



Before: Judge Coral Shaw
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

NWUKE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Bérengère Neyroud, ALS/OHRM

Introduction

1. The Applicant is a staff member of the United Nations Economic Commission for Africa (ECA). He has seven substantive applications before the Tribunal in which he contests administrative decisions taken between August 2008 and July 2011. He alleges that each of the challenged administrative decisions are unlawful because they are in breach of specific regulations or rules and, in addition, are examples of a continuing pattern of abuse of authority against him by the Executive Secretary (ES) of the Economic Commission for Africa.

2. In this case he challenged two decisions. Of these, the decision not to advertise the temporary vacancy for the position of Officer-in-Charge (OIC), Regional Integration, Infrastructure and Trade Division (RIITD), ECA was held to not be receivable.¹

3. The sole decision under challenge is therefore the non-selection of the Applicant for the post of Director of RIITD which was advised to him in a letter dated 30 August 2010.

Procedural Matters

4. The Applicant has represented himself in all of his cases since February 2010. Before the hearing of the substantive applications the Tribunal heard and decided a number of interlocutory matters.

5. The seven cases were heard over eight consecutive working days in September 2013. This case was heard on 12 and 13 September 2013. In preparation for these hearings the Tribunal made several case management orders², which included the consolidation of three of the cases (the Trio).³

¹ Order No. 106 (NBI/2013) dated 20 May 2013.

² Order Nos. 096 (NBI/2013); 106 (NBI/2013); 107 (NBI/2013); 130 (NBI/2013); 148 (NBI/2013); 157(NBI/2013); 175 (NBI/2013); 176 (NBI/2013) and 203 (NBI/2013).

³ UNDT/NBI/2009/044, UNDT/NBI/2010/045 and UNDT/NBI/2010/077.

6. In accordance with these orders, the Tribunal received oral and documentary evidence in each case on the clear understanding of both parties that, to avoid duplication of evidence and documents, the Tribunal would make its determination in the Trio first and refer to any relevant findings of fact and law made in the Trio in the subsequent judgments.

7. The Parties produced a bundle of documents for the hearing which contained all documents to be referred to by the witnesses or in submissions. The Applicant's evidence comprised his sworn confirmation of the facts alleged by him in his application supplemented by his oral testimony. The Respondent did not call any witnesses.

8. At the commencement of the hearing, the Respondent sought leave to file a note dated 4 March 2011 signed by three members of the panel which had interviewed the Applicant for the contested RIITD post. The note had been made after the Management Evaluation Unit (MEU) decision on his request for management evaluation of the challenged decision. The Applicant disagreed with the contents of the document and objected to its admission into evidence.

9. The Respondent was given time to locate the authors of the document and arrange for one or all of them to attend the hearing to be cross examined on its contents. Counsel for the Respondent then advised that he was not in a position to call any of the authors of the document.

10. In the absence of the authors of the document the Tribunal ruled that the document could be admitted into evidence but that the weight to be attached to its contents would be minimal.

The issues

11. Was the selection process for the post of Director of RIITD handled lawfully and correctly?

12. Did the Applicant suffer from harassment, discrimination and abuse of authority?

13. Did the Applicant suffer any compensable damage?

Facts

14. All of the Divisions referred to in this decision are Divisions of ECA unless stated otherwise.

Background

15. The Applicant joined the United Nations on 1 June 2001. He holds the P-5 position of Chief of the New Technologies and Innovation Section in the Special Initiatives Division at ECA.

16. Until March 2003, he worked as a Senior Economist in the Economic and Social Policy Division (ESPD). His duties included the management of the activities of the African Learning group, and preparation of reports, policy and position papers for the ES. From April to December 2003 he worked in the Office of Policy and Programme Coordination performing similar functions. In January 2004 he was transferred to the Trade and Regional Integration Division (TRID). The Director of TRID and the Applicant's supervisor was Mr. HH. Following a four-month secondment from ECA in 2005 as a special adviser to the Nigerian Minister of Finance, he resumed working at TRID.

17. The ES relevant to this case was appointed in early 2006. In that year, as a result of an ECA repositioning exercise, the Applicant was made the P-5 Chief of the Millennium Development Goals and Poverty Analysis and Monitoring Section (MDGs and PAMS) and was moved from TRID to the African Centre for Gender and Social Development (ACGSD).

18. On 24 June 2009, the Applicant filed a complaint with the Secretary-General about several matters related to his employment at ECA. It included his protest at the decision requiring him to submit to a competency-based interview for the post of Director of Trade, Finance & Economic Development (TFED). The whole complaint was referred to MEU for review.

19. Following another restructuring of ECA announced at the end of 2009⁴ a number of posts became vacant at ECA. A temporary vacancy announcement for the post of OIC, RIITD was issued on 1 December 2009.

20. On 3 August and 3 December 2009 in its responses to two of the Applicant's requests for management evaluation of selection decisions and other matters⁵, MEU and the Secretary-General urged ECA to take appropriate action to ensure the integrity of the selection process, including the selection panels, and to ensure that for future vacancies for which the Applicant was a candidate, the ES of ECA should be urged to ascertain that all ASPs were established in a manner that guaranteed fairness and impartiality of all Panel members.

21. On 5 December 2009, the Applicant applied for the temporary post of OIC, RIITD.

The RIITD vacancy and Selection process

22. On 8 February 2010 the post of Director of RIITD was advertised and the Applicant applied for it. As he had not heard about the outcome of his application for the OIC post, on 6 March he wrote to the Chief of Staff, ECA, copied to the ES and a number of other senior ECA officials. He did not receive a reply.

23. On 8 February 2010, a Mission Report by an Office of Human Resources Management (OHRM) Support Mission to ECA, held between 29 October and 6 November 2009, was finalized. It reported, *inter alia*, that vacancy management and

⁴ Nwuke UNDT/2013/157.

⁵ Ibid.

recruitment at ECA was chronically deficient. The recruitment processes were viewed by staff members as highly politicized (subject to favoritism); managers were not sufficiently aware and adequately trained to fully perform their people management roles; grievances and staff member claims remained outstanding for too long and the perception was that their resolution, if any was biased and not to be trusted. The Report made many recommendations for steps to be taken to improve the unresolved issues in the management of human resources by ECA.⁶

24. On 12 March 2010 Applicant made a formal complaint of prohibited conduct against the ES pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority. This was a repeat of allegations he had made to the Secretary-General in June 2009. A fact-finding panel (the Investigation Panel) was set up in April 2010 to investigate the complaint.

25. On 28 April 2010 the Applicant was invited to an interview on 4 May 2010 for the D-1 RIITD post. In response to his request, HRSS sent him a list of the members of the selection panel for the post. He asked if he could raise any objections to the composition of the panel but was told he could not.

26. On 29 April 2010 he sent an email to the OIC HRSS to inform her that he accepted the invitation to the RIITD interview but expressed his “reasonable fear that he would not be treated fairly, fully and justly by this selection panel”. He made the following observations about individual panelists:

- a) In the absence of any response to his enquires about the status of the TVA for which he had applied, he believed that two of the ASP members, including Mr. P, had been assigned to review and recommend candidates for the TVA.
- b) The Chair of the ASP and Deputy Executive Secretary, Ms. B, had made comments to him about his candidature for other posts and told him he

⁶ Discussed fully in Judgment No. UNDT/2013/157.

should accept an offer of an L6 post earlier made to him by the ES or he would regret it.

c) Other ASP members including Mr. HH had been involved in ASPs for positions for which he had applied and which were currently under investigation.

27. In this email the Applicant stated that he did not believe that a selection panel of which Messrs. HH, P and Ms. B were members would give him the highest regard. He recalled the MEU recommendations of 3 August and 3 December 2009 about the composition of selection panels for posts for which he was a candidate. He stated: “please note that I am not attempting in any manner to decide the composition of the selection panel. I am only stating that this ASP cannot give me the fullest regard as stipulated in the staff rules and other ST/AIs”.

28. The Applicant copied this email to the ECA Director of Administration, OHRM, the ASG/OHRM and the USG/DM. The OIC HRSS acknowledged receipt of it.

29. On 30 April 2010, the Applicant wrote again to the OIC noting he had not received a response to his concerns that he would not be given the “fullest regard”. The OIC responded on the same day that the composition of the interview panel was established and the interviews and selection would be conducted in accordance with ST/AI/2006/Rev.1 (Staff selection system). In the meantime the Applicant advised the OIC that another of the ASP members was on a committee appointed in March 2009 to look into his allegations of victimisation by the ASPs.

30. On 3 May the Applicant wrote to the Human Resources (HR) officer who was organizing the interviews asking for his interview to be conducted in the afternoon. On the same day the HR officer copied that request to the ASP members including Mr. P. The email trail sent by the HR officer included the Applicant’s email of 29 April to the OIC in which he raised concerns about the composition of the ASP. As recorded by MEU, the ES acknowledged that this email was circulated prior to the

Applicant's interview for the RIITD post, which was conducted at 4.00 p.m. on 4 May 2010.

31. The Applicant described the atmosphere at his interview as very tense. He later reported to HRSS in writing that a member of the panel created a discomforting environment. He told the Tribunal that she was wincing and making guttural noises in disapproval as he was answering the questions. Another member remained placid and showed no enthusiasm. He simply asked the questions.

32. On 5 May Mr. P wrote to the ES and the other members of the ASP. He said he had been copied on the email exchanges between the Applicant and HRSS on the issue of the composition of the ASP for the post of Director of RIITD, He quoted from the Applicant's letter and said:

In my 29 year professional career this is the first time ever that my professionalism and integrity and moral values have been questioned... I consider... the references made by [the Applicant] unwarranted, distasteful, abusive and unethical. I trust in your judgment you will take the necessary actions to address this matter.

33. On 10 May 2010, the ES sent comments to the Investigation Panel about the Applicant's allegations of prohibited conduct by the ES. He referred to the Applicant's "continuous resort to various dispute resolution processes" and his "track record of behaviour that is antithetical to the norms and values of the UN" He said "[t]he staff member is notorious in ECA for sending abusive and harassing emails to colleagues and making all manner of accusations against them for unfathomable reasons".

34. The ES referred to Mr. P's letter in which he criticized the Applicant for the allegations made about the members of the ASP for the RIITD post. The ES said that the Applicant had written to impugn the integrity of several ECA directors who had been appointed to an ASP for the post; he had accused them of bias against him. He described the Applicant's letter as "...this false and worrying allegation which was no doubt aimed at intimidating the panel". The ES concluded his response to the

Investigation Panel by denying harassment or intimidation of the Applicant by anyone in ECA referring instead to the Applicant's own "abominable track record of misbehaviour."

35. On 17 June 2010, the Applicant asked the OIC/HRSS for an urgent review of the integrity and validity of the interview for the post of Director of RIITD as he had "strong reason to believe that the process has been tampered with in a manner detrimental to my interest and to my career advancement in the UN". In light of the email from Mr. P which showed that all members of the panel had been copied into the Applicant's letter of concern about the composition of the ASP (which he regarded as confidential to the people he had sent it to), he was very concerned that the ASP could not have been objective in its assessment of his candidature for the post.

36. There is no record of a reply to this request.

37. On 30 June 2010, the ASP presented the ES with its interview report on the selection of candidates for the D-1 RIITD post. The information later provided to the central review body (CRB) on the evaluation of the Applicant stated inter alia:

He met more than half of the req (sic). Since the candidate did not meet half of the requirement in four of the eight competencies, particularly managing performance and judgment and decision making, the panel did not recommend him.

38. The CRB questioned the evaluation of two candidates for the RIITD post including that of the Applicant. It noted that his competency evaluation was contradictory as it said that he met half or more than half of the requirements of the individual competencies but the overall evaluation said he met less than half. It requested a logical write up of the facts.

39. An anonymous handwritten annotation to the CRB's query stated: "added he met more than half. OK?"

40. The OIC HRSS wrote to CRB to say that the PCO had made adjustments to both questioned evaluations. In the case of the Applicant, the adjustment was to the “overall competencies field”.

41. On 30 July 2010, the ASG/OHRM advised the Applicant that the Investigation Panel Report, dated 1 July 2010, into his complaints of prohibited conduct by the ES had found that no prohibited conduct took place. It had found that the allegations of harassment against the ES by the Applicant had no merit and lacked credibility. They could not be substantiated. In relation to his allegation that the ASPs were biased the Investigation Panel was satisfied that he had been fairly and impartially evaluated. The ASG/OHRM said the findings were sound and supported by the evidence.

42. The ES was sent the names of the 2 recommended candidates for the RIITD post on 27 August. On 30 August 2010, the Applicant was advised that he was “not amongst the most suited applicants”.

43. On 9 September 2010, the ES announced that Mr. A.M. had been promoted and appointed to the RIITD post.

44. On 11 October 2010, the Applicant requested management evaluation of the decision to fill the RIITD post. He alleged that the decision was procedurally flawed and tainted with ill motive and prejudice.

