Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

WU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
none

Counsel for Respondent:
Ivan Koulov, HRMS/UNOG

Judgment

1. By application, registered on 5 November 2008 by the Geneva Joint Appeals Board (JAB) and transferred to this Tribunal as of 1 July 2009 under UNDT/GVA/2009/12, the Applicant contests the administrative decision not to select him for the post of Chinese Reviser at the P-4 level (Vacancy Announcement (VA) No. 08-CON-UNOG-CSD-415954-R-GENEVA) within the Chinese Translation Section, Language Services Division, United Nations Office at Geneva (UNOG).

Facts

2. The Applicant entered service at the United Nations on 15 December 1985, as an Associate Translator (P-2 level) at the Conference Service Division, UNOG, on secondment from the Chinese government, on the basis of a two-year fixed-term appointment, which was renewed on several occasions.

3. In December 1987 the Applicant was granted a promotion to the P-3 level. In October 1991, he was offered a permanent appointment and his secondment status was terminated.

4. From 1 July 2004 to 31 August 2006, the Applicant was on assignment from UNOG to the Division of Conference Service, United Nations Office at Nairobi (UNON). He was formally transferred from UNOG to UNON after being selected for a post of Chinese Reviser (P-4 level) at UNON, effective 1 September 2006.

5. The Applicant applied for a Chinese Reviser (P-4) post issued on 17 April 2007 under VA 07-CON-DGACM-413932-R-NEW YORK. As an eligible candidate at the 15-day mark the Applicant was found suitable, hence recommended, however not selected. Instead, a 30-day mark candidate was selected, while the Applicant was put on a roster of preapproved candidates for similar vacancies.

6. On 4 February 2008, Vacancy Announcement No. 08-CON-UNOG-CSD-415954-R-Geneva was advertised through Galaxy, with deadline 4 April 2008. It covered two positions of Chinese Reviser in the Conference Services Division, UNOG at the P-4 level, even though the number of vacant positions was not specified. The Applicant applied to this VA on 9 February 2008.

7. The Applicant who was already on the roster for pre-approved candidates was identified as an eligible 15-day mark candidate and invited for an interview. After the interviews, four candidates, including the Applicant, were recommended for the positions. Out of the four recommended candidates, two were 30-day mark, while the Applicant and another candidate were 15-day mark candidates.

8. The Central Review Committee approved the selection procedure on 23 April 2008. It thus recommended that the Director-General, UNOG, proceed to the selection among the four recommended candidates, what he did on 29 April 2008. The two recommended 30-day mark candidates were selected, while the Applicant was, again, placed on the roster of pre-approved candidates for similar positions.

9. The promotion of the two selected candidates became effective on 1 May 2008, and the Applicant learnt at the Section meeting of the Chinese Translation Section, UNOG on 5 May 2008 that two other candidates had been appointed to the positions.

10. By letter dated 17 June 2008, the Applicant requested the Secretary-General to review the decision not to select him for the above-referenced post as Chinese Reviser at UNOG.

11. Only on 3 July 2008 was the Applicant formally notified by a Senior Human Resources Officer, UNOG, of the decision not to select him for the above-referenced post and of that he was placed on the roster of pre-approved candidates for similar posts.

12. On 5 August 2008, the Applicant was informed that he had been selected for a post of Chinese Reviser (P-4 level) Chinese Translation Section, Languages Services, Conference Services Division, UNOG (VA 08-CON-

UNOG-CSD-418609). The transfer became effective only on 1 September 2008, date on which he started taking up his new functions. The Applicant is currently occupying this position. He confirmed at the hearing in front of the Tribunal that the functions of this post are exactly the same as the functions of the posts he had applied for unsuccessfully.

13. On 26 August 2008, the Applicant received a negative reply to his request for review, by letter dated 21 August 2008 from the OIC, ALU, concluding that the decision not to select him for the subject posts was made in accordance with the provisions of the relevant rules and policy of the Organization and that hence, his claim that the decision not to select him was improper is unfounded.

14. On 26 September 2008, the Applicant wrote to the Secretary of the Geneva JAB requesting an extension of the time-limit to file an appeal. By letter of 6 October 2008, he was informed that his submission would be considered as an incomplete statement of appeal under Article 10 of the Geneva JAB Rules of Procedure. Accordingly, he ought to lodge his complete statement of appeal by 6 November 2008, what he did on 5 November 2008. The Respondent submitted his reply on 23 January 2009, followed by the Applicant's observations thereon, dated 23 March 2009 and the Respondent's final comments dated 7 April 2009. The Applicant transmitted his final observations on 8 May 2009.

