



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/022/
UNAT/1641
Judgment No.: UNDT/2013/005
Date: 17 January 2013
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

ZEID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Duke Danquah, OSLA

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 22 September 2008, the Applicant filed an appeal before the former United Nations Administrative Tribunal complaining about the circumstances surrounding his promotion to the P-5 level. In January 2010, the case was transferred to the Dispute Tribunal following the abolition of the former Administrative Tribunal on 31 December 2009.

2. The Applicant is claiming compensation “for serious harm to his morale and personal and professional reputation”. He alleges, in particular, that there were procedural irregularities and unjustified delays in concluding the promotion exercise. He also submits that the Joint Appeals Board (“JAB”) erred in its findings and improperly delayed its work. It is the Respondent’s case that the Applicant is not entitled to any relief as he had been promoted retroactively even beyond the date on which he would otherwise have been appointed. The Respondent also submits that, in a similar case concerning the same selection exercise (see *Kamal* 2012-UNAT-204, rendered on 16 March 2012), the United Nations Appeals Tribunal found that no compensation was warranted.

Procedural matters

Related case

3. This case concerns the same selection exercise and circumstances that were the subject matter of the Dispute Tribunal’s Judgment in *Kamal* UNDT/2011/034, rendered on 18 February 2011. The Dispute Tribunal dismissed Ms. Kamal’s claim that the Administration’s decision to suspend the selection process and to withdraw the recommendation to the Central Review Board (“CRB”) to promote Ms. Kamal was unlawful. It also dismissed Ms. Kamal’s claim that the decision to cancel the vacancy announcement for a second time was unjustified and caused her harm.

However, the Dispute Tribunal found as fact that the “inordinate delay [in the promotion process] and failure to provide [Ms. Kamal with] a timely response to her enquiries, caused her much anxiety and distress” (see para. 28 of *Kamal* UNDT/2011/034). It upheld Ms. Kamal’s claim that she suffered from stress “caused by the delay and by the effect of the process on her reputation with her colleagues”.

4. In *Kamal* 2012-UNAT-204, the Appeals Tribunal vacated *Kamal* UNDT/2011/034, finding that the case did not concern an appealable administrative decision as both parties had accepted the decision to promote Ms. Kamal.

5. The Appeals Tribunal further found that the delay in completing the selection process cannot be considered a valid ground for compensation, since the circumstances of the case did not show “any negligence or violation of specific rules by the Administration”. The Appeals Tribunal found that Ms. Kamal’s eventual appointment was an acknowledgment of her ability to fill the position after a fair and competitive process, leaving no doubt about the way she obtained it. The Appeals Tribunal found, contrary to the Dispute Tribunal’s findings at paras. 25, 27–28, 32–34 and 47 of *Kamal* UNDT/2011/034, that in light of the moral satisfaction arising from the outcome of the selection exercise as well as the retroactive payment of salary, Ms. Kamal did not suffer any damage that warranted compensation.

6. Both Counsel in this case represented the parties in *Kamal*. It is regrettable that it was not brought to the Tribunal’s attention by the parties and, specifically, their Counsel, that *Kamal* and the present case concerned similar issues. Disposing of both matters in a joint hearing would have resulted in an efficient use of the Tribunal’s resources. Counsel are reminded that it is their responsibility to bring such matters to the attention of the Tribunal in a timely manner.

Pre-hearing proceedings

7. On 14 September 2011, the Dispute Tribunal issued Order No. 215 (NY/2011), directing, by consent, that the proceedings in the present case be stayed pending the judgment of the Appeals Tribunal in *Kamal*.

8. On 5 May 2012, five days after publication of the Appeals Tribunal's judgment in *Kamal*, the Dispute Tribunal issued Order No. 98 (NY/2012), directing the parties to attend a case management discussion ("CMD") on 17 May 2012. At the CMD, the Applicant requested the Tribunal to proceed with the consideration of the present case. The Applicant stated that a hearing was required in order to allow him to introduce evidence demonstrating that his case was different from that of *Kamal*.

9. The Respondent resisted the Applicant's request for a hearing and submitted that the present case was in all material respects similar to *Kamal* and should be dismissed. It was further submitted by the Respondent that the Applicant's persisting in having a hearing was an abuse of process.

Hearing on the merits

10. At a hearing on the merits held on 14 November 2012, the Tribunal heard evidence from the Applicant as well as from Mr. Michael Sarsar, former Presiding Officer at the 41st Session of the Staff Council. The Respondent called Ms. Renu Bhatia, a former Administrative Officer, Executive Office, Department of Management. The Tribunal found the Applicant, as well as Mr. Sarsar and Ms. Bhatia, to be witnesses of truth.

11. At the conclusion of the hearing, the Dispute Tribunal issued Order No. 228 (NY/2012), allowing the parties to file written submissions.

Findings of fact

12. In April and September 2004, respectively, two vacancy announcements were issued for the post of Senior Interpreter (Arabic) at the P-5 level for the Interpretation Section, Department for General Assembly and Conference Management (“DGACM”). The Applicant was not among those recommended. These vacancy announcements were cancelled in April 2005 when it was established, following complaints by two staff members, including the Applicant, that the evaluation criteria were not consistent with ST/AI/2002/4 (Staff selection system).

13. On 14 April 2005, a single vacancy announcement for the two posts was re-issued. As a result of the selection process that followed, the Applicant and Ms. Kamal were recommended for appointment. The recommendations were forwarded to the CRB in October 2005.

14. On 17 October 2005, a group of interpreters sent a written complaint to the President of the Staff Union, expressing their concern about the procedures and recommendations and asking for a suspension of the process and the setting up of a joint staff-management working group.

15. On 20 October 2005, the Staff Council adopted Resolution No. 66, proposing the establishment of a joint staff-management working group to review the matter and determine whether the existing rules had been complied with, and to submit a report with findings and recommendations to the Assistant Secretary-General, Office of Human Resources Management (“OHRM”).

16. On 24 October 2005, the Applicant sent two communications to the Under-Secretary-General for Management to enquire whether OHRM had in fact agreed to suspend the selection process and to establish a working group. He also voiced his objections to any involvement by the Staff Council. The Tribunal finds that, as

a person who was recommended to the CRB, he had a direct and legitimate interest in raising the issue. The Applicant received no reply to these communications.

17. On 6 December 2005, OHRM decided to establish a working group to review the selection process and to interview interested staff members.

18. On 27 January 2006, the Applicant wrote to the Under-Secretary-General for Management and Assistant Secretary-General for DGACM expressing his concerns regarding the process, but received no reply.

19. On 30 January 2006, the Applicant met the working group that was conducting a fact-finding exercise.

20. On 22 February 2006, the Applicant enquired about the conclusion reached by the working group, but was only provided with a response that its review was still ongoing. He sent a follow-up request for information on 16 March 2006, but received no reply.

21. On 14 April 2006, the Applicant wrote to the Under-Secretary-General for Management protesting about the inordinate delays in the selection process and requesting intervention. He received no reply.

22. In May 2006, he wrote to various senior officials in the Organization requesting their assistance in resolving the issue. The Applicant did not receive a reply to his communications.

23. The working group submitted its report in May 2006. It made several recommendations including the dissemination of evaluation criteria to all potential candidates prior to any interview process and the maintenance of these criteria throughout the entire process.

24. On 25 May 2006, the Applicant submitted a request for administrative review of the decision to suspend the selection process. He filed an appeal with the JAB on 11 September 2006.

25. On 2 June 2006, three staff members submitted a complaint regarding the composition of the working group and requested that a newly constituted panel look at the selection process afresh. OHRM rejected this request.

