UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/071
Judgment No.: UNDT/2015/031
Date: 1 April 2015
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel, Registrar

ALY *et al*.

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
François Loriot

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

Introduction

1. By application filed on 6 September 2011, the Applicants Aly; Brown; Cherian; Cone; Coriette; Diaz Elizabeth; Ezaz; Gamit; Jordano; Golfarini; Hadera; Hassanin; Hto; Kaufman; Maung; McCall; Nemeth; Pava; Saffir; Samuel; Sebro; Smith; and Vocile—contest the 8 June 2011 decision of the Assistant Secretary-General, Office of Human Resources Management ("ASG/OHRM"), based on the recommendations of the New York General Service Classification Appeals Committee ("NYGSCAC"), to maintain the classification of their posts following the remanding of the case *Aly* et al. (Judgment No. UNDT/2010/195, rendered by Judge Kaman on 29 October 2010) to the NYGSCAC. Each of the Applicants seeks compensation equivalent to the difference in salary, allowance and other entitlements (including pension rights) between his/her current post level and the next step, retroactive to the first of the month following receipt of the Applicants' classification request in October 2000. Each of the Applicants also seeks one year net base salary as compensation for non-pecuniary damages. Finally, the Applicants seek costs in the amount of USD20,000 for abusive procedures and violations of due process.

2. By Order No. 277 (NY/2014) dated 14 October 2014, the Tribunal granted a request from Counsel for the Applicants to have Applicants Samuel and Sebro withdrawn from the application because they had not authorized legal representation. The Tribunal also noted that following the passing of Applicants Cherian and Cone, their estates had expressed an interest in remaining as parties to this case.

Facts

3. To provide the background for this case, the facts set out in UNDT/2010/195 are summarized as follows:

a. The Applicants worked for a number of years in the Distribution Section (formerly called the Publishing Section) in the Department for

General Assembly and Conference Management ("DGACM"). Apparently, as a result of technological advances within the publishing industry, in 1990, the Organization began a series of job analyses that eventually led to a 1998 reorganization of the Publishing Section. The Applicants considered that the reorganization had led to an increase in their functions and responsibilities, without commensurate reclassification of their posts;

b. On 8 May 2004, the Applicants filed an appeal, under sec. 5 of ST/AI/1998/9 (System for the classification of posts), with the ASG/OHRM against "decisions announced by email on 4 March 2004 related to the audit and classification of their posts". The audit had not resulted in reclassification of the Applicants' posts;

c. On 9 September 2004, the Director for the Division of Organizational Development, OHRM ("D/DOD/OHRM") informed the Applicants of OHRM's conclusion that the procedures set out in ST/AI/1998/9 (System for the classification of posts) had been fully observed in considering the classification of their posts. Citing sec. 5 of ST/AI/1998/9, the D/DOD/OHRM stated that if the Applicants wished to proceed under that provision, it would be necessary to show for each post that the classification standards were incorrectly applied resulting in classification of the posts at the wrong level;

d. The Applicants' cases were never submitted to the NYGCAC for review;

e. On 22 June 2007, the Applicants filed a statement of appeal to the former Joint Appeals Board ("JAB") against the implied decision not to submit their appeals to the NYGSCAC for review;

f. Judgment No. UNDT/2010/195 quoted the following recommendations from JAB Report No. 2001 (emphasis in original):

> 36. In light of the above analysis, the Panel *unanimously concluded* that Appellants' due process rights had been violated by the Administration's failure to review their cases in a timely manner. Therefore, the Panel *unanimously agreed* to recommend for the moral injury suffered, Appellants be granted three months net-base salary at the rate in effect as at end August 2008, i.e. the date of this report.
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> 37. The Panel further *unanimously agreed* to recommend that Appellants submit their cases to the [Classification Appeals Committee] as expeditiously as possible and no later than 90 days from the date of the Secretary-General's decision on the [JAB Report].

g. In a letter dated 6 November 2008, the Deputy Secretary-General informed the Applicants of the Secretary-General's decision to reject the JAB's first recommendation relating to compensation for moral injury and to accept the second recommendation that the Applicants submit their cases to the NYGSCAC;

h. The Applicants appealed the Secretary-General's decisions to the former United Nations Administrative Tribunal ("UNAT"). The appeal was later transferred to the Dispute Tribunal and registered as Case No. UNDT/NY/2010/035/UNAT/1681.

4. On 29 October 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/195. The Dispute Tribunal identified the contested decision and the scope of the case in paras. 2 and 3 of the judgment as follows:

> 2. Specifically, the Secretary-General's decision being contested in the present appeal is 1) an acceptance of the Joint Appeals Board ("JAB") recommendation that the applicants submit their cases to the Classification Appeals Committees ("CAC") for consideration and a request that the applicants take the appropriate action within 90 days; and 2) a non-acceptance of the JAB's recommendation of three months' net base salary as compensation for the delays within the classification review process.
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> 3. The instant case covers the period of 2000 until the date of the decision under appeal (6 November 2008). During this period, a

> reclassification was requested for a group of staff members (2000), a decision not to reclassify was taken (exact date unknown) and there then ensued a period during which that decision was not properly reviewed (2004–2008), the reasons for which both parties are jointly responsible.

5. The nature of the contested decision and the receivability of the appeal were analysed in paras. 37-52 of the judgment and in paras. 52-53 the Dispute Tribunal concluded as follows:

> 52. The Tribunal has considered the entire circumstances of the case before it—its protracted nature, the contents of the letter of 9 September 2004 (i.e., that it was not a clear administrative decision from which statutory deadlines should be fixed), the implied administrative decision that was made, the apparent agreements underlying the 1999 Staff/Management Task Force, the fact that the CAC procedures have never been implemented, and the delays on both sides. In ascertaining the most efficient, as well as fair, manner in which to adjudicate this most complex case, the Tribunal has carefully weighed these considerations, as well as how best to remedy the situation.
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> 53. For the reasons set out above, the Tribunal considers that both the decision not to refer the matter to the CAC and the decision not to reclassify (or not to change the initial decision of 2000) are receivable. The Tribunal considers they are properly before the Tribunal as part of the instant application, which is an appeal of the decision of the Secretary-General in 2008 as to how to resolve the entire protracted matter which was appealed to the UN Administrative Tribunal and then transferred to the UN Dispute Tribunal for adjudication.