15. As per Secretary-General's Bulletin ST/SGB/2009/11 dated 24 June 2009 on "transitional measures related to the introduction of the new system of administration of justice", the present case was transferred to the United Nations Dispute Tribunal (UNDT) as of 1 July 2009.

16. The parties were convoked by the Geneva Registry of the UNDT for a hearing scheduled on 9 October 2009 and a follow-up hearing on 13 November 2009 under Article 16 paragraph 1 of the Rules of Procedure of the UNDT (RoP UNDT). In the meantime, the Tribunal had ordered the Respondent to provide additional information with respect to the standard applied in order to assess the working knowledge of French.

17. In judgement UNDT/2009/022 *Kasyanov* issued on 23 September 2009 the Tribunal held that in selecting a 30-day mark candidate while a suitable 15-day mark candidate was among the pool of candidates, the Administration violated Section 7.1 of ST/AI/2006/3. In the course of the consideration of the case *Kasyanov*, on 11 September 2009, the Assistant Secretary-General for Human Resources Management issued a memorandum to all Heads of Departments/Offices stating *"effective immediately and for all current vacancies where 15-day candidates have not already been forwarded to the programme manager, programme managers will be required to review immediately upon receipt the candidacies of all 15-day candidates, documenting their suitability or non-suitability"* and that *"it follows that if suitable candidates eligible at the 15-day mark are identified, 30-day applicants are not considered and the review is completed at the first stage. Under such circumstances, the list of recommended candidates should not contain a mixture of candidates eligible at the 15-day mark and candidates eligible at the 30- or 60-day marks."*

Contentions of the parties

18. The Applicant's principal contentions are:

    a. The Applicant argues that the procedure to announce VA n° 08-CON-UNOG-CSD-415954-R-GENEVA was in breach of Section 4 of ST/AI/2006/3, since only one post was published on Galaxy whereas two of them were available and were actually filed. Hence, he submits that one of the posts "bypassed" the necessary procedure.

    b. He further considers that the Respondent failed to substantiate that a competitive process was conducted for the two positions.

    c. The Applicant puts forward that the overall selection procedure was tainted by flagrant procedural irregularities. In this regard, he recalls that - as provided for in Section 7 ST/AI/2006/3 - *"(i)n*

considering candidates, programme managers must give first priority to lateral moves of candidates eligible to be considered at the 15-day mark (…). If no suitable candidates can be identified at this stage, candidates eligible at the 30-day mark (…) shall be considered". Therefore, the Applicant asserts that, according to this provision, he - a 15-day candidate already holding the P-4 grade (lateral move) – should have been given first priority by programme managers. He argues that including two P-3 candidates among those recommended for the position in question amounts to a denial of his suitability for the post and thus of his right to be considered on a priority basis.

d. Confronted with the Respondent's contention that consideration of 30-day mark candidates may be undertaken if a programme manager has not completed a full evaluation of candidates released under 15-day mark and has not yet made a recommendation before receiving the list of 30-day, the Applicant objects that lack of timely completion of each step of the selection procedure cannot constitute a valid reason to exclude first stage consideration of a 15-day candidate. He is of the view that this lack of a timely evaluation of his candidature further reveals that the procedures of UN Staff Selection System were distorted and bypassed.

e. The Applicant holds that - contrary to what the Administration affirms - at least one of the selected candidates did not meet all the qualifications required for the post. More specifically, he maintains that it is well known, including to the Section Managers, that the latter selected candidate does not have "working knowledge of French", which is a requirement clearly specified in the relevant vacancy announcement. The Applicant adds that confirmation of knowledge of a third official language shall be the acquisition of an UN Language Proficiency Exam (LPE) Certificate, in accordance with General Assembly resolution 2480 (XXIII) B, and notes that, since the General Assembly set the definition for working language, the Respondent has no authority to modify, reverse or

replace it. He alleges that none of the two successful candidates has obtained such certificate, while he did. He affirms, in this connection, that the former selected candidate failed to be selected for a previously advertised post due to his lack of LPE Certificate in French.