26. In November 2006, a joint decision was taken by OHRM and DGACM to cancel the two vacancy announcement of 2005 and to issue a new vacancy announcement making it clear that all candidates would be assessed on the basis of the final version of the selection criteria established by DGACM.

27. The Applicant, along with other staff members affected by the delayed process, had a meeting with the Assistant Secretary-General for DGACM on 8 November 2006.

28. On 5 December 2006, the Applicant received a letter from the Assistant Secretary-General proposing to re-advertise the vacancy announcement. The Applicant was provided with a copy of the working group's report.

29. On 12 December 2006, the Applicant submitted his detailed comments to the Assistant Secretary-General for DGACM on the note of 5 December 2006, on the report of the working group, and on the proposal to re-advertise the vacancy.

30. On 3 January 2007, the Applicant sought a separate administrative review of the decision not to proceed with the recommendation for his promotion. He filed an appeal with the JAB on 15 February 2007.

31. On 27 March 2007, a JAB panel was established to consider whether the Applicant's appeal of 11 September 2006 was receivable. It found that it was. However, the appeal was not considered on its merits by the JAB until January 2008.

32. In 27 June 2007, having learned that the Respondent was proceeding with the cancellation of the previous vacancy announcements, the Applicant submitted to the JAB a request for suspension of action and sent a letter to the Administration complaining about the said decision. The Applicant submits that his request for suspension was denied due to the fact that the administrative decision had already been implemented.

33. On 12 July 2007—after a delay of seven months following the communication of the Assistant Secretary-General for DGAM dated 5 December 2006—a third vacancy announcement was advertised. The Applicant applied. As a result of this third selection exercise, he and Ms. Kamal were once more recommended for selection.

34. On 16 November 2007, a new JAB panel was established to consider the merits of the Applicant's appeals of 11 September 2006 and 15 February 2007. The JAB panel began consideration of the appeals in December 2007.

35. On 26 December 2007, the Applicant was informed of his selection. In January 2008, it was decided to promote the Applicant to the P-5 level retroactively, effective 14 April 2005 (the date of the posting of the second vacancy announcement), with all related payments backdated to that date, which was six months earlier than October 2005, when the recommendation for the Applicant's promotion had been set for consideration to the CRB during the second selection exercise.

36. The JAB panel that was established in November 2007 considered the Applicant's two appeals of 11 September 2006 and 15 February 2007 jointly and adopted a single report on 31 January 2008.

37. By letter dated 17 April 2008, received by the Applicant on 28 April 2008, he was informed that his appeals to the JAB were unsuccessful and that the Secretary-General had decided not to take any further action with regard to his claims.

38. On 22 September 2008, the Applicant filed an application with the former Administrative Tribunal complaining about the circumstances surrounding his promotion to the P-5 level. The case was subsequently transferred to the Dispute Tribunal.

Consideration

Cancellation of the second selection exercise

39. The Dispute Tribunal found in *Kamal* UNDT/2011/034 that the cancellation of the second selection exercise was lawful given the history of complaints within DGACM and in view of the strong representations from the Staff Council and the complaints raised with regard to the selection exercise. This finding was affirmed by the Appeals Tribunal.

40. In the Tribunal's considered view, the Applicant has failed to bring forward any evidence that would lead the Tribunal to revise its conclusions reached in *Kamal* UNDT/2011/034 that the Administration's actions in freezing the second selection exercise and in establishing the working group were proper.

41. The Applicant submits that "OHRM should not have [accepted] Resolution No. 66 without scrutinizing the motivations behind its passage". The Tribunal does not agree. It is not the task of the Secretary-General to interfere in the internal affairs of the Staff Council or to question or investigate the reasons for Staff Council's resolutions. Mr. Sarsar, the former Presiding Officer of the Staff Council meeting, testified that Resolution No. 66 was adopted in accordance with the established procedures and was valid. In the circumstances, there was no reason for the Administration to doubt its validity. Indeed, Mr. Sarsar testified that Resolution No. 66 received 19 votes of the members of the Staff Council, with no abstentions or votes against it.

