

CSAT/11

JUDGMENT OF THE ARBITRAL TRIBUNAL OF THE COMMONWEALTH SECRETARIAT

JUNE 2006

In the matter of

JOHN SADDINGTON

The Applicant

AND

THE COMMONWEALTH SECRETARIAT

The Respondent

Before the Tribunal constituted by

Justice R A Banda SC, President

Ms Anesta Weekes QC

Dame Joan A Sawyer PC, DBE

JUDGMENT

APPLICATION AND PLEAS

1. The Applicant's complaint to the Tribunal is centred on the Respondent's decision (contained in a letter dated 7 March 2002), to offer the Applicant a fixed term contract of three years duration commencing from 1 January 2003. In discussions orally and in writing with the Applicant the Respondent made it clear that this was the final contract that would be offered to the Applicant therefore bringing to an end his 28 years of service with the Commonwealth Secretariat. There are four important aspects of this complaint. Firstly, that the Respondents have a contractual obligation to renew the applicant's contract of employment up to retirement age. Secondly, that the final fixed term contract offered in 2002, was based upon a reason not connected to satisfactory performance. Thirdly, that the Respondents unilaterally varied his contract by the decision to subject him to the Rotation policy. Fourthly, that if the applicant was subject to the Rotation Policy that he should be treated with parity to those employees employed in like work and at the same grade.

2. The Respondent, on its part, has denied and disputes all the Applicant's contentions. The Respondent has specifically denied that it is under any contractual obligation to renew the Applicant's contract of employment until he attains his retiring age. The Respondent further denies that it is under any obligation to treat the Applicant with parity to those employees engaged on the same grade as the Applicant.

3. This Application is brought to the Tribunal in accordance with the provisions of Article II of the Statute of the Arbitral Tribunal of the Commonwealth Secretariat and we are satisfied and find that before the Applicant filed his Application with the Tribunal he had exhausted the local remedies which were available to him within the Secretariat. We are further satisfied that the application was filed within the prescribed time and we, therefore, have the jurisdiction to determine the issues raised in this Application.

PRELIMINARY MATTER

4. The Applicant made an application for an oral hearing. The Tribunal carefully considered the request and the underlying grounds for that request. We noted that the main reason for the request related to the calling of three witnesses who would give evidence in support of the Applicant's contention that assurances were given on security of tenure. There is no other ground given to support that request. The Tribunal concluded that the documentary materials (in particular the very detailed submissions contained in the Application, the Reply and the Additional Written Statement (15th May 2006) from the Applicant contained more than adequate material to enable the Tribunal to properly determine the issues raised and accordingly the application was refused. In order to ensure that all relevant material was before the Tribunal liberty was given to both parties to file further submissions and documents if they so wished. The applicant took the opportunity to file further submissions.

RELIEF SOUGHT

The Applicant seeks the following relief;

Declaration, that the Respondent has a contractual obligation to renew his contract to retirement. In the alternative to above, a declaration, that the Respondent ought to apply the rotation policy so that the Applicant's contract is renewed up to December 2011.

ISSUES

The Tribunal identifies that the following issues, presented in the form of questions, are central to this claim:

What is the nature of the assurances given by the Respondent and is the Applicant entitled to reply upon them?

Did the Respondent have an obligation to renew the Applicant's contract up to retirement?

Did the Respondent unilaterally vary the terms of the contract of employment by applying the Rotation Policy to renewal in 2002?

Did the Rotation Policy become a term of the contract and if so when?

Was the Rotation Policy applicable to the Applicant?

Did the Respondent apply the Rotation Policy fairly and in accordance with the internal laws and procedures of the Secretariat

THE TRIBUNAL'S APPROACH TO THIS CLAIM

7. The basic facts as stated in the documentation and submissions are not disputed by the parties. The issues which the Tribunal must determine make it imperative to carefully review the Applicant's entire employment history and all the relevant changes incorporated into the contract. For our purposes, 'contract of employment' is defined by Article II, paragraph 4(b) of the Statute of the Tribunal and it provides as follows -

"Contract of employment" and "terms of employment" include all relevant Regulations and Rules in force at the time of the alleged non-observance and include the provisions relating to staff retirements and end of contract benefits."

