

XII. The application is therefore rejected.

(Signatures)

Endre USTOR
Vice-President, presiding

Arnold KEAN
Member

Samar SEN
Member
New York, 6 November 1980

Jean HARDY
Executive Secretary

Judgement No. 259

(Original: English)

Case No. 250:
Hoppenbrouwer

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

Claim of a former technical assistance expert for payment of compensation for loss of personal effects.

Staff Rule 206.6 and article 3 (a) of Administrative Instruction ST/AI/149.—Question whether, at the time of a burglary in his hotel, the Applicant was "travelling" within the meaning of the Administrative Instruction and whether the burglary was the direct result of the travelling.—Conclusion in the affirmative.—Question whether the travel was in connexion with the performance of official duties within the meaning of the Administrative Instruction.—Conclusion in the affirmative.—Respondent's contention that the liability of the Organization is restricted to cases where a common carrier or innkeeper is liable is rejected.—Respondent's contention based on the policy of the Claims Board is rejected.—Irrelevance of Judgement No. 209.—Absence of negligence or misconduct on the part of the Applicant.—Rescission of the decision of the Secretary-General denying the claim for compensation.—Payment to the Applicant, as compensation, of an amount to be assessed by the Claims Board.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

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

Whereas, on 3 April 1980, Laurentius M. A. Hoppenbrouwer, a former associate expert of the United Nations, filed an application the pleas of which read as follows:

“ . . .

“I contest the decision of the Secretary-General . . . to maintain the decision of the Claims Board to deny my claim for compensation of personal effects under Staff Rule 206.6.

“I request that the above-mentioned decision of the Secretary-General be rescinded and that the Secretary-General be obliged to carry out the recommendation,

contained in para 44 of Report No. 332 [of the Joint Appeals Board] . . . , that 'the Secretary-General request the Claims Board to calculate the compensation due to the appellant and that he pay the appellant the appropriate amount of compensation'.

"I wish to claim an amount of compensation under article 9, para 1 of the Statute of the United Nations Administrative Tribunal which is equal to the present replacement value of the personal effects lost by me, due to theft, in the course of performance of official duties. This value is US\$900.00".

Whereas the Respondent filed his answer on 3 June 1980 and submitted an additional document on 3 November 1980;

Whereas the facts in the case are as follows:

The Applicant was serving as an Associate Expert in the UNDP office for the Western Pacific Region at Apia, Western Samoa. On 2 April 1973, before his departure for Tiel, Netherlands, on home leave, he wrote to the Deputy Director of the Asia and Middle East Branch, Office of Technical Co-operation (OTC), as follows:

"On 4 April 1973 I am scheduled to go on home-leave. On my way back to Western Samoa I intend to spend some days in New York. I would appreciate if you allowed me to have discussions on my work here with some members of your staff."

On 8 May 1973 the Chief of the Human Resources Projects Section of the Asia and Middle East Branch replied to the Applicant at his Netherlands address:

"We shall be happy to meet with you if you stopover in New York on your way back to Western Samoa."

On his return from home leave the Applicant travelled via Amsterdam and London to New York, arriving on 24 June 1973. After spending two days in consultations with OTC and UNDP officials, he flew to Washington, D.C., on 27 June 1973 and engaged in consultations with officers of the World Bank and the International Monetary Fund. On 29 June 1973 the Applicant left Washington, D.C., by plane and travelled non-stop to Honolulu, Hawaii, arriving there the same day. He checked into the Coral Seas Hotel, 250 Lewers Road, Honolulu, and was booked to leave the following day on a flight for Pago Pago and to continue on a flight from Pago Pago to Apia. At approximately 8 p.m. on 29 June, while the Applicant was away from his hotel room, the room was forcibly entered by thieves who stole travellers cheques, travel documents, and the following items of property: an electronic calculator, a radio-cassette recorder, a movie camera, a photcamera, a flash attachment, two watches, and a lighter. The Applicant reported the loss to the local police at 4 a.m. on 30 June. He obtained a refund of travellers cheques from the American Express office in Honolulu, and on 1 July some of the documents were found and returned to him by the police. On 2 July he left for Pago Pago and on 3 July arrived at Apia. On 16 July 1973 the Applicant submitted, in connexion with his home leave travel, a voucher for reimbursement of expenses in which he requested four days of daily subsistence allowance "for consultations in New York . . . and in Washington" and three days of daily subsistence allowance "for delay in Honolulu" since, because of the loss of his travel documents, he could not leave as planned. On the same day the Applicant sent to the Chief of the Administrative Section of OTC a copy of a statement from the Chief of Police of Honolulu verifying the filing of the report of the burglary, and requested payment of compensation for loss of personal effects under Staff

