without exercising all reasonable care in investigating the facts, and which was also circulated to persons within and outside the Organization;
- “(iii) the letter written by the Director-General of UNOG on 16 October 1974 (or thereabouts) to the Secretary-General of UNCTAD, the Director-General of GATT and the Director of ITC, containing misleading and false statements and without any reasonable care taken to establish their truth; and
- “(iv) the internal memorandum, dated 24 December 1974 (ref. ITC/OD/INF/51), from the Director (Programmes) ITC, to all ITC staff members announcing that the Applicant has been transferred from his post of Chief, Multinational Product Promotion Service to new undefined functions as ‘Special Assistant on Commodity Promotion’—thereby shearing the Applicant of many of his substantial responsibilities which also led to the loss of esteem and prestige of his colleagues;

the Tribunal is respectfully requested to order the payment to the Applicant of compensation and indemnity in a sum equal to the maximum amount envisaged under Article 9 (1) of its Statute; due account also to be taken of the prejudicial consequences of the administrative negligence

caused by inappropriate action on the part of the Director, UNOG Administrative and Financial Services to which the Joint Appeals Board refers in paragraph 8 of its Report, and, as a result, the Applicant was compelled to expend a large amount of time and efforts in seeking vindication of his legitimate claims through the arduous and prolonged appeal proceedings.”;

Whereas the Respondent filed his answer on 20 March 1978;

Whereas the Applicant, in written observations filed on 7 April 1978, amended his application by including supplementary pleas in which he requested the Tribunal:

“—to order the Respondent to submit his observations and comments on the substance of the application so as to enable the Tribunal to take a final decision in the case. The Applicant is invoking the obligation of the Respondent to accord him due process in connexion with this application and in particular to afford him a judicial remedy for the settlement of this case as enjoined by the expressed aim of the Charter to promote freedom and justice for individuals;

“—to determine whether the answer of the Assistant Secretary-General for Personnel Services of 12 January 1978 . . . to the request made to him by the Applicant in his letter of 29 November 1977 . . . for an agreement by the Secretary-General to a direct application to the Tribunal, under paragraph 1 of Article 7 of the Statute of the Tribunal, stating, *inter alia*, that:

“ ‘ . . . In case the Tribunal decides to reverse the Board’s finding that your appeal was not receivable, it may either remand the case to the Board for a ruling on the substance or *it may itself rule on it.*’ (Emphasis provided.)

constitutes sufficient grounds for the belief that the Secretary-General does not have any legal objection to the Tribunal considering the application as a direct application within the meaning of Article 7 (1). In the event the Respondent does not concur with this interpretation being placed on his afore-mentioned answer, the Applicant respectfully requests the Tribunal to order the Respondent to show cause why he should not agree to the adjudication by the Tribunal on the substance of the matter and should circumstances so require, the Applicant respectfully requests the President, pursuant to Article 10 of the Rules of the Tribunal, to call upon the Respondent, in the interests of an expeditious dispensation of justice consistent with a fair opportunity for the parties to state their respective case, and on the basis of equitable considerations, for his agreement to the present application being considered as a direct application to the Tribunal.”;

Whereas the facts in the case are as follows:

On 1 March 1973 the Applicant, who held a permanent appointment with ICITO (Interim Commission for the International Trade Organization)/GATT, was seconded to the United Nations until 31 December 1974 as Senior Trade Promotion Officer in the International Trade Centre UNCTAD/GATT. On 1 January 1974 his functional title was changed to Chief, Multinational Product Promotion Service. On 11 December 1974 the Director (Programmes) of the International Trade Centre sent him the following memorandum:

“At the request of the Director-General of GATT, the Director-General of the United Nations Office at Geneva designated a Board of Enquiry to investigate the

allegations made against you by Mr. A. Lacayo: these allegations have been communicated to you by that Board.

“The Board did not find in its investigation facts to substantiate the specific allegations made by Mr. Lacayo. However, statements made by you before the Board of Enquiry indicate certain instances of questionable conduct on your part which are incompatible with the responsibilities of a senior staff member exercising supervisory functions—that is, your ready admission to being in the habit of borrowing money from Mr. Lacayo and other members of your staff, and your casual reaction when you found on your desk an envelope containing SF750.-, which you knew came from Mr. Lacayo. Your conduct shows lack of judgement and gives rise to reservations about your suitability for a position with supervisory responsibilities.

