



Administrative Tribunal

Distr. Limited
8 October 2008

Original: French

ADMINISTRATIVE TRIBUNAL

Judgement No. 1411

Case No. 1483

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Dayendra Sena Wijewardane, Vice-President, presiding; Ms. Brigitte Stern; Sir Bob Hepple;

Whereas at the request of a former staff member of the United Nations High Commissioner for Refugees (hereinafter UNHCR), the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 30 April 2006;

Whereas, on 28 April 2006, the Applicant filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 26 June 2006, after making the necessary corrections, the Applicant filed an Application, requesting the Tribunal to order:

- “a. Reimbursement of all salary, benefits, pensionable remuneration, allowances, grants, and any other increases the Applicant would have received as an active staff member as from 1 March 2000, the date of his removal from his position as Representative in Abidjan, through the date of such reposting;
- b. An award of damages representing his actual physical and psychological injury due to the impugned actions of UNHCR ...;
- c. The award of moral damages in the maximum amount ... on account of the indignity the Applicant suffered in not being placed in a post commensurate with his grade, training, skills and experience for a period of more than [three] years; ... the irreparable harm caused to the Applicant’s honor and reputation by the [High Commissioner] and others’ repeated recital of ... ‘rumours and allegations’ as the basis for such non-posting; and ...

the huge gap that will appear in the Applicant's [curriculum vitae] covering his final years as a staff member of ... UNHCR;

- d. The award of legal costs and expenses;
- e. Interest at the market rate on all amounts awarded to the Applicant pursuant to this appeal, from 1 March 2000 through the date of such award;
- f. Initiation of disciplinary proceedings against those responsible for the unlawful denial to the Applicant of a post commensurate with his grade, skills and experience for more than three years; and
- g. Such other relief as the [Tribunal] deems just and necessary."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 11 December 2006, and once thereafter until 11 January 2007;

Whereas the Respondent filed his Answer on 11 January 2007;

Whereas the Applicant filed Written Observations on 12 March 2007;

Whereas, on 3 July 2008, the Tribunal decided not to hold oral proceedings in the case;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

"[Applicant's] Professional Record

... [The Applicant] entered the service of [UNHCR] on 26 January 1976, as a Research Assistant. [His contract was subsequently extended and he received several promotions. On 1 September 1996, the Applicant was appointed UNHCR Representative in Abidjan, Côte d'Ivoire, at the P-5 level with a special post allowance to the D-1 level. He was promoted to the D-1 level on 1 July 1999.]

...

Summary of Facts

... In December 1999, the [Applicant's] post as [UNHCR Representative, Côte d'Ivoire,] was downgraded from the D-1 to the P-5 level.

... By letter dated 22 February 2000, the [Applicant] was informed that he should leave the office in Abidjan by the end of that month, as his successor ... would take up his duties on 1 March ...

... By memorandum dated 24 February 2000 ..., the [Applicant] was informed that his successor's reassignment would be effective 15 March ..., and his revised date of departure would take effect on 13 March ...

... By memorandum dated 7 March 2000, the Head, Human Resources Service (... HRS), asked the [Applicant] to relocate with his family to his home village N'Zérékoré, Guinea, pending a future reassignment.

... The [Applicant] left the UNHCR office in Abidjan on 13 March 2000. [His] successor assumed her functions as Representative ... on 1 April ..., [on which date the Applicant] was placed on [special leave with full pay (SLWFP), on 'staff member in between assignment' (SIBA) status].

... By facsimile dated 14 March 2000, the [Applicant] urged the Chief, [HRS], that the decision of his relocation to N'Zérékoré, Guinea, be reconsidered, for educational and medical reasons. [The Applicant and his family were then permitted to remain in Abidjan, but his request to be transferred to Geneva pending reassignment was refused.]

...

... On 4 August 2000, the [Applicant advised] the Head, [HRS], ... that he was eager to be assigned to a new post [and] asked him to transmit him the vacancy announcements at the D-1 level which could be issued.

... [On] 7 May 2002, [the Applicant wrote to] the High Commissioner for Refugees, request[ing] him to review [the] situation. ...

... By letter dated 22 May 2002, the [Applicant's] treating physician wrote to [the] UNHCR Joint Medical Service, ... recommending his transfer to UNHCR headquarters in Geneva[, for medical reasons].

...

