UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/067
Judgment No.: UNDT/2014/108
Date: 31 July 2014
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

HAJDARI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant contests and seeks the rescission of the decision that he was ineligible for consideration for conversion to a permanent appointment due to him having taken a break in service in 2005 resulting in his service with the Organization not being continuous.

Procedural history

2. By email dated 4 March 2011 and received on 7 March 2011, the Applicant was notified that as a result of a 10-day break in service between 3 and 13 June 2005, he was not eligible for consideration for conversion to permanent appointment.

3. On 6 May 2011, the Applicant requested management evaluation of the contested decision and, by letter dated 12 July 2011, he was informed that the Secretary-General had decided to uphold the decision.

4. The Applicant appealed the decision to the Dispute Tribunal on 17 August 2011 and the Respondent filed his reply on 19 September 2011.

5. By Order No. 344 (NY/2013), dated 17 December 2013, the Tribunal requested that the parties submit a joint statement identifying the agreed and disagreed facts and legal issues in this case. The Tribunal further requested that the parties inform it as to whether they required the production of additional documents, an oral hearing, whether the case would benefit from being suspended for the purpose of pursuing informal proceedings and if there were any other issues that needed to be brought to the Tribunal's attention.

6. On 4 February 2014, the Respondent submitted a request for leave to file additional documents and the parties' joint submission was filed on 7 February 2014.

7. By Order No. 42 (NY/2014), dated 12 March 2014, the Tribunal ordered each party to file closing submissions. Each party filed their closing submissions on 21 April 2014.

Relevant background

8. In view of the absence of contested facts in the parties' joint response to Order No. 344 (NY/2013), the Tribunal hereby adopts and reproduces their agreed upon facts and legal issues:

> 2. On 1 January 2000, [the Applicant] joined the United Nations Interim Administration Mission in Kosovo ("UNMIK") as a Security Guard/Radio Operator on an Appointment of Limited Duration ("ALD") under the former 300 series of the Staff Rules at the GL-3 level. On 1 January 2004, [the Applicant's] appointment was converted into a fixed-term appointment [("FTA")] under the former 100 series of the Staff Rules.
>
> 3. In 2004, [the Applicant] applied for a position as Security Officer at Headquarters in New York. On 24 January and 2 February 2005, it was confirmed to [the Applicant] that he had been invited to undergo the required pre-recruitment formalities. [The Applicant] was notified that recruitment for the position of Security Officer is "on a local basis, which means that the Organization will not pay any expenses related to [his] travel and/or accommodations".
>
> 4. On 28 May 2005, [the Applicant] received an offer of a fixed-term appointment for an initial period of six months as a Security Officer, S-1/1, with [the Department of Safety and Security ("DSS/SSS')] in New York to commence on 13 June 2005. [The Applicant] was provided with a copy of the requirements of his new position, the conditions of service of Security Officers, and salary information. He accepted and signed the offer of appointment on 31 May 2005.
>
> 5. On 1 June 2005, [the Applicant] resigned from his position in UNMIK, effective on 3 June. [The Applicant]'s contract with UNMIK was due to expire on 30 June 2005.
>
> 6. [The Applicant] travelled to New York arriving on 12 June 2005.
>
> 7. On 13 June 2005, [the Applicant] signed a letter of appointment with DSS/SSS that indicated the effective date of appointment as 13 June 2005 at the S-1/1 level. He began work that

day. [The Applicant]'s entry level status was soon thereafter corrected to S-2/1. He has since served on consecutive fixed-term appointments.

8. In an email dated 4 March 2011- received on 7 March 2011, [an] Administrative Assistant, Executive Office, [United Nations Department of Safety and Security], notified [the Applicant] that as a result of the break-in-service between 3 June and 13 June 2005, he was not eligible to be considered for conversion to a permanent appointment under ST/SGB/2009/l0.

9. On 9 March 2011, [the Applicant] emailed […] Human Resources, Section C, [Office of Human Resources Management ("OHRM")], requesting a reconsideration of the decision stating that his resignation was necessitated by his need to travel to his new duty station.

10. On 21 March 2011, [the Applicant] was notified by [OHRM officer] that OHRM's decision […] would stand.

...