“As pointed out in the Report of the International Civil Service Advisory Board on Standards of Conduct in the International Civil Service, ‘it is axiomatic that the conduct of supervisors must be free of intimidation or personal favouritism and that solicitation or acceptance by them of favours, gifts, or loans from their staff must not be practised or even suspected.’

“In the light of the above I have decided, with the clearance and advice of the Director-General of GATT and of the Director-General of UNOG [United Nations Office at Geneva], to warn you that the behaviour admitted by you is incompatible with the highest standards expected of international civil servants and to reprimand you in the terms of Staff Rule 110.3 (c).”

On 13 December 1974 the Applicant requested access to the records of the Board of Enquiry in a memorandum to the Director (Programmes) reading:

“Having noted the contents of your memorandum with serious concern, I beg to state that before commenting upon any conclusions that have been arrived at about my conduct on the basis of certain statements attributed to me, I would need at the very least to have assured myself that the record of my statements before the Board of Enquiry is complete and accurate. Surely I should be permitted to make sure that no wrong conclusions have been drawn from incorrect facts or if essential material elements have been left out of account; otherwise I am being debarred from any legitimate defence and protection of my basic rights and this would undoubtedly raise very serious questions about the administration of natural justice.”

On 1 January 1975, upon expiration of his secondment, the Applicant was transferred to the International Trade Centre and reassigned to the Office of the Director of the Division of Technical Services as Special Assistant on Commodity Promotion. His permanent appointment with the International Trade Centre, effective as of 1 January 1975, was signed by him on 23 September 1975. On 8 January 1975 the Applicant returned to the Director (Programmes) a copy of the memorandum of 11 December 1974 on which he had underlined some words and written the following note:

“Inasmuch as I am in disagreement as to accuracy of account contained in the underlined sentences, I respectfully urge you to reconsider the matter. The response to my memo of 13 December is anxiously awaited by me to enable me to set the records straight.”

On 21 January 1975 the Director (Programmes) informed the Applicant that copies of his memorandum of 13 December 1974 and his note of 8 January 1975 had been forwarded

to the Director of Administrative and Financial Services of the United Nations Office at Geneva for necessary action. On 5 February 1975 an interview took place between the Applicant and the Chief of the Personnel Division of the United Nations Office at Geneva. On 10 September 1975 the Applicant sent to the Director of Administrative and Financial Services a memorandum reading in part:

“If I have not so far addressed you directly on this subject, it has been only due to the fact that I have been, and am still, awaiting definitive personnel action that would help to clarify the legal and the contractual status of such ITC staff members like me who are holders of ICITO/GATT permanent appointments and who were on provisional secondment to the United Nations only until 31 December 1974. Although I have been assured by the Chief of Personnel, ICITO/GATT and the Head, Personnel Section, ITC that necessary action for me to receive a permanent United Nations appointment has been initiated I have to this date not received any formal administrative notification to that effect. Moreover, I am not aware of the existence of any formal arrangements or procedures for the ITC staff members for the consideration of appeals and representations.

“As and when the outstanding issues and actions concerning the legal status of the Centre and the administrative status of its staff members like me have been resolved and completed, it is my intention to take appropriate steps to obtain the relevant documentation relating to the observations and conclusions of UNOG in regard to the present case (as communicated by the Director-General of UNOG to the different executive heads jointly responsible for the management of ITC and by the Director, ITC to me, as per his memo of 11 December 1974) and to seek a fair review of the issues of substance and procedure involved.

“ . . . ”

On 29 September 1975 the Director of Administrative and Financial Services replied:

“I refer to your memorandum dated 10 September 1975 on the above-mentioned subject and enclose herewith, as requested, a copy of a typewritten transcript of the shorthand notes of the statements you made to the Board of Enquiry.

“It is my understanding that you met with the Chief of the Division of Personnel, UNOG, on 5 February 1975. In that meeting you stated that your memorandum of 13 December 1974 and the annotation of 8 January 1975 mentioned in paragraph 3 of your memorandum were not to be regarded as a request for a review of the administrative decision which was communicated to you in the memorandum of the Director (Programmes), ITC dated 11 December 1974 and added that you needed time to consider whether or not to submit an appeal as provided for in the Staff Regulations and Rules. I understand also that no further communication was received from you since that date, i.e. 5 February 1975.

“In this connexion may I draw your attention to the provisions of Staff Rules 111.3 and 111.4 which regulate the matter of appeals against administrative decisions.”

On 10 October 1975 the Applicant wrote to the Director of Administrative and Financial Services a further memorandum reading in part:

“This is with reference to your memorandum of 29 September, 1975 with which you transmitted to me a mimeographed copy of the transcript of the shorthand notes of the ‘statements’ made by me before the Board of Enquiry.

"2. You refer to the meeting I had with Mr. Chackal on 5 February, 1975. Nothing that I said to him could possibly be construed to mean that I was withdrawing the request that I had made as per my memorandum of 13 December, 1974 to the Director, ITC. As a matter of fact, it was subsequently confirmed to me by the Director, ITC that he also felt that 'the ball is in the UNOG court' and I even followed this up, thereafter with a handwritten note to him on 12 March, 1975 wherein I again referred to my request for appropriate documentation. I deplore that this unjustified delay has occurred in your complying with my request.

"3. As regards the transcript of shorthand notes which I have now, at long last, been provided with, I would like to state that I find it incomplete, inaccurate . . . I consider that *dissemination of this unverified transcript in all circumstances is likely to affect me adversely in the estimation of reasonable people generally.*

" . . .

"7. In connection with the third paragraph of your memorandum of 29 September, 1975, please note that as I am not contending the non-observance of the terms of my appointment, I do not consider the provisions of Staff Regulation 11.1 relevant to the matter and would like to have your advice about available domestic remedies that could be invoked with a view to a satisfactory solution of the matter on the basis of respect for human rights, including the assessment of, and compensation for, the unjustifiable injury to which the last paragraph of my memorandum of 10 September, 1975 refers.

" . . ."

In a reply dated 17 October 1975, the Director of Administrative and Financial Services stated:

"I refer to your memorandum of 10 October 1975 to which I am replying.

"I understand that the point of substance in your memorandum concerns the means that might be available to you to obtain redress of, or compensation for, acts by the organization or its officials. I can only return to the information I have provided to you in my memorandum of 29 September 1975 that the provisions regulating matters of appeal against administrative decisions are contained in Staff Rules 111.3 and 111.4. Staff Regulation 11.2 and the Statutes and Rules of the Administrative Tribunal (copy attached) are also pertinent. Any violation of rights could have been committed only through the execution of administrative decisions in which case the provisions of the above-mentioned rules would apply.

"It seems however from the reading of your memorandum that you would seek to appeal and to obtain remedy against actions by the Director-General of UNOG. Since it appears from the examination of the record that the Director-General has taken no administrative decision regarding you as a result of the report of the Board of Enquiry the case for appeal against such supposed actions does not seem to exist.

" . . .

"Finally, should you wish to have a personal discussion of this matter with me I would be pleased to see you at your convenience."

On 17 November 1975, in a third memorandum to the Director of Administrative and Financial Services, the Applicant wrote:

" . . .

“4. I am grateful to you for drawing my attention to the Statute and Rules of the Administrative Tribunal. My specific complaint transcends beyond the narrow confines of ‘contracts’ and ‘terms of appointments’ and relates to actions or omissions on the part of the United Nations Office at Geneva, which I consider to be violations of my human rights. UNOG, however, is free to submit the matter to any joint body or Tribunal. Should UNOG have any doubts about my contentions regarding the basis and cause of complaint, the opinions of the Office of Legal Affairs, Division of Public Administration and Division of Human Rights may be sought. However, initiation of any action rests with you.

“5. It is for your consideration, and for the inner conscience of the officials and organizations concerned to confirm to me that the decision of 11 December 1974 is invalid and is being treated as such for all appropriate purposes. Until this fact is acknowledged in the light of the doubts I have expressed about the completeness, fairness and reasonableness of the procedures employed, I do not see how I can possibly engage in any meaningful personal discussion with you, which you have so kindly suggested, of the matters I have raised, especially my request for equitable relief for the unjustifiable moral injury sustained by me.”

On 24 November 1975 the Director of Administrative and Financial Services replied as follows:

“With reference to your memorandum of 17 November 1975, I can only confirm what I have already indicated to you in my memorandum of 17 October 1975 to be the courses of action open to you to appeal against an administrative decision. I draw your attention in particular to the second and third paragraphs of my memorandum.