... By memorandum dated 17 December 2002, the [Applicant] was informed ... that he would be temporarily reassigned to Geneva, as of 4 November ..., subject to medical clearance, for an initial period of 6 months.

...

... On 8 May 2003, the [Applicant] met with the High Commissioner to try to solve his professional situation.

... On 9 June 2003, the [Applicant formally] requested the High Commissioner ... to [respond] in writing with the nature and details of the rumours and allegations he had evoked during the meeting of 8 May ..., which would explain why the [Applicant] was never selected for an available position corresponding to his grade and experience. He further formally denied and refuted 'all of the rumours and allegations which the Administration ha[d] apparently wrongfully relied upon to deny [him] a rightful post over the past 3 years'.

... By letter dated 12 June 2003 to the High Commissioner, the [Applicant], addressing the question of his 'untenable situation', expressed his disappointment as [to] the outcome of their meeting of the same day, during which the High Commissioner [had] proposed [to] him an assignment to a P-4 post in Gambia. He specified that 'th[e] offer of a post ... two levels below [his] personal grade [was] by no means commensurate with [his] skills, training or experience and would be an affront to the dignity and respect to which [he was] entitled as an international civil servant'. He therefore stated that he would not voluntarily accept the offer, but would take up the position 'under reservation of all rights, and without prejudice'. The [Applicant] further stressed that concerning the High Commissioner's 'alternative suggestion that [he accept] an agreed separation, [he would] not do so until [his] name and reputation ha[d] been cleared, and the past three years of irregularity and mistreatment ... been redressed'.

... On 13 June 2003, the High Commissioner informed the [Applicant] that further to their meeting of 12 June ..., '[he] intend[ed] to assign [him] as Head of the Liaison Office in Libreville,

Gabon, post at the P-4 level, effective 1 July 2003'. He however reiterated his proposal of an agreed termination.

...

... By letter dated 26 June 2003 ..., the [Applicant] was informed ... that he would be appointed effective 15 July ... as the High Commissioner's Representative in Gabon ... at the P-4 level, subject to the agreement of the Government. ...

... On 3 July 2003, the [Applicant] wrote to the Secretary-General requesting

'[administrative] review [of] the failure of the Director of [the Division of Human Resources Management (DHRM), UNHCR,] to provide [him] with the explanation of [his] current administrative situation ...; to further review the decision of UNHCR not to appoint [him] to a post commensurate with [his] grade, training, experience and abilities over the past three years on the sole basis of unsubstantiated rumours and allegations ..., which [amounted to] an irregular disguised disciplinary sanction ...; to review the decision of the High Commissioner dated 26 June ... to transfer [him] as his Representative to Gabon at grade P-4; and to otherwise restore [him] to [his] prior status immediately'."

Also on 3 July 2003, the Applicant submitted an appeal to the JAB in Geneva, requesting suspension of action of 'UNHCR's decision to appoint [him] as the High Commissioner's Representative in Gabon at the P-4 level'. On 9 July, a summary hearing was held on the Applicant's request for suspension of action and, on 11 July, the JAB produced its report. It found that as the decision to assign him to Gabon "could appear as an indirect sanction for a behaviour or for acts for which [the Applicant] did not have the opportunity to answer within the framework of a disciplinary procedure, its implementation would result in irreparable injury to [his] rights as a staff member". Accordingly, the JAB recommended that the request for suspension of action be approved. On 15 July, the Under-Secretary-General for Management advised the Applicant that the Secretary-General had decided to suspend the implementation of the contested decision. By memorandum dated 30 July, the Applicant was advised that the High Commissioner had decided to rescind the decision to appoint him to Gabon.

On 16 October 2003, the Applicant lodged an appeal on the merits of his case with the JAB. The JAB adopted its report on 30 September 2005. Its considerations, conclusions and recommendations read, in part, as follows:

"Considerations

Admissibility

49. Concerning receivability *ratione materiae*, the Panel took note of the argument of the Respondent that the administrative decision of the High Commissioner to appoint the Appellant to a P-4 post in Gabon, dated 26 June 2003, was subsequently withdrawn ...