42. The Tribunal finds that the cancellation of the second selection exercise and its subsequent recommencement were, in the circumstances, appropriate and lawful. This aspect of the claim is dismissed.

Excessive delays

43. The Applicant submits that he should be compensated for the harm done as a result of the inordinate delay in reaching finality with respect to his selection. The Tribunal finds that the Administration's failures or deliberate and repeated omissions to answer the Applicant's queries and to keep him informed of progress are an integral part of the Applicant's case as they are intertwined with the delays in the selection and promotion process.

44. The Appeals Tribunal found in *Kamal* 2012-UNAT-204 that there was no contestable administrative decision. It is not clear from the brief Judgment of the Appeals Tribunal whether the issue of there being no appealable administrative decision was raised by the Respondent or by the Appeals Tribunal of its own motion. If it was the former, then it should be noted that this was never a part of the Respondent's case in *Kamal* before the Dispute Tribunal. Moreover, it was only raised in the present case following the Judgment of the Appeals Tribunal in *Kamal*.

45. In any event, the issue of a mutually-agreeable retroactive promotion is quite distinct from the issues of inordinate delays and the resultant harm in the present case. Whilst it is correct, as the Appeals Tribunal stated in *Kamal* 2012-UNAT-204, that there is no deadline for completing a promotion exercise, the Tribunal's examination of the issues does not end there. There is a duty on the Administration to respond to staff member's reasonable requests for information, assistance, and action, and to inform staff members of administrative decisions affecting them in a timely manner (*Sina* 2010-UNAT-094, *Obdeijn* 2012-UNAT-201).

46. With respect to the completion of the selection process, there were several delays that were attributable to the Organization and within its control and power to

change. For example, although the working group was set up in December 2005, it did not issue its report until May 2006. It took another five months, until November 2006, for the Administration to make a decision to cancel the second selection exercise. The third vacancy was issued approximately eight months later, in July 2007. These delays compounded the continued failure on the part of the Administration to respond to the Applicant's reasonable requests for information and action.

47. In cases of excessive delay, the Administration cannot, without more, use the absence of a specific rule regarding a particular period of notification as a cloak to cover instances of abuse of power and maladministration. There is a shared responsibility on the part of staff members as well as management to create and foster a harmonious working environment characterized by mutual respect and consideration for others consistent with the core values of the Charter of the United Nations (see art. 1 of the Charter), resolutions of the General Assembly (see, for example, resolution 63/253, dated 24 December 2008), and various administrative issuances. In particular, para. 2.1 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) provides that "every staff member has the right to be treated with dignity and respect and to work in an environment free from discrimination, harassment, and abuse". That the managers who failed in their duty to observe the standards of good management and administration could have continued to have done so, without accountability and concern for the legitimate interests of staff members, amounts to an abuse of power.

48. Although the Applicant was retroactively promoted with effect from 14 April 2005, this decision was taken in January 2008, almost three years after the commencement of the second selection exercise. Throughout this period, the Applicant made numerous enquiries with various senior officials in the Organization. The several requests by the Applicant enquiring about the selection decision were couched in reasonable terms notwithstanding his frustration not merely with the delays but also with the failure to acknowledge or reply to

his enquiries. The Administration's failures were not in any way even remotely consonant with its duty as an international organization towards a member of its staff. The Applicant's enquiries were neither acknowledged nor addressed. Having heard and seen the Applicant give evidence, the Tribunal finds that the Administration's repeated failure and/or omission to address his complaints—in other words, its failure to act—was an administrative decision that affected his rights and caused him distress.