This definition makes the Staff Regulations and Rules a term of the contracts of employment entered into by any number of staff with the Respondent. "Office Notices" are frequently used within the Secretariat to give notice of impending changes and to change the terms and conditions of employment of those who have a contractual relationship with the Respondent. These Office Notices are therefore part of the Rules.

8. It will be important, for the Tribunal to refer to the applicable law of the Tribunal before dealing with the issues. Article XIV of the Statutes provide as follows -

"(1) In dealing with all cases before it relating to contracts of service, the Tribunal shall be bound by the principles of international administrative law which shall apply to the exclusion of national laws of individual member countries"

For the purposes of this Article, contracts with Applicants referred to in Article 11.4(a)(v) and 11.4(a)(vi) shall be treated as contracts of service".

In all other cases, the Tribunal shall apply the law specified in the contract. Failing that, it shall apply the law most closely connected with the contract in question."

What law should the Tribunal apply to the contractual relationship between the Applicant and Respondent? This is an important question particularly because the Applicant has made reference to employment law principles within the national laws of some member states. Paragraph 5 of the Reply states:

It is a fundamental right in the employment legislation of several commonwealth countries, including for example England, New Zealand and Australia, that an employee should not be dismissed without a personal hearing. Under UK employment legislation, failure to have an oral hearing with a right of appeal will render a dismissal automatically unfair. The respondent applies English legal principles to its contracts-UK national insurance and income tax are deducted...The Secretary General has accepted in his working lunch with the CSSA on 16th March 2004 that the Secretariat will continue to be a good employer, not subject to UK employment law, but guided by it."

10. The Tribunal concludes from the above statements that the Applicant considers that UK law is important, applicable and relevant to his contractual relationship with the Respondent. The Tribunal accepts, of course, that the Commonwealth Secretariat will be affected by UK tax laws and pension rights when they come to make their own internal pension arrangements for those employed by the Secretariat. Subject to that example, the answer to the question above is, that the contractual relationship is governed by the internal law of the Commonwealth Secretariat and not by UK employment law or any other national state law.

11. The Tribunal recognises the long standing principle accepted by all International Organisations that it is necessary for them to have an independent internal system of law governing the employment relations with those who are employed within those organisations. The Commonwealth Secretariat is one example of such an international organisation. There are a number of important reasons for this principle. It will suffice to state two of the more important reasons. Firstly, personnel who work within these organisations are recruited from many different nationalities to work in many different countries therefore they must all be subject to one identical system of law. Secondly, that system of law should not be arbitrarily chosen from any one national state, so preserving the independence and integrity of the international organisation. That organisation is then protected from influence and any undue pressures by any individual national state.

12. The overall effect of an international organisation adopting its own internal laws is that all aspects of the contractual relationship with those who work in that organisation, including the Arbitral Tribunal process enacted to deal with contractual disputes is not affected in any way by the national laws of any of its member states. This principle will ensure that an international secretariat will be able to function efficiently. vide de Palma Castiglione INT, Judgment No.1 [1929] at page 3 .. and more recently the World Bank Arbitral Tribunal has stated in the de Merode case [(1981) WBAT Decision No.1] as follows -

“The Tribunal, which is an international tribunal , considers that its task is to decide disputes between the Bank and its staff within the organised legal system of the World Bank and that it must apply the internal law of the Bank as the law governing the conditions of employment”

It has come to be generally accepted now that it is the internal law of the organisation that governs the employment relationship of international civil servants with the international organisation for which they work.”

Principles of Institutional Law of International Organizations—(2005) C.F Amerasinghe.

Other international organisations have accepted this principle: vide Aglion, Judgment No.56 [1954], JUNAT Nos. 1-70 page 283 at pp 293-4 and the ILOAT Judgment in Waghorn No. 28[1957] at page 6.

Where necessary the Tribunal will have recourse to general principles of Contract Law.

