

that practice as improper. The Tribunal concludes that, in his application for a revision, the Applicant has not established the existence of any fact of such a nature as to be a decisive factor, which fact was unknown to the Tribunal when the Judgement was given; this request by the Applicant should therefore be denied.

V. With regard to the Applicant's request that the Tribunal should declare that violations of the national laws of States Members of the United Nations "normally will be violations also of the independent standards of integrity developed by, and proper to, the United Nations", the Tribunal considers that this request has, in effect, already been considered in Judgement No. 233 and does not refer to any new fact.

VI. Lastly, the Applicant requests the Tribunal to direct the Respondent "to seek a settlement whereby the grave injuries sustained by the Applicant and his family during this period may be redressed". The Tribunal notes that this request is in the nature of an appeal against the Tribunal's Judgement and does not constitute an application for revision under article 12 of the Statute. The Tribunal also notes that, in its Judgement No. 233, "in view of the length of the period during which the Applicant worked for ECLA" and "given the circumstances of the case", it decided that the Applicant was entitled to an indemnity. The Tribunal fixed the amount of the indemnity to be paid to the Applicant at \$3,000, and in that connexion the Applicant is not invoking any clerical or arithmetical mistake which might warrant a correction of the Judgement.

VII. For the foregoing reasons, the application is rejected.

*(Signatures)*

Suzanne BASTID  
*President*

Francisco A. FORTEZA  
*Member*

T. MUTUALE  
*Member*

*Geneva, 24 April 1980*

Francis T. P. PLIMPTON  
*Vice-President, Alternate Member*

Jean HARDY  
*Executive Secretary*

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### **Judgement No. 256**

*(Original: English)*

**Case No. 243:**  
**Willems**

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

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*Request for reimbursement of the cost of transporting an automobile from a staff member's home country to his duty station.*

*Administrative Instruction ST/AI/176/Rev.1 and Staff Rules 107.279(d) (v) and 103.15.—The Secretary-General's discretionary power in the matter.—Question whether he has used that discretionary power arbitrarily.—Paragraph 2(a) of Administrative Instruction ST/AI/176/Rev.1.—The Applicant's claim does not conform to the requirements relating to length of assignment.—Paragraph 2(c) of Administrative Instruction ST/AI/176/Rev.1.—Competence of the Secretary-General to decide that the car did not fulfil the necessary conditions for reimbursement of the cost of transporting it.—Staff Rule 103.15.—Failure of the Applicant to comply with the rule requiring him to file his claim within 12 months.—The Tribunal decides that the Respondent used his discretion properly in dismissing the Applicant's claim for reimbursement.—Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Mr. Samar Sen; Mr. Francisco A. Forteza, alternate member;

Whereas at the request of Willy Willems, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 24 August 1979 the time-limit for the filing of an application to the Tribunal;

Whereas, on 27 August 1979, the Applicant filed an application in which he requested the Tribunal:

“(a) to set aside the recommendations of the Joint Appeals Board in this case,

“(b) to direct that the Applicant be reimbursed for the cost of transporting his automobile from Belgium to Israel, the country of his duty station,

“(c) to grant the Applicant costs, interest on his claim and such other and further relief as the Tribunal considers fit.”;

Whereas the Respondent filed his answer on 28 September 1979;

Whereas the Applicant filed written observations on 16 November 1979;

Whereas . . .

Whereas the facts in the case are as follows:

The Applicant, a Field Service Officer since 1960, was serving with the United Nations Relief Office in Bangladesh (UNROB). Upon completion of his assignment in April 1974, he took his home leave in Belgium before taking up new duties with the United Nations Truce Supervision Organization (UNTSO) in Jerusalem. While on home leave the Applicant arranged to have his automobile shipped from Belgium to Israel. The automobile, a 1962 Opel Kapitän “L”, was shipped from Antwerp on 13 May 1974 and arrived at Ashdod on 10 June 1974 at a cost of 19,629 Belgian francs. The Applicant had arrived at his new duty station on 6 May 1974. On 13 August 1975 he requested reimbursement of the cost of transportation of his automobile in a P.101 form, submitted to UNTSO, where, asked to state the reasons for requesting transportation if the age of the automobile was three years or more, he stated:

“Notwithstanding the vehicle is 13 years old and has 104,000 km on the teller, it is in perfect condition and passes every year the technical tests in the countries where I am/was stationed and I am not in a financial position to purchase a new vehicle, and see no need, since above.”