f. In addition, he stresses that the management has the *"unshirkable responsibility"* to make sure that the PHP of candidates reflects reality. In this connection, he requests that the Administration verify the successful candidates' qualification regarding French knowledge against their PHP. Moreover, the Applicant submits that the standard version of language requirements for revisers' vacancy announcement, which, according to him, reads *"as tested by the relevant (appropriate) United Nations Competitive Examination"*, was omitted from the vacancy announcement in the present case.

g. The Applicant considers the fact that he was not informed in due time of his non-selection and placement on the roster to be a flaw in the procedure. He points out that, by the time he sent his request for review to the Secretary-General (17 June 2008) he had not been notified of the result of the selection process, as it happened on 3 July 2008, that is, more then two months later. It is the Applicant's opinion that, while ST/AI/2006/3 stipulates no delay for that matter, the Respondent must inform unsuccessful candidates within a reasonable time, as otherwise, *"it would give rise to unrealistic expectation, unnecessary waste of waiting time, hesitance to seek other options and even uncalled-for physcologicall (sic) stress"*.

h. The Applicant underlines that this has not been the first time that he was not selected for a similar positions within the Secretariat, what - in his view - shows a pattern of exclusion.

i. The Applicant **seeks redress** by requesting:

i. That the administrative decision not to select him for the post at issue be quashed and

ii. a one-year net base salary be paid to him as compensation for his injured right.

j. At the hearing, the Applicant clarified that primarily, he was seeking financial compensation.

19. At the beginning of the proceedings, the **Respondent's** principal contentions were:

a. The Respondent argued that appointment and promotion decisions are subject to the discretion of the Secretary-General, which results from Chapter IV and Article IV of the Staff Regulation and Rules. He further noted that the paramount consideration in employment of staff shall be the necessity of securing the highest standards of efficiency, competence and integrity, pursuant to Article 101 of the Charter and Staff Regulation 4.2.

b. Regarding the issue of the different time marks, the Respondent deemed that Section 7.1 of ST/AI/2006/3 and the *Staff Selection System: Evaluation and Selection Guidelines for Action by Heads of Department* under ST/AI/2002/4, as amended by ST/AI/2006/3 were observed in the present case. He explained that although ST/AI/2002/4 was superseded by ST/AI/2006/3, the guidelines regarding the evaluation process under the staff selection system in the evaluation of 15 and 30-day candidates remain applicable because no amendment was made to former Section 7.1 of ST/AI/2002/4 in this respect. The Respondent submitted that, under these provisions, 15-day candidates are given first priority in consideration, but this does not preclude the consideration of other eligible candidates at the 30-day mark. According to the Respondent's previous view, consideration of other candidates may be undertaken under certain circumstances, namely where the programme manager has not completed a full evaluation of

candidates released at the 15-day mark and has not made a recommendation to the Central Review Bodies before receiving the 30-day list.

c. Accordingly, the Respondent stated that since the Applicant had not been identified as a suitable candidate prior to the 30-day mark, the decision to review the Applicant's candidacy along with 30-day candidates was consistent with Section 7.1 of ST/AI/2006/3. He also highlighted that the Central Review Committee did endorse the selection process as having complied with the relevant procedures. Moreover, he notes that the Applicant was given proper consideration as a 15-day mark candidate and was among those recommended for the post. Nevertheless, other candidates were considered best suited for the post and thus selected. In this regard, the Respondent underscored that the programme officer is obliged to select the best suited candidate and that, in case there is a suitable 15-day mark candidate, "this does not imply that this candidate is the best suited one".

d. During the hearings in front of the Tribunal and in view of judgment UNDT/2009/22 *Kasyanov* the Respondent then expressed his view that though the decision not to select the Applicant to one of the posts was in breach of ST/AI/2006/3, this decision did not cause the Applicant any prejudice which was a prerequisite to any monetary compensation.

e. Throughout the procedure the Respondent recognizes that the vacancy announcement did not specifically mention that there were two vacant positions. However, he considers that this, in itself, does not mean that one of the posts bypassed the necessary selection process and affirms that a competitive process was conducted for the two positions.

f. With respect to the contention that at least one of the selected candidates does not fulfill the requirement of having *working knowledge of French*, the Respondent argues that both of them

fully meet the requirements specified in the vacancy announcement, and in particular, the *working knowledge of French*, as per their evaluation records. The Respondent explains that the former selected candidate studied in a French-speaking university and passed the LPE in French in 1996, whereas the latter selected candidate reached the last level (level 8) in the Language Acquisition Programme offered by SDLS and has translated documents from French, as confirmed by the Chief, Chinese Translation Section, UNOG. The Respondent argues that in assessing the working knowledge of a language, the Administration must have some discretion and that the rules do not prescribe that working knowledge can only be established by successfully passing the LPE.