Rule 206.6. On 16 July 1973 also, the Regional Representative a.i. forwarded the Applicant's travel claim to the Administrative Section, explaining that his stopovers in New York and Washington had been made "with the knowledge of . . . the Regional Representative who felt these visits would be highly useful for the expert". On 14 August 1973 the Administrative Section asked the Applicant to submit a list of items stolen, with values and purchase dates, for presentation to the Claims Board together with his claim for payment of the three days' subsistence, and advised him that the Administrative Section could not approve payment of the four days' subsistence for the New York and Washington stopovers. On 27 August 1973 the Applicant submitted a list of the stolen items. In a memorandum dated 20 September 1973, the Human Resources Projects Section advised the Administrative Section that it had no objection to the payment of two days' per diem for the Applicant's stopover in New York but that it could not recommend any per diem for his stopover in Washington; a copy of that memorandum was forwarded to the Applicant on 31 October 1973. On 27 December 1973 the Secretary of the Claims Board sent to the Administrative Section the following memorandum:

" . . .

"The case was considered by the Claims Board at its 132nd Meeting on 18 December 1973. The Board found this to be an ordinary hotel burglary which could not be directly attributed to the claimant's performance of official duties. The Board further noted that Mr. Hoppenbrouwer, by keeping the valuables and passports in his hotel room, had not exercised normal care and precaution for his effects. In these circumstances, the Board found the loss not compensable and recommended denial of the claim. That recommendation was approved today by Mr. Ulanchev for Mr. W. H. Ziehl, Acting Head, Office of Financial Services. . . ."

A copy of that memorandum was transmitted to the Applicant on 8 January 1974. In a letter dated 25 January 1974, the Applicant asked the Administrative Section to request the Claims Board to reconsider his claim; his letter read in part:

"I agree that this was a case of ordinary hotel burglary. It occurred however while I was on official travel. After two days of consultations in New York and two days in Washington with IMF and Worldbank (for which incidentally I did not receive D.S.A. despite the recommendation by the UNDP Apia office), I flew to Honolulu on 29 June 1973 to await the first available connection to Pago Pago and Apia. I thus travelled the most direct way to my duty station, with no pleasure travel involved. Certainly this can be considered 'official travel' and therefore would fall under the definition of 'performance of official duties', used in rule 206.6.

"The articles stolen, with the exception of the electronic calculator, were of course for non-official use. Rule 206.6 applies however to personal effects in general.

"With regard to the Board's assertion that normal care and precaution had not been exercised, I only would want to go as far as to admit that I was rather naive to think that I can safely leave travel documents and valuables in a hotel room in an American city.

"I note that the Board's memorandum does not refer at all to the request for D.S.A. for the days I was delayed because of the theft of my travel documents. I arrived in Apia three days later than planned. As in the meantime one day D.S.A. in Pago Pago has already been paid in connection with my travel claim, I hope that an additional two days can be paid in connection with the delay that was caused

indirectly by the theft.”

The Administrative Section having asked the Secretary of the Claims Board for his advice on the Applicant's claim for subsistence allowance, on 20 February 1974 the Secretary replied:

“ . . .

“Although not reflected in my memorandum to you of 27 December 1973, the Claims Board at its 132nd Meeting indicated that questions concerning payment (or non-payment) of this allowance did not fall within its terms of reference. I believe this matter might be dealt with by OTC in consultation with the Offices of Personnel and Financial Affairs.”

On 28 March 1974 the Administrative Section informed the Applicant that his “request for the two days' additional subsistence has been rejected”. On 1 August 1974 the Applicant reiterated his request for reconsideration of his claim. On 16 August 1974 the Administrative Section presented the Applicant's claim to the Claims Board for reconsideration. On 13 June 1975 the Secretary of the Claims Board advised the Administrative Section as follows:

“The above claim was considered at the 136th meeting of the Claims Board. It was established that the burglary was not attributable to Mr. Hoppenbrouwer's performance of official duties and that normal care and precaution for his personal effects were not exercised. Hence, the Board recommended denial of the claim. The recommendation was approved by Mr. Helmut Debatin, Assistant Secretary-General (Controller), Office of Financial Services.”

On 21 July 1975 the Applicant was informed accordingly and on 11 December 1975 he lodged an appeal with the Joint Appeals Board, which submitted its report on 7 September 1979. The Board's conclusions and recommendations read as follows:

“Conclusions and recommendations

“44. The Board finds that the loss of the articles stolen from the appellant's baggage occurred as a direct result of travelling by means of transportation furnished at the expense of the United Nations in connexion with the performance of official duties, and should therefore be deemed to be directly attributable to the performance of official duties. The Board concludes that the appellant is entitled under Staff Rule 206.6 to reasonable compensation for the loss. It accordingly recommends that the Secretary-General request the Claims Board to calculate the compensation due to the appellant and that he pay the appellant the appropriate amount of compensation.

“45. The Board finds that the appellant remained in official travel status in Honolulu for two additional days because of the theft of his travel documents, and recommends that the Secretary-General pay the appellant the appropriate subsistence allowance for those two days.”

On 28 January 1980 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General, having re-examined his case in the light of the Joint Appeals Board's report, had taken note of its recommendations and had decided:

“(a) to maintain the decision which approved the recommendation of the Claims Board that your claim for compensation for the loss of personal effects be denied, and

“(b) to accept the [Joint Appeals] Board’s recommendation that you be paid the appropriate subsistence allowance for the two additional days of stopover in Honolulu.”

On 3 April 1980 the Applicant filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The Applicant’s loss falls within paragraph 3 (a) (iii) of Administrative Instruction ST/AI/149 since it “occurred as a direct result of travelling by means of transportation furnished . . . at the expense or direction of the United Nations in connexion with the performance of official duties.”

2. Under Staff Rule 207.1 (iv) “travel in connexion with home leave” is considered to be official travel. The distinction between official travel, on the one hand, and performance of official duties, on the other, is unacceptable. Even if such a distinction is accepted, the Applicant has met the criterion for compensability, since his home leave travel included the performance of official duties in the restrictive sense.

3. The only criterion by which the compensability of a loss can be determined is its attributability to service. Whenever it can be maintained that had it not been for United Nations service the loss would not have occurred, the criterion of service attributability is met.

4. Since paragraph 3 (a) of Administrative Instruction ST/AI/149 begins with the words “Without restricting the generality of the rule . . .”, the situations envisioned in sub-paragraphs 3 (a) (i), (ii) and (iii) are not the only situations compensable under the general rule. Furthermore, the wording of Staff Rule 206.6 and that of Administrative Instruction ST/AI/149 do not explicitly exclude theft from the cases of compensable loss.

5. The Applicant’s case is not comparable to losses from thefts and burglaries suffered by staff members residing in New York. There is an obvious difference between the risks of day-to-day living and a loss sustained at an out-of-the-way place where a staff member has no business except in the line of duty.

6. The policies and practices of the Claims Board invoked by the Respondent are not law and cannot be cited in justification of their own perpetuation.

7. The Applicant took normal precautions and care by leaving his possessions in a locked suitcase in a locked hotel room.

8. The Secretary-General’s decision to accept the recommendation of the Joint Appeals Board regarding the payment of appropriate subsistence allowance for the two additional days of stopover in Honolulu indicates that the theft of travel documents is now considered to be directly attributable to the performance of official duties. It would therefore follow that the (same) theft of personal effects likewise can be considered to have occurred as a direct result of travelling by means of transportation furnished by and at the expense and direction of the United Nations in connexion with the performance of official duties. That decision also denies the Claims Board’s assertion that the Applicant had not exercised normal care and precaution for his personal effects.

Whereas the Respondent’s principal contentions are:

1. The language of Staff Rule 206.6, as compared to that of Staff Rule 206.5, requires, in the case of loss or damage, a more direct connexion between the performance of official duties and the loss or damage incurred.

2. When the Applicant departed from the airport in Washington, D.C. he left his

official business behind and was merely proceeding on home leave to his duty station. Though home leave is official travel, insofar as travel is paid by the United Nations, it is not travel on official business when it does not involve the performance of official duties.

3. The refusal under Staff Rule 207.21 to reimburse the cost of insurance for accompanied personal baggage is a clear indication that the Organization does not accept responsibility for all accompanied personal baggage, but only for such baggage as is covered under the limited provision of Staff Rule 206.6. If the Organization had intended to accept responsibility for all baggage, it would either have insured itself against the risk, or reimbursed staff members for the cost of insurance.

4. The Applicant's loss is not compensable under sub-paragraph 3 (a) (ii) of Administrative Instruction ST/AI/149. The principles applied by the Tribunal in the Corrado case are valid *a fortiori* in the present case since Honolulu was not even the duty station of the Applicant but only a stopover.

5. Sub-paragraph 3 (a) (iii) of the Administrative Instruction is intended to apply to the loss of baggage in transit while the staff member is travelling on official business. It is not enough for the staff member to be in travel status; the loss must be directly related to transportation and to the movement of the baggage itself.

6. It has always been the policy of the Claims Board to deny compensation for the loss of personal effects stolen from "private accommodations". This policy does not violate the Staff Rules or the Administrative Instruction and it best serves the interests of both the United Nations and its staff members.

7. Carriers are required to take responsibility of baggage in transit, but innkeepers are permitted to avoid responsibility for the personal effects of their clients. The Organization is in a position to recover through the staff member against the former and not the latter and for that reason has decided to let the risk lie where it falls in the case of private accommodation.

8. There is no contradiction between allowing the payment of the subsistence allowance and denying compensation for the loss of effects due to theft.

The Tribunal, having deliberated from 28 October 1980 to 6 November 1980, now pronounces the following judgement:

I. The Tribunal has referred to Staff Rules 206.6 and 207.21 (a), also to Administrative Instruction ST/AI/149.

II. To fall within Rule 206.6, the loss of personal effects must be "directly attributable to the performance of official duties on behalf of the United Nations". Article 3 (a) of the Administrative Instruction in force at the date of the loss interprets this by providing that the loss shall be deemed to be directly attributable to the performance of official duties when it

"occurred as a direct result of travelling by means of transportation furnished by or at the expense or direction of the United Nations in connexion with the performance of official duties."

III. The Applicant was, at the time of the burglary, staying at an hotel in Honolulu. The question therefore arises whether, at that time, he was "travelling" within the meaning of the Administrative Instruction, and whether the burglary was the "direct result of travelling". The Tribunal's view is that, since his stopover in Honolulu was

necessary in order to await the first connecting aircraft to Apia, where he was stationed, the Applicant must be considered as having been “travelling” at the time of the burglary, notwithstanding that he may not have been actually in the course of carriage by a means of transportation at that time, but was awaiting the next available means of transportation; and that his stay at the hotel exposed his personal effects to a risk of burglary which he otherwise would not have incurred. The loss of his effects was therefore “a direct result of travelling”.

IV. It is not disputed that the Applicant’s travel was at the expense of the United Nations. It is necessary to decide whether it was also “in connexion with the performance of official duties” within the meaning of article 3 (a) of the Administrative Instruction. The Applicant was returning from home leave in the Netherlands to his station in Western Samoa. The direct route would have taken him via New York, but he changed his itinerary to include Washington after he had obtained official approval for official consultations in both those cities. There can be no doubt that these consultations constituted the performance of “official duties”. The Tribunal rejects the argument that when the Applicant left Washington he left official duties behind, and considers that once, in the course of his journey, the Applicant had carried out official duties in New York and Washington his travel from those cities to his station in Western Samoa was “in connexion with the performance of official duties”. The Tribunal observes that “in connexion with” is an extremely broad expression and that sub-paragraph (iii) of article 3 (a) makes no attempt to restrict it by the use of an adjective.

V. The Tribunal also observes that in Staff Rule 207.1 a distinction is drawn between “travel on official business” (subparagraph (ii)) and “travel in connexion with home leave” (subparagraph (iv)). To fall within article 3 (a) of the Administrative Instruction the travel must be “in connexion with the performance of official duties”, but not necessarily “travel on official business”, even if the latter expression might have to be given a different meaning from “official duties”. The Tribunal is satisfied that, in the circumstances of this case, the loss “occurred as a direct result of travelling . . . in connexion with the performance of official duties”, and rejects the argument of the Respondent that the liability of the Organization is restricted to cases where a common carrier or innkeeper is liable, an argument for which no basis can be found in the Staff Rules or in the Administrative Instruction. The Organization’s lack of a right of recovery against a third party, whether a common carrier, an innkeeper or anyone else, is not relevant to the liability of the Organization, nor is the alleged longstanding policy of the Claims Board, on which the Respondent also relies (Judgement No 254: Fernández-López). The Tribunal considers the Corrado case (Judgement No 209) to be irrelevant as it was concerned with a burglary at a private dwelling where the claimant resided at the place where he was normally stationed.

VI. The Tribunal is further satisfied that, in the circumstances of this case, the personal effects stolen were “accompanied baggage” within the ordinary meaning of Rule 207.21 (a), and therefore the Tribunal need not consider whether that Rule restricts Rule 206.6 to accompanied baggage.

VII. Article 3 (b) of the Administrative Instruction provides that:

“No compensation shall be paid for any loss or damage which was occasioned by the negligence or misconduct of the claimant”.

The Tribunal is satisfied that as the Applicant intended to make only a short stay at the

hotel there was neither negligence nor misconduct on his part in leaving this property locked in a suitcase in his locked bedroom instead of depositing it in the custody of the hotel.

VIII. The Tribunal therefore orders:

1. The rescission of the decision of the Secretary-General conveyed to the Applicant by a letter dated 28 January 1980, insofar as it confirms the previous decision of the Secretary-General that the Applicant's claim for compensation for the loss of personal effects be denied; and

2. The payment to the Applicant of such amount as the Claims Board may assess as compensation for the loss of his personal effects.

(Signatures)

Francis T. P. PLIMPTON
Vice-President, presiding

Arnold KEAN
Member

Endre USTOR
Vice-President

Jean HARDY
Executive Secretary

New York, 6 November 1980

Judgement No. 260

(Original: French)

Case No. 252:
Denis

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

Dispute concerning the receivability of an appeal by the Joint Appeals Board of UNIDO.

Letter from the Secretary of the Joint Appeals Board giving his opinion concerning the receivability of the appeal.—Failure of the Board to consider the question of a possible waiver of the time-limits provided for in Staff Rule 111.3 (d).—Referral of case to the Board for consideration in the light of that Staff Rule.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean; Madame Paul Bastid, President, alternate member;

Whereas, on 17 April 1980, Jacques Denis, a former staff member of the United Nations, filed an application the pleas of which requested the Tribunal:

“—TO RESCIND the decision of the Secretary of the Joint Appeals Board of UNIDO dated 6 February 1980;