On 19 September 1975 UNTSO forwarded the form to Headquarters with the statement that “the mission supports staff member's claim and recommends approval”. On 2

October 1975 Headquarters replied that the Office of Personnel Services was unable to give an *ex post facto* approval for payment of the cost of transportation of the Applicant's automobile on the following grounds:

“*Firstly*, prior clearance should have been obtained from OPS before shipment.

“*Secondly*, it deems that the age of the car does not justify transportation at UN expense.

“*Thirdly*, in accordance with Staff Rule 103.15, the application should have been submitted within one year of the shipment.”

On 6 October 1975 the Applicant was informed accordingly. On 25 October 1975 he was reassigned to the United Nations Emergency Force (UNEF) in Egypt. On 25 February 1976 the Applicant asked the Office of Personnel Services to reconsider its decision, pointing out that he had not deemed it necessary to obtain prior approval for the shipment of his automobile since he had found from Administrative Instruction ST/AI/176/Rev.1 and Amend.1 that he fulfilled all the requirements; that it was not stated anywhere that such prior authorization was necessary; that upon his arrival at Jerusalem he had inquired of the personnel and finance officers of UNTSO as to how to proceed but that his was the first case of its kind at UNTSO and that no one knew the procedure; that when he accidentally came across the P.101 form he immediately filled it out but that he thereafter became so busy with his work that he lost track of time while the various UNTSO services discussed what to do with his request and that before he realized it the one-year period for filing a claim had passed; and that it was unfair to apply criteria based on the age of a car in determining whether transportation costs would be reimbursed since he should not be punished for having so low a salary as to not permit him to buy a new car every three years nor should he be punished for having bought a car which was so reliable as to have remained in perfect working condition after more than 13 years. On 11 March 1976 the Office of Personnel Services replied:

“In determining whether the transportation of a POV [privately owned vehicle] is justified the age and the mileage of the car is a most important factor. Under normal circumstances it can be assumed that a 13 year old car with a mileage of 104,000 is not likely to serve its owner for a substantial period ahead, and that, therefore, the transportation over a distance of 4,000 miles is not reasonable from an economical point of view. There may be exceptions to this rule. However, the Organization obviously has no means to ascertain whether in a specific case there are grounds for such an exception.

“Independently from this point, your request had to be denied for two further reasons. I would like to draw your attention to Para. 2(a) of Administrative Instruction ST/AI/176 according to which one condition for the approval is the staff member being expected to remain for at least 2 years at the duty station to which the vehicle is to be taken. There is no evidence that your reassignment to Jerusalem in June 1974 was expected to be for 2 years or more. As a matter of fact, you spent only 16 months with UNTSO, until your further reassignment.

“Finally, I note that your request on the relevant P.101 form carries the date of 13 August 1975. Provided that your claim had been founded in all other respects, it should have been submitted in June 1975 at the latest. The one year period for the submission of the claim, as set forth under Staff Rule 103.15, applies to any kind of payments and you could reasonably be expected to be aware of this provision

independently from the question of transportation of automobiles. Furthermore, the reasons given in your above-mentioned memorandum may account for the delay in forwarding the P.101 form to Headquarters. They do not explain, however, why you failed to establish your request before June 1975. After all, according to your own statement, you were in possession of the Administrative Instruction covering the matter and, therefore, amply informed as to the conditions under which reimbursement could be authorized."

On 5 April 1976 the Applicant requested the Secretary-General to review the decision not to reimburse him for the transportation of his automobile. On 22 June 1976 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General had decided to maintain that decision. On 4 July 1976 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 3 April 1979. The Board's conclusions and recommendation read as follows:

*"Conclusions and recommendation*

"49. The Board finds that the appellant failed to file his claim in a timely fashion, contrary to the time-limit provisions of Staff Rule 103.15, and that such delay was not justified.

"50. The Board finds also that the appellant neither had an expectation of a two-year assignment at the duty station to which he shipped his automobile, nor was his initial assignment subsequently extended to permit him two years of service at that post. The Board therefore concludes that the appellant failed to comply with the requirements of Administrative Instruction ST/AI/176/Rev.1, paragraph 2(a).

"51. The Board finds further that reimbursement of the cost of transporting the appellant's automobile would not have been reasonable in the circumstances under the provisions of paragraph 2(c) of Administrative Instruction ST/AI/176/Rev.1.

"52. Accordingly, the Board makes no recommendation in support of the appeal."

On 27 April 1979 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General had taken note of the Board's decision to make no recommendation in support of the appeal and had decided that the administrative decision rejecting the Applicant's claim for reimbursement be maintained. On 27 August 1979 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Joint Appeals Board erred in refusing to support the appeal on the ground that the application for reimbursement had not been submitted within one year of the shipment of the car. In all the circumstances of the case, the Board could and should have exercised its discretion in favour of the Applicant.

2. The Board erred in its construction as to when an expectancy of two years' service at the Applicant's duty station could have reasonably arisen. The Applicant could not have reasonably expected to serve at his duty station for a period of two years until he had served for at least one year. His reassignment elsewhere after 16 months' service in Jerusalem was unexpected.

3. A staff member has a basic right to the car of his preference, new or old, and no evidence has been adduced on the absence of potential loss on resale. The relative

price of automobiles in the locality and at the duty station should have been the overriding consideration in determining the reasonableness of transportation.

Whereas the Respondent's principal contentions are:

1. Reimbursement of the Applicant for the cost of transporting his automobile was properly denied under the applicable rules because the necessary conditions thereof had not been fulfilled.

2. The refusal of the Respondent to authorize reimbursement of the Applicant represents a proper exercise of discretion by the Respondent.

3. Insofar as the Applicant's assignment at the duty station was not for an expected or an actual period of two years or more, one of the essential conditions of Staff Rule 107.27 (d) (v) was lacking.

4. The conclusion of the Respondent pursuant to paragraph 2(c) of Administrative Instruction ST/AI/176/Rev.1, that the transportation of the automobile was otherwise not reasonable in the circumstances, was not arbitrary or otherwise an abuse of discretion.

5. The Applicant failed to justify adequately the delay in making his claim for reimbursement within the prescribed time-limit.

The Tribunal, having deliberated from 22 to 25 April 1980, now pronounces the following judgement:

I. The claim of the Applicant for reimbursement of the cost of shipping his personal car from Antwerp (Belgium) to Ashdod (Israel) in 1974 is founded on Administrative Instruction ST/AI/176/Rev.1 of 21 August 1972 as amended on 20 June 1973, read together with Staff Rules 107.27 (d) (v) and 103.15.

II. Even a general perusal of the Instruction and the Staff Rules cited above would establish beyond doubt that they do not confer any firm rights to a staff member to transport his personal car at United Nations' expense and that, at the most, they confer an entitlement which can be exercised by staff members only on conditions and in circumstances prescribed by the Secretary-General. The question therefore is whether in the circumstances of this case, the Secretary-General used his discretion arbitrarily or in any other ways improperly.

