



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

TIEFENBACHER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Daniel Trup, OSLA

Mariam Munang, OSLA

Counsel for Respondent:

Thomas Jacob, UNDP

Introduction

1. On 15 February 2016, the Applicant, a former D-1 level permanent staff member of the United Nations Development Programme (“UNDP”), filed an application contesting the decision not to “award [him]” the position of Directorate Manager, Bureau of Programme and Policy Support (“BPPS”), UNDP (“the DM post”). The Applicant submits that the contested decision was procedurally flawed and tainted by bias against him. On 16 March 2016, the Respondent replied to the application, submitting that the Applicant’s claims are without merit.

Procedural history

2. This case was assigned to the undersigned Judge on 1 July 2016.

3. By Order No. 167 (NY/2016) dated 11 July 2016, the Tribunal directed the parties to file further submissions and invited them to consider informal resolution of the dispute.

4. On 19 July 2016, the Respondent filed a submission on behalf of both parties, requesting suspension of the proceedings in order to undertake informal settlement discussions. By Order No. 174 (NY/2016) dated 19 July 2016, the Tribunal suspended the proceedings until 30 August 2016.

5. On 29 August 2016, the parties filed a joint submission stating that, despite several attempts, they were unable to resolve the matter.

6. By Order No. 208 (NY/2016) dated 30 August 2016, the parties were directed to attend a case management discussion on 19 September 2016 and to file a joint submission in preparation for a hearing on the merits, scheduled for 22 and 23 September 2016.

7. On 7 September 2016, the parties filed a joint request to re-schedule the hearing on the merits to 29 and 30 September 2016.

8. On 13 September 2016, the parties were informed by the New York Registry, via an email notification, that the hearing on the merits would take place on 29 and 30 September 2016.

9. On 15 September 2016, the parties filed a joint submission in response to Order No. 208 (NY/2016).

10. On 19 September 2016, the Tribunal held a case management discussion in preparation for the hearing on the merits.

11. The matter was heard on 29 and 30 September 2016. The following persons testified before the Tribunal:

- a. The Applicant, appearing via video-connection;
- b. Mr. Martinez-Soliman, Assistant Administrator and Director, BPPS, appearing in person;
- c. Mr. Diego Ruiz, Deputy Director, Office for Human Resources (“OHR”), UNDP, appearing in person.

Facts

12. The summary below is based on the oral evidence adduced at the hearing, as well as the record before the Tribunal.

13. The Applicant was a staff member in the United Nations system for approximately 16 years. He was granted a permanent contract effective 1 July 2009. However, in 2013, the post he occupied—the D-1 level position of Chief of Staff and Chief of Directorate, Bureau of Management (“BOM”)—

was abolished, and a new post of Chief, BOM, was created at the P-5 level. The Applicant decided not to apply for the newly-created post. (The Applicant is not disputing the decision to abolish his D-1 level post or the creation of the P-5 level post.) The Applicant was thereafter considered against several vacant D-1 level posts as part of a structural change exercise known in UNDP as a “job fair.”

14. One of the posts the Applicant was considered for was the contested DM post, first advertised in July 2014. As this consideration was done in the context of the structural change exercise, UNDP conducted a “desk review” of eligible candidates—which meant that no interviews were conducted—and decided, in or around June 2014, not to recommend the Applicant. Instead, another person was recommended and selected for the DM post. The Applicant thus had to continue his search. In September 2014, he was able to secure a temporary assignment (D-1 level Senior Advisor with BPPS), but it was funded only until 30 June 2015. Thus, both UNDP and the Applicant knew that, if no other opportunities came up, his permanent appointment would be terminated.

15. However, in or around July 2014, the person who was appointed to the DM post decided to take up another position in Afghanistan and left the DM post relatively shortly after his entry on duty. It appears that his reassignment took place in January 2015. After his departure to Afghanistan, the DM post became available again. At this point, UNDP—and this is the main point of contention in this case—decided to advertise the DM post as a regular, “global” vacancy open to external candidates. The Applicant states that, instead, UNDP should have considered him against this post on the basis of a desk review, without initiating a competitive process open to non-permanent and external candidates.

16. Thus, the DM post was advertised again on 1 April 2015, with a deadline for application of 15 April 2015. At the request of Mr. Martinez-Soliman, who was the hiring manager for the DM post, the vacancy was re-opened in June 2015, in an effort to increase the pool of candidates, with the new deadline for applications being 9 June 2015. In August 2015, one of the three short-listed candidates withdrew, leaving only the Applicant and a female candidate. The female candidate also indicated to UNDP that she might withdraw her candidacy. On 21 August 2015, Mr. Martinez-Soliman sent a request to OHR to accept two late applications (one from a female candidate and one from a male candidate) in order to have at least three candidates available for interviews. The additional male candidate subsequently decided not to proceed with his application, but the additional female candidate was permitted by OHR to submit her application. Around the same time, the originally short-listed female candidate withdrew her application. This left only two candidates—the Applicant and the newly-added and subsequently-recruited female candidate.

17. The Applicant testified that he applied for the post because he was interested in the position, felt qualified and suitable for it, and was aware that his temporary D-1 Senior Advisor assignment was funded only until the end of June 2015. He testified that he was encouraged to apply by his supervisor and the person who filled the functions of the DM post. The Applicant and the female candidate were interviewed on 27 August 2015. The female candidate was found suitable and was recommended, whereas the Applicant was not. He was informed of the decision of not being selected on 24 September 2015.

18. Following several temporary extensions, the Applicant's permanent appointment was eventually terminated on 31 July 2016 and, upon his separation from service, he was paid termination indemnity.

Consideration

Applicable law

19. Staff rules 13.1(a) and (d) state:

Rule 13.1

Permanent appointment

(a) A staff member holding a permanent appointment as at 30 June 2009 or who is granted a permanent appointment under staff rules 13.3(e) or 13.4(b) shall retain the appointment until he or she separates from the Organization. Effective 1 July 2009, all permanent appointments shall be governed by the terms and conditions applicable to continuing appointments under the Staff Regulations and the Staff Rules, except as provided under the present rule.

...

(d) If the necessities of service require abolition of a post or reduction of the staff and subject to the availability of suitable posts for which their services can be effectively utilized, staff members with permanent appointments shall be retained in preference to those on all other types of appointments, provided that due regard shall be given in all cases to relative competence, integrity and length of service. ...

20. Staff rule 9.6(e) states:

Rule 9.6

...

Termination for abolition of posts and reduction of staff

(e) Except as otherwise expressly provided in paragraph (f) below [concerning staff members in the General Service category and thus not relevant to the present case] and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service,

staff members shall be retained in the following order of preference:

- (i) Staff members holding continuing appointments;
- (ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;
- (iii) Staff members holding fixed-term appointments.

21. The UNDP Recruitment and Selection Framework (rev. 22 March 2012) provides in relevant parts:

Order of Retention in Cases of Abolition of Post or Reduction of Staff

...

17. The order of retention granted to staff members holding permanent appointments means that those staff members affected by the abolition of their posts or reduction of staff will be given priority consideration over external candidates and also over equally qualified internal candidates on other contractual modalities (CA [continuing appointment], FTA [fixed-term appointment], TA [temporary appointment]). In other words, as long as the staff member who holds a permanent appointment is found suitable and therefore recommended for the post, albeit not the preferred or first-ranked candidate, he/she will be given preference over the other suitable recommended candidates.

...

Recruitment and Selection Strategies and Techniques

...

67. Prior to commencement of the recruitment and selection process, the hiring manager ... shall decide on the strategies, methodologies and techniques to be used for assessing candidates ...

...

Review of Qualifications

...

83. Only candidates who fully meet the required qualifications for the position, as specified in the vacancy announcement, may be short-listed for the post.

84. ... The shortlist for interview should generally be comprised of a minimum of two and a maximum of four candidates. At least one woman should be included on the short-list. If no female candidate is included on the short-list, a waiver must be requested from the Director, OHR ...

22. UNDP's policy on "Recruitment & Selection Procedures—Remaining Vacancies from Structural Change Job Fairs" states in relevant parts:

While the Structural Change Job Fairs formally concluded on 3 October 2014, some positions advertised in the job fairs remain unfilled. This note articulates the selection processes to be followed in the recruitment of those remaining vacancies.