50. In view of the subsequent withdrawal of the decision dated 26 June 2003, the Panel considered that one object of the appeal, i.e. the decision to transfer the Appellant to the post of Representative in Gabon at the P-4 level, was indeed moot. However, the Panel considered that in view of the broader formulation of the request for review and of the statement of appeal, it had to

examine whether the failure to appoint the Appellant to a post commensurate with his grade for over three years constitute[d] an implied administrative decision. The Panel put forward that the silence of the Administration on various requests of the Appellant to appoint him to a post commensurate with his grade constitute[d] indeed an implied rejection of his claim, which continued to produce effects ... The Panel was satisfied that the essence of the request for review and the statement of appeal was the same and covered the rejection of the Appellant's claim to be appointed to a post commensurate with his grade. The Panel therefore considered that the appeal was admissible *ratione materiae*.

...

Merits

...

55. The Panel took note of the argument of the Respondent who stressed that due to the rotation principle of UNHCR, it is not always possible to immediately re-assign all staff members and that therefore, some staff members remain without assignment for certain periods of time. The Panel fully understood this, but stressed that according to the statistics on file, at the time, the average length of time UNHCR staff members on SIBA status spent without assignment was nine months ... The Panel therefore considered that in view of the particularly long period the Appellant spent on SIBA status and the circumstances surrounding his case, the Appellant's situation could not be explained merely by factors inherent to the rotation system.

56. The Panel noted that as of 1999, when the post that he occupied ... was downgraded, the Appellant had consistently applied to a multitude of posts, and that as of August 2000 (i.e. four months after having been placed on SIBA), he had regularly contacted and met with the Head of HRMS, as well as the High Commissioner in order to be posted. The Panel was struck by the fact that despite these efforts and numerous applications, his broad experience and his excellent performance evaluations, the Appellant remained on SIBA status for a period of over 60 months.

...

Conclusions and Recommendations

61. The Panel **concluded** that the Appellant's non-assignment to a post commensurate with his grade, training, experience and abilities over the past three years was influenced by the rumours and allegations mentioned in the letter of the High Commissioner of 26 June 2003, [and] was therefore legally flawed and warrant[ed] compensation.

62. The Panel further **concluded** that the only veritable rehabilitation of the Appellant would be an assignment to a D-1 post, but understood that given the circumstances of the case at this point in time, such repair [was] inconceivable.

63. It therefore **recommend[ed]** that] the Secretary-General ...:

- a. request that a written communication from the High Commissioner be addressed to the Appellant, containing a written apology and a recognition of his merits;
- b. grant the Appellant six months' net base salary as compensation for moral damages."

On 20 January 2006, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB's findings and conclusions and had decided to accept its unanimous recommendation.

On 26 June 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The compensation awarded to him was not proportionate to the excessive abuse he suffered at the hands of the Organization, and its affect on his health and professional reputation.
2. He was treated unfairly.
3. The JAB failed to recommend the extension of his contract until the age of 62.

Whereas the Respondent's principal contentions are:

1. The Applicant has been adequately compensated for any irregularities in his case, and his pleas of improper treatment by the Administration were resolved by the Secretary-General's acceptance of the JAB's report and recommendations.
2. Issues which were not previously submitted for administrative review, or which were not considered by the JAB, are not receivable.

The Tribunal, having deliberated from 3 to 25 July 2008, now pronounces the following Judgement:

I. Before considering the Applicant's present claims, the Tribunal will first summarize the earlier events. The Applicant had been employed in the service of UNHCR since 26 January 1976 under an indefinite contract. Having begun his career in a post at the P-1 level, he was promoted to a D-1 post on 1 July 1999. On 22 February 2000, the Applicant was informed that, owing to the arrival of his successor, he had to leave his post. On 1 April, the Applicant was placed on SLWFP. In November 2002, he was temporarily appointed to the post of Principal Officer in Geneva but, on 1 February 2003, he was again placed on SLWFP. From March 2000 to May 2003, he was against 42 posts in succession without being definitely appointed to any of them. During that period, the Applicant was the subject of a pre-investigation concerning certain rumours regarding him but without ever having an opportunity to discuss the matter with the competent services of the Administration. On 12 June 2003, in an interview with the High Commissioner, the latter offered the Applicant the option of immediate separation from service or acceptance of a post of Representative of the High Commissioner in Gambia, at the P-4 level, the appointment taking effect on 15 July. On 26 June, the High Commissioner notified the Applicant of his decision to appoint him to the post of Representative in Gabon at the P-4 level.