g. The Respondent points out that the alleged belated notification of his non-selection to the Applicant does not constitute, in itself, a flaw in the procedure. He notes that it did not prevent the Applicant to contest the final decision. The Respondent underlines in this respect that Section 10, paragraph 1 of ST/AI/2006/3 does not stipulate a delay to inform the unsuccessful candidate and that the Applicant did not present any evidence that the alleged belated notification negatively affected application for other posts.

h. In view of the foregoing the Respondent concludes that a declaration by the Administration recognizing the violation of the Applicant's rights would be appropriate compensation and that, should the Tribunal consider that financial compensation was warranted, such compensation should be very modest.

Applicable Law

20. Former Article IV of the Staff Regulations and Chapter IV of the Staff Rules both deal with appointment and promotion issues. Additionally, Administrative Instruction ST/AI/2006/3 of 15 November 2006 deals with

the Staff Selection System. The *Evaluation and selection Guidelines for action by Programme Case Officers and Heads of Department under ST/AI/2002/4* approved on 9 June 2004 are still applicable under the new ST/AI/2006/3 which replaced ST/AI/2002/4.

Considerations

21. Having found the application receivable *ratione temporis* and *ratione materiae*, the merits of the case are examined in light of the applicable rules and jurisprudence.

22. The Tribunal shares the interpretation of the relevant provisions of ST/AI/2006/3 made in *Kasyanov*.

23. Administrative instruction ST/AI/2006/3, which replaced ST/AI/2002/4, introduced a new staff selection system *"which integrates the recruitment, placement, promotion and mobility of staff"* (Section 2.1 of ST/AI/2006/3).

24. Mobility constitutes a fundamental principle of this new system: Pursuant to Section 2.2 of ST/AI/2006/3, "*All staff, up to and including those at the D-2 level, are expected to move periodically to new functions throughout their careers. To facilitate and regulate mobility, the system […] requires that vacancies be made available in the first instance for lateral moves of eligible staff before other candidates may be considered for selection […]*". Section 7.1 of ST/AI/2006/3 *Consideration and selection* states that "*in considering candidates, programme managers must give first priority to lateral moves of candidates eligible to be considered at the 15-day mark under section 5.4. If no suitable candidate can be identified at this first stage, candidates eligible at the 30-day mark under section 5.5 shall be considered. Other candidates shall be considered at the 60-day mark, where applicable*". Section 5 *Eligibility requirements* determines the eligibility status of candidates at the 15-, 30- and 60-day mark.

25. The language of Section 7.1 of ST/AI/2006/3 and in particular of its second sentence ("*if no suitable candidate*...") does not leave room for interpretation: Indeed, the literal meaning of this Section is that once eligible staff members to be considered at the 15-day mark have been identified their suitability for the post has to be assessed. In case there is a suitable candidate among these 15-day mark candidates the Administration is precluded from considering 30-day mark candidates. As such, the administrative instruction establishes a "stair-system" in which 30-day mark candidates can only be considered if no suitable candidate can be identified among the 15-day mark candidates.

26. The temporal argument raised by the Respondent according to which priority is given in consideration but not in selection and that 30-day mark candidates can be selected if the PCO has not yet assessed the 15-day mark candidates is not reflected in the rules. Section 7.1 of ST/AI/2006/3 exclusively relies on the eligibility status of candidates at the 15- or 30-day mark, as defined in Section 5 of ST/AI/2006/3, which is independent from the moment at which each candidature is assessed. Any other interpretation would be against the clear and unambiguous terms of Section 7.1 of ST/AI/2006/3.

27. This analysis is in conformity with the overall structure, context and purpose of ST/AI/2006/3: particularly, Section 2.2 – which is placed in the General provisions part of ST/AI/2006/3 - refers, through a footnote, to Section 7.1 as such demonstrating the importance and priority which shall be given to lateral moves. Section 4.5 and Section 6.2 of ST/AI/2006/3 also support this analysis.