45. In his response to the Applicant’s request for management review, the ES told MEU that the ASP decided that the recommended candidate should obtain more than half of the requirements of a competency rating for at least five competencies as a minimum benchmark for recommendation given the importance of the post in terms of its relationship to ECA’s strategic pillar and the need to ensure continued close partnership with the African Union, the African Development Bank and other agencies. He continued:

...Each candidate was assessed against eight competencies, as advertised in the VA. Based on his performance during the interview, the Applicant was found to have met more than half of the competency requirements in only 4 competencies... He did not get a rating of more than half of the competency requirement in at least a minimum of 5 competencies... the minimum requirement to recommend a candidate. Therefore he was not recommended.

46. On 3 February 2011 MEU released its findings. It concluded that the decision not to select the Applicant was not an act of retaliation by the ES. It found no error in the selection. It rejected the allegations that two of the panel members had a conflict of interest due to their involvement in other ASPs. The fact that an ASP member was a former incumbent of the Post did not disqualify him. However MEU found that the impact of the circulation of the Applicant's 29 April email to the members of the panel and Mr. P's reaction to it raised a serious doubt as to whether the Administration could demonstrate that it gave him full and fair consideration for the post.

47. Following an unsuccessful and confidential attempt to resolve the issue by agreement, MEU made a public proposal for the Applicant to accept compensation for this breach on the condition that he did not appeal the matter to the UNDT or bring any other claim in relation to the selection process of the Post in any other forum.

48. The Applicant rejected that proposal and filed his application with the UNDT on 19 February 2011.

49. Mr. Amareswara Rao, Chief, ECA Human Resources Services Section (HRSS) who gave some evidence in Case Nos. UNDT/NBI/2011/060 and UNDT/NBI/2011/082 also provided the Tribunal with evidence about the practice adopted by interview panels at ECA. He said that the ES nominates the ASPs for D-1 posts from a small pool of no more than 15 when the Directors of the Sub Regional Offices (SROs) are included. Once the interview panel is selected it has a preliminary meeting to: finalise questions to be asked based on the competencies for the Post

outlined in the job opening; and who would be asking which questions. The way posts were to be assessed used to be discussed by the ASP before the candidates came in. Mr. Rao said that he has since made proactive changes as this practice was not based on any administrative instruction and in a couple of cases candidates had not passed all the competencies. Now a candidate must meet the minimum competencies for all of the competencies. The panel normally has an assessment sheet for each competency. As the candidates answer, the panel notes the responses on each sheet. Most of the time the sheets go to the rapporteur but there is no standard policy.

Applicant's Submissions

50. The Applicant relied on the MEU letter of 12 February 2011 and its determination that the case was not handled correctly because the process was “poisoned” by the distribution of the 29 April email to Mr. P who then copied it to the other panel members.

51. The process was arbitrary and capricious. The Respondent did not adduce any evidence to show how the minimum benchmark for the evaluation of candidates was set by the ASP and the candidates were not told beforehand what the standard was. This gives rise to allegations that the standards were changed to manipulate the results and avoid recommending him.

52. The CRB identified contradictions in the report of the ASP.

53. The imposition of the standard of meeting more than half of at least five out of eight competencies is outside the scope of the ASPs and is unlawful. The INSPIRA manual states that candidates must pass all the competencies in order to be recommended for selection. He was given the same scores as other candidates in the language requirement although he has passed the United Nations language examination in Russian.

54. The chair of the panel had not undertaken competency training.

55. The Applicant relied on the evidence adduced in the Trio of cases to submit that there was ongoing abuse of authority, harassment and discrimination against him of which this case was another example.

56. The effect of the unlawful process on him was loss of morale and self-worth. The working environment in a small work place became toxic. The Applicant submitted that he lost the opportunity to be fully and fairly considered for the post and suffered significant damage in terms of career advancement and intellectual growth.

Respondent's Submissions

57. The Respondent submitted that the Secretary-General is vested with wide discretion to select staff members for positions. The Tribunals should not substitute their own judgment for that of the Secretary-General.

58. There is a presumption of regularity. If the Respondent makes a minimal showing of regularity the burden of proof shifts to the Applicant who must show through clear and convincing evidence that he or she was denied a fair chance of promotion.

59. Staff members have the right to full and fair consideration, but have no right to selection to a higher-level post. Staff members who are selected for posts must be those that are best suited for the positions.

60. The evidence shows that the Applicant was fully and fairly considered for the posts in accordance with ST/AI/2006/3/Rev.1. He had a competency-based interview but did not attain the required competencies.

61. In relation to the Applicant's concerns about other panel members, none had a conflict of interest, lacked partiality or were biased against the Applicant. The Chair did not participate in the interview and the allegation that Mr. HH was ineligible to

serve on the panel was baseless. The Investigation Panel found there was no prohibited conduct on the part of any ECA official.

62. There is no evidence that the contested decision was an act of retaliation or discrimination.

63. The circulation of the 29 April email was an error. There was no evidence of *mala fides*.

64. There is no basis upon which to award compensation to the Applicant.

Considerations

65. Although the Applicant alleged there were several aspects of the selection decisions that were unlawful, his principal claims challenged the composition of the panel including allegations of bias and the method of competency assessment. He also repeated the allegations made in each of his other cases that he was the victim of harassment, discrimination and abuse of authority. In the light of the ultimate decision in this case the Tribunal will not traverse the other issues other than in passing as they relate to the main issues.

Composition of the Panel

66. In the case of *Majbri* 2012-UNAT-200, UNAT stated at para 30 that:

All the candidates that appear before an interview panel have the right to full and fair consideration. A candidate challenging the denial of a promotion must prove through a preponderance of the evidence any of these grounds: that the interview and selection procedures were violated; that the members of the panel were biased; that the panel discriminated against an interviewee; that relevant material was ignored or that irrelevant material was considered; and potentially other grounds depending on the facts of each case.⁷

⁷ Repeated at paragraphs 20 and 21 of *Rolland* 2011-UNAT-122.

67. The Applicant referred to the “Terms of Reference, Interview Process under the Staff Selection System” revised in January 2006 as a guide to the procedures which he says should have been followed. These terms of reference relate to UNOV/UNODC and had not been adopted by OHRM and are therefore not applicable to this case.

68. In the absence of OHRM guidelines on selection panels or on how the competency standards are set, the Tribunal relies on the principles of fairness and natural justice to assess the lawfulness of the procedures adopted in the interview and non-selection of the Applicant in this case. The following matters are relevant to these principles:

- a) The small size of the pool from which suitable persons could be appointed to ECA ASPs for D-1 posts was recognised twice by MEU and seen as sufficiently serious to warrant warnings to the ES of ECA to take particular care in the selection of ASPs.
- b) To resolve issues with the ASPs the OHRM Mission Report recommended *inter alia* that “there should be a large, diverse pool of ASP members appointed by the ES at the beginning of the year”, and “an appropriate panel to be assembled under the authority of the Director of Administration for each vacancy”. The need for care was reinforced by the very specific concerns raised by the Applicant in his letter of 29 April 2010 to the OIC HRSS.

69. However, the Administration not only ignored the concerns of the Applicant about the ASP but those of MEU and the Secretary-General as reported by MEU. In so doing, the allegation that the panel was unfairly constituted was not addressed and inevitably fueled the Applicant’s suspicions about the process.

70. The Applicant’s allegations that the ES had a very negative attitude towards him were supported by the trenchant views about the Applicant made by the ES to the Investigation Panel. It is not for the Tribunal to embark on an enquiry into whether

those views were justified but the fact remains that the ES held a very negative opinion of the Applicant at a time when he was responsible for the appointment of each ASP and the ultimate selection decision for all of the posts for which the Applicant had applied, including the D-1 RIITD post.

71. Mr. P's reaction to the Applicant's 29 April 2010 letter was extreme and disproportionate. He described the Applicant's letter as unwarranted, distasteful, abusive and unethical.

72. In *Finniss* UNDT/2012/200, a case where a panel member had openly demonstrated his personal animus against a candidate, the Tribunal held that the test for apparent bias is:

Whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. The Tribunal notes that an interview panel in a selection exercise is not a tribunal and has no final powers of decision making. It takes one step in a process but it is an important step. It is the only opportunity candidates have to provide information and create an impression part from their Personal History Profile (PHP) records. The interview panel has the power to recommend and to provide a reasoned analysis of the suitability of candidates for the post relied on by the ultimate decision maker. To avoid the tainting of the final decision it is incumbent on the interview panel to be and to be seen to be impartial, objective and free from bias.

73. On the basis of Mr. P's views about the Applicant, the Tribunal finds that the test for apparent bias is made out in the case of Mr. P. The nature and extent of the possible bias against him was clearly shown in his letter of protest.

74. The witting or unwitting circulation of the Applicant's letter to the ASP members before the selection process was concluded raises the real possibility that the ASP members could not have been or seen to have been impartial, objective and free from bias.

Competency Evaluation

75. The evaluation formula applied by the ASP and sent to the CRB was that the candidates should demonstrate that they reached the standard of more than half the requirements in at least five out of the eight competencies in the Vacancy Announcement. The CRB's questions about the way the ASP expressed the Applicant's results appeared to indicate an inconsistency in the method of evaluation, however, the Tribunal is satisfied that the change in wording sent to the CRB simply clarified that he had attained the standard of more than half the requirements in four of the competencies. That did not alter the fact that according to the records of the ASP he did not achieve the standard in five or more competencies.

76. The Applicant suggested that there was a possibility that the ASP formulated the evaluation standards at the end of the process in order to ensure that he was not recommended for selection. Mr. Rao's evidence revealed that the ASPs set the method of assessment before the interviews. In light of the finding of apparent bias by the ASP members and Mr. Rao's concerns about the lack of compliance with the relevant administrative instruction in this part of the process there is an inevitable suspicion about the integrity of the process applied to this selection process. However a suspicion does not amount to a preponderance of evidence that it did occur. There is insufficient evidence to substantiate the Applicant's allegations.

Harassment, Discrimination and Abuse of Authority

77. The Tribunal found in the Trio of cases that the once strong relationship between the ES and the Applicant deteriorated from at least early 2009. Their last meaningful discussion was in June 2009. The Applicant ceased to trust any decisions made by the ES or by the Administration and challenged those decisions with increasing frequency. This led to a state of siege between the Applicant and the Administration.

78. The Applicant's allegations in the present case reflect this situation. In spite of the adverse finding that the Applicant did not receive fair consideration in his application for the RIITD post, the Tribunal cannot find on the preponderance of evidence that the reason for that failure was an act of harassment, discrimination or abuse of process. It is rather an example of the systemic failures of the HR system in place at time in the ECA as reported by the Mission Report of the OHRM Support Mission to ECA which was finalised on 8 February 2010.**(Footnote the Trio)**

Did the Applicant suffer any compensable damage as a result of the decision?

79. Article 10.5 of the UNDT Statute materially provides that in cases of appointment, the Tribunal may as part of its judgment order rescission of the contested administrative decision and/or compensation that shall not normally exceed the equivalent of two year's net base salary of the Applicant.

80. Although the Applicant requested the rescission of the selection decision for the post of Director RIITD, the decision is three years old. Too much time has passed for the decision to be rescinded and the selection for the post recommenced. The Applicant realistically submitted that he is aware that he has no expectation of selection for any post and on this basis the Tribunal finds that he has not suffered any actual monetary loss arising for his non-selection for the post.

81. The Applicant is, however, entitled to moral damages. Throughout this case and all the other cases heard by the Tribunal⁸, he exhibited a strong sense of injustice both to himself and to the institution of the United Nations and its ideals. These were compromised by the unlawful selection processes. His legitimate expectation that, having applied for a post, he would be fully and fairly considered for it was disappointed. In his application the Applicant sought "appropriate compensation for the violation of my rights, for emotional and psychological stress and for harm to my reputation".

⁸ *Nwuke* UNDT/2013/157, *Nwuke* UNDT/2013/158, *Nwuke* UNDT/2013/160 and *Nwuke* UNDT/2013/161.

82. The Applicant's case is that he has a legitimate expectation of a full and fair selection process. He gave evidence of the moral damage he has suffered. He spoke of his loss of morale and low self-worth. The Tribunal finds that this is understandable in the light of the personal attack he suffered from Mr. P's outburst in which he called the Applicant distasteful, abusive and unethical.

83. As UNAT held in *Wu* 2010-UNAT-042, while not every violation of due process rights will necessarily lead to an award of compensation where damage is found in the form of neglect and emotional distress than applicant is entitled to be compensated.

84. UNAT has also held that it is within the discretion of the Dispute Tribunal to determine the amount of moral damages to award a staff member for procedural violations in light of the unique circumstances of each case.⁹

85. On the basis of *Wu*, the starting point for compensation in selection cases is two months net base salary. However in this case the response of a panel member to the Applicant's exercise of a legitimate right to try and ensure that the ASP was properly constituted was disproportionate, insulting and hurtful. Taking that into account the Tribunal awards the Applicant three month's net base salary as at the time of the selection decision.

(Signed)

Judge Coral Shaw

Dated this 4th day of December 2013

⁹ *Cieniewicz* 2012-UNAT-232; *Morsy* 2012-UNAT-298 and *Wu* 2010-UNAT-042.

Entered in the Register on this 4th day of December 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi