



**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

GUEDES

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RELIEF**

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**Counsel for Applicant:**

Jeffrey C. Dahl

**Counsel for Respondent:**

Stéphanie Cochard, HRMS/UNOG

Arne Treves, HRMS/UNOG

## **Introduction**

1. The Applicant contested the decision denying his request to be considered for conversion to a permanent appointment as a result of him taking six months special leave without pay (“SLWOP”). The Applicant sought the rescission of the contested decision and an award in respect of moral damage.

2. On 25 February 2013, the Dispute Tribunal rendered Judgment *Guedes* UNDT/2013/031, in which it found that the decision to deny the Applicant consideration to permanent appointment was unlawful. The Tribunal also ordered that it would hold an oral hearing to determine any consequential relief to be afforded to the Applicant who would be requested to give evidence in support of his claim for moral damages.

3. At the hearing held on 4 March 2013, the Applicant, located in La Paz, Bolivia, and his counsel Mr. Dahl, located in The Hague, Netherlands, participated by telephone. The Respondent, who was represented by Mr. Treves and Ms. Cochard participated via video-conference from Geneva, Switzerland.

4. The Applicant gave evidence as to the damages he suffered as a result of the unlawful decision taken by the administration regarding his request for consideration for conversion to permanent appointment. The Tribunal noted, and the Applicant stated that he understood, that as part of its Judgment on liability the Tribunal had found that the contested decision was the result of the incorrect interpretation by the Organization of the applicable bulletin and that it did not appear in any of the facts before the Tribunal that the contested decision as applied to the Applicant was based on any malicious intent or was biased.

## Consideration

### *Applicable law*

5. Under art. 10.5(b) of the Statute of the Dispute Tribunal, the Tribunal may order compensation to an aggrieved party. The jurisprudence of the Appeals Tribunal upholds the principle that an Applicant may receive compensation for emotional harm, such as distress and anxiety (see, *Wu* 2010-UNAT-042 and *Antaki* 2010-UNAT-095). Nevertheless, for the Tribunal to award such compensation there must be evidence of injury or damage. As stated in *Antaki*: “[c]ompensation may only be awarded if it has been established that the staff member actually suffered damages”. Furthermore, such compensation may not amount to “an award of punitive or exemplary damages designed to punish the Organization and deter future wrongdoing” (see art. 10.7 of the Statute of the Dispute Tribunal as applied in *Wu* and *Kasyanov* 2010-UNAT-076).

6. It should be noted that whilst, in an appropriate case, medical evidence may well be helpful, the absence of such evidence is not fatal to a claim in respect of distress suffered so long as there is a rational basis in support of a finding by the Tribunal that such damage occurred.

### *Moral damages*

7. The Applicant has not suffered any economic loss as a result of the impugned decision. His claim is solely for moral damages as a result of being informed that the Organization would not consider him for permanent appointment.

8. The Applicant stated that when he received the impugned decision he was extremely upset and felt that he was not valued by the Organization. He further submitted that as the country representative in Bolivia he worked in harsh and stressful conditions and that he was so distressed by this decision that he considered submitting his resignation even though he had been in service with the Organization in various capacities for over 20 years.

9. The Applicant stated that as a result of his personality, as well as professional experience, he was “strong enough to deal” with the devastation felt as a result of the decision and that at no point did he require any assistance, medical or otherwise, to continue addressing either his personal or professional obligations. In response to the Tribunal’s question regarding the degree to which he was distressed, on a scale of 1 to 10, with 10 being the highest, the Applicant replied that he would grade his feeling of upset at 9 out of 10. The Applicant was not able to identify any additional factors to be taken into account in assessing the financial component of his moral damages. However, he stated that he has been a loyal international civil servant for an extended period of time and that but for a few additional weeks of service he would have been eligible, in accordance with the Respondent’s interpretation of the requirements, for consideration to permanent appointment which further emphasized the perception of unfairness behind the decision.

10. The Respondent submitted that the contested irregularity was not directed personally against the Applicant or based on improper motives in that it was just the result of the application of the rules as understood by the Organization at the time. Furthermore, the Respondent submitted that the impugned decision was in relation to the first stage of the process regarding conversion to permanent appointment which consists of the pre-decision stage of eligibility for conversion. The Respondent stated that as a result of Judgment UNDT/2013/031, the Applicant’s candidacy for consideration to permanent appointment was in the process of being transmitted to the Assistant-Secretary-General for consideration.

11. The Respondent submitted that the Applicant was, and still is, gainfully employed by the Organization and that there was no evidence before the Tribunal that this decision affected his career prospects in any way. The Respondent contended that there was no causal link between the decision and any damages requested or suffered by the Applicant, particularly considering the lack of medical or other evidence presented to the Tribunal. Consequently, the Respondent submitted that the Applicant had not met the required burden of proof to be awarded compensation for moral

damages. Whilst not accepting that the Applicant suffered any damage, the Respondent submitted, in the alternative, that should the Tribunal consider that there was some level of moral damage suffered by the Applicant, then any such damage would have to be considered as minimal and not punitive.

12. It is difficult to arrive at a precise sum to reflect the extent of damage suffered by a particular staff member in a given set of circumstances. This is not an issue which lends itself to scientific quantification or certainty. The Tribunal has to use its judgment to arrive at an assessment, which is fair and proper and does not diminish confidence in the ability of the system to provide, in appropriate cases, compensation that is neither paltry nor excessive. Above all, the award has to be truly compensatory.

13. The approach that the Tribunal has adopted is to try and categorize the harm suffered by the Applicant in terms of a scale of severity. The Tribunal has first to assess whether the Applicant was minimally, moderately, or extremely distressed by the manner in which he was treated. It is only after such a finding that the Tribunal may arrive at a sensible and reasoned assessment. In this case, the Tribunal has no hesitation in stating that the Applicant's distress and anxiety cannot justifiably be placed at the top end of the scale of severity but rather at the lower end. This is even truer considering that the Applicant, who appears to have a very good track record with the Organization, is now in the process of being considered for permanent appointment.

14. The Tribunal has to strike a balance between the subjective and introspective feelings and perception of the aggrieved staff member with the application of reasonableness, rationality and objectivity in arriving at a fair and proper assessment of damage particularly involving the indefinable characteristics of what has been described in broad general terms as "moral damage".

15. In all the circumstances, the Tribunal assesses the appropriate sum to be awarded to the Applicant, as compensation for emotional harm (moral damages) to be USD3,000.

**Conclusion**

16. The Respondent is ordered to pay to the Applicant the sum of USD3,000 in compensation.

17. Under art. 10.5 of the Statute of the Dispute Tribunal, the sum of compensation as detailed in para. 15 above is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is 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.

18. There being no other applications, this matter is now closed.

*(Signed)*

Judge Goolam Meeran

Dated this 4<sup>th</sup> day of March 2013

Entered in the Register on this 4<sup>th</sup> day of March 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York