



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

JITSAMRUAY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Miles Hastie, OSLA

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, an S-2 level Security Officer currently serving with the Department of Safety and Security (“DSS”) of the United Nations Secretariat in New York, contests the decision of 4 October 2011 “denying [him] the opportunity to write the Young Professionals Programme [“YPP”] examination in [the areas of] Administration and Humanitarian Affairs (scheduled for 7 December 2011)”. The decision was based on the ground that he had not served the “minimum of five years continuous service in the Secretariat”, which is one of the eligibility criteria under sec. 3.1 of ST/AI/2010/7 (Competitive examination for recruitment to the Professional category of staff members from other categories). The issue arose because during the period 1 June 2007 to 2 February 2009, the Applicant was employed pursuant to a Memorandum of Understanding (“MoU”) between the United Nations Secretariat and the United Nations Development Programme (“UNDP”), which is a separately-administered programme that is not part of the United Nations Secretariat.

2. The Applicant submits, *inter alia*, that he worked “in” the United Nations Secretariat (namely, DSS), although his contract was administered by the UNDP. He refers to various contract and personnel documents identifying his post as a post with DSS. He further states that he was previously invited to sit the General to Professional examination in 2009, when the eligibility criteria were identical to the ones that were in place in 2011. The Applicant further states that, since 2010, he has held a permanent appointment in the Secretariat. He submits that, with respect to the disputed period from 1 June 2007 to 1 February 2009, he was not on loan, but rather subject to an *ad hoc* arrangement between the UN Secretariat and UNDP that was governed by the MoU. The Applicant submits that various reports provided by the Secretary-General to the General

Assembly indicate that, at all relevant times, the Secretary-General has treated UNDP-administered staff of the United Nations Secretariat as “staff of the Secretariat” and included them in the Secretariat staffing tables whilst excluding them from the UNDP staffing tables. Finally, the Applicant submits that he made a request for an exception under staff rule 12.3(b), which was not properly considered.

3. The Respondent submits, *inter alia*, that at the time of the contested decision the Applicant did not have five years of continuous service with the Secretariat. Therefore, pursuant to sec. 3.1(a) of ST/AI/2010/7, he is ineligible to take the examination. The Respondent contends that the Applicant was employed by UNDP from 1 June 2007 to 2 February 2009 pursuant to the MoU between UNDP and the United Nations Secretariat which expressly provided that “UNDP shall contract staff” who would then provide security services to DSS. The Respondent submits that the Applicant was thus loaned to DSS and his engagement with UNDP was reflected in the Applicant’s letter of appointment and UNDP personnel action reports. The Respondent states that a contract can only confer rights or impose obligations on parties to the contract, and UNDP cannot and does not purport to impose an employment relationship between the Secretariat and the Applicant. The Respondent further submits that the application is moot since the Applicant was allowed to take the examination and did not pass. As a result, the contested decision has no impact on the Applicant. Finally, the Respondent submits that the Applicant did not properly request an exception under staff rule 12.3(b).

Procedural matters

4. On 23 July 2013, by Order No. 174 (NY/2013), the Tribunal directed that the parties file any additional submissions by 29 July 2013. The Tribunal requested the parties to confirm if a hearing was necessary and directed that, “[i]n

the event no hearing is requested, the Tribunal [would] proceed with rendering its judgment, subject to any orders that may be issued”.

5. On 29 July 2013, the parties filed their additional submissions, stating, *inter alia*, that they had no objections to the disposal of the case on the papers.

Facts

6. In late June to early August 2006, the United Nations Development Programme (“UNDP”) and representatives of the United Nations signed an MoU governing the provision of “services in support of the security arrangements”. (The MoU was signed by the Officer-in-Charge, Bureau of Management, UNDP, on 26 June 2006; by the Under-Secretary-General, DSS, on 28 June 2006; and by the Assistant Secretary-General and Controller, Office of Programme Planning Budget and Accounts, United Nations Secretariat, on 2 August 2006.) The MoU entered into force with retroactive effect from 1 January 2005.

7. The MoU states that (emphasis in original):

Whereas, the General Assembly Resolution [59/276 of 23 December 2004 (Questions relating to the programme budget for the biennium 2004–2005)] further provides for the additional recruitment of 150 FSCO [Field Security Coordination Officers] together with local level support personnel and their related requirements, funded and centrally managed by the UN, through the Under-Secretary-General, UN/DSS;

...

Article 1

Legal context

This MoU sets out the terms and conditions under which the UNDP, upon request of UN/DSS, shall provide services in support of the security arrangements in the applicable countries ... in accordance with the description of services in Annex 2 (Services) and the matrix of responsibility in Annex 1

Article 2

Request for services

1. ... UN/DSS shall request UNDP, through a formal, written document, to provide such Services as are required for the appointment of FSCOs.
2. UN/DSS shall:
 - ...
 - (c) [m]aintain the oversight of FSCO programme ...;
 - (d) ... provide technical oversight on the ground,
 - ...

Article 3

UNDP Services

- ...
- 3.3(b) ... Letters of Appointments signed before assignment to UN/DSS will stipulate that the staff member will be loaned to UN/DSS, and as such is not a UN/DSS staff member.
- ...
- 3.3(e) ... individuals hired by UNDP shall work under the supervision of the person designated by UN/DSS ... in accordance with overall directives laid down by UN/DSS in consultation with UNDP. UNDP shall provide such individuals with appropriate guidance and support on administrative and managerial issues as UNDP may deem necessary
- ...

Article 6

Liability and Insurance

- ...
- 6.2 UNDP shall be responsible for handling any dispute or claim arising from or in connection with the provision of Services, including disputes or claims from third parties.
8. From 18 February 2003 to 31 May 2007, the Applicant was employed by the Security and Safety Section (“SSS”) of the Economic and Social Commission

for Asia and the Pacific (“ESCAP”), Bangkok. It is common cause that his service with ESCAP is regarded as service with the United Nations Secretariat.

9. On 4 May 2007, the Applicant received a letter informing him that he had been selected “for the post of Local Security Assistant for UNDSS at Level GS-5 Step II”. The offer was written on UNDP letterhead and signed by the Chief of Operations of UNDP.

10. On 14 May 2007, the Resident Representative of UNDP, on behalf of the Administrator of the UNDP, signed the letter of appointment. It was signed by the Applicant on 16 May 2007. The letter was written on the United Nations letterhead, but stated that it was for “a fixed-term appointment in this office of the United Nations Development Programme”. It further stated that it was “subject to the provisions of the Staff Regulations and Staff Rules applicable to the United Nations Development Programme” and “may be terminated prior to its expiration date in accordance with the relevant provisions of the UN Staff Regulations and Staff Rules” in which case the “Administrator of the United Nations Development Programme” will give 30 days’ written notice. The letter of appointment also stated that it “[did] not carry any expectancy of renewal in the Secretariat of the United Nations Development Programme” and that staff members “specifically recruited for the UNDP have no entitlement for consideration for posts outside the Secretariat of that Programme”. It made note of one “special condition”, namely that this appointment was “limited to service with the United Nations Department of Safety & Security”. However, it did not explicitly state, as required by art 3.3(b) of the MoU, that the Applicant “will be loaned to UN/DSS and as such is not a UN/DSS staff member”. The Applicant was employed under these terms until 2 February 2009.

11. From 2 February 2009, the Applicant has been employed by DSS in New York on a letter of appointment issued by the United Nations Secretariat, and

signed by an official of the Office of Human Resources Management (“OHRM”) on behalf of the Secretary-General.

12. By letter dated 22 November 2010, signed by the Assistant Secretary-General for Human Resources Management, the Applicant was informed that his contract would be converted to a permanent appointment, with retroactive effect from 30 June 2009. He accepted the permanent appointment, effective 30 June 2009, on 3 December 2010.

13. In 2011, the Applicant applied to take the YPP examination in two areas, “Administration” and “Humanitarian Affairs”. He was notified on 4 October 2011, by two separate letters, that his application to take the YPP examination in both areas was rejected by the Central Examination Board because he “did not have a minimum of five years of continuous service in the Secretariat to qualify for admission to the examination”. The Applicant appealed the decision of the Central Examination Board on 14 October 2011. On 25 October 2011, the Examinations and Tests Section of the Office of Human Resources Management (“OHRM”) informed him that because his service was with UNDP, it could not be counted towards service with the Secretariat.

14. On 21 November 2011, the Applicant requested management evaluation of the Central Examination Board decision. On the final page of the narrative attached to his MEU request, he further requested that an exception be granted in his case based on the *Hastings* rule. (*Hastings* 2011-UNAT-109 affirmed the ruling in *Hastings* UNDT/2010/071, establishing that requests for exceptions to staff rules and subsidiary instruments must be properly considered.) In his narrative attached to the request for management evaluation, the Applicant wrote, “I see nothing compelling the Organization to reach this unfair decision. If I am mistaken, and there is some valid legal instrument requiring it, then I would ask

the Administration to exercise its discretion to rectify the unfairness through the operation of staff rule 12.3(b)”.

15. Given the impending examination, on 23 November 2011, the Applicant sought a suspension of action from the Tribunal. This application was rejected in *Jitsamruay* UNDT/2011/206, dated 1 December 2011, the Tribunal having determined that the requirement of urgency was not satisfied as the urgency was self-created. The Tribunal did not rule on the question of the *prima facie* unlawfulness of the decision.

16. Pending the outcome of the request for management evaluation, the Administration allowed the Applicant to sit the examination, which he did not pass. In his submission of 29 July 2013, the Applicant refers to para. 13 of the Respondent’s reply which states that “in light of the fact that the Applicant’s management evaluation [of 21 November 2011] request was outstanding, on a without prejudice basis, the Administration admitted the Applicant to the [2011 YPP] examination pending the outcome of his management evaluation”. In his submission of 29 July 2013, the Applicant “confirms that he did not pass the original sitting of the [2011 YPP] test” referred to by the Respondent in para. 13 of the reply.

17. On 1 March 2012, the Management Evaluation Unit (“MEU”) upheld the original decision. The report explained that:

[d]ue to the urgency of the matter and the fact that the examination in question was scheduled to take place on 7 December 2011, and pursuant to a request from your counsel, the MEU suggested to the Examinations and Tests Section to allow you to sit in for the 2011 YPP examination without prejudice, subject to MEU’s final decision on your eligibility ... In light of the foregoing considerations of your case, the Secretary-General has decided that the decision to deem you ineligible to participate in the 2011 YPP examination was taken in

accordance with the applicable rules and thus upholds it. Accordingly, the 2011 YPP exam that you wrote will not be evaluated.

18. Although the MEU letter stated that the Applicant's "2011 YPP exam [would] not be evaluated", it is common cause that it was evaluated, and that the Applicant did not pass it.

Applicable law

19. Section 1 of ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009) of 23 June 2009 states:

Section 1

Eligibility

To be eligible for consideration for conversion to a permanent appointment under the present bulletin, a staff member must by 30 June 2009:

(a) Have completed, or complete, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules; and

(b) Be under the age of 53 years on the date such staff member has completed or completes the five years of qualifying service.

20. ST/AI/2010/7 regarding the YPP examination provides in sec. 3.1 as follows:

Section 3

Eligibility

3.1 A staff member serving in the General Service and related categories, including the Field Service category up to and including the FS-5 level, may apply to take a competitive examination in a particular occupational group, provided that he or she:

(a) Has a minimum of five years of continuous service in the Secretariat, excluding any service in separately administered funds

or programmes, except as otherwise provided in section 3.2 below [concerning short breaks in service];

(b) Has a rating of at least “fully meets performance expectations” or “fully successful performance” in his or her last two performance assessments;

(c) Holds a United Nations appointment valid until at least six months after the date when the written examination is scheduled to take place;

(d) Meets the minimum educational criteria set out in sections 3.4 and 3.5 of the present instruction.

Consideration

21. The main issue is whether the decision that the Applicant was ineligible to sit the YPP examination in 2011 because he did not have “five years of continuous service in the Secretariat” was lawful.

Effect of permanent appointment granted in November 2010

22. On 22 November 2010, the Applicant’s fixed-term appointment with the United Nations Secretariat was converted to a permanent appointment effective 30 June 2009. The question therefore arises as to what conclusions are to be drawn from this conversion, particularly considering the legal requirements in place for both the conversion and the YPP eligibility.

23. Below are the key provisions of ST/SGB/2009/10 (on conversion) and ST/AI/2010/7 (on YPP examination) that pertain to the years of continuous service:

ST/SGB/2009/10 (on conversion)	ST/AI/2010/7 (on YPP)
Minimum of five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules (sec. 1(a)).	Minimum of five years of continuous service in the Secretariat, excluding any service in separately administered funds or

programmes (sec. 3.1(a)).

24. ST/AI/2010/7 (on YPP) contains an explicit clause excluding service in separately administered funds or programmes in the computation of continuous service.

25. The Tribunal will examine the meaning of the relevant provision in ST/SGB/2009/10 (on conversion). Firstly, it must be stated at the outset that this document is a Secretary-General's bulletin that applies to the staff members of the United Nations Secretariat, as explicitly stated in its title ("Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009"). Section 1(a) of ST/SGB/2009/10 specifically refers to five years of continuous service under the former 100 series of the Staff Rules, which apply to the staff members of the United Nations Secretariat. Therefore, the requirement of a minimum of five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules (ST/SGB/2009/10, sec. 1(a)) is another way of saying that the appointment was continuously with *the United Nations Secretariat* for at least five years on fixed-term contracts. (See sec. 1(a) of ST/SGB/2009/10; former Staff Regulations (see, e.g., ST/SGB/2009/6; ST/SGB/2012/1), section entitled "Scope and purpose"; and former Staff Rules, sec. 1, stating that the Staff Rules apply to staff members of the United Nations Secretariat).

26. Secondly, it has been established by the Dispute and Appeals Tribunals that this requirement of "five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules" (ST/SGB/2009/10, sec. 1(a)) is satisfied in two situations:

Option (a): the staff member had five years of continuous service on fixed-term appointments with the United Nations Secretariat, or

Option (b): the staff member's service outside of the United Nations Secretariat during any part of the relevant time period was subject to an inter-agency agreement that provided that service in one organization "will be counted for all purposes" as service in a counterpart organization (see *O'Hanlon* 2013-UNAT-303).

27. It is common cause that the Applicant was not subject to an *O'Hanlon*-type inter-agency agreement, i.e., one which provided that service in one organization would be counted "for all purposes" as service in the second organization. Thus, option (b) above could not have applied when the Applicant was considered for conversion in November 2010. From this it must necessarily follow that, when deciding to convert the Applicant to a permanent contract, the Organization treated him as falling under option (a), namely that he was a staff member who, by 30 June 2009, had completed five years of continuous service on fixed-term 100 series appointments with the United Nations Secretariat.

28. It follows from the above that by converting the Applicant to a permanent appointment under ST/SGB/2009/10—which explicitly concerns "Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009"—the Organization explicitly declared and accepted that he had five years of continuous service with the United Nations Secretariat.

29. Having made this finding upon considering the Applicant for conversion, it would be absurd for the Organization to find him ineligible to sit the YPP examination under ST/AI/2010/7 on the basis that he had *not* reached five years of service with the United Nations Secretariat. The Organization is estopped from going back on its previous declaration of continuity of service with the Secretariat. It would defy not only law and logic, but also common sense.

Permanent appointments are the most enduring and secure type of employment relationship that the Organization can have with a staff member. Having found his employment history with the Secretariat sufficient to satisfy the requirements of conversion to permanent status (i.e., at least five years of continuous service with the United Nations Secretariat on a 100 series appointment), the Organization is bound by this finding in relation to other administrative decisions involving a determination of continuity.

Other considerations

30. Aside from the fact of the conversion of the Applicant's contract to permanent in 2010, the Tribunal finds that the following further considerations are relevant in deciding whether he should have been found eligible to sit the YPP exam.

31. The Applicant avers, which the Respondent did not challenge or deny, that he was invited to take the YPP examination in 2009 under the terms of ST/AI/2003/7 (Competitive examination for recruitment to the Professional category of staff members from other categories), which contained the same conditions upon which the Applicant has now been rejected. Although he apparently withdrew from the 2009 examination, the fact that he was permitted to sit the YPP examination in 2009 suggests that the Organization regarded him as eligible in 2009, no doubt based on the finding that he had five years of continuous employment as aforesaid. Yet he was declared ineligible in 2011. In the absence of any denial or explanation by the Respondent for this incongruity, the Respondent is estopped from denying the Applicant's eligibility.

32. Furthermore, the nature of the Applicant's employment status during June 2007 to February 2009 was such that he was treated by the Secretariat at the time as one of its employees, confirmed by the fact that he was converted to

a permanent contract status in 2010. In particular, his letter of appointment of May 2007, prepared on the United Nations letterhead, stated that his appointment was limited to “service with the United Nations Department of Safety & Security”. His letter of appointment did not stipulate, as required by art. 3.3(b) of the MoU that he “will be loaned to the UN/DSS and as such is not a UN/DSS staff member”. The Applicant apparently worked under the direct supervision of two DSS staff members, and throughout his service with DSS had a United Nations Security pass that identified DSS as his employer office. Under general principles, the fact that an employer has the right of supervision and control over the employee is a strong indicator that the relationship is one of a contract of service. Upon examining the relationship as a whole and taking into account the various factors above, the dominant impression may be created that the relationship is a contract of service between the Applicant and DSS.

33. The Applicant also referred to a number of Secretary-General’s reports for the period of 2009 to 2012, which indicate that, from 2010, when reporting to the General Assembly on matters of staff demographics, the Secretary-General includes UNDP-administered staff of the United Nations Secretariat as part of the staff population of the United Nations Secretariat, referring to them as “UNDP-administered staff of the Secretariat”.¹ This is apparently done pursuant to the General Assembly’s request in para. 18 of resolution 63/250 (Human resources management) of 24 December 2008, asking the Secretary-General to “gradually incorporate within his report on the composition of the Secretariat the overall number of staff, regardless of sources of funding, on contracts of one year or more”.

¹ See A/65/350 (Composition of the Secretariat: staff demographics) (8 September 2010), pp. 18–19; A/66/347 (Composition of the Secretariat: staff demographics) (8 September 2011), pp. 12, 39; A/67/329 (Composition of the Secretariat: staff demographics) (28 August 2012), pp. 12, 39; and A/68/356 (Composition of the Secretariat: staff demographics) (30 August 2013), pp. 12, 14, 40.

34. Whatever the legal construction UNDP and United Nations Secretariat attempted to establish, the facts of this case speak for themselves. The Applicant was deemed to have completed five years of continuous service as a staff member of the Secretariat for the purposes of conversion to a permanent appointment. He was treated at his work place as a staff member of the United Nations, was previously invited to sit the 2009 YPP examination under the same conditions, and was allowed to sit the 2011 YPP examination, albeit “on a without prejudice basis”. On the facts alone, it is disingenuous and manifestly unreasonable to suggest that the Applicant’s service in the period June 2007 to February 2009 should be disregarded.

35. All of the above considered, the Tribunal finds that, in addition to the legal effect of the Applicant’s conversion to a permanent status in 2010, it was manifestly unreasonable for the Administration to completely disregard the Applicant’s service for the period June 2007 to February 2009, when determining his eligibility to take the YPP examination in 2011.

Request for exception

36. The Applicant submits that he made a proper request for an exception under staff rule 12.3(b) (Amendments of and exceptions to the Staff Rules), which was not properly considered. The Applicant made such request for an exception to sec. 3.1 ST/AI/2010/07 (Competitive examination for recruitment to the Professional category of staff members from other categories) for the very first time in the narrative attached to his MEU application. He submits that the MEU in its report did not address his request for an exception.

37. The Applicant did not follow the normal process for requesting an exception from the Secretary General (see, e.g., *Rockcliffe* UNDT/2012/033). If indeed the request for an exception filed through the MEU could be viewed as

properly made, the Secretary-General's lack of response to this request would constitute an administrative decision (of an implicit nature) refusing to grant the exception.

38. It is important to articulate that when the Applicant included his request for an exception in his letter to the MEU, he did not do so by way of seeking a management evaluation of some prior refusal to grant an exception. The letter to the MEU contained the *original* request for an exception. However, the purpose of the MEU is to review the lawfulness of already *existing* administrative decisions. Any response (or lack thereof) from the Secretary-General to the request for an exception made in the Applicant's letter to the MEU would necessarily result in the first administrative decision that the Applicant could then contest by filing a management evaluation request.

39. According to staff rule 11.2(a), "[a] staff member wishing to formally contest an administrative decision ... shall, as a first step, submit to the Secretary-General in writing a request for management evaluation of the administrative decision". Thus, it would be required of the Applicant, prior to raising the issue before the Tribunal, to submit a request for management evaluation of the implicit refusal by the Secretary-General to grant the exception.

40. Therefore, even if the Tribunal were to accept that the MEU is an appropriate forum to request for an exception, since the Applicant failed to seek management evaluation of the implicit refusal of the Secretary-General to grant his request for an exception, made for the first time in his letter to the MEU, his claims regarding this request are not properly before the Tribunal.

Relief

41. The Applicant seeks rescission of the contested decision and a declaration that he served in the United Nations Secretariat, which service contributes to his

YPP eligibility. The Applicant also initially sought compensation equal to, *inter alia*, the difference between his current remuneration package and that of a staff member at the P-2 level from the date “when the first P-2 post becomes available to be filled from the rostered 7 December 2011 YPP examination candidates”. However, in his submission filed on 29 July 2013, having taken into account that he was not successful in the 2011 YPP examination when he took it “on a without prejudice basis”, the Applicant amended his claim for relief, seeking only the difference between his current remuneration package and that of a staff member at the P-2 level from the date “when the first P-2 post becomes available to be filled from YPP examination candidates ... from the *next* YPP examination” (emphasis added). In the alternative, the Applicant seeks an order requiring the Secretary-General to remand the case and employ the correct procedure examining the YPP criteria or to consider his request for an exception. He also seeks compensation equal to three months’ net base salary “for the procedural delay”.

42. The Tribunal finds that the Applicant has failed to demonstrate that the contested decision caused him pecuniary or non-pecuniary loss warranting compensation. It is common cause that the Applicant was allowed to sit the YPP examination in 2011, apparently without prejudice, pending the outcome of management evaluation, and that he did not pass (which the Applicant confirms in para. 9 of his submission of 29 July 2013). The Tribunal cannot speculate as to what would have transpired had the Applicant passed the examination in 2011. Having sat and failed the examination, the Applicant cannot claim to have suffered any contingent loss in connection with the 2011 examination. Further, the subject matter of the present case is decision not to admit the Applicant to the YPP examination scheduled for 7 December 2011 (see p. 2 of the application). Examinations that may have taken place in subsequent years are not part of the present case. In any event, even if post-2011 examinations were

part of the present case, their possible outcome would be too speculative to take into account. The Tribunal finds that the Applicant, despite being given an opportunity to file additional submissions by 29 July 2013, has not substantiated that he suffered pecuniary or non-pecuniary harm such as to warrant compensation.

43. As the United Nations Appeals Tribunal stated in *Antaki* 2010-UNAT-095, “[n]ot every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages”. In view of the circumstances of this case, the only relief that the Tribunal finds appropriate to order in this case is the rescission of the decision not to allow the Applicant to sit the 2011 YPP examination.

Observations

44. The Tribunal finds it appropriate to comment on the Respondent’s submission that this matter is moot as the Applicant was allowed to sit the 2011 YPP examination, which he, in any event, failed. It is clear from the record that this concession was made to the Applicant “on a without prejudice basis” (para. 13 of the Respondent’s reply) and pending the outcome of the management evaluation. The Respondent also states in his submission of 29 July 2013 that the Applicant’s “application [for the 2011 YPP examination] could not go forward for the reason that he did not succeed in the examination”. This submission is misguided and plainly incorrect. The Applicant could not go forward with his YPP examination because he was found ineligible. It is not contended by the Respondent that had the Applicant passed when allowed to take the examination “on a without prejudice basis”, he would have been deemed by the Respondent to have completed five years of continuous service.

The Applicant's claims in this case were clearly not moot, contrary to the Respondent's assertions.

45. The Tribunal regrettably notes that this matter has resulted in wasted resources and needless costs due to unnecessary litigation. This case could have, and should have, been resolved by the parties through informal discussions.

Conclusion

46. The contested decision not to allow the Applicant to sit the 2011 YPP examination is rescinded. All other pleas and claims for relief are rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 8th day of November 2013

Entered in the Register on this 8th day of November 2013

(Signed)

Hafida Lahiouel, Registrar, New York