Legal Issues

13. Whether the Applicant's resignation, effective 3 June 2005, and his subsequent re-employment under former Staff Rule 104. 3, on 13 June 2005, render him ineligible for consideration for conversion to a permanent appointment under Section 1 (a) of SGB/2009/10.

Applicable law

9. In its resolution 37/126, sec. IV, para. 5, the General Assembly

> 5. Decides that staff members on fixed-term contracts upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment;

10. In its resolution 51/226, sec. V, paras. 1 and 3, the General Assembly

> 1. Underlines the importance of the concept of career service for staff members performing continuing core functions;
> …
>
> 3. Decides that five years of continuing service as stipulated in its resolution 37/126 of 17 December 1982 do not confer the automatic right to a permanent appointment, and also decides that other considerations, such as outstanding performance, the operational realities of the organizations and the core functions of

the post, should be duly taken into account;

11. ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 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
>
> **Section 2**
>
> **Criteria for granting permanent appointments**
>
> In accordance with staff rules 104.12 (b) (iii) and 104.13, a permanent appointment may be granted, taking into account all the interests of the Organization, to eligible staff members who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the highest standards of efficiency, competence and integrity established in the Charter.
>
> **Section 3**
>
> **Procedure for making recommendations on permanent appointments**
>
> 3.1 Every eligible staff member shall be reviewed by the department or office where he or she currently serves to ascertain whether the criteria specified in section 2 above are met. Recommendations regarding whether to grant a permanent appointment shall be submitted to the Assistant Secretary-General for Human Resources Management.
>
> 3.2 A similar review shall also be conducted by the Office of Human Resources Management or the local human resources office.
>
> 3.3 In order to facilitate the process of conversion to permanent appointment under the present bulletin, recommendations to grant a permanent appointment that have the joint support of the department

> or office concerned and of the Office of Human Resources Management or local human resources office shall be submitted to the Secretary-General for approval and decision in respect of D-2 staff, and to the Assistant Secretary-General for Human Resources Management for all other staff.
>
> 3.4 In the absence of joint support for conversion to permanent appointment, including cases where the department or office concerned and the Office of Human Resources Management or local human resources office both agree that the staff member should not be granted a permanent appointment, the matter shall be submitted for review to the appropriate advisory body designated under section 3.5 below. The purpose of the review shall be to determine whether the staff member concerned has fully met the criteria set out in section 2 of the present bulletin. The advisory body may recommend conversion to permanent appointment or continuation on a fixed-term appointment.
>
> …
>
> 3.7 Staff members who, after consideration, are not granted a permanent appointment will continue to serve on a fixed-term appointment, and shall not be eligible to be considered for a permanent appointment in the future.

12. ST/SGB/2011/1 (Staff rules and Staff Regulations of the United Nations) dated 1 January 2011 states:

> **Rule 4.17**
>
> **Re-employment**
>
> (a) A former staff member who is re-employed shall be given a new appointment unless he or she is reinstated under staff rule 4.18 below.
>
> (b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.
>
> (c) When a staff member receives a new appointment in the United Nations common system of salaries and allowances less than twelve months after separation, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the number of months, weeks or days of salary to be paid at the time of the separation after the new appointment, when added to the number of months,

weeks or days paid for prior periods of service, does not exceed the total of months,

Rule 4.18

Reinstatement

(a) A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within twelve months of separation from service may be reinstated in accordance with conditions established by the Secretary-General.

(b) On reinstatement the staff member ‘s services shall be considered having been continuous and the staff member shall return any monies he or she received on account of separation, including termination indemnity under staff rule 9.8, repatriation grant under staff rule 3.18 and payment for accrued annual leave under staff rule 9.9. The interval between separation and reinstatement shall be charged, to the extent possible, to annual leave, with any further period charged to special leave without pay. The staff member’s sick leave credit under staff rule 6.2 at the time of separation shall be re-established; the staff member’s participation, if any, in the United Nations Joint Staff Pension Fund shall be governed by the Regulations of the Fund.

(c) If the former staff member is reinstated, it shall be so stipulated in his or her letter of appointment.

Rule 9.2

Resignation

(a) A resignation, within the meaning of the Staff Regulations and Staff Rules, is a separation initiated by a staff member.

(b) Unless otherwise specified in their letters of appointment, three months’ written notice of resignation shall be given by staff members holding continuing appointments, thirty calendar days’ written notice by those holding fixed-term appointments and fifteen calendar days’ written notice by those holding temporary appointments. The Secretary-General may, however, accept resignations on shorter notice.

(c) The Secretary-General may require the resignation to be submitted in person in order to be acceptable.

…

Rule 9.4

Expiration of appointments

> A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

13. OHRM Guidelines on consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered as at 30 June 2009 state:

> **Eligibility for consideration**
>
> 5. With respect to the requirement of five years of continuous service, the following should be noted:
>
> a. A break in service of any duration prior to the date on which the staff member reached the five years of qualifying service will interrupt the continuity of service.
>
> …
>
> d. Staff who were in the Secretariat on 30 June 2009 on a 100 series appointment will be eligible for consideration for conversion to permanent appointment even though part of such service under the 100 series of the Staff Rules was performed outside the Secretariat in an another entity that was governed by the 100 series of the Staff Rules prior to 1 July 2009.

Consideration

Receivability

14. The Applicant is contesting the decision not to be considered eligible for conversion to permanent appointment because of what he considers to be an artificial break in service. The Applicant timely filed a request for management evaluation with the Management Evaluation Unit ("MEU") on 6 May 2011 within 60 days from the day when the administrative decision was notified to him - 21 March 2011.

15. The Applicant's appeal was filed before the Dispute Tribunal on 17 August 2011, within 90 days from the date on which the response from MEU was due, 6 June 2011. The application therefore meets all of the receivability requirements of art. 8 of the Dispute Tribunal's Statute.

Eligibility for permanent appointment

16. Section 1 of ST/SGB/2009/10 defines the eligibility requirements that have to be met by a staff member wishing to be considered for conversion to a permanent appointment. Namely, a staff member must, as of 30 June 2009, have completed or complete five years of continuous service on fixed-term appointments under 100 series of the Staff Rules and be under the age of 53 years.

17. Sections 2 and 3 of ST/SGB/2009/10 establish the procedure that has to be followed for granting a permanent appointment to a staff member who has been deemed eligible for consideration for conversion to permanent appointment. Furthermore, sec. 3.4 states that "[t]he advisory body may recommend conversion to permanent appointment or continuation on [an FTA]". Similarly, sec. 3.7 also states what is to occur if a staff member is not granted a permanent appointment following consideration, namely that they "will continue to serve on a fixed-term appointment, and shall not be eligible to be considered for a permanent appointment in the future".

18. Upon reviewing ST/SGB/2009/10, the Tribunal concludes that for the purpose of determining the eligibility of staff members wishing to be considered for permanent appointment, the provisions contained therein have to be interpreted as a whole rather than independently from one another. Consequently, for a staff member to be eligible for conversion to a permanent appointment, he or she not only has to meet the criteria referenced under sec. 1 of ST/SGB/2009/10, but they must, as an initial requirement for the process defined in ST/SGB/2009/10 to even be applicable, and as expressed by the title and also by secs. 3.4 and 3.7 of ST/SGB/2009/10, be currently appointed on an FTA with the United Nations Secretariat.

19. Therefore, for a staff member to be eligible for consideration for conversion to a permanent appointment he or she must:

> (1) Be on a fixed-term appointment at the time of consideration;
>
> (2) The fixed-term appointment is with the United Nations Secretariat;

> (3) Have completed at least five years of continuous service by 30 June 2009;
>
> (4) The continuous service was completed on fixed-term appointments under the 100 series of the Staff Rules;
>
> (5) On the date the staff member completed the five years of qualifying service he or she was under the age of 53.

20. These requirements are cumulative and it is only once all of them have been met that a staff member can actually be considered eligible for conversion to a permanent appointment.

21. The Applicant joined UNMIK on 1 January 2000 under the former 300 series of the Staff Rules and, on 1 January 2004, his appointment was converted to an FTA under the former 100 series of the Staff Rules. In the later part of 2004 the Applicant applied for a position as a Security Officer at the United Nations Headquarters in New York and, on 28 May 2005, he received an offer for an FTA as a Security Officer with DSS/SSS in New York. The Applicant accepted and signed the offer of appointment on 31 May 2011.