49. The Tribunal finds that such failures and/or omissions to act were deliberate or, if they were not, they amounted to negligence in the performance of the Administration's duty to act within a reasonable timeframe. The Tribunal notes that administrative decisions that are subject to review by the Tribunal are not always presented as affirmative decisions. They are sometimes in the form of a failure to act, which may be characterized as an implied administrative decision (see *Tabari* 2010-UNAT-030, *Nwuke* 2010-UNAT-099, *Rahimi* UNDT/2011/089). The several reasonable and legitimate enquiries by the Applicant fell on stony ground. The Respondent's repeated failures constituted a breach of duty on the part of the Administration and were tantamount to maladministration and abuse of power.

50. The Tribunal finds that among the features that distinguish the present case from that of *Kamal* is the extent of persistent enquiries and requests for information and action sent by the Applicant, all of which were ignored without any explanation. Specifically, the Applicant's enquiries included communications sent to various senior officials in October 2005, January 2006, February 2006, March 2006, April 2006, May 2006, and December 2006. The extent of the Applicant's persistent requests and enquiries highlights the legitimacy of his frustration with the process and demonstrates the gravity of the Administration's failure to act.

51. The Tribunal finds that the managers concerned failed to give proper weight to the fact that as one of the two candidates recommended for promotion, the Applicant had a legitimate interest and concern for a timely resolution. This was

particularly the case in a department that was the subject of several complaints of irregular promotion practices aside from this promotion exercise. It was common knowledge in DGACM that the Applicant and Ms. Kamal were recommended, thus a cloud hung over them as to whether they were also the beneficiaries of irregular practices.

52. Although the Tribunal takes note of Ms. Bhatia's testimony that this selection process was among the most difficult exercises in DGACM due to the significant number of claims and counter-claims brought forward by various participants and at various stages, the Tribunal finds that the delays in this case were unreasonably excessive and could have been minimised.

53. The Applicant testified at the hearing that, morally and professionally, he was hurt and had an overwhelming feeling of insult and humiliation. The continued uncertainty and delays resulted in an uncomfortable working environment that had so affected him that he even considered leaving the Organization. The Tribunal does not consider fanciful his testimony that he felt damaged emotionally and professionally by what he considered to be unfair treatment. The Applicant acknowledged that some of these feelings were assuaged after he was selected in the third selection exercise and promoted retroactively in January 2008, but insisted that the suffering he experienced prior to that warrants compensation. The Applicant's evidence was not effectively rebutted in cross-examination.

54. The Tribunal is satisfied, on the evidence given, that the Applicant suffered harm in the form of emotional distress from the excessive delays attributable to the failure on the part of the Organization not only to conclude the promotion exercise within a reasonable period, notwithstanding the difficulties, but also the Administration's lack of any acknowledgement or reply to the numerous attempts that he made seeking explanation for the continued delay.

Compensation for delays and related harm

55. In a number of cases, the Appeals Tribunal granted or upheld the Dispute Tribunal's awards compensating staff members for the excessive delays that they were subjected to by the Administration.

56. In *Asaad* 2010-UNAT-021, the Appeals Tribunal found that the appellant proved that the decision to terminate his probationary appointment was unlawful. The Appeals Tribunal also found that there was a delay of five years in dealing with the appellant's case, which justified compensation in the amount of one month's net base salary.

57. In *Sina* 2010-UNAT-094, the Appeals Tribunal affirmed the findings of the Dispute Tribunal in *Sina* UNDT/2010/060 with respect to the lawfulness of the non-renewal of the applicant's contract. However, the Appeals Tribunal vacated the Dispute Tribunal's order of compensation in the amount of USD500 for the delay of 19 days in the notification to the Applicant of a decision by the Advisory Board on Compensation Claims that had a direct impact on the non-renewal of the applicant's appointment. The Appeals Tribunal stated that, while "a staff member certainly has the right to be informed of administrative decisions affecting him, a few days lapse is inconsequential". As the applicant suffered no harm for this delay, no compensation was warranted.