28. The foregoing notwithstanding, the Tribunal notes that this understanding of ST/AI/2006/3 does not entail an opinion as to the adequacy - or inadequacy - of the staff selection system: the Secretary-General has broad discretionary power to take policy decisions on staff management matters. However, once such decisions are incorporated into administrative instructions, the Administration, in its practice, is obliged to strictly adhere to them. It cannot through mere guidelines adopt a practice which is

contrary to the clear, existing rule of an administrative instruction just because it suits the Administration better. If the Administration finds that an administrative instruction is difficult to be put into practice, it is free to change the provision by a legal text of the same value – i.e. another administrative instruction, provided that superior norms are not in contradiction with the desired changes.

29. In the present case the Applicant, together with one other 15-day mark candidate, had been found suitable for the post under review. Since there were two posts to be filled by the same VA and in accordance with Section 7.1 of ST/AI/2003/6, the Applicant should have been selected for one of the two posts. As such the decision not to select the Applicant for one of the posts advertised under vacancy announcement No. 08-CON-UNOG-CSD-415954-R-GENEVA was tainted by procedural flaws.

30. With regard to the outcome of the selection procedure, the Tribunal finds that the Applicant's argument that the two candidates who had been selected to the two posts did not meet the criteria of working knowledge of French cannot stand: the Administration has discretionary power to determine - reasonable - standards to assess someone's working knowledge in a certain language and there is no element on file which allows to conclude that this discretion has been abused in the present case.

31. Indeed, the Organisation is – within reasonable limits - free to define the professional criteria to be fulfilled for each vacancy announcement. Therefore, it was not indispensable to require 'working knowledge' of a language to be proven by an UN Language Proficiency Exam. In this respect and without prejudice to the conclusion reached under paragraph 29 above, the appointment of the candidates, who had not passed such an exam, is not a breach of law.

32. The Tribunal notes that at the hearing the Applicant clarified that above all, he was seeking monetary redress for his injured rights rather than the quashing of the decision not to select him.

33. According to 10.5 of the statute of the United Nations Dispute Tribunal (UNDT Statute), the Dispute Tribunal may order one or both of the following: *"(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph; (b) Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant. ..."* Art. 10.7 of UNDT Statute prescribes that the Dispute Tribunal shall not award exemplary or punitive damages.

34. As to the Respondent's claim that the Applicant did not suffer any financial damage, it has to be pointed out that the provisions cited above mainly rely on the idea of "compensation" rather than of "material damage". The latter is no precondition for the further. This also corresponds to Art. 10.5 (b) of UNDT Statute - covering the amount of compensation - which is not connected to any real amount of financial losses but put into relation to the more abstract category of the Applicant's income. In certain cases compensation may be necessary even if no financial damage can be found. It is well known that 'loss of affection' and other immaterial damages have to be compensated in money, since there is no other remedy. Whenever an infringement to a person's rights has been established, compensation of this breach has to be taken into consideration. Otherwise judicial remedy runs the risk of becoming ineffective. Thus, also the former United Nations Administrative Tribunal (UNAT) had held that *"formal procedures are safeguards which must strictly complied with. The failure of the Respondent to adhere to its own rules, the adherence of which is strictly and solely within the power of the Respondent, represents an irregularity which amounts to a violation of the Applicant's right to due process, for which the Applicant should be compensated* (judgment no. 1122 *Lopes Braga* (2003), quoting judgment no. 1047 *Helke* (2002)). There are no signs that the new system of

Administration of Justice wants to desist from this approach as long as the borderline to exemplary or punitive damage will not be crossed, as established by Art. 10.7 of UNDT Statute.

35. Since the quantification of immaterial damages is an "*inexact science"*, the Dispute Tribunal in its judgment UNDT/2009/028 *Crichlow* has established some guiding principles for calculation of compensatory damages; these include that damages may only be awarded to compensate for negative effects of a proven breach; and that an award should be proportionate to the established damage suffered by the Applicant.

36. The application of the universal principle of proportionality on the determination of financial award for a proven breach requires due consideration of all elements of the single case at hand. Essential elements of this consideration are e.g. the number of breaches and their intensity as well as the impact the established breaches have on its victim.