II. On 3 July 2003, the Applicant requested the High Commissioner to rescind that decision. On the same day he applied to the JAB, requesting that the decision be suspended and protesting against the conditions under which his career had evolved over the three years preceding that decision. The JAB recommended in its initial report of 11 July that the Gabon appointment decision be suspended. Following the suspension decision, the case continued before the JAB. The Gabon appointment decision was withdrawn by the High Commissioner on 30 July. In its report on the merits dated 30 September 2005, the JAB held that the question of the Gabon appointment no longer relevant but declared itself competent to examine the way in which the Applicant had been treated in the three years preceding that decision.

III. In attempting to understand the reasons for the professional situation in which the Applicant found himself, the JAB stated that it was satisfied that certain rumours and allegations that had given rise to the initiation of a pre-investigation had played a part in the fact that the Applicant had for more than three years been in a situation where no position was assigned to him and where he was finally appointed to a post which was not commensurate with his grade, training, experience or abilities. That situation had not caused any financial loss - the Applicant having continued to be paid as if he had remained in a D-1 post. Nevertheless, the JAB held that the Applicant had suffered moral damage, which warranted compensation. The JAB requested the High Commissioner to offer an official apology to the Applicant and recommended compensation equivalent to six months' net salary. On 20 January 2006, the Secretary-General forwarded the report of the JAB to the Applicant and informed him that he accepted its conclusions. Meanwhile, on 15 December 2004, the Applicant was appointed to a post of Special Adviser, Office of the Director for External Relations. He remained in that D-1 post until his retirement on 30 September 2005.

IV. In the present appeal, the Applicant maintains that the compensation granted to him is not proportionate to the moral damage which he suffered. The Applicant's claims are based on several facts serving to prove that his situation had been made untenable by the Administration for more than three years and that, for this reason, he is entitled to higher damages than those awarded to him by the JAB. The Tribunal will now set out the Applicant's arguments.

V. Firstly, the Applicant contends that the contested decision to transfer him to a post at a grade below his personal level constitutes a disguised disciplinary measure adopted in breach of the disciplinary procedures designed to protect the rights of the individual concerned. The Applicant relates certain facts of which he became aware by chance and which show that an unofficial investigation was being carried out against him. The Applicant states that, when he wished to have an opportunity to discuss the matter with HRS, he was informed that it was a pre-investigation and that he would be contacted in due course if necessary. The Applicant was never subsequently informed of the outcome of that process. In this connection, the Applicant states the following:

“It is clear that the [High Commissioner] used the impugned transfer as a disguised disciplinary measure instead of initiating a disciplinary proceeding whereby the Applicant would have been guaranteed the appropriate safeguards to protect his interests and the interest of justice, including the opportunity to rebut the allegations against him”.

The Applicant further alleges that the Administration, by initiating an investigation, was seeking a reason to separate him from the Organization.

VI. Secondly, the Applicant contends that, by not explaining to him the reasons why he was never appointed to any of the many posts against which he was placed in succession, on each occasion for a few days only, during the period from March 2000 to May 2003, the Administration committed procedural irregularities. The Applicant maintains in particular that the Administration should have furnished him with the appraisals of his performance which justified the conclusion that he could not be retained in the posts concerned.

VII. Thirdly, the Applicant contends that the Administration infringed the principle of equal treatment by downgrading the post of Representative of the High Commissioner which he had held in Abidjan in December 1999 to the P-5 level, whereas, in the case of the Dakar and Freetown posts, the former was maintained at the D-1 level and the latter was upgraded from the P-5 to the D-1 level. The reasons which had then been communicated to him were to do with the reduction in the number of refugees in Côte d’Ivoire. The Applicant argues that the same development could be observed in Senegal and Sierra Leone but those posts were not downgraded.

VIII. Fourthly, the Applicant contends that, by remaining without any post for over three years, he was not treated with the dignity and respect due to an international civil servant. The Applicant insists that his professional and personal reputation was irreparably damaged. The facts at issue took place at the end of his career, which did not allow him any opportunity to clear himself of any suspicion with regard to the rumours concerning him.

IX. Fifthly and finally, the Applicant maintains that, by allowing such unfounded and defamatory information to spread, the Administration was in breach of its fundamental obligation not to cause moral damage to its employees.

X. In regard to these allegations, the Applicant requests the Tribunal to rule that:

- An apology be offered to him by the High Commissioner personally and not by the Director of Human Resources, as was done;
- Increased compensation be paid to him in keeping with the serious injury that he has sustained;

- Damages be awarded to him because his request for an extension of his contract up to the age of 62 years was refused which would have allowed him to restore his professional reputation.