“If, after further consideration, you should decide to avail yourself of the administrative machinery provided for under the Staff Rules and Regulations, you should note that the provision of Staff Rule 111.3 (a) prescribes that you should, as a first step, address a letter to the Secretary-General of the United Nations, requesting that the administrative decision be reviewed.

“However, if I do not hear from you within a month that you have requested the Secretary-General to review the administrative decision of which you complain, I shall consider the matter closed.”

On 8 December 1975 the Applicant requested the Secretary-General to review the administrative decision communicated to him in the memorandum of the Director (Programmes) of the International Trade Centre dated 11 December 1974. His request read as follows:

“As advised by the Director, Administrative and Financial Services of UNOG, per his memorandum to me on 24 November 1975, of the procedure to be followed in relation to the matter which has been the subject of my memoranda of 10 September 1975, 10 October 1975 and 17 November 1975 to him, you are hereby requested to review the administrative decision communicated to me in the memorandum of the Director (Programmes), International Trade Centre UNCTAD/GATT dated 11 December 1974. In addition to the rescission of the decision, I also hereby seek equitable relief for the unjustifiable moral injury sustained by me on account of the arbitrary nature of the decision tainted by illegality.”

On 31 January 1976 the Assistant Secretary-General for Personnel Services sent the following reply to the Applicant:

“This is to acknowledge receipt of your letter of 8 December 1975 to the Secretary-General in which you requested an administrative review of what you described as the decision communicated to you in the memorandum of the Director (Programmes), International Trade Centre, UNCTAD/GATT dated 11 December 1974. I would like to indicate at the outset that the time limit for requesting review of an administrative decision, under rule 111.3 (a) (i), is one month from the time the staff member received notification of the decision in writing. Therefore your request for review should have been submitted by 11 January 1975.

“I would, however, point out for your information that the above-mentioned memorandum conveyed to you the results of the investigation into the allegations made against you by another staff member, allegations of which no sufficient evidence was found. It also contained a reprimand by your supervisor for a certain behaviour admitted by you in the course of the investigation and considered incompatible with your status as an international civil servant. A reprimand by a supervisory official is not a disciplinary measure, as stipulated in rule 110.3 (c). Had you submitted your request for review within the time limit, the Secretary-General would have considered the said reprimand justified in the circumstances and would have decided not to take any action with regard to it.

“This reply is given without prejudice to the non-receivability, in view of the non-observance of time limits, of any appeal you may nevertheless decide to file.”

On 26 February 1976 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 28 June 1977. The Board's findings and conclusions with regard to the receivability of the case read as follows:

“II. *Findings and conclusions of the Board with regard to the receivability of the case.*

“4. Considering the receivability of the case, the Board observed that the decisions contested by the Appellant were contained, as regards the reprimand, in a memorandum from the Director (Programmes) of the International Trade Centre dated 11 December 1974, and, as regards the transfer, in a Personnel Action form signed for the Director of Personnel on 21 January 1975. While the Appellant, in accordance with Staff Rule 111.3 (a), should have requested a review of those decisions within one month from the time he had received notification in writing, he actually formulated that request in a letter to the Secretary-General dated 8 December 1975—that is, more than nine months after the prescribed time limit.

“5. The Board examined whether exceptional circumstances existed which would justify its waiving the prescribed time limit in accordance with Staff Rule 111.3 (d). The Board noted in this connexion that the Appellant considered it necessary for the preparation of his case to review the record of his statements before the Board of Enquiry, and repeatedly requested the Administration that such record be communicated to him. That request was granted to him on 29 September 1975 only, which could have been done much earlier. The Board observed, however, that there was no justification for the Appellant to delay his request for a review of the decisions affecting him until the documents he asked for had been communicated to him, and that the requirements for lodging an appeal had been brought to his

attention by Mr. Chackal, then Chief of UNOG Personnel Division, in a discussion which took place on 5 February 1975.