III. Paragraph 2(a) of Administrative Instruction ST/AI/176/Rev.1 stipulates that for a staff member to be eligible for reimbursement of the transport cost of his personal car, his "assignment to the duty station is expected to be for a period of two years or more, or the initial assignment for a lesser period is extended so that the total assignment is two years or more". The Applicant was asked in 1974 to proceed to Israel and he joined duty at Jerusalem in May 1974. His contention that he "could not have reasonably expected to serve at his duty station for a period of two years until he had served for at least one year" is misleading: an official could be appointed to any post initially for two years or more; alternatively, at any time after he has joined his post, his tenure could be extended to two years or more. The rules legitimately speak of expectation, and for the Applicant to suggest that such an expectation can only arise after a year's service has been completed at any duty station is not tenable: such an expectation could arise at all times if the appropriate authorities had given any indications to that effect. Similarly, in the absence of any indication of the wishes of the competent authority, a staff member cannot as a matter of course assume that he would be kept at a specified post for two years or more, even if he had, in fact, completed his first year of service at the post and entered his second year. The Applicant was reassigned to another post after he had been

in Israel with UNTSO for only 16 months and in the circumstances he could not have any reasonable grounds to expect that he would be at Jerusalem for two years or more. He has adduced no evidence to support such an expectation, if he had any. The Tribunal therefore concludes that the Applicant's claim does not conform to the requirements laid down in paragraph 2(a) of Administrative Instruction ST/AI/176/Rev.1.

IV. Paragraph 2(c) of the same Instruction contains the proviso that:

“Transportation is, in the opinion of the Secretary-General, reasonable in the circumstances. In determining the reasonableness of transportation in the case of an automobile previously in the possession of the staff member, account will be taken of such factors as the age of the automobile, the potential loss on resale if not transported and the relative price of automobiles in the locality and at the duty station.”

On 11 March 1976, Mr. Herrel, Personnel Officer, wrote to the Applicant in the following terms on this question:

“In determining whether the transportation of a POV is justified the age and the mileage of the car is a most important factor. Under normal circumstances it can be assumed that a 13-year-old car with a mileage of 104,000 is not likely to serve its owner for a substantial period ahead, and that, therefore, the transportation over a distance of 4,000 miles is not reasonable from an economical point of view. There may be exceptions to this rule. However, the Organization obviously has no means to ascertain whether in a specific case there are grounds for such an exception.”

To this the Applicant replied in his memorandum of 5 April 1976 addressed to the Secretary-General:

“Mr. Herrel assumes a little too much. It is not in my view within his jurisdiction to question and decide on what type or age of car one must possess. This is entirely left to the staff member concerned whether to have the latest Cadillac or a 13-year-old Opel Kapitän “L” like I have. After all it is not the organization which is buying me the car and my financial resources are not supported by further donations from the organization to have the type of vehicle the organization wants me to have . . .”

On the question of age and condition of the car to be imported to a duty station, the Joint Appeals Board held “that as a general policy, it could not be foreseeable at the time of reassignment of a staff member that a 13-year-old car would in all likelihood continue to function for a reasonable period of time, even if in this particular case the car has continued to give service to its owner. Such decisions cannot be made in retrospect, as the entitlement to reimbursement arises either at the time of the initial shipment or at the time of the extension of the initial short-term assignment. Furthermore, a 13-year-old car, which has no market value, would not appear to present to its owner a potential loss on resale if not transported”.

The Tribunal considers that the relevant section of the Administrative Instruction enjoins on the Secretary-General the task of determining in each case if transportation of any specified car can properly be undertaken at United Nations' cost. On the basis of such information as had been supplied to the Secretary-General, he determined that the car did not fulfil the conditions for reimbursement. Such a determination is not an abuse of his discretionary powers. The Tribunal notes that at no time did the Applicant ask for an evaluation and technical examination of the car.

V. The Tribunal then examined if Staff Rule 103.15 had been properly applied in this case. This Rule makes it clear that a staff member “shall not receive retroactively [an] allowance, grant or payment” unless he has made written claim “within one year following the date on which the staff member would have been entitled to the initial payment”.