6. The Tribunal's further findings were as follows:

> 65. … the Tribunal finds that the CAC is the legitimate and appropriate body to hear the applicants' request for a review of a reclassification decision. Once a classification decision is recommended by the CAC and taken by the ASG/OHRM or the head of office as the final decision on classification, the applicants are, of course, at liberty to file a new appeal within the new system of internal justice if they are not satisfied with the outcome.
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> 66. With regard to length of time granted to do so, the usual time limit to request a review of a classification decision is 60 days, as per sec. 6.3 of ST/AI/1998/9; 90 days is, in comparison, generous.

> 67. The Tribunal considers that the Secretary-General's decision to uphold the JAB's recommendation that the applicants submit the cases to the CAC within ninety days of the date of the decision was both reasonable and fair.
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> 68. The Tribunal will make the necessary order, under art 10.5(a) for specific performance of the Tribunal's Statute, that the case shall be remanded to the CAC for decision by the CAC within 180 days, on the proviso that the applicants submit the cases for review within sixty days.

7. The Applicants' request for compensation was analysed in paras. 69-73 of the Judgment and the Tribunal decided:

> 74. … the Tribunal is of the view that the respondent has not provided sufficient explanation for the delays during the period between 2000 and 2004. After the joint departmental Staff/Management Working Group, via the Executive Officer of DGACM, "called for" the reclassification of the 28 job descriptions, there was no response until 2004. In the light of the totality of the evidence before it, the Tribunal finds the respondent's silence on the delays during this period to be telling. The JAB report—which is before the Tribunal as an annex to the application but without its annexes—serves as circumstantial evidence of the record of the JAB rather than any kind of binding authority.
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> 75. In view of this report, the lack of information provided in the years between 2000 and 2004 in the facts as agreed by the parties, and the respondent's silence in explaining this specific delay, the Tribunal finds that compensation for the excessive delay in responding to the original request for reclassification is warranted, as is compensation for the breach of the applicants' procedural rights.
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> …
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> 78. Bearing this in mind, the Tribunal considers USD20,000 per applicant for the excessive delay and breach of procedural rights in failing to refer the matter to the CAC as required should be awarded. It is noted that the two year cap as provided for in art. 10.5(b) of the Statute of the Dispute Tribunal does not apply as the amount awarded is per applicant.
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> 79. The JAB awards three months' for violation of due process rights (failure of the respondent to review the cases in a timely manner) but then goes on to describe the award to be for "moral

> injury". The Tribunal notes that the applicant did not make submissions as to moral injury and does not consider an award for moral injury to be appropriate in the circumstances.
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> 80. On the question of whether the applicants be compensated for the period from the date of Secretary-General's decision in November 2008 until 9 February 2009, the date of appeal to the UN Administrative Tribunal, the Tribunal notes that counsel for the applicants requested information about the composition of the CAC in November 2008 and January 2009, to which he received no response. In their appeal to the Administrative Tribunal of 9 February 2009, the applicants requested, inter alia, the Administrative Tribunal to direct the respondent to provide the necessary clarifications concerning the functioning of the CAC prior to referring the applicants' reclassification requests to it.
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> 81. As a matter of good administrative practice and particularly in light of the circumstances of the applicants' case which has been drawn out over many years, the respondent should have responded to the applicant. On the other hand, there was nothing to prevent counsel for the applicant—a seasoned counsel in such disputes— to have submitted his cases to the CAC and then to have followed-up with his questions on the CAC's composition.
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> 82. The Tribunal further notes that counsel for the applicant for a second time appears to have made an informed decision not to submit the cases to the CAC: in addition to the decision under review, the applicants were also afforded the same opportunity by the Administration in 2007–2008. For these reasons, the Tribunal is of the view that compensation for the period from November 2008 until the date of appeal is not warranted.
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> 83. Finally, with regard to awarding compensation for "expenses" to the attorney, bearing in mind the shared responsibility that counsel for the applicant for the delays post-2004 and that there has been no abuse of proceedings before the Tribunal as required under art. 10.6 of the Statute, the Tribunal does not consider such compensation to be warranted.

8. The Tribunal concluded that the decision to remand the case to the NYGSCAC was reasonable and fair, awarded USD20,000 to each of the Applicants for excessive delays and procedural non-compliance, and rejected the rest of the pleas (paras. 84-85). In para. 86, the Tribunal ordered:

a. The case to be remanded to the NYGSCAC for classification decisions on the proviso that each applicant submitted the cases for review within sixty days of the date the Judgment became executable;

b. For all such cases submitted in accordance with the above order, the NYGSCAC shall render decision within 180 days of the date that the Judgment became executable; and

c. The Respondent to pay USD20,000 to each of the Applicants within 60 days of the date the Judgment became executable.

9. Neither of the parties appealed UNDT/2010/195.

10. By letter dated 21 December 2010, the Chief, Human Resources Policy Service ("HRPS"), OHRM advised Counsel for the Applicants that the NYGSCAC was in the process of being reactivated and that the Applicants could submit their cases for review through the Committee's Secretary.

11. By letter dated 8 February 2011, Counsel for the Applicants wrote to the Secretary of the NYGSCAC requesting that their 8 May 2004 appeals for classification submitted to the ASG/OHRM be reviewed by the NYGSCAC in accordance with UNDT/2010/195. The letter further stated:

> We would appreciate being informed of the CAC composition, procedures and of the new ST/IC reactivating the CAC … The appellants request access to all documents which will be submitted to the CAC, and they are all available to testify on their duties and responsibilities discharged for the period under consideration.

12. By email dated 16 February 2011, a Legal Officer in the Administrative Law Section advised Counsel for the Applicants that Payroll Operations Unit had approved all payments related to UNDT/2010/195.

13. In a Note dated 4 March 2011 to the then Chef de Cabinet, Executive Office of the Secretary-General, the ASG/OHRM advised the Secretary-General of the Joint Negotiation Committee's decision to recommend Ms. VL as chairperson of

the NYGSCAC. The ASG/OHRM also submitted to the Secretary-General the names of three staff members that OHRM recommended for appointment by the Secretary-General. Finally, the ASG/OHRM advised the Secretary-General of the names of three staff members that, on 24 February 2011, the Staff Council had nominated for membership of the NYGSCAC.

14. On 13 May 2011, the ASG/OHRM wrote to the Executive Office of the Secretary-General to advise that two of the staff members recommended by OHRM for membership of the NYGSCAC "will not be in a position to participate in the deliberations of the Committee", and recommended two other staff members as replacements.

15. By email dated 27 May 2011, a staff member from the Office of the Deputy Secretary-General advised the ASG/OHRM (and others) that the Secretary-General had "approved" the requests of the ASG/OHRM in regard to the proposed members of the NYGSCAC.

16. On 7 June 2011, the ASG/OHRM issued ST/IC/2011/17 (Membership of the New York General Service Classification Appeals Committee).