13. Finally the Tribunal reminds itself of the approach it must take when reviewing the actions and decisions of the Secretariat in this case. We do not substitute our views in place of the views or decision taken by the Secretariat. The decision as to whether to renew a fixed term contract subject to a Rotation policy must contain a measure of discretionary power. The Tribunal’s approach to the exercise of discretionary power is to examine it and to ask where relevant, all or some of the following questions; Was it exercised according to the internal laws, rules and regulations of the organisation? Was the decision based upon an error of law or error of fact? Was the correct procedure followed? Did the decision makers take into account facts they should have taken into account? Is there evidence of misuse of power? (In re Ballo, ILOAT Judgement No. 191).

SUMMARY OF EMPLOYMENT HISTORY

14. 8TH April 1974, the Applicant began his employment at the Secretariat as a clerical officer. The offer letter for this job stated, “You will be subject to the Secretariat staff Rules and Regulations as laid down now and as amended from time to time.” This clause is an important one and appears in every contract offered and accepted by the Applicant throughout his employment history.

15. 30th March 1976 office notice 19/76 introduced the New Pension and Life Assurance Scheme for all staff of the Secretariat. It was necessary to introduce this new scheme to bring the Secretariat’s superannuation Scheme in line with UK legislation on pensions. The UK legislation was due to take effect on 5th April 1980 and affected all superannuation schemes operating in the UK. The effect was detrimental to those who were members of superannuation schemes as it drastically reduced the circumstances in which contributions were refunded to them. The Secretariat’s new scheme was designed to provide a pension on retirement or the receipt of a gratuity on termination of the contract. Members of staff wishing to join the gratuity scheme had to transfer to contract terms. The applicant was an example of such a staff member.

16. A number of meetings were held with the Commonwealth Secretariat Staff Association (CSSA) and management about the effects and operation of this new scheme. Office Notice no. 6/79 26th January 1979, (page 0314 of documents) sets out an important change to tenure, if a staff member elected the

gratuity that permanent status had to be exchanged for contract terms. Most importantly, at page 0314 of the documents is stated, "Those who do decide to opt for the gratuity will appreciate that their future employment would be on contract, for three years in the first instance, that contractual appointments are always subject to review at the expiry of their term, and that as with other contractual appointments, no guarantee of renewal can be given." At a meeting held on 29th January 1979, the then Deputy Secretary-General (Administration) discussed the arrangements for the new scheme with all staff who attended, giving them assurances about tenure.

17. On the 6th February 1979 the Applicant filled out the relevant form electing not to join the new pension scheme but to be placed on contract terms. The first 3 year contract took effect from 1st April 1979. The applicant contends that he was able to elect that option because of the assurances given at the meeting on 29th January 1979. Those assurances mirror assurances given later on 21st February of that same year. Notes of that meeting were taken by the CSSA and state, "The Director of Administration accepted the point being made and reassured the Staff Association that there was absolutely no need for concern.....it was emphasised that at present the renewal of any non-diplomatic contract was subject only to the condition of satisfactory performance. ..as a good employer the Secretariat would maintain its existing practice regarding contract renewal-that is to say, using only the condition of satisfactory performance-and the special circumstances of those staff joining the gratuity Scheme would be remembered,....it requested the Administration to assure the Staff Association that even if circumstances in future should make the existing principle of using only satisfactory performance as the condition for renewal untenable, then the special position of those staff on contract because of the Gratuity Scheme would continue to be accepted was agreed by the administration."

18. In relation to assurances given the Tribunal notes a memo sent to the Ad Hoc Committee dated 19th March 1984 which states, "it was agreed with the Staff Association that those on gratuity terms would be treated as if they were on indefinite tenure -subject always to good performance.". Within the same memo reference was made to the important development of rotation in the Secretariat.

19. 1st of July 1984, the Applicant was promoted to a higher executive officer grade M3 and accepted a further 3 year term contract. There followed further renewals of a 3 year term on 1st July 1987, and a 2 year term on 1st July 1990.