The Applicant argued that he could not abide by this Rule as the nature of his work did not leave him much time. In addition, he alleged that the UNTSO office at Jerusalem could not enlighten him on how to make his claim or provide him with the necessary form (P.101). He further stated that he could not “carry in his head all [the] detailed clauses and conditions” of the Administrative Instruction and that therefore his failure to file form P.101 in time—he sent it on 13 August 1975, while the time-limit for filing it expired on 10 June 1975—should be condoned. Simultaneously he suggested that for Field Service Officers like himself it would be impracticable to follow this Rule as they frequently did not know much in advance how and when they would be moved. The Applicant would like the Rule of filing claims within a year to be relaxed “to assist staff members such as the Applicant who experience problems or unusual difficulties in meeting the deadline, particularly those outposted in places where ready access to the relevant rules and regulations is not available and those serving in emergency operations where vigilance on duty and unforeseen emergencies have often to take priority over searching for . . . staff rules”. The Respondent however pointed out in the proceedings before the Joint Appeals Board that other staff members similarly placed did not have any difficulty in fulfilling the requirements of Staff Rule 103.15 and indeed he is reported in the Board’s report as stating that “during this period of time other such claims had been submitted by Field Service Officers serving with UNTSO and that it is therefore ‘inconceivable’ that neither information nor P.101 forms would have been available to the appellant”.

The Tribunal considers that all officers, including even those who lack the experience and the length of service of the Applicant, must be presumed to be familiar with the basic rules of an organization in which they are employed. The rule that obliges the Applicant to file his claim within 12 months is not confined to any particular class of payments but extends to all claims except those which are to be made within a shorter period of three months. The Applicant cannot therefore plead—as indeed he has not specifically pleaded—his ignorance of such an important rule. Moreover, the Applicant has provided no explanation why some informal claim at least could not have been made in time, even if the UNTSO office at Jerusalem was unable to supply him with the required forms and information. The material before the Tribunal does not disclose any serious attempts by the Applicant to seek guidance on these matters from any quarters.

VI. In view of the considerations set out above, the Tribunal decides that the Respondent has used his discretion properly in dismissing the Applicant’s claim for reimbursement of the cost of shipping his personal car from Belgium to Israel in 1974.

VII. Accordingly, the application is rejected.

*(Signatures)*

Francis T. P. PLIMPTON  
*Vice-President, presiding*

Francisco A. FORTEZA  
*Alternate Member*

Endre USTOR  
Vice-President

Jean HARDY  
Executive Secretary

Samar SEN  
Member  
Geneva, 25 April 1980

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### Judgement No. 257

(Original: English)

Case No. 244:  
Rosbasch

Against: The Secretary-General  
of the United Nations

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*Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.*

*Request for oral proceedings.—Request rejected in view of the completeness of the documentation and argumentation before the Tribunal.—Proceedings which culminated in the termination of the Applicant's appointment.—Consideration of the case by the Joint Review Body.—Applicant's contention that the Administration had created impossible working conditions for her.—Consideration of the matter by the Joint Review Body.—Contention rejected.—Applicant's contention based on the fact that she had been awarded her annual within-grade increments.—It is UNDP practice to grant such increments automatically to General Service staff serving at Headquarters.—The reasons which the Applicant had for knowing that her service was in fact considered unsatisfactory.—Applicant's contention concerning an "anonymous petition" against her.—The contention is irrelevant.—Applicant's contention that the Joint Review Body's decision was not duly or properly exercised.—Contention rejected.—Other contentions relating to the report of the Joint Review Body are rejected.—Conclusion of the Joint Appeals Board buttressing that of the Tribunal.—Discretionary authority of the Secretary-General to evaluate the performance of a staff member.—The Applicant was accorded due process.—Application rejected.*

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#### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Mr. Samar Sen;

Whereas, on 11 January 1979, Susan Rosbasch, a former staff member of the United Nations Development Programme, hereinafter called UNDP, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 11 September 1979;

Whereas the pleas of the application read in part: