



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MOHAMMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:

Aloys Aboge

Counsel for the Respondent:

Karen Madeleine Farkas, UNHCR

Introduction

1. The Applicant, a former United Nations High Commissioner for Refugees (UNHCR) Education Officer, challenges a decision dated 29 July 2014 which he describes as “Abolition of Office”. In his Application, filed with the United Nations Dispute Tribunal (UNDT) on 29 April 2015, he alleges that the contested decision was unlawful and/or improper because:

- a. There were procedural errors in the abolition of his post as a result of which he suffered loss.
- b. The exercise of discretion to abolish the post was driven by bias, abuse of office by the Head of Operations and other extraneous matters for the ulterior motive of disadvantaging him.

Procedural history

2. The Respondent filed his Reply on 4 June 2015. In accordance with Order No. 349 (NBI/2015), the parties filed submissions on the facts and issues for determination and their views on the necessity for an oral hearing. Neither party requested an oral hearing and indicated that the Tribunal should proceed by way of the papers.

3. The Applicant filed supplementary submissions on 17 March 2016. By Order No. 173 (NBI/2016), dated 28 March 2016, the Tribunal requested further submissions on the issue of accord and satisfaction. On 1 April 2016, the Respondent filed additional evidence and submissions in relation to accord and satisfaction. On 5 April 2016, the Applicant filed his submissions on the issue of accord and satisfaction and on 12 April he filed additional submissions on his motion for production of evidence as directed in Order No. 186 (NBI/2016).

4. On the basis of the pleadings and documents filed by the parties, the Tribunal decided that no hearing was required for the fair and expeditious disposal of this case.

Facts

5. The Applicant is a Kenyan national who served with UNHCR as an Education Officer at the NOC step 9 level in Dadaab, Kenya from 17 October 2011. After a period of probation he was engaged on a three-year fixed-term contract from 1 April 2013 to 31 March 2015.

6. On 9 April 2014, the Head of Operations in Dadaab gave notice by a letter to all staff that there was a need for UNHCR to demonstrate its ability to be an active and strong player in innovation projects such as fresh food vouchers, technological digital education, e-learning and community based resources all of which were being experimented with and implemented in Dadaab. Effective 14 September 2014 he had designated a Livelihood Officer to establish a livelihood strategy in the Dadaab operation and to coordinate the refugee education sector. He advised that the Applicant would continue to take charge of day-to-day education activities in camps. The letter stated that a recent internal United Nations audit observation revealed that significant changes needed to be done in the education sector.

7. In his annual Performance Appraisal Document (ePAD) for 2014, the Applicant's performance was rated as 7.2 (successfully meets performance expectations).

8. On 25 June 2014, the Representative of the UNCHR Branch Office in Nairobi sent the Chairperson of the Budget Committee a confidential Memorandum entitled "UNHCR Kenya Operation - Request for position changes under 2014 OL, using RAF procedures", which stated:

Following a review of immediate staffing needs in the Kenya Operation, with the aim to accommodate the most important and urgent staffing requirements, I would like to request the following position changes in accordance with RAF procedures. In line with applicable rules, proposals made on the Dadaab staffing table will come into effect in 2015, after a six month notification is given to the affected staff members.

9. The Memorandum requested position changes in three areas: the Nairobi Office (one downgrade and two upgrades), the Kakuma operation (one retitle, one discontinuation and two upgrades) and the Dadaab operation (one discontinuation, one new position and two upgrades) and provided a justification for the changes to each post.

10. The post requested for discontinuation in the Dadaab operation was the post encumbered by the Applicant. The Memorandum referred, *inter alia*, to the need to operationalize the work of UNHCR Dadaab refugee education services delivery and the need to recognise strategic partnerships. It stated:

[...] the strategic partnership with UNICEF in the education sector has yielded comparative advantage dividends which validate an improved monitoring capacity by UNHCR. All this invariably means a human resource capacity increase in the Education Unit that is planned to be met by discontinuation of a National Education Officer post, creation of and additional GS posts and linkage of the education strategies with livelihoods and solutions strategies through a Livelihoods Officer innovative approach and overall programme coordination.

11. The Applicant did not see this document until it was produced by the Respondent as part of his Reply to the Application.