“6. The Board further noted that the uncertainty of the Appellant’s contractual status after 31 December 1974 was no justification either for the lack of any action on the part of the Appellant, who should have enquired without delay about the proper channels to follow for requesting a review of the decisions affecting him. Contrary to the Appellant’s allegation in his Statement of Appeal . . . , there was, in the Board’s view, no ‘ambiguity and uncertainty about the applicability of relevant rules and available means for obtaining redress’. The letter to the Appellant from the Chief of Administrative and Financial Services, GATT, dated 24 March 1959 . . . clearly stated that the Appellant’s permanent appointment ‘will be governed by the United Nations Staff Rules and Regulations relating to permanent appointments’.

“7. The Board considered carefully whether the frequent absences of the Appellant from Geneva, for official or personal reasons, during the period between the notifications of the decisions affecting him and his asking for a review of those decisions, could justify the delay in so doing. The Board concluded that a delay of no more than a few weeks—but certainly not of several months—could have been justified on those grounds.

“8. Finally, the Board noted that the content of a memorandum of 24 November 1975 from Mr. Barbosa, then Director, UNOG Administrative and Financial Services, might have given the Appellant the erroneous impression that he still had the time to request the above-mentioned review. While this inappropriate action on the part of Mr. Barbosa is to be regretted, it cannot be construed as a waiver of the prescribed time limit, which it was not in the power of the Administration to grant.

“Decision of the Board

“9. In the light of the above findings, the Board decided that the appeal was not receivable in view of the inobservance, which was not justified by exceptional circumstances, of the time limit prescribed in Staff Rule 111.3 (a).”

On 18 November 1977 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board’s decision. On 29 November 1977 the Applicant requested the Secretary-General’s agreement to direct submission of the dispute to the Tribunal. On 12 January 1978, the Assistant Secretary-General for Personnel Services advised the Applicant as follows:

“Your case having been submitted to the Joint Appeals Board and the latter having communicated its opinion to the Secretary-General, the submission of an application by you to the Tribunal at this stage does not call for an agreement by the Secretary-General and by you to a direct application. You may therefore submit your application to the Tribunal within the time limits prescribed in Article 7. In case the Tribunal decides to reverse the Board’s finding that your appeal was not receivable, it may either remand the case to the Board for a ruling on the substance or it may itself rule on it.”

On 21 February 1978 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The Joint Appeals Board should not have limited its consideration to the pro-

cedural question of the receivability of the case.

2. There has been no indolence on the Applicant's part in his quest for an equitable remedy for the injury sustained.

3. The Board has overlooked the fact that from 1 January 1975 to 23 September 1975 the Applicant had no contract with the United Nations, and chapter XI (Appeals) of the United Nations Staff Regulations is not applicable to ICITO/GATT staff members.

4. The Board did not examine in sufficient depth all the interrelated aspects of the case arising from the complexities of reciprocal relationship between GATT, the United Nations and the International Trade Centre.

5. The Chief of the Personnel Division of the United Nations Office at Geneva did not communicate to the Applicant the precise requirements for lodging an appeal in the course of the meeting they had on 5 February 1975.

6. Failure to observe a time-limit is not an irregularity that could be pleaded after the Director of Administrative and Financial Services had implicitly waived the time-limit in his memorandum of 24 November 1975.

7. The Applicant's claim against the Administration's liability to indemnify him for moral injury, professional injury and injury to his reputation exists and is well founded. In any case the communication of the reprimand is a nullity and its dissemination is defamation.

8. The Board has erred in not upholding the Applicant's contention that the ambiguity and uncertainty about the applicability of relevant staff rules and available means for obtaining redress could reasonably be considered to be an exceptional circumstance that would have justified its meriting the prescribed time-limit.

9. The Applicant's note of 8 January 1975 amounted to a formal request in the "material" sense that the decision be reviewed.

10. A time bar erected by an advisory administrative body such as the Board cannot abridge the right of a staff member to a judicial or arbitral remedy.

11. As there are no facts and evidence in support of the specific language used in the written reprimand, the Respondent has exceeded and misused his authority and power.

Whereas the Respondent's principal contentions are:

1. The Board fully examined the question of the Applicant's contractual status from 1 January 1975 to 23 September 1975 as well as the complexities of the institutional relationships between the United Nations, GATT and the International Trade Centre, but found that they did not justify a waiver of the time-limit.

2. The report of the Board categorically states that the requirements for lodging an appeal had been brought to the Applicant's attention by the Chief of the Personnel Division of the United Nations Office at Geneva in a discussion which took place on 5 February 1975; in any event the error of fact alleged by the Applicant, even if established, was not material since the time-limit under Staff Rule 111.3 (a) had by that date already expired.

3. As stated by the Board, the memorandum from the Director of Administrative and Financial Services dated 24 November 1975 cannot be construed as a waiver of the prescribed time-limit, which it was not in the power of the Administration to grant.

4. In first deciding the procedural question the Board was acting in conformity with Staff Rule 111.3 (d) and it was under no obligation to rule concurrently on the

substance of the appeal.

The Tribunal, having deliberated from 3 to 20 October 1978, now pronounces the following judgement:

I. Before considering any question of substance the Tribunal has to determine whether the decision of the Joint Appeals Board that the appeal was not receivable should be upheld or reversed.

II. It should be noted by way of preliminary that the scope of the appeal to the Board was not identical with that of the present application to the Tribunal. The appeal to the Board was directed at two contested decisions, one being the reprimand embodied in the memorandum of 11 December 1974 from the Director (Programmes) of the International Trade Centre, and the other being the Personnel Action form signed for the Director of Personnel on 21 January 1975 transferring the Applicant from the Multinational Product Promotion Service to the Office of the Director of Technical Services. The present application is directed only at the first of these decisions, namely the reprimand. The validity of the transfer is not therefore before the Tribunal.

III. The Tribunal observes that the Board, in reaching its conclusion, took the view that the Applicant initiated his appeal only on 8 December 1975 (that is to say nearly a year after the reprimand itself), that there were no exceptional circumstances to justify a waiver of the time-limit prescribed in Staff Rule 111.3 (a) and that neither the Applicant's contractual status at the time nor his frequent absences from Geneva could be regarded as extenuating circumstances of any relevance.

IV. In the view of the Tribunal, the issue is not as simple as the Joint Appeals Board appeared to think; in particular the circumstances in which delays occurred deserve close attention. The summary results of a careful scrutiny of these circumstances by the Tribunal are given in the following two paragraphs.

V. The memorandum of 11 December 1974 made it clear that the reprimand was not a disciplinary measure. It was described as the result of a decision, though whether this could be readily recognized as an administrative decision within the meaning of Staff Regulation 11.1 was at one point questioned by the Respondent (see para. VI below). The Applicant appears to have regarded it primarily as a statement about his conduct which he might need to challenge; he therefore asked for a record of the statements attributed to him. In his manuscript note of 8 January 1975 the Applicant went further and, while still challenging the accuracy of the transcript on which the reprimand was based, urged that the matter should be "reconsidered". This could have been intended as, or taken for, a request for a review of the decision imposing a reprimand; it was not however followed up by the Applicant in a manner which suggested that he had in mind the possibility of action under Staff Rule 111.3. All the indications are that the Applicant was primarily concerned with getting the record straight and was not contemplating any formal move, such as an appeal. Thus when told by a memorandum dated 21 January 1975 that he should pursue his inquiries with the United Nations Office at Geneva he wrote on his copy of the memorandum "UN. secondment ended on 31.12.74. New personnel action awaited. Wait and see". He did however make personal contact with the United Nations Office at Geneva a few days later and on 5 February 1975 had an interview with the Chief of the Personnel Division, Mr. Chackal. Both the Applicant and the Respondent have supplied accounts of this interview. According to the memorandum dated 29 September 1975 from the Director of Administrative and Financial Services, the Applicant told Mr. Chackal that his action up to 5 February 1975 was not to be

regarded as a request for a review of the administrative decision communicated to him in the memorandum of 11 December 1974 and that he needed time to consider whether or not to submit an appeal under the Staff Regulations and Rules. The Applicant has not challenged the Respondent's account of this part of the conversation, and in view of the corroborative evidence as to his attitude to a formal appeal, it seems *prima facie* probable that it is correct. It is also perfectly consistent with what the Applicant wrote in a reply of 10 October 1975 to the effect that nothing that he said to him (Mr. Chackal) could possibly be construed to mean that he was withdrawing his earlier request. There is however a slight conflict of evidence or at least of emphasis as to what was said at this interview about appeal procedures. According to the submission made by the Respondent to the Joint Appeals Board, the Applicant was "advised by Mr. Chackal that should he wish to submit an appeal, the transcript of the stenographic notes of his own statements were at his disposal". It was presumably on the basis of this submission that the Board stated in its report that "the requirements for lodging an appeal had been brought to his attention by Mr. Chackal". Regarding this statement the Applicant in a letter of 14 November 1977 has entered a qualified denial, namely "Mr. Chackal . . . did not communicate to me the precise requirements for lodging an appeal". For the purposes of the present scrutiny the Tribunal is content to let the matter of the interview of 5 February 1975 rest at that point.

VI. Thereafter, except for a handwritten query addressed to the Director (Programmes) of the International Trade Centre on 12 March 1975, the Applicant took no further action until 10 September 1975 when he wrote to the Director of Administrative and Financial Services of the United Nations Office at Geneva. He alleged therein that he had been awaiting clarification of his contractual position with the United Nations before he took steps to "obtain the relevant documentation . . . and seek a fair review of the issues of substance and procedure involved". On 23 September 1975 the Applicant's permanent appointment with the United Nations, which he had been told as early as 9 January 1975 was being prepared, was finally completed. Nevertheless the Applicant still hesitated formally to institute proceedings under Staff Regulation 11.1. When on 29 September 1975 he at last received copies of the transcript for which he had asked on 13 December 1974, he queried details but in his reply of 10 October 1975 specifically stated: "I am not contending the non-observance of the terms of my appointment, I do not consider the provisions of Staff Regulation 11.1 relevant to the matter". He received some support for this view in the reply dated 17 October 1975 from the Director of Administrative and Financial Services who said *inter alia*: "Since it appears . . . that the Director-General has taken no administrative decision regarding you as a result of the report of the Board of Enquiry the case for appeal against such supposed actions does not seem to exist". A month later the Applicant was still saying to the United Nations Office at Geneva that it was so to speak up to them, not to him, to put right the wrong allegedly committed: "initiation of any action rests with you". He was told firmly in a reply dated 24 November 1975 that the only action open to him was an appeal to the Secretary-General under Staff Rule 111.3 (a) and that if this were not made within a month the matter would be regarded as closed. Only on 8 December 1975 did he finally initiate the action resulting in the appeal which was found to be time-barred by the Joint Appeals Board.

VII. The Tribunal considers that it is clear, from the facts recited in the two preceding paragraphs, that the failure of the Applicant to comply with the time-limits set

in Staff Rule 111.3 (a) was due not so much to oversight or indolence as to genuine doubts about the applicability of the prescribed procedure to the subject-matter of his complaint. He may also have felt unable to pursue the matter effectively as long as his request for copies of the transcript had gone unanswered; he may also not have wished to push matters too far while his status under his new contract with the United Nations was not finally formalized. These considerations taken by themselves could have constituted a basis for "exceptional circumstances" in which under Staff Rule 111.3 (d) time-limits may be waived at the discretion of the Board. But in the Tribunal's view these considerations cannot be taken by themselves. On the basis of the evidence cited, the Tribunal considers that the Applicant was perfectly aware of the implications and limitations of a formal appeal against an administrative decision under Staff Regulation 11.1; that he was reluctant for reasons of his own, and with his eyes open, to initiate such an appeal; that this reluctance persisted even after September 1975 when his contractual status was no longer in doubt and he had obtained the documentation he had been seeking; and that the delay in submitting the appeal which he eventually formulated was the result of the exercise of a choice on the part of the Applicant and cannot be attributed to exceptional circumstances beyond his control. The Tribunal concludes that in his understandable search for an appropriate remedy for his alleged grievance the Applicant omitted to have recourse in time to the only line of action open to him under the Staff Regulations and Rules.

VIII. The Tribunal accordingly determines that the non-compliance with the time-limits prescribed for the presentation of an appeal was the responsibility of the Applicant and that the decision of the Joint Appeals Board that the appeal was not receivable was valid and must be upheld.

IX. The merits of the application are not therefore appropriate for consideration by the Tribunal and the pleas of the Applicant fail accordingly.

X. The application is therefore rejected.

(Signatures)

R. VENKATARAMAN
President

Roger STEVENS
Member

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

New York, 20 October 1978

Judgement No. 236

(Original: English)

Case No. 225:
Belchamber

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

Request for rescission of the decision to introduce a new salary scale for General Service staff in Geneva.