17. On the same day, the chairperson of the NYGSCAC transmitted to the ASG/OHRM the NYGSCAC's analysis of the cases submitted by the Applicants. The memorandum stated:

> The Committee met on a number of occasions during May 2011 to consider the cases. …
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> …
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> After undertaking a preliminary discussion on the circumstances of the cases, the documents available, and the structure of the review, the Committee proceeded with a factor-by-factor analysis of the existing job descriptions under appeal on their merits and separate from other issues within the UNDT judgment. In their evaluation, the Committee applied the General Service Job Classification Standards that were in effect at the time of the initial classification of the job descriptions.

18. The NYGSCAC did not conduct a review of the cases of three of the Applicants, finding that a classification decision had not been made in respect of two of the Applicants' job descriptions and there was therefore no initial classification to review. In respect to the case of a third Applicant, the NYGSCAC stated that "due to the fact that neither the staff member, OHRM or DGACM could not [sic] locate, nor confirm the existence of revised and completed job description, the Committee could not conduct a review of that case". The NYGSCAC found that the posts of the other Applicants had been appropriately classified, and recommended upholding the initial classification decisions.

19. On 8 June 2011, the ASG/OHRM decided to approve the NYGSCAC report.

20. By email dated 9 June 2011, a Compensation Officer within the Compensation and Classification Section, OHRM advised Counsel for the Applicants that the NYGSCAC had completed the review of the appeal of the classification decisions ordered by the Tribunal. Attached to the email was the final approved copy of the report of the NYGSCAC.

Procedural background

21. On 1 September 2011, the Applicants filed the present application contesting the post reclassification decision made by ASG/OHRM on 8 June 2011, based on the NYGSCAC recommendations of 7 June 2011.

22. The Respondent filed his reply on 23 November 2011. He submitted that the scope of the application is limited to the judicial review of the recommendation of the NYGSCAC dated 8 June 2011, and the ASG/OHRM's decision to accept that recommendation, and that all other claims falling outside this scope are *res judicata* or not receivable. The Respondent requested that the Tribunal dismiss the application.

23. By Order No. 348 (NY/2013) dated 19 December 2013, the Tribunal ordered the Applicants to respond to the Respondent's submissions regarding the receivability of the application and the Respondent to file a response to that submission.

24. On 23 January 2014, the Applicants filed a submission on receivability in response to Order No. 348 (NY/2013).

25. On 6 February 2014, the Respondent filed a response to Order No. 348 (NY/2013).

26. By Order No. 228 (NY/2014) dated 7 August 2014, the Tribunal convened a case management discussion ("CMD") to clarify and consider a number of issues relevant to the just and expeditious disposal of the case.

27. Following a 25 August 2014 CMD, the Tribunal, by Order No. 248 (NY/2014) dated 27 August 2014, requested that the Applicants provide details of the contractual status of each individual Applicant, provide any legal representation forms not previously produced, and inform the Tribunal as to whether they each wished to maintain their claims before the Tribunal. The Respondent was also ordered to notify the Tribunal as to whether there were any additional documents in his possession that may further clarify the process followed by the NYGSCAC in reaching its decisions, what further actions, if any, were taken with regard to the three staff members who were not reconsidered by the NYGSCAC, and if there were documents related to the reclassification to a higher level of 12 other staff members in DGACM, which took place in 2003-2004 prior to the Applicants' reclassification requests.

28. By Order No. 277 (NY/2014) dated 14 October 2014, the Tribunal granted the Applicants' request to remove from the case Applicants Samuel and Sebro, ordered the estates of Applicants Cherian and Cone to provide documentation authorising legal representation on their behalf, and ordered the parties to inform the Tribunal if the case could be decided on the papers before it or if additional evidence and/or a hearing was required.

29. In a submission from the Applicants dated 13 November 2014, the Tribunal received documentation from the estates of Applicants Cherian and Cone authorizing legal representation on their behalf.

30. By Order No. 329 (NY/2014) dated 2 December 2014, the Tribunal accepted further evidence filed by the Applicants in response to Order No. 277 (NY/2014). The Tribunal ordered the parties to file their closing submissions, and indicated that the Tribunal would render judgment on the papers once in receipt of the closing submissions.

31. On 11 December 2014, the parties filed their closing submissions.

32. On 15 January 2015, the Applicants filed the "Applicants' Motion to Adduce Evidence in Compliance with UNDT's New Revised Statute" ("the Motion"). The Applicants noted that on 16 December 2014 the General Assembly adopted a report of the Fifth Committee, which recommended amendments to the Statute of the Dispute Tribunal. In particular, art. 10, para. 5(b) of the Statute was amended to state that the Dispute Tribunal could order compensation "for harm, supported by evidence".

33. The Applicants also noted the Respondent's submission, set out in his response to Order No. 322 (NY/2014), that affidavits filed by the Applicants "did not contain any evidence of probative value". The Tribunal accepted the affidavits into evidence by Order No. 329 (NY2014) dated 2 December 2014. However, in light of the amendments to the Statute of the Dispute Tribunal approved by the General Assembly, the Applicants submitted in the Motion that:

> … the Tribunal should compel the respondent to formally indicate what more "*supporting evidence*" it expects and is required to prove the Applicants' claims. A UNDT case management hearing could help clarify these modalities of proof on the Applicants' "*harm…supported by evidence*", as may now be required by UN General Assembly members.

34. By Order No. 16 (NY/2015) dated 3 February 2015, the Tribunal ordered the Respondent to file and serve his comments, if any, on the Motion.

35. On 4 February 2015, the Respondent filed his response to Order No. 16 (NY/2015). The Respondent submitted that the Applicants had already been provided

with a full and fair opportunity to submit their evidence. The Respondent further submitted that the amendment to the Dispute Tribunal's Statute is not a material change in the law, but merely represents a clarification consistent with existing general principles of law, and the jurisprudence of the Appeals Tribunal. The Applicants had been on notice of those principles and the Dispute Tribunal had provided them with ample opportunity to submit evidence in support of their claims. The Respondent requested the Tribunal to reject the Motion.

36. By Order No. 27 (NY/2015), dated 11 February 2015, the Tribunal rejected the Motion, stating:

> Before the General Assembly decided to amend the Dispute Tribunal's Statute, the parties agreed that this case could be decided on the papers, they provided the Tribunal with all the relevant evidence (documents, including uncontested affidavits) and the debates were closed on 11 December 2014 when they filed their closing submissions. The Tribunal considers that no additional evidence (witnesses) is required in the present case and the Motion and the Complement to the Motion are to be rejected.

Applicants' submissions

37. The Applicants' principal contentions may be summarized as follows:

a. The legality of new appointments to the NYGSCAC made in 2011 is highly questionable due to the fact that the Staff Council was dissolved at the time of the appointments;

b. Some of the new NYGSCAC members had a conflict of interest in respect of the Applicants, in particular the new chairperson, who was heavily involved in a task force that assessed the Applicants' posts at an earlier stage of the dispute. The chairperson was effectively reviewing her own previous work and decisions;

c. The NYGSCAC members were unqualified—none of the members had expertise on classification matters or the standards of the International Civil Service Commission ("ICSC");

d. The NYGSCAC members ignored the "ICSC Guidelines and Benchmark Grade Profile aligned to [General Service] Master Standard for classification purposes" in their deliberations;

e. The NYGSCAC did not hear the Applicants or call them as witnesses and consequently the findings of the June 2011 report are "replete with inaccuracies, hearsay, subjective perceptions and remarks which are foreign to the Applicants' discharge of duties";

f. The NYGSCAC had discriminated against the Applicants and failed to accord them equal treatment with other staff members, namely 12 colleagues who were discharging the same functions as the Applicants and were reclassified to a higher level by the Administration in 2003-2004;

g. The NYGSCAC did not fully disclose the parameters, benchmarks and guidelines on which it based its findings, making it difficult for the Applicants to argue their own case;

h. The Applicants have been denied due process. The NYGSCAC heard the Administration but not the Applicants and OHRM failed to provide NYGSCAC members with earlier reports and studies on the Applicants' post reclassification.

38. The Applicants seek the following relief:

a. Compensation to each Applicant "equivalent to and calculated by the difference in their salary, allowances and other entitlements between the current post level and the next step, and '*retroactive to the first of the month following receipt of the Applicants' classification request in October 2000*'…;

such compensation to include loss of Applicants' pension rights" (emphasis in original);

b. Compensation in the amount of one year net base salary for non-pecuniary damages as a result of "due process violations, pain, stress, delays, humiliation and distress resulting from more than 12 years of protracted negotiations, dilatory tactics, dysfunctional and non-operational CAC, as well as abusive procedures at the JAB, UNAT, UNDT, and CAC";

c. Costs in the amount of USD20,000 "for abusive procedures and violations of due process at the NYGSCAC and at UNDT".

Respondent's submissions

39. The Respondent's principal contentions may be summarized as follows:

a. The scope of the application, and issue before the Tribunal, is limited to a judicial review of the recommendation of the NYGSCAC dated 7 June 2011 and the 8 June 2011 decision of the ASG/OHRM to accept the recommendation;

b. To the extent that the Applicants' claims overlap with issues that they previously submitted to the JAB and the Dispute Tribunal, they are subject to *res judicata* and cannot be raised before the Dispute Tribunal in the present case;

c. The Applicants' claim related to abusive procedures before the Dispute Tribunal in UNDT/2010/195 is not receivable. If the Applicants were dissatisfied with respect to the Tribunal's handling of that first case they should have appealed within the statutory time frame;

d. Claims related to the composition of the NYGSCAC are not administrative decisions subject to appeal. The appointment of the members of the NYGSCAC was a decision of general application and did not affect

the Applicants' terms of appointment. The members of the NYGSCAC were appointed in accordance with the relevant administrative issuances;

e. Claims related to decisions that were not taken on the advice of the NYGSCAC are not receivable because the Applicants did not submit a request for management evaluation;

f. The issue of equal treatment is not properly before the Tribunal. The sole mandate of the NYGSCAC was to determine for each candidate whether the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level;

g. The Applicants provide no details or evidence to establish allegations that the NYGSCAC lacked independence, objectivity or professionalism;

h. The Applicants' claim that some members of the NYGSCAC were subject to a conflict of interest lacks detail and evidence;

i. There is no legal basis for the Applicants' position that the calling of witnesses is mandatory;

j. The pertinent ICSC Guidelines were used in the review by the NYGSCAC;

k. The NYGSCAC's review of the case was completed within the time specified by the Tribunal in UNDT/2010/195.

40. The Respondent requests that the application be dismissed.

41. In response to the receivability issues raised by the Respondent, the Applicants made the following submissions in their response filed on 23 January 2014:

a. The right to equal pay for equal work is inherent to the Applicants' contractual and civil rights and to the NYGSCAC mandate and is an issue

properly before the Tribunal. The Respondent has provided no legal basis to support his contention that the mandate of the NYGSCAC is too narrow to allow consideration of this principle;

b. The Applicants do not appeal the "handling of" or any aspects of Judgment No. UNDT/2010/195. Reference to the Judgment was intended to recall the abusive context in which the Applicants' reclassification requests were delayed;

c. The Applicants agree that Judgment No. UNDT/2010/195 is *res judicata*. As a result, all its important findings are binding on the Respondent;

d. The Applicants are not "appealing" the Secretary-General's decision on the composition of the NYGSCAC. However, as a matter of natural justice, ethics, and human rights, they have a right to raise serious issues of bias and conflict of interest at any time;

e. The waiver of the requirement to submit a request for review of an administrative decision to the Management Evaluation Unit covers all legal components ancillary to the NYGSCAC deliberations, including the decision of the ASG/OHRM and any errors or omissions by the NYGSCAC.

Consideration

Applicable law

42. Staff rule 11.2 from ST/SGB/2011/1, which came into effect on 1 January 2011, stated:

> A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General … is not required to request a management evaluation.

43. ST/AI/1998/9 (System for the classification of posts) provides in relevant parts:

> **Section 1**
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> **Request for the classification or reclassification of a post**
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> 1.1 Requests for the classification or reclassification of a post shall be made by the Executive Officer, the head of administration at offices away from Headquarters, or other appropriate official in the following cases:
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> (a) When a post is newly established or has not previously been classified;
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> (b) When the duties and responsibilities of the post have changed substantially as a result of a restructuring within an office and/or a General Assembly resolution;
>
> (c) Prior to the issuance of a vacancy announcement, when a substantive change in the functions of a post has occurred since the previous classification;
>
> (d) When required by a classification review or audit of a post or related posts, as determined by the classification or human resources officer concerned.
>
> 1.2 [OHRM], or the local human resources office in those cases where authority for classification has been delegated, shall provide classification advice when departments submit, with their budget requests, job descriptions for new posts and for the reclassification of existing posts.
>
> 1.3 Incumbents who consider that the duties and responsibilities of their posts have been substantially affected by a restructuring within the office and/or a General Assembly resolution may request [OHRM] or the local human resources office to review the matter for appropriate action under section 1.1 (d).
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> …
>
> **Section 5**
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> **Appeal of classification decisions**
>
> The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.

Section 6

Appeal procedure

6.1 Appeals shall be submitted in writing to:

(a) [The ASG/OHRM], in the case of appeals regarding:

…

(iii) Posts in the General Service and related categories at Headquarters and in small and medium-sized duty stations, except when posts in such duty stations are administered by the offices indicated in subparagraph (b) below;

…

6.2 Appeals must be accompanied by the job description on the basis of which the post was classified.

6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.

6.4 The appeal shall be referred for review to:

(a) In the case of appeals submitted to [the ASG/OHRM], the responsible office in [OHRM], which will submit a report with its findings and recommendation for decision by, or on behalf of, [the ASG/OHRM];

(b) In the case of appeals submitted to the head of office, the local human resources service or section, which will submit a report with its findings and recommendation for decision by, or on behalf of, the head of office.

6.5 If the review results in an upgrading of the classification to the level sought by the appellant, the appellant shall be notified in writing of the decision.

6.6 If it is decided to maintain the original classification or to classify the post at a lower level than that claimed by the appellant, the appeal, together with the report of the reviewing service or section, shall be referred to the appropriate Classification Appeals Committee established in accordance with the provisions of section 7 below.

6.7 The Secretary of the Appeals Committee shall transmit a copy of the report of the reviewing service or section to the appellant for comments, which must be submitted within a period of three weeks. The appellant's comments will be provided to the Office of Human Resources Management or the human resources service or section concerned, as appropriate, for their observations, which must be submitted within a period of two weeks.

6.8 In cases where the Administration has questioned the receivability of the appeal, the Committee shall first determine whether the appeal is receivable. The following appeals shall not be receivable:

(a) Appeals submitted after the 60-day time limit, unless exceptional circumstances warrant the waiver of the time limit;

(b) Appeals that are based on new functions which were not the subject of the contested decision;

(c) Appeals that are based exclusively on comparison with other posts without any reference as to the reason why the classification decision, on its own merits, would be incorrect.

6.9 If the appeal is found to be non-receivable, the appellant shall be informed of the decision and of the reasons therefor.

6.10 If the appeal is found to be receivable, the Committee shall so inform the parties. The Committee shall then determine whether it requires any additional information. It may invite any staff member who may have information relevant to the appeal to appear before it or request any additional written information that it deems useful.

6.11 For a meeting of the Committee, a quorum shall be required, consisting of a majority of the members and comprising:

(a) The chairperson or a member designated by him or her to act in his or her absence;

(b) An equal number of members designated by the administration and the staff.

However, if no members have been designated by the staff in accordance with the provisions of paragraphs 7.2-7.5 of this instruction, within three months of a formal request to that effect, the quorum requirement shall be satisfied if the chairperson or a member designated by him or her to act in his or her absence and at least two members of the Committee are present.

6.12 The Appeals Committee shall adopt its report by majority vote. If the recommendation of the Appeals Committee is not adopted unanimously, any member who dissents from the majority position may have his or her opinion included in the report.

6.13 The Appeals Committee shall submit its report to [the ASG/OHRM] … The report shall constitute the official record of the proceedings in the appeal. It shall contain a summary of the case and a reasoned recommendation concerning the disposition of the appeal.

6.14 [The ASG/OHRM] … shall take the final decision on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal.

6.15 In those cases where the appeal is successful, the effective date of implementation of the post classification shall be, subject to the availability of

a post, the same effective date as that of the original decision, as defined in section 4.1 above.

Section 7

Classification Appeals Committees

Establishment

7.1 Classification Appeals Committees to examine classification appeals and advise [the ASG/OHRM] … shall be established as follows:

…

(b) A [NYGSCAC] for:

(i) Appeals concerning posts classified in the General Service and related categories at Headquarters and in small and medium-sized duty stations …

(ii) Appeals concerning all posts in the General Service and related categories when the classification of the post at a Professional level is being requested;

…

Membership

…

7.3 The [NYGSCAC] shall comprise:

(a) A chairperson appointed by the Secretary-General on recommendation of the Joint Advisory Committee at Headquarters;

(b) Two or more members appointed by the Secretary-General;

(c) An equal number of members designated by the staff representative body at Headquarters.

Receivability and the scope of the case

Receivability

44. Under staff rule 11.2(b) and sec 6.14 of ST/AI/1998/9, staff members appealing against a decision of the Classification Appeals Committees are not required to submit their claim for management evaluation before filing an appeal before the Dispute Tribunal. Section 6.14 of ST/AI/1998/9 clearly states that

the ASG/OHRM shall take the final decision on an appeal to the Classification Appeals Committee, and "any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal". As previously established by the Dispute Tribunal in *Fuentes* UNDT/2010/064, affirmed by the Appeals Tribunal in *Fuentes* 2011-UNAT-105, "ST/AI/1998/9 was intended to create a special procedure to challenge a refusal to classify a post".

45. The Tribunal recalls that on 17 March 2009, the General Assembly adopted Resolution 63/253 "Administration of justice at the United Nations" and decided to abolish the United Nations Administrative Tribunal as of 31 December 2009 and to create a new formal system of justice comprised of the UNDT and the UNAT, which came into effect on 1 July 2009. All the cases pending before the former Administrative Tribunal were transferred to the Dispute Tribunal and consequently, after 1 July 2009 an appeal against a non-reclassification decision could be filed before this Tribunal.

46. The contested decision was made by the ASG/OHRM on 8 June 2011 and was notified to the Applicants on 9 June 2011. The present application, which, in accordance with staff rule 11.2(b) and sec. 6.14 of ST/AI/1998/9, is exempted from the requirement to request management evaluation, was filed before the Tribunal on 6 September 2011, within 90 days of the receipt by the Applicants of the administrative decision, in accordance with art. 7(1)(c) of the Dispute Tribunal's Rules of Procedure.

Scope of the case

47. In Order No. 329 (NY/2014) dated 2 December 2014, the Tribunal decided that a hearing was not needed and that the case would be decided on the papers before it. The parties were ordered to file closing submissions based on the contentions and documents already filed before the Tribunal. In the closing submissions, the Applicants filed, without leave from the Tribunal, additional grounds of appeal.

48. The Tribunal considers that closing submissions should consist of a summary of the key facts and legal issues that the parties presented during the proceedings. If a party wishes to file any new submission and/or additional evidence when filing closing submissions s/he must, in good faith, file a reasoned request prior to the expiration of the filing deadline. Such a request cannot be filed without leave from the Tribunal and should not represent a reason to delay the Tribunal's deliberations.

49. Based on the principle of equality of arms these new issues are not to be considered by the Tribunal as part of the appeal. No additional grounds of appeal and/or evidence can be allowed in a case without all parties being given an opportunity to respond to them. Therefore the additional grounds of appeal included in the closing submission by the Applicants (the conflict of interest of Mr. K as a member of the NYGSCAC; invalid and obsolete job descriptions; adjudication in bulk instead of individual review by the NYGSCAC; hasty five day deliberations by NYGSCAC members in 24 cases; undue influence and bias in the NYGSCAC report; ICSC classification standards incorrectly applied to the Applicants' job descriptions), are not part of the present application and will not be analyzed by the Tribunal.

Membership of the NYGSCAC

50. On 7 June 2011, the ASG/OHRM issued ST/IC/2011/7 (Membership of the NYGSCAC) to inform staff members of the membership of the NYGSCAC. The Tribunal therefore concludes that the Administration recognizes the right of staff members to be informed of the composition of the NYGSCAC. Other similar documents were issued since 1998 when ST/AI/1998/9 was adopted. The last one, ST/IC/2000/28/Add.6, has been cancelled and superseded by ST/IC/2011/17.

51. The Applicants contest the NYGSCAC report, *inter alia*, because the membership of the NYGSCAC established by ST/IC/2000/28/Add.6 in 2003 was modified without the Applicants' knowledge. The new membership was announced only after the NYGSCAC had already concluded its report, with members

presumably recommended by the Staff Council. The Applicants state that the Staff Council' was dissolved on 31 January 2011 and the newly elected Staff Council began its mandate only in July 2011, after its June election. The Applicants challenged the legality of the appointments to the NYGSCAC, its composition, and the existence of a valid quorum for its May deliberations.

52. The Applicants also submit that the new chairperson of the NYGSCAC, Ms. VL, was in a conflict of interest because she was heavily involved in the Task Force at earlier stages of the dispute concerning the Applicants' reclassifications and job descriptions and she was not in the position to review her own previous work and decisions. They also submit that if they had been notified of her appointment in a timely manner, they would have requested that the chairperson be replaced and that, despite the fact that the NYGSCAC is a specialized internal justice body, none of the new members have expertise or ICSC training on classification.

53. The Tribunal notes that ST/IC/2011/17 (Membership of the New York General Service Classification Appeals Committee) was issued by the ASG/OHRM on 7 June 2011, on the same day that the NYGSCAC issued its report. The Applicants' right to be informed of the composition of the NYGSCAC in a timely manner was not respected. Moreover, the NYGSCAC, as an appellate body, must have impartial members to ensure the fairness of the review and the appellants must have the possibility to request the replacement of any member, including the chairperson, if any of them are incompatible.

54. According to the Report of the Staff/Management Task Force on the Distribution Section dated 14 December 1998, Ms. VL, the chairperson of the NYGSCAC, was one of five staff members nominated by the Department of General Assembly Affairs and Conference Services (five members of the Task Force were also recommended by staff) to "review the working conditions, management issues and practices, work processes and structure of the Distribution Section". The Applicants consider that, as a result of her involvement in the Task Force,

Ms. VL was subject to a conflict of interest and that they should have had an opportunity to recuse her.

55. Section 7.3 from ST/AI/1998/9 states as follows (emphasis added):

> The New York General Service Classification Appeals Committee *shall* comprise:
>
> (a) A chairperson *appointed* by the Secretary-General on recommendation of the Joint Advisory Committee at Headquarters;
>
> (b) Two or more members *appointed* by the Secretary-General;
>
> (c) An equal number of members designated by the staff representative body at Headquarters.

56. The Tribunal considers that, in accordance with sec. 7.3, the membership of the NYGSCAC panel is mandatory and the chairperson, together with the two members from the Administration, must be appointed by the Secretary-General. The record shows that the members—the original nominees and the two replacements—were proposed by OHRM on 4 March 2011 and 13 May 2011, respectively. The Secretary-General approved these requests, as results from the 27 May 2011 email. The report of the NYGSCAC dated 7 June 2011 states that the Committee "met on a number of occasions during May 2011 to consider the cases". There is no evidence on the record to indicate that the approval of the Secretary-General had a retroactive effect in relation to the previous meetings of the proposed members. Therefore, the Tribunal considers that the NYGSCAC began its deliberations before its members had been properly appointed in accordance with sec. 7.3 of ST/AI/1998/9.

57. Further, the Tribunal finds that there is no evidence on the record that the Secretary-General *appointed* the chairperson of the NYGSCAC and the members recommended by the Administration, as required by sec. 7.3 of ST/AI/1998/9. The Tribunal does not consider that the email from the Office of the Deputy Secretary-General dated 27 May 2011, which "approved" the recommendations from OHRM, was sufficient to formally appoint members to the NYGSCAC. The Tribunal

therefore concludes that the chairperson of the NYGSCAC and the members recommended by the Administration were not appointed by the Secretary-General in accordance with sec. 7.3 of ST/AI/1998/9.

The NYGSCAC proceedings and report

58. Section 6.7 from ST/AI/1998/9 (System for the classification of posts) contains specific and mandatory procedural steps to be followed before the CAC:

a. The Secretary of the Appeals Committee "shall transmit" a copy of the report of the reviewing service or section to the appellant for comments;

b. The appellant must submit his/her comments to the Secretary of the Appeals Committee within three weeks;

c. The appellant's comments "will be provided" by the Secretary to OHRM or the human resources service or section concerned, as appropriate, for their observations;

d. The observations of OHRM "must be submitted" within two weeks.

59. The Tribunal considers that this mandatory provision establishes the fundamental due process rights and obligations of the parties before the CAC, in particular:

a. The appellant's right to receive a copy of the report made by the reviewing service;

b. The appellant's right to prepare comments and the correlative obligation to file them within three weeks;

c. The right of OHRM to receive a copy of the Appellant's comments; and

d. The right of OHRM to prepare observations and the correlative obligation to file them within two weeks.

60. Section 6.7 of ST/AI/1998/9 also establishes the mandatory role and activities of the Secretary of the NYGSCAC, who must provide the Committee with three necessary documents for their further activity: the report of the reviewing service (OHRM), the appellant's comments on this report, and OHRM's observations on the Appellant's comments.

61. It is only after receiving these three documents that an Appeals Committee can determine if an appeal is receivable (sec. 6.8). If the appeal is not receivable, the Committee must make a reasoned decision and inform the appellant of the decision and reasons in writing (sec. 6.9). If the appeal is found to be receivable, the Committee is to inform both parties (sec. 6.10). The Committee must then determine whether it requires any additional information and, if it does, the Committee has the discretion to invite any staff member who may have information relevant to the appeal to appear before it or request any additional written information it deems useful (sec. 6.10).

62. There is no evidence on the record that a report of the reviewing service (OHRM) was made after the Applicants filed their appeals on 8 May 2004 against the decision to maintain the original classification of their posts and that this report was provided to the Secretary of the NYGSCAC as required by sec. 6.6 of ST/AI/1998/9. Further, there is no evidence that the Secretary provided this report to the Applicants in order to respect the mandatory provisions from sec. 6.7 of ST/AI/1998/9. The Tribunal considers that the Applicants' right to receive a copy of the report of the reviewing service and to file their comments before the NYGSCAC was breached.

63. The Tribunal further considers that there is no evidence that the NYGSCAC, before starting its review, was provided by the Secretary with these three mandatory documents: the report of the reviewing service (OHRM); the Applicants' comments

on this report; and OHRM's response/observations to the Applicants' comments to the reviewing report, which are necessary for the entire activity of the NYGSCAC.

64. In accordance with sec. 6.13 of ST/AI/1998/9, the NYGSCAC's report is the official record of the proceedings in the appeal ("shall constitute") and must ("shall") contain a summary of the case and a reasoned recommendation concerning the disposition of the appeal.

65. The Tribunal, after carefully reviewing the NYGSCAC report from 7 June 2011, notes that the only references to the procedure are the following:

> 3. The Committee met on a number of occasions during May 2011 to consider the cases. Present at those meetings were the Chair, and Committee members, Mr. ER (DM), Mr. HSK (DM) and Ms. AP (OCHA) representing the administration; and Mr. CJ (DM), Mr HHN (DGACM), and Mr. PO (DM) representing the staff. The Committee reviewed the submissions and discussed the cases at length. Ms. EM provided technical and administrative support as the Secretary.
>
> 4. After undertaking a preliminary discussion on the circumstances of the cases, the documents available, and the structure of the review, the Committee proceeded with a factor-by-factor analysis of the existing job descriptions under appeal on their merits and separate from other issues within the UNDT judgment. In their evaluation, the Committee applied the General Service Job Classification Standards that were in effect at the time of the initial classification of the job descriptions.

66. The Tribunal finds that there is no mention in the report, and therefore no evidence on the NYGSCAC record, of the following matters:

> a. If the NYGSCAC, before starting its review, was provided by the Secretary with these three mandatory documents: the report of the reviewing service (OHRM); the Applicants' comments to this report; and the OHRM response/observations to the Applicants' comments to the reviewing report, which are necessary for the entire activity of the NYGSCAC;

b. If the NYGSCAC respected its obligation to verify if they have received the documents mentioned above and to determine whether it requires (additional) written useful information and/or invite any staff member to appear before it.

67. According to para. 4 of the report, the NYGSCAC had "a preliminary discussion on … the documents available", but none of them were indicated in the report and there is no determination of their relevance in supporting the recommendations from the report.

68. The Tribunal concludes that the Applicants' right to receive a copy of the report of the reviewing service and to file their comments in writing before the NYGSCAC was breached. This breach was not covered subsequently during the procedure followed by the NYGSCAC through an official request for the report of the reviewing service (OHRM), the Applicants' comments and OHRM's observations, and for other relevant documents or oral evidence (witnesses). Moreover, the NYGSCAC report was based not on the required documents to be filed by the Applicants and OHRM, but on documents which remained unknown to the Applicants.

69. The Tribunal underlines that the appeal procedure established before the CAC imposed fairness in the conduct of proceedings, that both parties are to be treated equally, and that the principle "hear the other side (*audi alteram parte*)" be respected during the review, which, in the present case, it was not.

70. The Tribunal recalls the uncontested facts set out in paras. 5 – 29 of UNDT/2010/195. The subject of the appeal to the ASG/OHRM, filed on 8 May 2004, was the decisions related to the audit and classifications of the Applicants' posts, which were maintained at the same level.

71. The NYGSCAC, as an appellate body, must examine if the classification standards were incorrectly applied, resulting in the classification of the posts at the wrong level (sec. 5 of ST/AI/1998/9). The NYGSCAC report must contain

reasoned recommendations concerning the disposition of the appeals (sec. 6.13 of ST/AI/1998/9).

72. In the present case, the Applicants raised the following grounds of appeal before the NYGSCAC (emphasis in original):

> 1. The [job descriptions] and classification received in March 2004 did not correspond to earlier analysis and agreements reached between staff and management, as reflected in the 23/12/98 report on the *Staff/Management Task Force on the Distribution Section,* and its recommendations on the reclassification process. Nor does it comply with the 2000 report of the *Work Group* chaired by the AC (created pursuant to recommendation 7 of the above *Task Force).*
>
> 2. The C. Work Group had prepared an extensive revision of the appellants' Job Descriptions, which upgraded their functions and levels. We attach as a sample, the WG minutes of 1/06/2000 describing the "principles …applicable to item B.3(b) indicating the type and length of experience required in all JDs". These WG principles and others do not appear to have been applied to the appellants' JD and classification in 2004.
>
> 3. At the time of their appeals, the appellants were discharging "lead functions" which entitled them to reclassification. The Administration recognized these "lead functions" and reclassified upward a few colleagues at the Publication Section, while the appellants doing the same work were denied such reclassification (situation described in JAB report No. 1805/2005).
>
> 4. The appellants' requests for upward reclassification of their posts date back to the mid-80's. Support for their reclassification was officially recognized in the 1990 ASG/OHRM Kofi Annan report and, later on, in the 23 December 1998 Staff-Management Task Force report and agreement, as well as in the commitment reached with and signed on 6 August 2001 by ASG/OHRM R.S. Earlier, on 27 March 2001, in her memo to USG YJ of DGAACS, the ASG/OHRM R S had pledged that "CCPU will conduct a fresh classification analysis with full consideration given to the job descriptions, the audit findings, the DGAACS elaborations, and *related documents"*.
>
> 5. These "elaboration and related documents" included studies, analysis, research, audits, etc., which were conducted by OHRM,

> DGAACS, CCPU, audit consultants, with the appellants' own participation. These documents should all be made available to the CAC for its review and understanding of the background of these appeals. We also request production by OHRM to the CAC of the USG/DGAACS and ASG/OHRM exchange of letters, which outlined the scope and parameters of the appellants' job reclassification, including the 23 May 2002 memo from USG CJ to ASG S urging the timely completion of the appellants JDs and their reclassification by OHRM.

73. The Tribunal considers that, in the present case, instead of analyzing the legality of the OHRM reviewing report on maintaining the classification of the Applicants' posts at the same level in the light of the grounds of appeal, and making recommendations concerning the disposition of the appeals to the ASG/OHRM, the NYGSCAC conclusions and recommendations for all the posts to be maintained at the same level were based on its own determination of the evaluation factors for the each of the Applicants' job descriptions. The Tribunal concludes that the report does not contain explicit and reasoned recommendations concerning the disposition of the appeals by the ASG/OHRM.

74. The Tribunal considers that none of the issues raised by the Applicants in their appeals were analyzed by the NYGSCAC and therefore the Tribunal accepts the Applicants' contention that they were not accorded due process and finds that the NYGSCAC report is unlawful.

The decision of the ASG/OHRM

75. Article 6.14 of ST/AI/1998/9 states (emphasis added): "The [ASG/OHRM] or the head of office, as appropriate, *shall* take the *final decision* on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee".

76. The Tribunal considers that compliance with this provision is mandatory and that the ASG/OHRM must take his/her own decision, which is a completely separate decision from the NYGSCAC report.

77. The Tribunal, after reviewing the content of the decision taken on 8 June 2011 by the ASG/OHRM, finds that the only decision taken by the ASG/OHRM was to approve the NYGSCAC report from 7 June 2011 (page 20 of the report has a special section—"Decision of the Assistant Secretary-General for Human Resources Management"—with two check boxes "approved" and "not approved"). The Tribunal therefore finds that instead of making her own final, reasoned decision on the appeal, as required by sec. 6.14 of ST/AI/1998/9, the ASG/OHRM only approved the NYGSCAC report.

Conclusion

78. The Tribunal concludes that the review by the NYGSCAC was flawed due to irregularities relating to the announcement of its composition and the appointment of its members, and the fact that the procedure set out in sec. 6.7 of ST/AI/1998/9 does not appear to have been followed prior to the NYGSCAC considering the Applicants' cases. These deficiencies were not identified or addressed by the ASG/OHRM in her final review. She also did not produce a final, reasoned decision.

79. The Tribunal considers that it is not its role to exercise a double legal review and to substitute its own decision for both the NYCAC recommendations and the decision of the ASG/OHRM. Consequently, the Tribunal considers that, in the light of the particular circumstances of the present case, and in the interest of all parties, it is appropriate to give the Administration the opportunity to follow the mandatory procedures set out in ST/AI/1998/9 and to make a new decision without repeating the procedural irregularities identified above.

80. Following the Appeals Tribunal jurisprudence in *Malmstrom* 2013-UNAT-357 and *Egglesfield* 2014-UNAT-399, the Tribunal rescinds the ASG/OHRM decision from 8 June 2011 together with the NYGSCAC recommendations on the Applicants' appeal and remands the Applicants' appeal for a fair and full consideration of the grounds of appeal before the NYGSCAC, which is to make its recommendations to the ASG/OHRM for her final decision on the appeals.

The Tribunal orders that the entire process is to be completed within 90 days of the publication of this judgment.

81. The Tribunal underlines that the following steps are to be followed by the Administration:

a. In accordance with the mandatory provisions of sec. 7.6 (Terms of office) of ST/AI/1998/9, the chairperson and members of the NYGSCAC must be appointed for a mandate of a maximum of two years. Therefore, every two years the Secretary-General must appoint the new NYGSCAC chairperson and its members from the Administration. The Staff Representative Body at Headquarters must appoint an equal number of members as the Administration;

b. The Secretary-General has to issue letters of appointment for the chairperson and for the members from the Administration;

c. The staff members must be informed via an information circular of membership of the Committee;

d. The NYGSCAC must begin its activity only after the letters of appointment are issued by the Secretary-General and after the information circular is published;

e. All the procedural steps described in the considerations section of this judgment must be followed and the report must include reasoned recommendations in relation to the grounds of appeal;

f. The ASG/OHRM, must take his or her own final and reasoned decision on the appeal(s).

Remedy

82. The Tribunal does not have the competence to decide on the Applicants' request for compensation equivalent to the difference in salary, allowance and other entitlements between their current posts level and the next step, as that would require a determination of whether they are entitled to have their posts reclassified.

83. The Tribunal notes that the NYGSCAC issued its recommendation within 180 days of 21 December 2010, as requested in Judgment No. UNDT/2010/195 and there were no procedural delays.

84. Regarding the Applicants' request for costs for "abusive procedures and violations of due process", the Tribunal considers that the judgment itself—rescission of the contested decision together with the remanding of the case to the Administration to be fully and fairly considered in accordance with all the mandatory procedural steps—is reasonable and sufficient relief to compensate the Applicants for the delays in the procedure.

85. Regarding the Applicants' request for moral damages, the Tribunal notes that the Applicants' request for compensation for excessive delays was granted for the period from 2000 to 9 September 2004 in paras. 73-83 of UNDT/2010/195, which was not appealed by the parties. For the period after 9 September 2004, the Tribunal established that "the parties must take joint responsibility for the delays post September 2009". Compensation for moral injuries for the period from November 2008 until 9 February 2009 (date of appeal) was not considered appropriate and it was rejected. In the present application, the Applicants made a similar request for compensation for moral damages resulting from "12 years of protracted negotiations, dilatory tactics, dysfunctional and non-operational CAC, as well as abusive procedures at the JAB, UNAT, UNDT, and CAC". They also seek costs of USD20,000 for abusive procedures and violations of due process at the NYGSCAC and the Dispute Tribunal levels.

86. The Tribunal rejects the claim for compensation for the period from 2000 until 9 September 2009, identical to the one adjudicated in UNDT/2010/195, as *res judicata*. Regarding the appeal filed before the NYGSCAC by the Applicants on 8 February 2011, the Tribunal notes that the NYGSCAC issued its recommendation within 180 days from 21 December 2010, as ordered in the Judgment.

Judgment

87. In the light of the foregoing, the Tribunal DECIDES:

a. The Application is granted in part;

b. The contested decision from 8 June 2011 together with the NYGSCAC recommendation on the Applicants' appeal are rescinded and the Applicants' appeal before the NYGSCAC is remanded for a fair and full consideration of the grounds of appeal before NYGSCAC, which is to make its recommendations to the ASG/OHRM for her final decision on the appeals. The entire process is to be completed within 90 days of the publication of this judgment;

c. The requests for compensation for excessive delays and moral damages, and for costs are rejected.

(*Signed*)

Judge Alessandra Greceanu

Dated this 1st day of April 2015

Entered in the Register on this 1st day of April 2015

(*Signed*)

Hafida Lahiouel, Registrar, New York