XI. The Tribunal will now summarize the Respondent's arguments. The Respondent essentially maintains that the Applicant was granted fully appropriate compensation by the JAB for the treatment received by him.

XII. The Respondent first notes that the High Commissioner's decision, dated 26 June 2003, to appoint him to a post at the P-4 level is no longer open to discussion since that decision was rescinded in July. The Respondent further notes that the Applicant was subsequently appointed to a D-1 post, in which he remained until the date of his retirement. The decision at issue did not, therefore, cause him any loss.

XIII. The Respondent then maintains that the Administration made the necessary efforts, throughout the duration of the Applicant's SLWFP, to try to find him a new post. The Respondent provided the Tribunal with three documents, dated 23 January 2003, in which the Director, Division of Human Resources Management, put forward the Applicant's candidature for three separate positions. For each of those candidatures, the services concerned felt that the Applicant did not have the necessary qualifications. The Respondent adds that, of the many posts occupied by the Applicant in succession on a very temporary basis, none matched his skills. The Respondent also refers to paragraph 102 of the Procedural Guidelines of the Appointments, Postings and Promotions Board (APPB), applicable in the services of the Office of the High Commissioner, which provides for shared responsibilities of the Administration and staff members:

“These Procedural Guidelines define the shared responsibilities of staff members, the Administration and the APPB aimed at enhancing the ability of the Office to fulfill its obligation to make demonstrated efforts to place available staff on available posts for which they are eligible and suitably qualified”.

XIV. Finally, as to the reasons why the Applicant was without a post for more than three years, the Respondent repudiates the Applicant's allegations that that situation was maintained owing to the rumours and allegations concerning him. The Respondent draws the Tribunal's attention to correspondence, dated 26 June 2006, addressed to the Applicant by the High Commissioner, in which the latter states the following: “While I indeed mentioned that allegations of unsatisfactory conduct regarding you had been brought to my attention and were under investigation, your statement that these allegations were the reasons why none of your numerous applications had been successful, is totally unfounded”.

XV. The Respondent also responds to the Applicant's claim for damages for not having been granted an extension of his contract up to the age of 62 years in order to restore his professional reputation. The

Respondent states that no such request was presented to the JAB. Article 7.1 of the Statute of the Administrative Tribunal provides as follows:

“An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the Staff Regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the Applicant have agreed to submit the application directly to the Administrative Tribunal”.

The Respondent accordingly contends that the claim is not receivable by the Tribunal.

XVI. The Tribunal will now carefully examine these different arguments. First, the Tribunal is inclined to reject the Applicant's request to receive an apology from the High Commissioner himself. The Tribunal recalls that, when the JAB recommends to the Administration that it make an official apology for embarrassment caused to an international civil servant, such an apology has to come from the Administration and not from a person on his or her own behalf. The Tribunal notes that an official apology was offered to the Applicant in a letter dated 14 February 2006 signed by the Director, Division of Human Resources Management. The Tribunal holds that the Director, Division of Human Resources Management, was a high-level official who, on behalf of the Organization, duly and properly presented the apology to which the Applicant was entitled. Adequate satisfaction has, thus, been given.

XVII. Secondly, the Tribunal will deal with the issue whether the Applicant was appropriately compensated for the moral damage suffered by him by reason of the affront to his reputation and the very uncomfortable situation in which he was placed for more than three years, during which time he was without activity.

XVIII. The Tribunal wishes to state most emphatically that the situation arising from the Applicant's having been placed on SLWFP for forty-four months is totally unacceptable. That situation, which was created by the Administration, constitutes not only an infringement of the Applicant's rights but also very poor management of the financial interests of the Organization.

XIX. In the first place, as regards the infringement of the Applicant's rights, the Tribunal recalls the principle whereby compensation granted has to be proportionate to the severity of the infringement. Account should be taken here of the ruling made by the International Labour Organization (ILO) Administrative Tribunal in a judgement of 2004 regarding the improper use of special leave:

“A decision to place a senior officer on leave with or without pay pending a review of his or her performance is one that inevitably affects that person's dignity and good name and, moreover, is one that will almost certainly carry adverse consequences for his or her career. Where, as here, the decision is unlawful, the person concerned is entitled to compensation. *However, the measure of compensation may vary according to whether, on the one hand, the decision might otherwise*

properly have been taken in the circumstances or, on the other, whether it appears to have been taken for an improper purpose.” (Judgement No. 2324 (2004), para. 13. Emphasis added.)

This Tribunal has also had occasion to rule that the use of special leave over a prolonged period to remove a staff member from the Organization was a form of abuse. (See Judgement No. 1172, *Ly* (2004), para. X.) The instant case undoubtedly constitutes an example of such abuse. In fact, it must be emphasised that the Administration very clearly misused the mechanism of special leave, which ought to be an exceptional measure, justified by the needs and specific interests of the service which employs it. (See ILOAT Judgement No. 2661 (2007), para. 15.)

XX. The Tribunal confirms the JAB’s finding with regard to the untenable situation in which the Applicant was placed: “even though the non-assignment did not have a financial impact in the sense that the [Applicant] continued to be paid at the D-1 level, including all related entitlements, it deeply affected the [Applicant’s] honour and his career and caused him moral damage”.

The harm suffered by the Applicant is not measured in terms of financial loss but actually in terms of the damage to his reputation, integrity and dignity. In an earlier ruling, the Tribunal held that “a staff member is greatly harmed when confined to staying home without duties or office, resulting in a loss of self-respect and morale”. (See *Ly*, (ibid.), para. X.) In similar cases where a staff member had remained on SLWFP for several years, the Tribunal held that it was “the anguish of being left without any functions to perform, for a prolonged period of time” (Judgement No. 925, *Kamoun* (1999), para. XII) or the “humiliation, stress and uncertainty” inflicted (Judgement No. 812, *Everett* (1997), para. IX) which caused moral damage that should be compensated. In the present case, it is incontestable that the Applicant suffered pressure, stress and anguish, which had serious consequences not only for his professional life, which became virtually non-existent, but also for his personal life, the Applicant having subsequently suffered from severe depression, as evidenced by two medical certificates appended to the Applicant’s file. It is, therefore, this moral damage which warrants compensation.

XXI. Even more serious, the Tribunal notes that the Applicant’s removal was initiated for improper purposes. The Administration clearly made use of the Applicant’s special leave to distance him from the Organization, following the rumours and allegations regarding him, instead of a proper disciplinary procedure. As to the situation of the Applicant during those three years, the JAB made the following observation:

“the rumours and allegations that had initiated the investigation and which were explicitly mentioned in the letter of the High Commissioner dated 26 June 2003 did indeed have an impact on the [Applicant] non-assignment to a post commensurate with grade for such a long period of time, despite the fact that the case against him had officially been closed”.

XXII. The Tribunal agrees on this point also with the conclusions of the JAB. In the present case, several factors allow the assertion that the Applicant's prolonged period of special leave is akin to a veiled sanction, which was premature and unjustified in that the rumours and allegations were never substantiated. The Tribunal notes that the High Commissioner had refuted that assertion in a letter dated 26 June 2003 addressed to the Applicant. The Tribunal also observes that the High Commissioner again stressed that point in correspondence addressed on 9 July to the JAB, in which he stated the following: "The possibility that 'rumours' could be the reason for his situation, namely that none of his applications for a post had been successful for some two years, might have been invoked as a purely hypothetical reason for his not being selected".

However, the Respondent has not adduced any other reasons to explain the removal of the Applicant and in particular has not furnished sufficient evidence to show that it was only because of the Applicant's professional skills and the specific needs of the Administration that the Applicant could never be reappointed to any post. The Respondent provided three recommendations in the Applicant's favour for different positions, each dating from 23 January 2003. Those documents are not sufficient to warrant the contention that the Administration made every necessary effort to find the Applicant a new post. The Tribunal had, in a similar case, pointed out that even if "the Respondent was constrained by the availability of alternate posts ... this should have motivated him to make a concerted effort *throughout the duration of the SLWFP* and not simply in its final months". (See *Everett (ibid.)*, para. VII. Emphasis added.)

XXIII. For these reasons, the Tribunal holds that the Administration made use of special leave as a veiled sanction. That deprived the Applicant of the right to defend himself, which he could have done if a genuine disciplinary procedure had been initiated. In this connection, the Tribunal must draw attention to the following:

"SLWFP is a measure used only in exceptional circumstances. It is normally used for short periods of time, for instance, until a new position is found for a staff member. It must also be borne in mind that special leave with full pay may amount to a sanction against the staff member subjected to it, when used in cases where it is not justified. Such a measure must never be adopted without ensuring that the rights of the staff member are guaranteed and should never amount to a veiled attempt to discipline a staff member without due process." (See *Kamoun (ibid.)*, para. IX).

It should thus be concluded that the Administration committed a breach of due process by clearly intending some sort of disciplinary measure. (See, in this connection, ILOAT Judgement No. 809, *In re Najman* (Nos. 1 and 4) (1987), para. 20.) That fact has to be taken into consideration in the assessment of the moral damage suffered by the Applicant.

XXIV. Before making that assessment in financial terms, the Tribunal wishes to comment on the Organization's budget management practices. On the matter of the poor administration of the Organization's finances, as revealed by this practice of using SLWFP over a very long period, the Tribunal

expresses its deepest concerns with regard to such a situation, which is not an exceptional occurrence. In *Everett*, it noted that considerable expense had been incurred for the Organization through the use of such special leave for a three-year period. In *Ly*, it again noted the excessive waste of money in placing a staff member on special leave for over two years. In the present case, the Tribunal is once more confronted with an incomprehensible situation given the recurrent financial problems facing the Administration on a virtually continuous basis. The Applicant himself observes that, during the period from April 2000 to October 2002, he cost the Administration the sum of US\$ 417,444. The Tribunal cannot but highlight the inconsistency of such a practice, which not only totally conflicts with the respect that the Administration owes its staff members but also very seriously affects the interests of the Organization itself.

XXV. That said, the Tribunal has to determine, with regard to the moral damage suffered by the Applicant owing to the impaired professional situation in which he was placed for more than three years, whether the six months' compensation recommended by the JAB is appropriate. It should be pointed out that the moral damage to the Applicant was particularly significant. Account should also be taken of the fact that, during all those years, the Applicant did not sustain any financial loss since he continued to be paid on the basis of his initial salary at the D-1 level. The absence of financial loss admittedly does not in any way detract from the severity of the moral damage but the Tribunal has to take it into consideration in the determination of adequate compensation. The Tribunal further notes that, in similar cases, a staff member who had been on SLWFP for forty-two months obtained compensation equivalent to one year of his net base salary (See *Kamoun (ibid.)*); another who had been on special leave for five years and whose appointment was finally terminated obtained compensation equivalent to eighteen months' salary (see Judgement No. 1167, *Olenja (2004)*); still another who had been placed on special leave for more than three years with the acknowledged aim of separating her from service owing to her highly reprehensible conduct towards other staff members received compensation of US\$ 3,000 (See *Everett (ibid.)*). The amount of compensation due in such cases thus varies considerably depending on the circumstances of each case. In the present case, the Tribunal holds that it has no reason to depart from the findings and conclusions of the JAB. The latter correctly reviewed and assessed the facts and, in the opinion of the Tribunal, the six months' compensation recommended by the JAB is adequate, having regard to all the circumstances of the case.

XXVI. Finally, the Tribunal turns its attention to considering the Applicant's claim for damages by reason of the non-extension of his contract up to the age of 62. The main question raised by the Respondent is whether that claim is receivable by the Tribunal. The Respondent disputed that this issue was raised before the JAB. The Applicant contends that he specifically submitted that request to the JAB. However, the Tribunal finds that it is not apparent from the file whether or not any such request was made. If that request was presented, the JAB did not reply to it. In not having said anything on the matter, the JAB may either have forgotten to deal with the issue or considered the request to be unfounded. The Tribunal nonetheless

holds that even if the claim was receivable - an issue on which it is not making any pronouncement - it could not give rise to compensation. The Tribunal points out that the Applicant's anticipated retirement age was 60. It would only be by way of exception that the Secretary-General could extend the length of his service to 62. There is, thus, no entitlement here the violation of which warrants the award of damages.

XXVII. For the foregoing reasons, the Tribunal rejects the Application in its entirety.

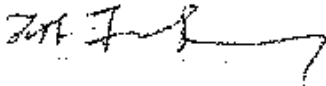
(Signatures)



Dayendra Sena **Wijewardane**
Vice-President



Brigitte **Stern**
Member



Goh Joon Seng
Member

Geneva, 25 July 2008



Maritza **Struyvenberg**
Executive Secretary