58. In *Chen* 2011-UNAT-107, the Appeals Tribunal affirmed *Chen* UNDT/2010/068. The Appeals Tribunal found that the Dispute Tribunal correctly determined that the applicant was performing work that was equal to that of her colleagues and that her post should have been reclassified. The Appeals Tribunal affirmed the Dispute Tribunal's order on compensation, which included, in addition to compensation for lost salary and entitlements, six months' net base salary for the "non-material damage of frustration and humiliation compounded by the delays

[the applicant] was subjected to”. The delay in that case involved a two-year delay in consideration of the applicant’s request for reclassification of her post.

59. In *Shkurtaj* 2011-UNAT-148, the Appeals Tribunal affirmed an order of compensation in the amount of USD5,000, made in *Shkurtaj* UNDT/2010/156, for the Respondent’s “substantial delay” in considering the Ethics Office’s recommendation regarding the applicant in that case. It should be noted in particular that the applicable rules did not establish any deadline for consideration of the Ethics Office’s recommendations, and the finding of delay was based on the Dispute Tribunal’s assessment of the circumstances in that case.

60. In *Charles* 2012-UNAT-242, the Appeals Tribunal observed, in the context of the applicant’s allegations regarding unnecessary delays in consideration of his case before the Dispute Tribunal, that “inordinate delays do not only adversely affect the administration of justice, but on occasions can inflict unnecessary anxiety and suffering on an applicant”. The Appeals Tribunal further stated that “[t]imely and efficient administration of justice is not only a requirement of the rule of law, but it also provides for a congenial working relationship among staff and management”. The Appeals Tribunal noted that “justice delayed is justice denied”. Whilst this judgment related to legal proceedings, the underlying principle has broader application.

61. Compensation for inordinate delay is also granted in appropriate cases by other international tribunals. For example, in Judgment No. 2706 (2008), the Administrative Tribunal of the International Labour Organization (“ILOAT”) found that the World Intellectual Property Organization acted unlawfully in refusing to promote the complainant and consider her post for reclassification. The ILOAT found that the consideration of the applicant’s status was delayed by several years and ordered that the applicant be paid compensation in the amount of 40,000 Swiss francs for “all the injuries suffered”, which included the “substantial delay in reaching a decision on the complainant’s case”. (See also ILOAT Judgment

No. 2116, In re *Giordimaina* (2002).) In its Decision No. 453, *BO* (2011), the World Bank Administrative Tribunal (“WBAT”) found that the Bank had delayed the conclusion of the recruitment process in question and failed to inform the applicant about the progress of the selection exercise or give an adequate explanation for the delays. The WBAT found that three months’ net base salary and attorney fees that had been paid to the applicant were sufficient to compensate for the harm suffered.

62. There is an implied term in the contract of employment between the United Nations and its staff members that decisions affecting the staff member’s terms of employment must be consistent with the duty and mutual obligation on both parties to act in good faith towards each other, which includes acting rationally, fairly, honestly, and in accordance with the obligations of due process (see *Shashaa* UNDT/2009/034; *Castelli* UNDT/2009/075 (affirmed in *Castelli* 2010-UNAT-037); *D’Hooge* UNDT/2010/044; *Sina* UNDT/2010/060 (affirmed on liability but overturned on compensation in *Sina* 2010-UNAT-094); *Teferra* UNDT/2010/084; *Goddard* UNDT/2010/196; and *Obdeijn* UNDT/2011/032 (affirmed with variation of compensation orders in *Obdeijn* 2012-UNAT-201)). Failure to acknowledge or respond to reasonable requests, particularly where they are repeated several times over, amounts to maladministration for which some compensation is payable in appropriate cases. In *Asaad* 2010-UNAT-021 and *Bertucci* 2011-UNAT-121, the Appeals Tribunal stated that the Organization must act in good faith and comply with applicable law and procedural rules and that the decisions of the Administration must not be arbitrary or based on erroneous or improper motivation.

63. In the Dispute Tribunal’s considered view, it is difficult to see why the principles established in the judgments above, particularly the judgments of the Appeals Tribunal, should not apply to this case. The Organization’s mishandling of the process and the excessive delays, resulting in proven harm to the Applicant, warrant compensation.

64. The Tribunal notes that the Applicant was promoted with retroactive effect from April 2005. The Respondent submitted in the reply that, by this retroactive reinstatement, “not only has the Applicant been made whole, both financially and professionally, but he has been placed in a better financial position than if he had been promoted on the basis of the second selection exercise”, presumably because he would have been appointed in or after October 2005 had the second selection exercise been completed normally (see para. 44 of the reply). The Tribunal notes that the retroactive reinstatement of the Applicant was at no point in time suggested by the Respondent to be compensation for any harm associated with the delays in concluding the exercise or in addressing his enquiries. The Respondent refused to acknowledge liability and stated in his reply that there were no undue delays in this case and any delays “were unavoidable and necessary”. Therefore, the Tribunal is bound to interpret the retroactive payment as compensation for economic loss suffered, as a gesture of good will on the part of the Respondent. It was not intended by the Respondent—or accepted or understood as such by the Applicant—to compensate the Applicant for the harm to his morale, professional reputation, and emotional well-being, as established in the course of the present proceedings. Although the fact of his retroactive promotion may have provided some vindication of the stance he took, it did not extinguish the distress which he had experienced. In giving evidence the Applicant was clearly still distressed by the manner in which he had been treated by a failure to recognize his legitimate expectation of a timely decision.

65. As the fact-finding tribunal, this Tribunal is best placed to arrive at a conclusion as to whether the Applicant suffered emotional harm and, if he did, to quantify its extent (*Abbassi* 2011-UNAT-110, *Messinger* 2011-UNAT-123, *Cieniewicz* 2012-UNAT-232, *Gehr* 2012-UNAT-234, *Muratore* 2012-UNAT-245). The Tribunal finds that, applying the principles enunciated by the Appeals Tribunal, the Applicant in the present case is entitled to compensation. The delays in this case were not inconsequential and the Applicant has testified regarding the emotional

harm he suffered as a result. The Tribunal finds that the case presented by the Applicant in this respect is even more compelling than that of *Kamal*. In the Tribunal's considered view, the Applicant has demonstrated that he suffered emotional harm, which warrants compensation in the amount of USD10,000.

JAB proceedings

66. The Applicant submitted that the JAB erred in its findings, did not comply with its own rules, and improperly delayed its work. The Respondent submitted that there were no irregularities in the JAB proceedings in this case. Although, in the Tribunal's view, the JAB proceedings could have been carried out more expeditiously, they were complicated by the ongoing delays discussed above. The Applicant's appeals were filed in September 2006 and February 2007, and the JAB concluded its work and adopted its final report in January 2008, the same month the Applicant was promoted retroactively. In the Tribunal's view, any delays with respect to the JAB proceedings were in large part attributable to the ongoing developments at the time, which were due to the Administration's continuing delays in addressing the situation. Therefore, the Tribunal was not persuaded by the Applicant that the JAB proceedings were marred with violations warranting compensation in addition to what is ordered below.

Conclusion

67. The Tribunal finds that the cancellation of the second selection exercise and its subsequent recommencement were, in the circumstances, appropriate and lawful in view of the strong representations by the Staff Council in Resolution No. 66 and the complaints raised regarding the selection exercise. However, there were excessive and unjustifiable delays in concluding the selection process. The Organization also consistently and without just cause failed to respond to the Applicant's reasonable requests for information and action. The delays in question as well as the failure to respond to the Applicant's enquiries were deliberate

or negligent and, in any event, amounted to maladministration. The resultant harm to the Applicant shall be compensated.

Order

68. The Respondent shall pay to the Applicant the sum of USD10,000. This sum is to be paid within 60 days from the date the Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the sums are not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Goolam Meeran

Dated this 17th day of January 2013

Entered in the Register on this 17th day of January 2013

(Signed)

Hafida Lahiouel, Registrar, New York