20. In November 1990, Office Notice no. 69/90 gave notice to staff of the intention to bring in rotation in grades M4-M5 and grades S1 to S2. There were no guidelines for Rotation and the Secretariat did not implement Rotation at that time. There followed two further 3 year renewals of the contract 1st July 1992 and 1st July 1995.

21. On 7th May 1996 Office Notice no. 23/96 set out agreed guidelines on Staff Rotation, longevity of service and career prospects. This is an important document. It states, " At the Diplomatic and professional levels, the principle of rotation is fundamental, whereas for more junior and support grades continuity of tenure can be assured.....In view of their interest in appointments at this level there is an expectation among governments that a degree of rotation should also apply at the M1-M3 levels....but the Secretary General will take the need for rotation into account when considering recommendations for contract extensions." The Tribunal notes that at the time of issue of this notice the Applicant had been at Grade M4 since 1984.

22. 1st October 1996, the Applicant joined the Secretariat pension Scheme but remains on fixed term contracts. 1st July 1997, the Applicant received further promotion to grade M1 on a 3 year contract. (although he was remunerated at the 5th Point on M2 scale). May 1999, the Secretariat commissioned the Report of The Change Manager which was approved by governments in Resource week June 1999. This important report, referred in some detail to Tenure and the need for rotation within the Secretariat. 1st January 2000, there was a further renewal for a term of 3 years followed by a change to CS5 grade in July of the same year.

23. The following year March 2001, Office Notice No. 9/2001, set out further guidelines on rotation in the Diplomatic and Professional grades. This Office Notice refers back to the basis for rotation as set out in the Change Managers report. That notice makes specific reference to how the rotation policy would affect officers currently in employment by stating two important facts firstly that "office notice no. 23/96 is relevant". Secondly it set out in some detail, Transitional arrangements for staff currently in

employment". The most important of those transitional arrangements relate to the Applicant in that it states, "Those whose contracts expire in 2002 having served three or more contracts will be eligible for a final contract of 18 months from the end of the current contract."

24. In 2002 the Applicant's contract came up for renewal. By a letter dated 7th March 2002, the Applicant was informed that the Secretary-General approved the renewal of his contract "in accordance with the Staff Rotation Policy, ." for a further 3 year term. The Applicant by letter dated 23rd July 2002, set out his objections to the renewal based upon the rotation policy. He further set out his arguments in some detail as to why the rotation policy should not apply to him with particular reference to the assurances made in 1979.

THE ISSUES

THE 1979 ASSURANCES

25. The Tribunal notes that the Respondent does not dispute the notes of the meeting dated 21st February 1979 (set out in paragraph 17 above) nor the Applicant's contention that similar assurances were given on 29th January 1979. A close examination of the notes of 21st February meeting shows that the assurances purporting to give indefinite tenure by automatic renewal of fixed terms were neither clear nor concise and were in conflict with other written material on the same issue. The note written by the CSSA states:

"When these contracts came up for renewal it should be stressed to the Review Board that these staff members were on contract merely because of a technicality arising out of the requirements of the Gratuity Scheme and as such the renewal of their contracts should be virtually automatic"

And yet, in another vein it states -

"The Staff Association understood, of course, that renewal would be subject to satisfactory performance and thus no binding assurance could be given by the Administration for fully automatic renewal."

And again the Note states -

"It was emphasised that at present the renewal of any non-diplomatic contract was subject only to the condition of satisfactory performance".

26. 26th January 1979 Office Notice written and signed by H.M. Lynch-Shyllon for the Administration and Legal Divisions as set out above, states -
..no guarantee of renewal can be given.."

27. In considering whether the Applicant can rely upon these assurances the Decision of In re Geiser (ILOAT Judgment No. 782), is both instructive and persuasive but not binding. The rules of good faith place an obligation on the party making a promise to keep that promise. The party relying on that promise has a right to enforce that promise and seek redress if there is a breach. There are however important conditions to this rule. The promise must be substantive, it must be made by someone competent to make it, and the position in law must remain unchanged between the date it was made and the date it was to be fulfilled. Finally that breach of the promise should cause injury to the party relying on it.

28. The Tribunal finds that two of these conditions have not been fulfilled. Firstly, that there does not appear to be a substantive promise giving a guarantee of indefinite tenure despite the existence of fixed term contracts. The Tribunal notes the unsatisfactory state of the assurances given. There is a degree of conflict between what was said orally and what is recorded in writing. Office Notice 6/1979, which was sent out on behalf of both the administration and legal divisions made it is clear that all staff were told that no guarantee of renewal could be given. No assurances were given in that document about indefinite tenure. Within just three days of that written document the then Deputy Secretary General (administration) Chief Emeka Anyaoku, gave verbal assurances as to future renewal of fixed term contracts which was identical to the assurances contained in the notes of 21st February 1979. The verbal assurances given at the meeting of the 21st February was given by the author of the Office Notice 6/1979. The assurances were given by senior management with authority to comment on this matter. These facts are not challenged by the Respondent. These verbal assurances were in conflict to the written notification contained in Office Notice 6/1979 issued on behalf of the Administration and Legal Divisions so therefore the written document should take precedence. It is unfortunate that no one from the CSSA or senior management of the Secretariat sought to correct this conflict of information. It is also unfortunate

that the Applicant and CSSA were left with conflicting information on such an important matter. They were entitled to seek clarification of the practical effects on tenure for concerned staff, therefore it was necessary that any changes were set out clearly, consistently and concisely whether given orally or in writing.

29. In addition to the point above the notes of 21st February 1979 contained the words, "at present", which should have indicated to all who heard it that the oral utterances would not confer any enforceable rights as to future changes brought about by mutual consent. The Applicant was therefore given a limited oral assurance which operated for the present with no guarantee for the future except an expectation that the special position of relevant staff would be taken into account on renewal.

30. Secondly, the position in law had not remained unchanged but had changed between 1979, the date of the assurances and the relevant renewal of contract in 2002. The Applicant relied upon these assurances from 1979 up to 2002, wrongly ignoring the fact that the assurance could never affect future change (brought about by mutual consent) of condition and terms of each new fixed term. There has been a change in the law brought about by the Rotation policy between date assurance given and date of renewal of one of the fixed terms. It is implicit in the Applicant's case that he could belong to both the indefinite tenure and the definite fixed term contract. This argument is totally untenable.

31. Finally on this issue, in order to rely upon the assurance the Applicant must demonstrate that the assurances became a term of the contract whether collateral or otherwise. The test is to discover whether the intention of the parties was to make the statement a term of the contract and that intention can only be deduced from the evidence as a whole: vide *Miller V Canon Hill Estates Limited* [1931], 2KB 113. Looking at the Respondent's actions, a significant part of the circumstances surrounding these assurances is the fact that within 3 days before the meeting on the 29th January, Office Notice 6/79 set out the correct position on security of tenure and that all subsequent fixed term contracts were based upon Staff Regulations and Rules as they were presently drafted and as they could be amended in the future. The Tribunal notes that whenever there are to be changes of a fundamental nature to terms and conditions, they are always put into writing. Looking at the Applicant's actions it is significant that neither the Applicant himself nor the CSSA on his behalf ever requested that the assurances be written into each contract. Even if this request were made the Tribunal doubts whether the Secretariat would have complied with such a request. The Tribunal therefore concludes that it was never the intention of the Respondent that the verbal assurances become a term of the contract.

ROTATION POLICY AND VARIATION TO THE CONTRACT

32. The sole reason for the decision to grant only one further fixed term to the Applicant in 2002 was Rotation. The Tribunal must look at the internal laws to see if that decision could be impugned in any way. The above chronology sets out the important contractual changes due to Rotation policy. The Tribunal notes that prior to the Decision in 2002 to offer one more fixed term contract, there were no less than four significant dates where Rotation was discussed in detail always with the CSSA knowledge and active role. On the 7th May 1996, Office Notice no. 23/96 set out an agreed guideline on the application of rotation. If the CSSA disagreed with those guidelines this document would not have used that important word. This document recorded the expectation of Governments that a degree of rotation would apply to staff of the Applicant's grade. Here is clear unambiguous evidence that all staff knew about Rotation and that it would apply to their terms of contract at some stage in the near future. The guidelines made it clear there was to be a new list of factors relevant to renewal of contracts. There no longer existed one ground, namely satisfactory performance, for renewal. The new grounds were:

(i) the need to achieve a wide geographic basis on the recruitment of staff and to achieve as far as possible a gender balance of all staff at all levels.

an appropriate skills balance to enhance the capacity of the Secretariat to respond to the challenging demands and priorities of Member Governments.

ensuring a regular inflow of new ideas and energy.

the need to meet the Respondents' needs with reduced numbers in staff it must operate within and to retain to some degree of continuity and effective institutional member.

33. If there was any doubt that the Rotation Policy was applicable to staff at the Secretariat, then Office Notice no. 9/2001 dated 13th March 2001 took away that doubt. The Applicant has submitted that the

Rotation Policy did not apply to him in 2002 because for a period of some twenty years it had not applied to him and that during such a long period in which the Policy was not applied to him, there developed an entrenched custom and practice. This custom had become a term and condition of his contract of employment. This argument is founded on false premise.

34. Although the principles of the Rotation System were laid down in 1984 and later reaffirmed, the Tribunal has found the following regarding the policy: Rotation was not a term or condition of the Applicant's contract in 1984 nor was there any established custom or practice of implementation at that time. Therefore, the Rotation Policy could not and did not apply to the Applicant during that period. It was good managerial practice not to introduce such a fundamental change to tenure overnight as it were, so therefore change was introduced gradually. Time was taken to investigate and to discuss the change at all levels of the secretariat. The Office Notice dated 7th May 1996 fully introduced the policy into the internal law of the Secretariat. At the time of the all important decision in 2002 to renew for one more term based upon rotation, the Applicant was at grade CS5 a grade roughly equivalent to M1 grade. At this time Office Notice 9/2001 gave even more detailed guidance on how the policy would be implemented and exactly who would be affected by it. Therefore in 2002 the Applicant was subject to Rotation according to the internal laws of the organisation.

35. The Applicant's contention that the Respondent unilaterally varied his terms of contract of employment without his consent in relation to rotation has no legal force and cannot be sustained. It is our view that the Respondent, as a matter of law could vary unilaterally any unessential terms of contract of employment without the Applicant's consent. In the de Merode case [(1981)WBAT Decision No.1], it was held that an international organisation, like the Respondent, has an inherent power to amend the general and impersonal rules which establish the rights and duties of its staff. It was further held in the same case, that it was an accepted legal principle that the power to create rules implied the power to change them. It is noted, however, that the Respondent in relation to rotation had always maintained detailed and full consultations with members of the CSSA before this fundamental change of policy was brought into the internal laws.

36. The Tribunal notes that as long ago as 1984 the role of the Staff Association was re-assessed in the Report of the Ad Hoc Committee on personnel administration. That report states at para. 90(4), "The role of the Staff Association may be summarised...to consult and negotiate with administration on matters relating to welfare of all staff including salaries, conditions of service, staff development etc.." (Document page 0599). There was consultation with the CSSA. It is therefore not possible that this variation of fundamental terms of contracts could take place without the full knowledge and consent of the staff members. The Rotation policy became a term and condition of employment of the Applicant's contract by mutual consent.

37. The Respondent was therefore entitled to renew the contract for only one further term of three years on the basis of rotation. Therefore the Tribunal does not find any proper basis to conclude that the decision to renew should be set aside.

ROTATION POLICY AND PARITY OF TREATMENT WITH OTHER EMPLOYEES

38. The Applicant complains of unequal treatment in the way the Rotation Policy was applied to him. He stated that Mr Jasimuddin and Ms Lorna McLaren were promoted from grade CS6 to CS5 grade. In the case of Ms. McLaren she was promoted long after Office Notice 23/96 of May 1996 without being subject to rotation. The Applicant further contends that this is evidence of the custom and practice not to apply rotation to the professional grades of CS5 and in any event amounts to unjustified disparity of treatment. In addition, the Applicant's third written submissions refers to his contention that there is no other non-diplomatic locally-recruited staff member who was in service in February 1979 who made the decision to join the gratuity Scheme who has had their employment terminated in this way.

39. The Tribunal accepts that the principle of equality of treatment applies to the Secretariat in its dealings with staff. In order for the Tribunal to consider whether this principle has been violated by the Respondent it must have detailed evidence from which it can consider the complaint. All the evidence received by the Tribunal on this issue is set out in the paragraph above. This evidence is insufficient for the Tribunal to evaluate this claim. It is the duty of Applicant and his legal advisers to set out in as much

detail as is necessary the grounds of his complaint of unequal treatment so that the tribunal has a basis to properly consider his claim.

40. There is no evidence, for example, of whether the Applicant and the two mentioned employees were carrying out the same or similar duties, whether the same grade means that all work and all conditions are the same, or whether the promotion of all three took place in the same conditions and circumstances, whether the guidelines set out in Office Notice 23/96 and Office Notice no. 9/2001 have in some way been wrongly applied by the Respondent. Lack of evidence means that the claim fails.

THE RESPONDENT'S OBLIGATION TO RENEW THE CONTRACT UP TO RETIREMENT

41. The Applicant contends that there exists an obligation to renew his contract up to retirement. The argument is threefold. Firstly, that the Respondent gave an assurance in 1979 prior to the acceptance of the first fixed term which was relied upon by the Applicant. Secondly, that the Respondent has renewed consistently for the period from 1982 to 2002, therefore creating a custom of expectation of renewal. Finally, that there were special personal circumstances which applied to the Applicant which required the Respondent to renew his contract up to retirement.

42. The increased use of fixed term contracts and in particular the more recent terms relating to Rotation indicate that the Secretariat intends to carry out its work by implementing fixed term contracts for those who join the Secretariat in modern times. This is further demonstrated by the recent implementation of the Sutherland Human Resource Handbook. The Tribunal notes that Staff Regulation no. 13 makes it mandatory for staff on grades CS2-CS5 to be subject to the Rotation Policy. These changes which have come about during the life time of the Applicant's contract of employment were not arbitrary changes brought about by the Secretariat but decision of Governments which had to be implemented by mutual consent of all staff.

43. The Tribunal finds that there was no obligation to renew because the Secretariat had to follow the Rotation Policy once it was finally implemented and it was so implemented by 2001 prior to the decision of 2002. The Rotation Policy does not lay down any requirement that the Respondent must take account of personal circumstances of each person affected by its application, and neither can the policy take account of assurances given in 1979 some 20 years ago when the Secretariat operated under entirely different terms and conditions of service.

FINDINGS

44. We have carefully reviewed all the materials that has been placed before the Tribunal and are satisfied that there is no basis to impugn the decision of the Respondent to renew the contract for one further term up to 2005.

45. For completeness the Tribunal will deal with two further matters contained within the claim. Firstly, the Tribunal is unable to find that the Respondent's letter dated 7th March 2002 addressed to the Applicant was a letter of dismissal. It was neither a notice of dismissal nor dismissal. It was a final renewal of a fixed term contract which had been renewed a number of times in the past. The terms of the follow up letter dealing with when the applicant had to leave the secretariat was intended to comply with the requirements of the transitional arrangements for staff currently in employment when Office Notice 9/2001 was introduced.

46. Secondly, the Applicant waited some 7 months to get a response to his letter dated 23rd July 2002 making enquiries about the Rotation Policy. This was regrettable. There has been no explanation given by the Respondent in the pleadings for this delay. Unreasonable delay can amount to denial of justice to those who choose to submit claims to this Tribunal. It is important where possible, that matters are dealt with during the existence of an applicant's contract and in this regard the Tribunal has in mind its powers under Article X. 2. The Tribunal notes however that there is no relief sought and that this complaint did not form part of the pleas but is to be found in the final paragraph of the Additional Written Statement.

47. This Application is dismissed.

Given on this day of June, 2006 in London.

Signed

Justice R A Banda, SC

Anesta Weekes, QC Dame Joan A Sawyer, DBE, PC