22. The offer indicated that the Applicant would have to commence his functions on 13 June 2005. Due to the fact that the Applicant's appointment with UNMIK was due to expire on 30 June 2005, the Applicant submitted a resignation letter dated 1 June 2005 stating that he was resigning effective 3 June 2005. The Applicant commenced his new functions on 13 June 2005.

23. On 7 March 2011, the Applicant received an email informing him that as a result of the break in service he took between the date on which he resigned, 3 June 2005, and the date on which he stated his new functions, 13 June 2005, he was not eligible to be considered for conversion to a permanent appointment. On 9 March 2011 he requested a reconsideration of the decision explaining that his resignation was necessitated by his need to travel to his new duty station and on 21 March 2011 he was notified that the decision would stand.

24. As results from the evidence, the Applicant, by letter dated 1 June 2011, resigned from his post with UNMIK due to him having been recruited at UNHQ New York as Security Officer, a position which is considered to be 'locally recruited'. The Applicant's letter stated that his resignation would be effective as of 3 June 2005.

25. The Applicant, due to being considered a locally recruited staff at UNHQ in New York, had to organize his own travel arrangements from UNMIK to New York. Taking into consideration that the Applicant sent his resignation letter on 1 June 2005 (Wednesday), effective from 3 June 2005 (Friday), that 4-5 June were a weekend, that he obtained his visa to travel to New York on 10 June 2005 (Friday), and that he travelled from Kosovo to New York on 12 June 2005 (Sunday), the Tribunal considers that he acted in good-faith and as a diligent person.

26. It was not until the Applicant was informed by the Organization on 4 March 2011 that he was not eligible for consideration for permanent appointment that he became aware that the aforementioned period of 10 days would be considered a break in service.

27. As part of his 9 March 2011 request for reconsideration of his non-eligibility, the Applicant expressed that the purpose of this break in service was to enable him to "come a week before [his] new assignment in order to set up a new life. [The Applicant] never left UN per se, and believe that [he] should be considered for this conversion".

28. The Tribunal finds that the Applicant truly believed that in order to be able to report for duty on 13 June 2005, as required by his new terms of appointment, he had to resign from UNMIK prior to the expiration of his FTA. The date of expiration of the Applicant's contract with UNMIK, 30 June 2005 was known to the Organization prior to them providing him with a new offer of appointment. It is clear that as the Applicant's employer, the United Nations was aware that an acceptance of the new FTA with UNHQ was only possible if the appointment with UNMIK was to end prior to its expiration date of 30 June 2005. The Applicant accepted the terms of his new

appointment, including the 15 June 2005 start date, of his functions at the UNHQ and it appears that the sole purpose of his resignation was as a result of his acceptance of the new offer. Due to the Applicant being considered as a local hire for the purpose of this new appointment, the Applicant was required to make his own travel arrangements between his home country and UNHQ.

29. Both contractual parties were aware once the letter of 28 May 2005 from the Chief, General Service and Related Categories Staffing Unit, OSD /OHRM was accepted and signed on 31 May 2005 that the Applicant will be re-employed under a fixed term appointment within twelve months from his separation.

30. According with the legal provisions, any former staff member who is re-employed within twelve months from his/her separation from service may be reinstated. Consequently, a staff member re-employed within twelve months has the right to be considered for reinstatement and the Organization has the correlative obligation to analyze and determine if the staff member is to be reinstated. The Tribunal underlines that while a staff member does not having a legal right to be reinstated, because the legal provision is expressly indicating that the Organization has the discretion to decide on individual base if a staff member is to be reinstated, as indicated in the Tribunal's jurisprudence such a discretion must be exercised in a reasonable manner and with good faith. Also, a staff member has the right to be informed of what are the reasons for denying the reinstatement.

31. The Tribunal considers, taking into consideration the Applicant's resignation letter, his request for reconsideration of the decision that he was not eligible for consideration to permanent appointment and the content of his request for management evaluation, that the Applicant truly believed that the acceptance of his new FTA with the same employer prior to his resignation would not affect the continuity of his service and that his resignation was only a procedural formality required to enable him to relocate from UNMIK to UNHQ in New York.

32. The Tribunal considers that the contractual parties in a labour contract must respect their rights and obligations imposed by the general legal principles of law: the principle of good faith, the principle of mutual consent, the principle of information and the principle of mutual consultation.

33. Regarding the general principles of good faith and information, the Tribunal considers they are applicable from the beginning of the contract which starts with the offer of employment made by the employer and the acceptance of it by the future employee (staff member) and during the entire execution of the contract, each time one of the parties has the intention to modify, suspend or terminate it. It results that both parties –employer and employee(s) have the obligation to inform and the correlative right to be informed about all the essential elements of the contract.

34. In the present case, the Applicant stated that he was not informed about the legal possibility of reinstatement. The Tribunal considers that the information related to reinstatement was essential regarding the staff member's rights who was re-employed within five working days from his resignation. By omitting to include in OHRM's letter of 28 May 2005 and in the letter of appointment of 13 June 2005 any information related to rule 4.18(a), the Administration breached the staff member's fundamental right to be fully informed about the terms and conditions applicable to his contract and he was in the impossibility to exercise and /or defend his right to be considered for reinstatement. The institution of reinstatement has a crucial importance upon the continuity of a staff member's contract, because on reinstatement the staff member's services shall be considered having been continuous and the interval between separation and reinstatement shall be charged, to the extent possible, to annual leave, with any further period charged to special leave without pay. Also the staff member shall return any monies he or she received on account of separation, including termination indemnity under staff rule 9.8, repatriation grant under staff rule 3.18 and payment for accrued annual leave under staff rule 9.9.

35. In *Egglesfield* 2014-UNAT-399, the Appeals Tribunal restated the Secretary-General's position with regard to staff rule 4.18(a) and the absence of details regarding the criterion on which a staff member could be reinstated:

> 19. On 16 January 2012, the Secretary-General accepted the recommendation of the Management Evaluation Unit to uphold the contested decision, stating:
>
> > … The Administration has discretion whether to reinstate a former staff member or not.
> >
> > In this regards…Staff Rule 4.18(a) provides for reinstatement "in accordance with conditions established by the Secretary–General". … [T]his language suggests that additional criteria will determine whether reinstatement is granted or whether a new appointment is offered. ... [S]uch conditions for reinstatement have not yet been established … Therefore, these additional criteria are currently generated from the practice of the Organization.
> >
> > …[S]ince the introduction of the new Staff Rules … reinstatement has been granted in three cases, where the involved staff members were reinstated in the same offices of their department. … [I]n practice the criterion was established, that reinstatement requires re-employment in the same office under the same conditions of service.
> >
> > …[Y]ou do not fulfil the narrow criterion that reinstatement requires re-employment in the same office under the same conditions of service.
>
> 21. As we held in *Valimaki-Erk* [2012-UNAT-276, para. 42], "Staff Regulations [and Rules] embody the conditions of service and the basic rights and duties and obligations of United Nations staff members. They are supplemented by the administrative issuances in application of, and consistent with, the said Regulations and Rules."[footnote omitted]
>
> ….
>
> 24. It was incumbent upon the Secretary-General to act within a reasonable time to establish "conditions" for reinstatement of staff members after Staff Rule 4.18(a) was amended to require him to do so. However, he concedes that he has not yet promulgated an administrative issuance establishing conditions for reinstatement under Staff Rule 4.18(a). This failure to establish conditions for reinstatement prejudices staff members who seek reinstatement.

> 25. Past practices cannot and do not substitute for an administrative issuance establishing conditions for reinstatement within the requirement of Staff Rule 4.18(a).[footnote omitted] Similarly, "conditions" set by managers that are not part of a published promulgation can prejudice a staff member and subject him or her to the personal opinions of the manager making the decision.
>
> 26. The Secretary-General's failure to implement an administrative issuance establishing "conditions" for reinstatement, as required by Staff Rule 4.18(a), resulted in the Administration's decision being an unlawful decision which was inconsistent with Staff Rule 4.18(a). Accordingly, the UNDT did not make an error of law when it found that the Administration's decision not to reinstate Mr. Egglesfield was unlawful and should be rescinded.
>
> 27. Generally, when the Administration's decision is unlawful because the Administration, in making the decision, failed to properly exercise its discretion and to consider all requisite factors or criteria, the appropriate remedy would be to remand the matter to the Administration to consider anew all factors or criteria;[footnote omitted] it is not for the Tribunals to exercise the discretion accorded to the Administration. However, in the present case, remand is not available because Mr. Egglesfield has retired from service with the Organization. Thus, based on the Administration's failure to lawfully consider his request for reinstatement and to comply with Staff Rule 4.18(a), the Appeals Tribunal awards moral damages to Mr. Egglesfield in the amount of USD 5,000.

36. The Tribunal notes that in the absence of the published promulgation of the conditions for reinstatement it is unclear who is to initiate the procedure of reinstatement: The Secretary-General, sua sponte on behalf of the Organization, has the obligation in all cases where the staff members in the Organization are re-employed within twelve months from the separation to include in the letter of offer and/or the letter of appointment information regarding reinstatement and consequences of the lack thereof or the staff member is the one who has to request it. The Secretary-General also has the obligation to provide his reasoned decision regarding this matter in the event reinstatement is denied or when the staff member is the one to request reinstatement.

37. Also, there are no time-limits to initiate and conduct a reinstatement procedure. The Tribunal notes that the Applicant expressed his desire to be reinstated

on 19 May 2011 as part of his submission of additional particulars to his original request for management evaluation, whereby he stated that if he were to be reinstated by the Secretary-General he was willing to return all end-of service entitlements he might have received with his separation from UNMIK. His request for reinstatement was not addressed by the Administration.

38. The Tribunal considers that the Secretary-General, in the MEU letter, erred in stating that it took "particular note that [the Applicant] did not contest the decision not to reinstate [him] at the relevant time" because no such administrative decision was taken before their response from 12 July 2011. The Tribunal notes that the Secretary-General was obligated, prior to upholding the decision not to consider the Applicant eligible for permanent appointment, to take note and process the reinstatement request.

39. The Tribunal considers that the decision to reinstate the Applicant is to be taken after the Administration adopts the administrative issuance regarding the conditions for reinstatement under Staff Rule 4.18. Such issuance has a crucial importance upon the staff member's continuity in service and his eligibility for permanent appointment and other entitlements.

40. It is not for the Tribunal to exercise the Administration's discretion and the Tribunal considers that it is best to give the opportunity to the Administration to address these matters. Consequently, in light of the Appeals Tribunal's latest jurisprudence, and considering that the Applicant is currently a staff member of the Organization, the Tribunal remands the case to the Administration for a fair processing of the Applicant's request for reinstatement and a reconsideration of the decision not to consider him eligible for conversion to permanent appointment based on the decision regarding his reinstatement.

Nota Bene

41. The Tribunal notes that in order to respect employees' fundamental right to be informed promptly and correctly about all their contractual rights and obligations, the Organization is expected to act in good-faith and conduct in advance, before the administrative issuance establishing the conditions for reinstatement under staff Rule 4.18 (a) will be adopted, a review of all cases involving staff members re-employed within one year after a break in service and to give a full and fair consideration to each case after promulgation. For an equal treatment of all staff members, the Tribunal recommends for the review to include also cases where staff members requested reinstatement and the request was denied, since the absence of the conditions for reinstatement affected the lawfulness of such decisions. Further, the Organization is to analyze the impact of the lack of denial of reinstatement upon other related matters, for example the eligibility and suitability of each concerned staff member for consideration for conversion to permanent appointment and to review, when necessary, the previous negative decisions by considering him/her eligible and/or granting retroactively a permanent appointment.

Conclusion

In the light of the foregoing, the Tribunal DECIDES,

42. The application is granted.

43. The Applicant's request for reinstatement and the decision not to consider him eligible for conversion to permanent appointment are remanded to the Administration for reconsideration, based on the decision regarding his reinstatement.

(*Signed*)

Judge Alessandra Greceanu

Dated this 31st day of July 2014

Entered in the Register on this 31st day of July 2014

(*Signed*)

Hafida Lahiouel, Registrar, New York