37. On the Applicant's account, first and foremost, there is the breach of Section 7.1 of ST/AI/2006/3 which was causal for the Applicant's non-selection for the post and constituted a violation of his right to full and fair consideration. For the Applicant, this breach implied a loss of an opportunity to be nominated against this particular P-4 reviser post in Geneva at that specific moment in time. Though not part of the present proceedings, the fact that already previously, the Applicant's candidature for at least one other P-4 Chinese reviser post had not been fully and fairly considered, is another element to be taken into account. Finally, the fact that the Administration failed to notify the Applicant of his non-selection in reasonable delays - though not constituting a violation of the applicable rules – demonstrates a lack of good faith of the Administration's dealing with the Applicant. Indeed, as the Tribunal held in judgment UNDT/2009/025 *James "it is a universal obligation of both employee and employer to act in good faith towards each other. Good faith includes acting rationally, fairly, honestly and in accordance with the obligations of due process"*. By notifying the Applicant formally only on 3 July 2008 although the promotion of the two candidates had become effective on 1

May 2008, the Administration caused unnecessary stress to the Applicant who was uncertain about his professional becoming and failed to treat the Applicant in good faith.

38. The foregoing in mind, it has to be recalled that in the present case, the Applicant's loss of opportunity was limited in scope and time since he was informed on 5 August 2008 – while his request for review was still pending – that he had been selected for another P-4 Chinese reviser post in Geneva. As the Applicant confirmed at the hearing, the functions of the post he was appointed for on 5 August 2008 and transferred to on 1 September 2008 are exactly the same as those covered by the posts subject of the present proceedings. Hence, he was appointed to a post at the same level with the same functions at the same duty station only three to four months later than if he had been selected – in accordance with the applicable rules – to one of the posts under review.

39. With respect to the determination of the level of financial compensation, it is also noteworthy to recall the parameters developed by UNAT jurisprudence in appointment and promotion cases under the former internal justice system. In the above-quoted judgement *Lopes Braga* (2003), UNAT provided that if the Respondent fails to follow its own procedures - i.e. to apply objective criteria of evaluation in a promotion exercise in a consistent manner - the Applicant shall be compensated with six months net based salary for the violation of his due process rights stemming from these procedural irregularities.

40. In application of the jurisprudence *Lopes Braga*, the Secretary-General subsequently accepted recommendations by Joint Appeals Boards (JAB) concluding that in view of the violation of an Appellant's due process right and right to full and fair consideration for promotion and appointment, financial compensation should be awarded. Interestingly, in one case concerning a lateral move in which no financial damage was caused – like in the case at hand - the JAB had recommended three months compensation for the moral injury suffered by the Appellant, but the Secretary-General decided that the Appellant should be granted six-month

net-base salary, in reference to similar previous cases (Geneva JAB case n° 578). In this case, the JAB and the Secretary-General had concluded that the decision not to select the Appellant had been based on an inquiry into moral standards undertaken within the Unit, as such damaging the Appellant's reputation and causing her moral injury.

41. In another case decided by the Secretary-General upon recommendation by the JAB, twelve-months were granted to the Appellant for the violation of his due process rights and his right to full and fair consideration for promotion (Geneva JAB case n° 629). The Secretary-General's decision was based on the fact that upper management had illegally influenced the selection process in favour of the selected candidate and on the direct causal link between that illegal interference and the Appellant's non-promotion.

42. In view of previous jurisprudence and the particular circumstances of the present case, it can be stated that the Applicant's claim of one full year net base salary would be clearly disproportional to the injury he had to suffer, given the fact that Art. 10.5 b) of UNDT Statute fixes a maximum compensation of two years net base salary. Even the six months net salary granted by former UNAT have to be seen in light of the fact that those decisions dealt with promotion cases, whereas the Applicant's case concerns only a lateral move. The foregoing notwithstanding, it has to be noted that the Organisation did not only commit a breach of law by applying a most doubtful practice twice on the Applicant, but also did not act in good faith when notifying the Applicant very late of the outcome of his application. Therefore, the immaterial damage in terms of being neglected and emotional stress may not be regarded as not being worth to be compensated in money. Finally, it has to be recalled that the Applicant received exactly the same post that he had unsuccessfully applied for only a few months later. With respect to this rather unusual but crucial fact together with all other relevant circumstances the Tribunal is convinced that two months net base salary is an appropriate sum to compensate the damages.

Conclusion

For the reasons stated above and in application of Article 10.5 (b) of the UNDT Statute

It is DECIDED that

The Applicant be paid two months net base salary calculated at his salary level at the date of this judgment.

(*Signed*)

Judge Thomas Laker

Dated this 30th day of November 2009

Entered in the Register on this 30th day of November 2009

(*Signed*)

Víctor Rodríguez, Registrar, Geneva