The recruitment strategy adopted for the selection of the remaining approved Structural Change Job Fair vacancies will conform to the principles contained within the UNDP Recruitment & Selection Framework, as follows:

1. Hiring units may advertise approved positions internally/externally with immediate effect;
2. For all positions at the P-5 level and above, hiring units may choose to conduct Competency-Based Interviews to assess candidates;
3. For positions at the P-4 level and below, candidates will be evaluated by Desk Reviews;
4. Should a Desk Review panel determine that an external applicant is the top-rated candidate for a position, the hiring unit must conduct a Competency-Based Interview with that proposed candidate before making any submission to a Compliance Review Body. ...

23. UNDP's People Realignment Policy and Processes states in relevant parts:

For the purposes of the structural change, the People Realignment Policy and Processes temporarily suspends related UNDP guidelines, frameworks and policies concerning

recruitment and separation unless specifically referred to in this document. All decisions and actions will be taken in accordance with the principles set forth in the People Realignment Policy and Processes.

3.3 Applying for positions

a. Eligible staff members may apply for up to three positions, either at the same time, or during subsequent rounds of the Job Fairs.

...

4. Interview Report / Desk Review Report and Recommendations

4.1 Once the interview or desk review process is concluded, a report will be prepared, signed by all panel members and submitted to the Bureau Director for review.

Scope of the case

24. In his application, the Applicant identified the contested decision as, specifically, the “[d]ecision not to award [him] the [DM] position,” of which he was notified in writing on 24 September 2015. Therefore, this case is not an appeal against the abolition of the Applicant’s post or the resultant decision to terminate his contract and separate him from service effective 31 July 2016. This case concerns the selection for the DM post, the main question being whether the Applicant was properly considered for it.

Compliance with the staff rules on retention of permanent staff

25. The Applicant submits that the DM post should not have been advertised globally, and that he should have been given the post on a priority basis as a permanent staff member on an abolished post. He further submits that, when the DM post became available again, UNDP should have established his suitability based on a desk review exercise, which would have found him suitable based on his excellent performance record, his experience in similar functions, his applicable skills, and his status as a permanent staff

member on an abolished post. Instead, UNDP issued an external vacancy announcement and started to apply a different set of procedures, effectively disregarding the order of retention under staff rule 13.1. The Applicant submits that, in his view, the process was changed to an interview-based process only after it became clear that he was the only candidate left.

26. The Respondent's response is that once a staff member was appointed to the DM post (the staff member who subsequently left for Afghanistan), the post ceased to be regarded as part of the structural change exercise. Thus, when the post became vacant again, it was subject to a regular selection process with no advantage given to displaced permanent staff. Accordingly, a desk review was not contemplated for this recruitment, and there was no switch in process as alleged by the Applicant. Paragraph 17 of the UNDP Recruitment and Selection Framework provides that holders of a permanent appointment will be given preference when the candidate "is found suitable and therefore recommended for the post," even if not the preferred or first-ranked candidate. In this case, the interview panel found that the Applicant was not suitable for the DM post. Consequently, he was not recommended for the position. The Respondent submits that, therefore, the order of retention did not apply in this case and the Applicant was not entitled to be given preference.

27. The oral evidence as well as the case record unequivocally demonstrate that the 2015 vacancy for the DM post was treated by UNDP as a standard vacancy open to external candidates on a competitive basis.

28. The Applicant was a permanent staff member who had previously occupied a post that was now abolished. The Administration was well aware that he was a permanent staff member in need of a post and that his temporary assignment was for a limited duration only. There is no evidence that there were any other similarly situated permanent staff members who needed to be

considered for the DM post. As a permanent staff member, the Applicant should not have been made to compete for positions against non-permanent staff members, and particularly external candidates. All that was required was a determination whether the Applicant was “suitable” for the DM post.

29. The key question, therefore, is whether the Applicant was actually suitable for this position. The Respondent submits that he was not, as such was the determination reached by the interview panel. However, the Applicant points out that, had he been afforded due consideration as a permanent staff member, no interview would have been required. This argument is persuasive for the following reasons. Firstly, when the DM post was made available in 2014 as part of the structural change exercise, the candidates were considered through a desk review exercise, with no interviews. Secondly, a proper matching exercise under staff rule 13.1(d) is distinct from a full-scale competitive selection process open to external candidates. What staff rule 13.1(d) envisages is a matching exercise that would take into account various relevant factors (contract status, suitability, length of service, etc.), regardless of the name given to it (*El-Kholy* UNDT/2016/102 (under appeal); *Hassanin* UNDT/2016/181). This is not the same process as a competency-based interview.

30. However, the Tribunal is also not persuaded by the Applicant’s view that, since he was short-listed for the interview, he would have been found suitable based on a staff rule 13.1(d) matching exercise. The two processes—short-listing for a competency-based interview and a matching exercise under staff rule 13.1(d)—are not identical. There is not enough evidence before the Tribunal to draw the conclusion that the short-listing of the Applicant for an interview as part of the standard recruitment process would necessarily mean that he would have been found suitable as part of a matching exercise under staff rule 13.1(d). It is not for Tribunal to decide whether the Applicant would

have been found suitable when the DM post became available in 2015 had he been considered under the framework of staff rule 13.1(d) as a permanent staff member, without having to engage in a full competitive process with non-permanent candidates. However, and of utmost importance, is the reality that the Applicant lost a fair chance to be selected based on such a desk review.

31. The Respondent referred to various UNDP internal policies and guidelines, including its “Recruitment & Selection Procedures—Remaining Vacancies from Structural Job Fairs” policy, which provides at paras. 1 and 2 that “[h]iring units may advertise approved positions internally/externally” and that “[f]or all positions at the P-5 level and above, hiring units may choose to conduct Competency-Based Interviews to assess candidates.” However, these procedures are not aligned with—and are, in part, contrary to—staff rule 9.6(e) and 13.1(d). This becomes apparent when one refers to para. 4 of the same document, which states that “[s]hould a Desk Review panel determine that an external applicant is the top-rated candidate for a position, the hiring unit must conduct a Competency-Based Interview.” Staff rules 9.6(e) and 13.1(d) do not envisage a situation whereby permanent, continuing, or fixed-term staff members on abolished posts would be forced to compete with an external candidate for an available post. If a permanent staff member whose post has been abolished is suitable for an available post, she or he “shall be retained,” always bearing in mind that the order of retention gives permanent staff members priority over other categories of staff.

32. The purpose of a structural change exercise is to find alternative employment for staff affected by abolition of posts. This goal is consistent with the requirements of staff rule 13.1(d). However, if a permanent staff member remains without a post after the completion of a structural change exercise, UNDP still maintains its obligation under the Staff Rules to make good faith efforts to retain this staff member. UNDP was fully aware that the Applicant

was a permanent staff member in need of a post and that there was an available post. Therefore, UNDP should have considered his suitability without opening the process to external candidates and conducting a full-scale selection exercise.

33. The Tribunal, therefore, finds that the Applicant was not afforded proper priority consideration for the DM post under the framework established by staff rule 13.1(d). He, therefore, lost a fair chance of being selected for the DM post.

Alleged bias

34. The Applicant submits that the selection process was tainted by bias against him, which manifested itself in the re-opening of the vacancy; in the admission of an external candidate after the deadline for applications; in the panel's failure to take into account his significant field experience; and in the mischaracterization of his answers as "rehearsed." The Applicant submits that this bias stemmed from a complaint he made in 2014, alleging abuse of authority and harassment by the former Director of OHR, and his cooperation with an investigation relating to these allegations. He also refers to comments he had made on 28 August 2015, in his capacity as a member of the Compliance Review Board, noting irregularities in procedures followed by an interview panel during a recruitment process.

35. The Respondent submits that the Applicant reported his allegations to the Ethics Office of UNDP, which found that there was no *prima facie* evidence of retaliation. The Applicant did not challenge that finding. The Respondent further submits that, with respect to the first reason proposed by the Applicant for the alleged bias (the allegations of abuse and harassment made in 2014), the Applicant failed to demonstrate the link between his allegations regarding the former Director of OHR, who left UNDP in

November 2014, and the decision not to selection the Applicant for the DM post nine months later, in August 2015.

36. With respect to the second reason proposed by the Applicant for the alleged bias—as a reaction to his complaint as a member of the Compliance Review Board—the Respondent submits that the Applicant was interviewed on 27 August 2015, one day before he raised his objections in relation to a separate selection process as a Compliance Review Board member. Mr. Ruiz testified, and this evidence stands unrebutted, that the panel finalized its evaluation of the Applicant’s interview the same day he was interviewed. This undermines the Applicant’s claim of retaliation, since his complete interview evaluation, indeed, pre-dated his comments as a Compliance Review Board member, made on 28 August 2015.

37. At the hearing, both Mr. Martinez-Soliman, the hiring manager for the DM post, and Mr. Ruiz, one of the members of the interview panel, denied any improper influence or bias in the selection process. Mr. Martinez-Soliman testified that he considered the Applicant to be a strong candidate and was pleased that he had applied. Mr. Martinez-Soliman’s evidence was that, had the interview panel found the Applicant suitable and recommended him, he would have had no concerns as he considered him a good and reliable colleague and a strong contender for the DM post. Mr. Martinez-Soliman testified that he had asked to add additional candidates not because he considered them suitable or preferred any of them, but only because he deemed them as “plausible candidates,” and because UNDP wanted to see a broad pool of candidates, with at least one female candidate, as per UNDP’s standard policies. Mr. Martinez-Soliman testified that he did not have any preferred candidate in mind. His only guidance to the interview panel was to ask probing questions at the interview and to get the best candidate for the job, whoever it may be.

38. The Tribunal finds that there is insufficient evidence in this case to establish that the selection process was tainted by bias against the Applicant.

Relief

39. The Applicant seeks rescission of the contested decision with retroactive payment of salary or, alternatively, compensation in the amount of two years' net base salary plus all entitlements, as well as compensation for moral injury in the amount of three months' net base salary. The Applicant also requested post-judgment interest and pre-judgment interest, with interest accruing from the date each salary payment would have been made, compounded semi-annually.

General principles

40. By resolution 69/203, adopted on 18 December 2014 and published on 21 January 2015, the General Assembly amended art. 10.5 of the Tribunal's Statute to read as follows: "As part of its judgement, the Dispute Tribunal may *only* order one or both of the following ... (a) [r]escission ... [or] (b) [c]ompensation for harm, *supported by evidence*" (emphasis added). (See also *Antaki* 2010-UNAT-095, stating that "compensation may only be awarded if it has been established that the staff member actually suffered damage.")

Pecuniary loss

41. As the Applicant specifically identified the contested decision as the non-selection for the DM post, any demonstrated loss in this case must stem directly from the decision not to select him for the DM post.

42. The Tribunal notes that the Applicant's appointment was terminated and, as a result, he was paid termination indemnity. Ordinarily, in cases of

appeals against termination of an appointment, if a finding of unlawfulness is made, the staff member's termination indemnity should be taken into account when assessing compensation (*Bowen* 2011-UNAT-183; *Cohen* 2011-UNAT-131). However, given that the Applicant did not dispute the abolition of his post and the resultant decision to terminate his appointment, the Tribunal will not take termination indemnity into account when determining compensation. As stated above, the scope of his application was limited to the decision not to select him for the DM post, of which he was notified on 24 September 2015. The subsequent termination of his appointment on 31 July 2016, approximately ten months after the conclusion of the contested selection process, is a stand-alone matter that the Applicant did not challenge before the Tribunal. Accordingly, the termination indemnity paid to the Applicant after 31 July 2016 should not be an element in determining appropriate relief.

43. As explained above, it is not the Tribunal's role to decide whether or not the Applicant should have been found suitable for the DM post. However, given all the circumstances, the Tribunal finds that, had the Applicant been afforded proper consideration for the DM post as a permanent staff member under the framework envisaged by staff rule 13.1(d), he would have had a fair chance of being found suitable. Although he was rejected for the same post a year earlier, he did acquire useful experience in 2014 and 2015, which likely would have made him a stronger candidate. The Tribunal assesses that his chance of success, had he been properly considered under the framework of staff rule 13.1(d), stood at fifty per cent.

44. There is no clarity as to the duration of the contract which the Applicant would have been placed on. Neither the vacancy published on 1 April 2015 nor the vacancy re-published in June 2015 stated the duration of the appointment. No oral evidence or records have been provided to the Tribunal indicating the expected duration of the contract. However, given

that the post continues to be in existence since July 2014, it follows that there is funding for it. As the Tribunal stated in *Fayek* UNDT/2010/113, in assessing compensation, certain assumptions can be made, but they must be reasonable. Normal contingencies and uncertainties that may intervene in the average working life include early retirement, career change, disability, and lawful termination. Each case must be seen on the basis of its own facts and surrounding circumstances and the mitigating and aggravating circumstances. The Tribunal finds it reasonable to conclude, taking into account the Applicant's excellent performance record, that it is likely that, if selected, the Applicant would have occupied the DM post for up to two years. Any findings regarding his continued employment beyond that period would be too speculative as they would not take into account the various contingencies of life.

45. Both the Dispute Tribunal and the Appeals Tribunal have said that there is a duty to mitigate losses and the Tribunal should take into account the staff member's earnings, if any, during the relevant period of time for the purpose of calculating compensation (see, e.g., *Tolstopiatov* UNDT/2011/012; *Mmata* 2010-UNAT-092). Indeed, the Applicant continued to be gainfully employed by UNDP at the D-1 level until 31 July 2016. No evidence has been put forward as to the date when the selected candidate commenced her functions, however, given that the selection process was finalized in September 2015, it is likely that the Applicant, had he been selected for the DM post, would have commenced his functions sometime in or around November 2015. Since he was employed by UNDP (through various extensions) at the D-1 level until 31 July 2016, it follows that for nine months, from November 2015 and until August 2016, he suffered no actual economic loss.

46. The Applicant's also gave evidence that, although he has taken steps to find a new job in order to mitigate his financial loss, he has been unsuccessful in finding a new job after 31 July 2016. However, given the Applicant's experience, skills, excellent performance record, relatively young age and his continued efforts to find alternative employment, it can be expected that he will be gainfully employed at some point in the foreseeable future.

47. Thus, in determining the amount of compensation for pecuniary loss, the Tribunal has considered the following relevant factors:

a. If selected, it would be reasonable to expect the Applicant to occupy the DM post for two years after November 2015, or until November 2017;

b. Of this two-year period (November 2015 to November 2017), the Applicant suffered no pecuniary loss for nine months, between November 2015 and August 2016;

c. In relation to the remaining 15 months, the Applicant lost a fifty per cent chance of being paid earnings in that period as he had a fifty per cent chance of being selected for the DM post, had UNDP properly applied the framework envisaged by staff rule 13.1(d); and

d. The Applicant has a reasonable prospect of finding alternative employment in the foreseeable future.

48. In view of the above, the Tribunal assesses the Applicant's pecuniary loss at seven months' net base salary.

49. The Tribunal has considered the Applicant's request for pre-judgment interest on his pecuniary damages, with interest accruing from the date each salary payment would have been made, compounded semi-annually.

As explained above, given that the Applicant suffered no pecuniary loss until August 2016, his pecuniary loss pertains almost entirely to future earnings. Accordingly, the Tribunal will not award pre-judgment interest. However, the Tribunal shall order post-judgment rate as per *Warren* 2010-UNAT-059.

50. Accordingly, the Tribunal finds that the Applicant shall be paid seven months' net base salary as compensation for pecuniary loss.

Moral injury

51. In his application, the Applicant sought compensation for moral injury in the amount of three-month net base salary "for grave breaches of [his] staff rights and emotional distress." The Applicant referred the Tribunal to *Asariotis* 2013-UNAT-309. In *Asariotis*, the Appeals Tribunal outlined some principles of assessment of claims for moral damages, finding, however, in that particular case, that the Dispute Tribunal's award of damages in the amount of CHF15,000 was not warranted.

52. Having considered the evidence in this case and the jurisprudence of the Appeals Tribunal on issues of relief, the Tribunal does not find that the present case satisfies the requirements for an award for moral injury. The Appeals Tribunal has consistently held that, as a general principle of compensation, moral damages may not be awarded without specific evidence supporting the claim for such relief (*Kozlov and Romadanov* 2012-UNAT-228; *Hasan* 2015-UNAT-541). No evidence has been adduced at the hearing to substantiate the Applicant's claim for compensation for moral injury, nor does the Tribunal consider that the breach of his rights was of such a fundamental nature that it should give rise, in and of itself, to an award of compensation in addition to compensation for his pecuniary loss (see also art. 10.7 of the Tribunal's Statute, precluding awards of exemplary or punitive damages). Accordingly, the claim for an award for moral injury is dismissed.

Orders

53. The application succeeds.

54. The Respondent shall pay the Applicant seven months' net base salary at the rate in effect as of the date of his separation. This sum is to be paid within 60 days from the date the Judgment becomes executable, during which period interest at the US Prime Rate applicable as of that date shall apply. If this sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 11th day of October 2016

Entered in the Register on this 11th day of October 2016

(Signed)

Hafida Lahiouel, Registrar, New York