12. On 26 June 2014, the Applicant was called from the field to meet with his immediate manager, the UNHCR Senior Protection Officer in Dadaab. In the presence of the Senior Administrative/Finance Officer, the Applicant was told that as a result of a comprehensive staff review his position as Education Officer was being proposed for discontinuation effective 1 January 2015. He was handed a letter to this effect from the UNHCR Representative for Kenya dated 25 June 2014. The letter also said that in light of this and pending a decision from UNHCR Headquarters (HQ), the Applicant should consider applying for any vacant position within the Country Operation immediately.

13. The Applicant states that he was shocked to learn at the meeting for the first time that his position had been “targeted for abolition” and that it had already

been submitted to UNHCR HQ and approved by the UNHCR Country Representative.

14. The Applicant sought a meeting with the Head of Operations to discuss the abolition of his post. He states that at this meeting on 12 July 2014 and other meetings with the Senior Protection Officer, he was told the decision had been made in Geneva and that their “hands were tied”.

15. In an email to the Head of Operations on 29 July 2014 the Applicant said, “I am writing to remind you of our earlier discussions regarding the expiry of my contract. As you indicated to me kindly confirm that I will be able to complete my assignment by 31 March 2015, as in my letter of contract”.

16. On 29 July 2014, the Representative wrote a letter to the Applicant that said: “We have now received the final results of the staffing review exercise and I am now writing to officially inform you of the approval by Headquarters of the discontinuation of the position effective 1 January 2015”.

17. For unknown reasons, this letter was not sent or handed to the Applicant until three months later.

18. On 1 October 2014, an email was circulated to all staff at Dadaab and Alinjugur enclosing a vacancy notice for the temporary appointment of an Education Assistant (TA) GL-4. This was later withdrawn.

19. Meanwhile, unaware of the decision that had been made on 29 July 2014; the Applicant continued to have several discussions with the Head of Operations. In a letter to the Head of Operations on 6 October 2014 the Applicant referred to those discussions and requested him to reconsider rescinding the proposal to abolish his position. He stated that he had “served the country for more than 30 years and had wished to benefit from his pension taking into account the fact that he only had 2 years to qualify”.

20. The Head of Operation did not respond to this letter, however, on 9 October 2014, the Applicant's manager wrote to him undertaking to explain the rationale behind the proposal.

21. On 23 October, the Applicant wrote to the Human Resources Officer, copied to the Head of Operations, the Representative and his manager that: "this issue has caused me a lot of anxiety without anybody telling me the correct position. Please talk to me".

22. On 24 October the Human Resources Officer sent him an email which attached the 29 July letter and stated: "I trust the attached letter was hand-delivered to you by SOD HR Unit, which was tasked to do so". The HRO asked him to pass by [V's] office "who will review your entitlements upon your separation".

23. On the same day the Senior Administrative/Finance Officer wrote to the Applicant about calculation of his entitlement to termination indemnities and invited him to see her for the "detailed discussion on your position and your entitlement".

24. On 27 October 2014, the Applicant was handed the 29 July 2014 letter from the Representative informing him of the approval of the discontinuation of his position and that further to the decision he would be separated from service, effective 1 January 2015. He signed it on that day.

25. The Applicant requested management evaluation of this decision on 15 November 2014. In summary, he claimed that the decision to discontinue his position was improperly motivated and it violated UNHCR procedural requirements for changes in status of positions.

26. In his Reply to the Application, the Respondent stated that:

[...] on 18 March 2015, the Applicant received a reply to his request for management evaluation, ...Insofar as the allegations of improper motivation of the decision was concerned the Deputy High Commission noted that no evidence was available to support the Applicant's assertion however the Deputy High Commissioner did

note that he was concerned by the manner in which the Applicant was notified of the decision and acknowledged that the Applicant was not accorded the foreseen notice period set out in relevant UNHCR policies.

27. The Deputy High Commissioner informed the Applicant that in view of the procedural irregularity, he would be paid compensation in an amount representing his full salary and entitlements for the period commencing on 1 January 2015 until 31 March 2015 - corresponding to the remaining period of his foreshortened fixed-term appointment (less the amount of termination indemnities the Applicant had received upon separation).

28. On 26 May 2015, the Applicant received a payment totaling KES1,724,707.74 (equivalent to USD18,231.58).

29. On 2 June the Head of Payroll signed an Attestation which read, in part: “I, the undersigned, certify that (the Applicant) ex –staff member of UNHCR received KES (X) as final emoluments [...]”.

30. On 5 June 2015, following correspondence with payroll in which he queried the calculation of his entitlements, the Applicant confirmed receipt of the amount and acknowledged the clarifications he had received concerning the calculation of the amount. He stated, “Thank you for elaborate explanation regarding the matter at hand and would wish to rest my case on that. Should there be need for further queries, I am sure you would be willing to help as you have just demonstrated”.

Summary of Applicant’s submissions

31. The Applicant submitted that the payments were received by him purely on a “without prejudice” basis and did not address his claim of improper motivation for the decision to abolition of his office. It did not amount to accord and satisfaction of his entire case.

32. The Deputy High Commissioner accepted liability for procedural irregularities by the manner in which the Applicant was notified of the decision

and acknowledged that the Applicant was not accorded the foreseen notice period set out in relevant UNHCR policies.

33. The action by the Respondent to deploy an urgent drive to pay what the Applicant referred to as a ‘paltry’ three months’ salary was an attempt at concealing liability against the Applicant after the procedural irregularities.

34. The amount paid to him was not compensation as it was the right of the staff member according to the length of his contract. It was never negotiated or properly disclosed and communicated to the Applicant. It was a reinstatement in service with full benefits.

35. His expression of satisfaction was with the explanation by payroll with the salary calculation and he wanted to rest his case on that issue. It was not a salary negotiation with the aim of reaching an agreement (accord and satisfaction) in the current case of abolition of office.

36. On the substantive issues the Applicant submitted that there were procedural errors in the abolition of his position as a result of which he suffered loss. The relevant provisions are contained in Inter-Office Memorandum No. 027/2009 – Field Office Memorandum No. 027/2009 (IOM/027/2009-FOM/027/2009) (Procedural Guidelines for Changes in Status of Positions).

37. He was handed a letter dated 25 June 2014 notifying him that his position was targeted for discontinuance without reference to his manager and after it had been sent to UNHCR HQ. He was not given the opportunity to discuss, comment and contribute to the change of status of the position he encumbered.

38. His manager, the Senior Protection Coordinator, displayed a “lay about and hands off attitude” in applying these rules exposing him to unnecessary anxiety and emotional distress.

39. The six months’ notice period was not observed, in total contravention of the Guidelines.

40. The exercise of the discretion to abolish the post was driven by bias, abuse of office by the Head of Operations and other extraneous motives for the ulterior purpose of disadvantaging him.

41. The Head of Operations dishonestly denied knowing of the origins of the decision and had nothing to do with it.

42. The inordinate delay in advising him that his position had been abolished remains unexplained although he worked and resided at the UNHCR compound where the Administration office that the letter emanated from was situated. The bad faith is manifested through the speed with which the office moved to separate him despite his request that his right to complete his standard assignment length be respected.

43. The administration became suddenly extremely efficient when he was served with his separation notice the same day he received the letter abolishing his position.

44. The bad faith is also manifested through the advertisement for the position of Education Assistant on a temporary basis before he was notified of the decision. The Applicant submits that the advertising and filing of this position was meant to fill the void he would leave upon his separation from employment, a fact that he alleges was well known to the Head of operations.

45. The exercise of the discretion to restructure was driven by irrelevant considerations and other extraneous considerations. These include the need for local staff at field offices to perform functions that require national knowledge and experience rather than international staff. In this case he was replaced by a P-3 level international officer with no background in education programs.

46. The recommendation for the abolishment of the Education Officer's position in Dadaab violates the Global and Dadaab Education strategies that are in force until 2016 (IOM/019/2012-FOM/020/2012).

Summary of Respondent's submissions

47. The exchange of correspondence between the Applicant and the Administration about the payment of compensation to him following management evaluation is evidence that *prima facie*, accord and satisfaction has been reached in this case.

48. There are two main procedural requirements for discontinuation of a post: a) notification to a staff member that a review of his or her encumbered position is being proposed before the submission of the proposal is made and discussions with the staff member; and b) formal notification to the staff member of the decision on the proposed discontinuation six months prior to its implementation.

49. The Respondent notes that the decision of post discontinuation was not implemented in full compliance with the UNHCR Procedural Guidelines for Changes in status of position as the Applicant was not given the required six months' notice period.

50. In recognition of this the Applicant was granted compensation amounting to his full salary and entitlements for the period commencing 1 January 2015 until 31 March 2015 corresponding to the remaining period of his foreshortened fixed-term appointment, less any termination indemnities he had received upon separation.

51. The manager informed the Applicant orally and in writing of the Administration's intention to discontinue the encumbered position. The Representative's letter to the Applicant as well as the Representative's submission to the Chairperson of the Budget Committee effectively took place simultaneously with the notification and discussions with the manager. The Applicant suffered no prejudice as a result of any minor procedural irregularity in this regard.

52. As he had no expectancy of renewal, this payment placed him in the same position as if his fixed-term appointment had regularly expired.

53. The discontinuation of the encumbered position and the placement of educational matters under the supervision of the livelihoods posts was a valid exercise of the Organization's power to restructure some or all of its departments or units including the abolition of posts, the creation of new posts and the redeployment of staff. It took place in the context of a partial reorganization of the Protection Pillar at the sub-office, Dadaab to enhance the efficiency and effectiveness of Protection Services in the Dadaab operation as well as UNHCR's leadership and coordination roles and responsibilities in Dadaab.

54. The creation of the Temporary Education Assistant (G-4) position was to assist UNHCR's activities at the Field office in Alinjugur with its school inventory programme. It was unrelated to the decision to discontinue the Applicant's position and was withdrawn due to operational reasons.

55. The Applicant's allegations of ill motivation and dishonest intent by the Administration in deciding to discontinue the encumbered position are totally unfounded. The Applicant has adduced no evidence in support of the contentions.

Issues

56. The parties each submitted a list of the issues as they saw them. Having considered those and the relevant jurisprudence the Tribunal finds that the issues in the case are:

- a. Was the decision to discontinue the position in accordance with the relevant rules, regulation and procedures and a proper exercise of managerial discretion?
- b. Were the reasons given to justify the discontinuation of the position supported by the evidence and the facts?
- c. Has the Applicant discharged his burden of proof to establish that the contested decision was tainted by malice, discrimination or other extraneous factors?

d. To the extent that the process was affected by a procedural irregularity, has the Applicant been adequately compensated or is the Applicant entitled to the relief sought?

Considerations

57. It is well settled that “an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff”¹. The Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, the Administration has the duty to act fairly, justly and transparently in dealing with its staff members².

58. Decisions may be set aside only on limited grounds, such as breach of procedural rules or if discretion was exercised in an arbitrary, capricious or illegal manner. The procedure must be fair and transparent³.

Was the discontinuation of the Applicant’s position taken in accordance with the relevant rules, regulation and procedures?

59. IOM/027/2009-FOM/027/2009 (Procedural Guidelines for Changes in Status of Positions) was distributed to all UNHCR managers in 2009 in light of the 2010-2011 annual programme review of the Comprehensive and Prioritized Plans and Budgets. The section entitled Changes in position status (discontinuation, reclassification) provided (in summary):

a. Where a manager intends to seek discontinuation of a position encumbered by a staff member the manager must inform the staff member in writing that a review of the position is being sought before submission of the request to the Budget Committee for the Annual programme Review or to the Director, Representative, Situational coordinator or Hub Manager under the Revised Framework for Resource Allocation and Management RAF.

¹ *Pacheco* 2013-UNAT-281.

² *Hersh* 2014-UNAT-433.

³ *Chen* 2011- UNAT-107and *Adundo et al.* UNDT/2012/118.

- b. The manager is responsible for discussing proposed changes in position status directly with the staff manager concerned.
- c. The effective date of discontinuance will be no less than six months after the approval of the request by the Budget Committee in view of the potential costs of discontinuations of encumbered positions.
- d. The six months period of notification starts from the date the staff member is informed of the relevant decision on the change in the position status.
- e. The purpose of the six month period of notification is to allow the Organization and the staff member to find an agreed employment solution for the staff member and is therefore essentially linked to the type and duration of the contract or the standard assignment length.
- f. Once positions are approved for discontinuation the manager and staff should consult with DHRM to ensure that appropriate solutions are found for all affected personnel within the six month period.

60. The authority to discontinue national or General Service positions lies with Representatives and Hub managers by virtue of paragraph 16 of IOM/051/2007-FOM/054/2007. This document repeats the requirement that changes are to be implemented six months from the date of notification to the staff member concerned.

61. Strategic decisions on the financial aspects of resource allocation and reallocations are vested in the Budget Committee.

62. The Applicant was not notified in writing of the proposal to discontinue his position before the submission of the proposal to the Budget Committee. His manager discussed the proposal with him on 26 June, the day after the proposal had been submitted. The Respondent accepts that the Representative's letter to the Applicant as well as the Representative's submission to the Chairperson of the

Budget Committee effectively took place simultaneously with the notification and discussions with the manager.

63. A central and repeated requirement of IOM/027/2009-FOM/027/2009 is that a change to the status of a position is not to be implemented less than six months after notification to the affected staff member of the approval by the Budget Committee. There are two policy reasons for this time frame: the mitigation of potential costs to the Organization and the requirement to ensure an agreed employment solution for the staff member.

64. If properly observed, the procedure for notifying and discussing the proposal with the affected staff member at an early stage gives the manager the opportunity to be both fair and transparent about the proposal before it is submitted to the Budget Committee.

65. *Tsoneva* 2013-UNAT-339 was decided under the same UNHCR Guidelines that apply in this case but in different factual circumstances. In that case, the Director had submitted his request for the discontinuation of the position to the Budget Committee some days after discussing his intentions with, and giving written notification of it, to the staff member. In those circumstances, the United Nations Appeals Tribunal (Appeals Tribunal) held that the order of the discussion and the written notification was immaterial.

66. In the present case, the written notification and some limited discussion with the Applicant were held contemporaneously with the submission to the Budget Committee.

67. The Tribunal does not accept the Respondent's contention that in the present case the manager's failure to notify the Applicant and discuss the purpose with him before the submission of the proposal to the Budget Committee was a minor procedural irregularity. The rationale for the procedure prescribed by the UNHCR guidelines was rendered nugatory.

68. It is clear from the Applicant's submissions that the truncation of this important part of the procedure led to his serious concerns and suspicions about

the motivation for the decision. The delay in conveying the decision of the Budget Committee to him added to his suspicions. The Respondent has not adequately explained the delay, particularly as the Applicant was working and living at the UNHCR compound where the Administration Office that issued the letter was situated and, as his email correspondence demonstrates, he was regularly asking the Head of Office to tell him what was happening.

69. The Tribunal holds that the Administration was not fair, just, or transparent in its dealings with the Applicant over the discontinuation of his position. The procedure adopted for the discontinuance of the Applicant's position was not in accordance with the relevant rules, regulation and procedures. The Administration failed to comply with the Guidelines concerning the timing of the written notification of the proposal to the Applicant, discussions with the manager and submission of the proposal to the Budget Committee. The failure to immediately notify him of the decision of the Budget Committee also reduced the mandatory six months for implementation to three months.

Were the reasons given to justify the discontinuation of the position supported by the evidence and the facts and a proper exercise of the managerial discretion?

70. The rationale given to the Applicant by the Representative in his written notification of the proposal to discontinue the Applicant's position was that it was pursuant to a staffing review of the Kenya Operation. The outcome of that review was reflected in the Representative's request to the Budget Committee for position changes dated 25 June 2014⁴.

71. In relation to the discontinuance of the Applicant's position, the request referred to the implementation of an interagency education strategy by having two national G-6 posts reporting directly to a P-3 Livelihoods Officer who was to coordinate the implementation of the education strategy and strategic responsibilities.

⁴ See paragraphs 11 – 14 above.

72. Although the Applicant doubts that this is a durable solution, this decision is a matter of policy which is in the sole discretion of the Organization. There is no evidence to rebut the presumption that these reasons were other than genuine or that they were not a proper exercise of the managerial discretion to restructure a department or unit.

Has the Applicant discharged his burden of proof to establish that the contested decision was tainted by malice, discrimination or other extraneous factors?

73. The jurisprudence of the Tribunals places the burden on the staff member to prove that the non-renewal of his/her fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive⁵.

74. As evidence of extraneous factors, the Applicant relies on the series of undoubted deficiencies in the procedure which led to the discontinuance of his position. These include the undue haste in notifying him of the proposal and submitting it to the Budgetary Committee combined with the failure to convey the decision of the Committee until months after the decision followed by the speedy implementation of his separation points.

75. The Tribunal finds that such lapses in proper process may equally be explained by carelessness and oversight and, although reprehensible, do not of themselves provide clear and convincing evidence of ill motivation or discrimination.

76. The Applicant further relies on the advertising of the post of Education Assistant on a temporary basis before he was notified of the decision. He alleges that the Head of Operations knowingly did this in order to fill the void he would leave upon his separation from employment.

77. The evidence submitted by the Respondent shows that the creation of the Temporary Education Assistant (G-4) position was to assist UNHCR's activities at the Field office in Alinjugur with its school inventory programme. It was

⁵ *Hepworth* 2015-UNAT-503.

unrelated to the decision to discontinue the Applicant's position and was later withdrawn for operational reasons.

78. The Applicant has not met the burden of proving that the decision was motivated by extraneous factors.

To the extent that the process was affected by a procedural irregularity, has the Applicant been adequately compensated or is the Applicant entitled to the relief sought?

79. The Applicant was separated on 1 January 2015 but following management evaluation, he was paid a further three months' salary plus entitlements for the period 1 January to 31 March 2015, the expiry date of his fixed-term contract.

80. The Respondent argued that by accepting this amount the Applicant agreed that his entire case before the Tribunal was settled to his satisfaction. However, on the evidence, the Tribunal finds as a fact that the Applicant's expression of satisfaction was with the clarification of the calculation of the amount he had received in salary and benefits for the three months January to March 2015.

81. The 2 June 2015 attestation by the Head of Payroll did not refer to the payment being made in resolution of the pending litigation between the Applicant and the Respondent.

82. The Tribunal concludes that the payment of the three months' salary and benefits to the Applicant was not expressed to be in full and final settlement of the litigation between the parties which was on foot at that time, nor did the Applicant agree to the conclusion of the litigation when he received the payment.

83. The next question is whether the payment he received amounted to compensation which placed the staff member in the same position he or she would have been in had the Organization complied with its contractual entitlements or if it was a payment that the Organization was obliged to make in accordance with

the Applicant's standard length assignment that ran until 31 March 2015 and therefore not compensation for the purposes of this case.

84. If the correct procedure had been followed by the Administration, the Applicant would have received a full six months' notice from the date of the decision of the Budget Committee that his contract would be terminated on 1 January 2015. Instead he received just three months' notice. The payment of the three months' salary plus benefits beyond his 1 January 2015 following management review covered a period for which he did not work and accordingly can be characterized as compensation for this lack of notice rather than payment of what was due as part of his contract.

85. However, the obligations of the Administration to the Applicant went beyond giving the required period of notice. The Guidelines provide that "once positions are approved for discontinuation...manager and staff should consult with DHRM to ensure that appropriate solutions are found for all affected personnel." The period of six months' notice from the date of the notification of the decision of the Budget Committee had the explicit purpose of ensuring an agreed employment solution for the staff member.

86. It is clear from the Applicant's submissions that he wanted to continue working with the Organization for a further two years in order to ensure his rights to a pension. For three months after the decision of the Budget Committee, he unsuccessfully attempted to discuss with his manager what he was led to believe, until at least as late as 9 October, was still a proposal.

87. Following the belated formal notification of the contested decision, the Administration took no steps at all to discuss, let alone ensure, an agreed employment solution up until the date of his separation. There is no evidence that the Applicant's managers consulted with Division of Human Resources Management (DHRM) about this. All of the correspondence to the Applicant from the Head of Office from 27 October 2014 is directed to his separation on 1 January 2015.

88. The Tribunal finds that the lengthy delay in notifying the Applicant of the decision and the failure of his Head of Office and manager to communicate with him adequately made the Applicant distrust the motives for the decision and caused him distress. He also lost the valuable opportunity to ensure an agreed employment solution to which he was le

Decision

89. The Tribunal finds that:

a. For the foregoing reasons, the contested administrative decision was unlawful and is rescinded.

b. As the contested decision concerns termination of the Applicant's employment the Respondent may elect to pay to him compensation as an alternative to rescission. In this case this compensation would normally be the entitlements to which he would have been due up to the end of his fixed-term appointment. Beyond that point the Applicant had no expectation of renewal. The Tribunal notes that this amount has already been paid and received by the Applicant.

c. In addition, the Applicant is entitled to compensation for the harm caused to him. The Tribunal accepts that he suffered unwarranted stress as a result of the failure of the Administration to act in a fair and transparent manner and also lost the proper opportunity to benefit from the UNHCR policy of ensuring an agreed employment solution upon the early termination of his contract due to discontinuation. For this harm the Applicant is awarded the sum of USD3,000.

d. The total sum of compensation is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the United States Prime Rate until the date of payment

(Signed)

Judge Coral Shaw

Dated this 16th day of June 2016

Entered in the Register on this 16th day of June 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi