



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/007

Judgment No.: UNDT/2016/186

Date: 14 October 2016

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

LEMONNIER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Daniel Trup, OSLA

Counsel for Respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 22 February 2016, the Applicant, a former staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”), serving at the P-5 level on a continuing appointment, filed an application challenging the decision to terminate his employment. The Applicant was informed of the contested decision on 1 September 2015. The Applicant submits that the contested decision was unlawful because the Administration failed to take proper steps to find him an alternative post pursuant to staff rule 9.6(e). He also submits that he was improperly separated while being on paternity leave, which was due to end on 11 September 2015.

2. On 16 March 2016, the Respondent replied to the application, submitting that the decision to terminate the Applicant’s appointment was lawful.

Procedural history

3. By Order No. 175 (NY/2016) dated 20 July 2016, the Tribunal directed the parties to file a joint submission by 24 August 2016 addressing a number of issues in preparation for a hearing on the merits. The parties were also invited to consider informal resolution of the case.

4. On 12 August 2016, the parties filed a joint motion for suspension of proceedings for one month, stating that they are actively engaged in efforts to informally resolve the case and that their discussions were positive and ongoing.

5. By Order No. 197 (NY/2016) dated 12 August 2016, the Tribunal suspended the proceedings in Case No. UNDT/NY/2016/007 until 9 September 2016.

6. On 9 September 2016, the parties filed a joint submission stating that their efforts to informally resolve the case were unsuccessful.

7. On 16 September 2016, the parties filed their joint submission pursuant to Order No. 175 (NY/2016).

8. On 27 September 2016, the Tribunal held a case management discussion in the present case and Case No. UNDT/NY/2015/011/R1 (in which the Applicant contested his non-selection for the position of Chief, Integrated Support Services, MINUSTAH). Counsel for the Applicant stated that no hearing was needed in these cases. Counsel for the Respondent stated that the Respondent had only one witness in relation to the present case, Mr. Leonard Otti, Chief, Career Support Unit, Field Personnel Division, Department of Field Support. The parties agreed that they would provide a stipulation regarding Mr. Otti's statement of proposed evidence, following which the parties would be provided with the opportunity to file their closing submissions. The parties agreed that both cases would thereafter be decided on the papers.

9. By Order No. 224 (NY/2016) dated 27 September 2016, the parties were directed to file a joint submission by 30 September 2016, including: (i) Mr. Otti's statement, which shall contain his written declaration as to the veracity of the information included therein; (ii) a stipulation by the Applicant as to whether he accepts Mr. Otti's statement as part of the case record, without the need for cross-examination; (iii) the parties' views as to whether there was any practical benefit to consolidating these two cases through an order for a combined proceeding, given that the matter would be

decided on the papers. The parties were also directed to file their closing submissions by 4 October 2016.

10. On 7 October 2016, the parties filed a joint submission pursuant to Order no. 224 (NY/2016), attaching Mr. Otti's written statement and stating that the Applicant accepted Mr. Otti's statement as part of the record, without the need for cross-examination; that the parties consented to the Tribunal deciding this case on the papers; and that the parties saw no practical benefit to consolidating the two cases.

11. On 10 October 2016, the parties filed their closing submissions.

Facts

12. The Applicant joined the Organization in 2001 as a P-2 level staff member. By 2010, he was rostered for P-4 and P-5 level positions in the area of information and communication technology resources.

13. Effective 20 December 2010, the Applicant joined MINUSTAH as Chief Telecommunications and Information Technology Officer at the P-4 level on a fixed-term appointment. Effective 1 January 2011, he was promoted to the P-5 level.

14. On 1 July 2012, the post used to finance the Applicant's appointment was abolished. The Applicant is not disputing the decision to abolish his post in July 2012. The Applicant was thereafter moved to the post of Chief of Administrative Services, which was vacant.

15. Starting in 2012, the Applicant was placed on a list of staff affected by downsizing, maintained by the Career Support Unit ("CSU") of the Field Personnel Division, Department of Field Support. The CSU provides career support to staff in the field and manages the reassignment of staff affected by

downsizing, within the constraints of availability of vacant posts. The list of staff affected by downsizing is circulated to all Chiefs and Directors of Mission Support in all missions of the Department of Peacekeeping Operations and the Department of Political Affairs, who are requested to review the list against job openings and to give appropriate consideration to affected staff members, including those on continuing appointments. The Respondent submits that the Applicant was placed on this list on three separate occasions:

- a. In 2012, when the Applicant successfully applied to the United Nations Hybrid Operations in Darfur (UNAMID) and was thereafter removed from the list. The Applicant successfully applied for the position of Chief Information Technology Officer with UNAMID. However, due to difficulties regarding the Applicant's visa, he was unable to take up the position and so remained with MINUSTAH;
- b. In 2014, the Applicant was placed on the list but was subsequently removed when, prior to the granting of his continuing appointment, he was retained in MINUSTAH on fixed-term appointments ending 31 October 2014; and
- c. In 2015, the Applicant was again placed on the CSU list when it was confirmed that he was still affected by the abolition of the post used to finance his appointment.

16. On 1 July 2013, the General Assembly abolished the post of Chief, Administrative Services, following its approval of MINUSTAH's 2013–2014 budget.

17. From 1 July 2013, the Applicant was placed against the post of Chief Budget Officer, with the functional title of Umoja Site Coordinator. This post

was subsequently reclassified downwards to the P-4 level under MINUSTAH's 2015–2016 budget.

18. In January 2014, MINUSTAH announced a retrenchment exercise.

19. On 17 April 2014, MINUSTAH advertised a job opening for the position of Chief, Integrated Support Services. The Applicant was considered but was not selected. The Applicant appealed his non-selection as a separate case (Case No. UNDT/NY/2015/011/R1).

20. By letter dated 1 October 2014, the Applicant was notified that he had been granted a continuing appointment effective 30 September 2014.

21. In the first half of 2015, the Applicant applied to the following positions:

a. Job opening (“JO”) 40537, Chief Acquisition Planning Officer (Bangui), P-5 level, to which the Applicant applied on 24 March 2015. This was a roster-based recruitment exercise. The Respondent submits that the Hiring Manager recommended a candidate who was found more suitable for the position.

b. JO 41496, Chief of Communications and Information Technology Section (Abidjan), P-4 level, to which the Applicant applied on 4 May 2015. No selection has been made yet for this position.

c. JO 42824, Chief Communications and Information Technology Section (Amret Al Faouar), P-5 level, applied on 4 May 2015. The Applicant was considered but, according to the Respondent, “a more suitable candidate was recommended for selection.”

- d. JO 42610, Chief Communications and Information Technology Section (Mogadishu), P-5 level, to which the Applicant applied on 12 May 2015. The Applicant was considered but, according to the Respondent, “a more suitable candidate was recommended for selection.”
 - e. JO 43401, Chief Communications and Information Technology Section (Baghdad), P-4 level, to which the Applicant applied on 9 June 2015. The Applicant was considered but, according to the Respondent, “a more suitable candidate was recommended for selection.”
 - f. JO 44451, Deputy Chief Mission Support (Erbil), P-5 level, to which the Applicant applied on 6 July 2015. The Applicant was considered but, according to the Respondent, “a more suitable candidate was recommended for selection.”
 - g. JO 46145, Chief Communications and Information Technology Section (Kabul), P-4 level, to which the Applicant applied on 20 August 2015. The Applicant was considered but, according to the Respondent, “a more suitable candidate was recommended for selection.” The Applicant was recommended as the second choice candidate.
 - h. JO 46493, Chief Service Delivery Officer (Baghdad), P-5 level, to which the Applicant applied on 7 September 2015. The Applicant did not meet the requirements for the position.
22. On 3 August 2015, the Applicant went on approved paternity leave until 11 September 2015.

23. On 31 August 2015, the Under-Secretary-General for Management approved the termination of the Applicant's appointment effective 31 August 2015.

24. On 1 September 2015, the Applicant was notified of the decision to terminate his continuing appointment, effective 31 August 2015.

25. On 15 February 2016, following the Applicant's request for management evaluation, the Secretary-General upheld the decision to terminate the Applicant's appointment, but modified the effective date of the termination to 1 September 2015.

Consideration

Applicable law

26. Staff regulation 1.2(c) provides:

General rights and obligations

(c) Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

27. 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.

28. Section 11 of ST/AI/2010/3 (Staff selection system) states:

Section 11

Placement authority outside the normal process

11.1 The Assistant Secretary-General for Human Resources Management shall have the authority to place in a suitable position the following staff members when in need of placement outside the normal process:

...

(b) Staff, other than staff members holding a temporary appointment, affected by abolition of posts or funding cutbacks, in accordance with Staff Rule 9.6(c)(i);

...

11.2 The Under-Secretary-General for Field Support, after consultations with the heads of the Departments of Peacekeeping Operations and Political Affairs, the head(s) of the missions involved and the staff members(s) concerned, shall have the authority to transfer staff members whose appointment is not limited to a specific mission or department, outside the normal process, between activities away from Headquarters that are administered by the Department of Field Support as well as between those activities and the Departments of Peacekeeping Operations, Political Affairs and Field Support, to

suitable job openings at the same level without advertisement of the job opening or further review by a central review body.

Application of staff rule 9.6(e)

29. The parties disagree as to whether the Administration complied with the provisions of staff rule 9.6(e) with regard to the Applicant as a staff member on a continuing appointment who was affected by the abolition of his post.

30. The Applicant submits that staff rule 9.6(e) does not require that the affected staff member be deemed to be the best candidates following a competitive recruitment exercise. It only requires that the post be available and suitable. At the same time, there is no indication in the wording of the above rule suggesting that such assignments are limited to a particular duty station or department (*Ademagic et al.* 2016-UNAT-684). The Applicant submits that in addition to giving him priority consideration to the positions he had applied to, the Administration was obligated to identify and assign him to suitable available posts in other Offices and Missions. The Applicant submits that he holds four roster memberships (Chief CITS (P-5 level); Chief ISS (P-5 level); Chief CITS (P-4 level); Chief IT (P-4 level)) and it is inconceivable that the Organization would be unable to find an alternative position for him.

31. The Respondent submits that, following the abolition of the post used to finance the Applicant's appointment on 1 July 2012, the Organization made good faith efforts to retain the Applicant's services for as long as possible, and to assist him in finding alternative employment. This Respondent offered Mr. Otti's written statement in support of the efforts made by the Organization in this regard. The Respondent submits that the Applicant was placed on a number of temporary assignments since July 2012 and that up until the termination of his appointment, the Department of Field Support continued

its efforts to assist the Applicant. However, as of 1 July 2015, there were no longer any suitable vacant posts.

32. Article 101.3 of the Charter of the United Nations provides that “[t]he paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity.” In its resolution 51/226 (para. 5), the General Assembly requested the Secretary-General “to announce all vacancies so as to give equal opportunity to all qualified staff and to encourage mobility.” However, there are particular rules that apply to certain categories of staff—including staff on continuing appointments—who are affected by abolition of posts. As *lex specialis*, such rules apply to and govern the applicable situations. In particular, staff rule 9.6(e) requires that the staff on continuing posts affected by abolition of posts be retained on a priority basis as compared to fixed-term staff (although, pursuant to staff rule 13.1, staff holding permanent appointments are retained in preference to staff on continuing appointments). Staff regulation 1.2(c) and secs. 11.1(b) and 11.2 of ST/AI/2010/3 allow the Organization to transfer and assign staff members affected by the abolition of posts to suitable positions outside the normal selection process.

33. In his closing submission, the Respondent submitted that “[t]he Applicant had been considered for a number of other vacant positions, but he was not deemed *the most suitable* candidate for any of them” (emphasis added). Indeed, in the months preceding the termination of his appointment, the Applicant applied and was considered for eight posts. However, although he was found suitable for at least some of them, he was not selected as, according to the Respondent, “a more suitable candidate was recommended for selection”. This was in breach of staff rule 9.6(e), which requires that, as a staff

member on a continuing appointment and in need of placement, the Applicant should have received priority consideration for suitable posts.

34. For instance, with respect to one of the posts—Chief of Communications and Information Technology Section (Abidjan)—which the Applicant had applied to in May 2015, no selection has apparently taken place. The Applicant is, in fact, on a pre-approved roster for this post, yet there was apparently no effort to place him against this post as envisaged by staff rule 9.6(e).

35. Further, with regard to the post of Chief Communications and Information Technology Section (Kabul), the Respondent has submitted that the Applicant “was recommended as the second choice candidate.” Thus, the Applicant was found suitable, but not retained on a no priority basis under staff rule 9.6(e). There is no indication that the selected candidate was a staff member on a permanent or continuing appointment in need of placement due to an abolition of her or his post.

36. As a staff member on a continuing appointment at the relevant times and in need of placement, the Applicant should not have been made to compete for positions against other staff members on fixed-term or temporary appointments or against external candidates (*El-Kholy* UNDT/2016/102 (under appeal); *Hassanin* UNDT/2016/181; *Tiefenbacher* UNDT/2016/183). Although he did not have a continuing appointment at the time his post was abolished, at the time of the termination of his continuing appointment he was on a continuing appointment and in need of placement due to the earlier abolition of his post, and thus enjoyed the protections afforded by staff rule 9.6(e). What was required was a determination as to whether the Applicant was “suitable” for an available post. During this exercise under staff rule 9.6(e), it would be a material irregularity to place the Applicant as a staff member on

a continuing appointment in the same pool as fixed-term or temporary staff members or external candidates.

37. The Tribunal therefore finds that the Organization breached its obligations under staff rule 9.6(e) by failing to afford the Applicant proper priority consideration for suitable available posts as a staff member on a continuing appointment affected by the abolition of his post.

Termination while on paternity leave

38. The Applicant submits that the decision to terminate his appointment while he was on paternity leave was unlawful. He states that sec. 11.3 of ST/AI/2005/2 (Family leave, maternity leave and paternity leave) should be read to include termination and should not be interpreted simply to include instances where a staff member's fixed-term appointment expires. The Respondent submits that, under ST/AI/2005/2, there is no prohibition on a staff member's appointment being terminated due to post abolition while he is on paternity leave. The Respondent submits that to interpret sec. 11.3 of ST/AI/2005/2 in the manner suggested by the Applicant would be to impose an obligation on the Organization to refrain from terminating a staff member in circumstances not provided for in the Staff Rules.

39. Administrative instruction ST/AI/2005/2 contains the following provisions regarding maternity and paternity leave:

Section 8

Relationship of maternity leave to other entitlements

...

Extension of fixed-term appointments for utilization of maternity leave entitlement

8.2 Pregnant staff members on fixed-term appointments shall be considered for extension or conversion of their appointment

under the same criteria as other staff. The fact that a staff member is or will be on maternity leave shall not be a factor in that consideration.

8.3 If, however, on the basis of considerations unrelated to the staff member's pregnancy, a decision is made not to offer a new fixed-term appointment and the current appointment is due to expire during the period of maternity leave, the appointment will be extended to cover the full duration of the leave. ...

Section 11

Relationship of paternity leave to other entitlements

...

Extension of fixed-term appointments for utilization of paternity leave entitlement

11.2 The fact that a staff member is or will be on paternity leave shall not be a factor in considering extension or conversion of appointment.

11.3 If, however, on the basis of considerations unrelated to the staff member's decision to take paternity leave, a decision is made not to offer a new fixed-term appointment and the current appointment is due to expire during the period of paternity leave, the appointment will be extended to cover the full duration of the leave.

40. Sections 8.3 (on extensions of appointments expiring while on maternity leave) and 11.3 (on extensions of appointments expiring while on paternity leave) contain similar language. These sections afford similar protections to staff on paternity leave and to staff on maternity leave. Notably, although secs. 8.3 and 11.3 discuss *extensions* of fixed-term appointments to cover full duration of maternity or paternity leave, they do not explicitly address cases of *termination* of appointments (continuing, fixed-term, or any other type) of staff on maternity or paternity leave.

41. However, the Tribunal finds that there is a general requirement that the Organization act in good faith with regard to its staff members (see, e.g., *James* UNDT/2009/025 (affirmed in *James* 2010-UNAT-009 on liability, but

setting aside the compensation award); *Shashaa* UNDT/2009/034; *D'Hooge* UNDT/2010/044; *Obdeijn* UNDT/2011/032 (affirmed in *Obdeijn* 2010-UNAT-201, with variation of compensation award)). As the Tribunal stated in *Gaskins* UNDT/2010/119 (not appealed), each employment contract has an implied term of mutual trust and confidence between employer and employee, which means that both parties must act responsibly and in good faith (see also *Goddard* UNDT/2010/196).

42. The Tribunal considers that the termination of the Applicant's continuing appointment while he was on paternity leave was a flagrant breach of the requirement of good faith and fair dealing. Notably, his termination was also backdated since he was notified of it on 1 September 2015 although it went into effect on 31 August 2015.

43. How an employer deals with staff on maternity and paternity leave speaks volumes about the working conditions and the working environment. Maternity and paternity leave signifies a particularly vulnerable time in an employee's life. When staff members use their entitlement to a maternity or paternity leave, they place a lot of reliance on predictability of income and access to health insurance. It is also difficult for staff members in such situations to present their position or mount an urgent legal challenge to such terminations. This explains why particular care should be taken with regard to staff members who exercise their rights to maternity and paternity leave. In this regard, in the Tribunal's view, administrative instruction ST/AI/2005/2 requires further revisions to address more fully the various types of issues that may arise.

44. The Administration should also be mindful that terminations during maternity or paternity leave immediately raise concerns as to whether they were a result of improper discrimination or retaliation for staff taking time off

to care for their newborn children. Such things have been known to happen in the history of employer-employee relations, and they shall not be tolerated in a working environment such as the United Nations. There is no evidence in this case that the Applicant was discriminated against nor that the contested decision was influenced by his paternity leave status. However, needless to say, any discrimination of this sort would be unacceptable.

45. In this case in particular, the Applicant's continuing appointment was being terminated through no fault of his own. He did not engage in any type of misconduct. He was a good employee with a good performance record and had a continuing appointment. The Administration did not give due weight to these factors and took no cognizance of his particular situation, separating him while he was taking care of his newborn child. This was a flagrant breach of the requirement of good faith and fair dealing.

46. The Tribunal finds that the Organization breached the Applicant's rights by terminating his appointment while he was on paternity leave.

Alleged bias

47. The Applicant alleged that there was bias against him on the part of the Deputy Special Representative of the Secretary-General ("DSRSG"), MINUSTAH. The Applicant referred the Tribunal to emails exchanges from July 2012 and September 2014, which, according to him, demonstrate that the DSRSG was prejudiced against him. However, there is nothing before the Tribunal to suggest that the DSRSG improperly influenced any of the selection exercises. In fact, the Applicant was found suitable for many of them, although he was not selected because the Administration did not properly follow the procedures envisaged by staff rule 9.6(e) and sec. 11 of ST/AI/2010/3. In the absence of conclusive evidence showing that

the contested decision was in fact influenced by improper factors, the Tribunal will not make such a finding.

48. The Tribunal finds that there is insufficient evidence in this case to establish that the contested decision in this case was motivated by bias against the Applicant.

Relief

49. The Applicant seeks rescission of the decision to separate him from service or, alternatively, compensation for unlawful termination.

General principles

50. 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.")

51. Pursuant to art. 10.5(a) of the Tribunal's Statute, when ordering rescission in cases of termination, "the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision."

Pecuniary loss

52. As the Tribunal stated in *Fayek* UNDT/2010/113, in assessing compensation, certain assumptions can be made, but they must be reasonable. Each case must be seen on the basis of its own facts and surrounding

circumstances. Normal contingencies and uncertainties that may intervene in the average working life include early retirement, career change, disability, and lawful termination (see also *Tiefenbacher* UNDT/2016/183). The Tribunal finds it reasonable to conclude, taking into account the Applicant's good performance record, that, had the Organization complied fully with staff rule 9.6(e), it can be reasonably expected that the Applicant's employment would have continued for two years after 1 September 2015. 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. The Tribunal also notes, in this regard, that art. 10.5(b) of its Statute provides that compensation for harm, supported by evidence, "shall normally not exceed the equivalent of two years' net base salary."

53. Upon his separation from service, the Applicant received fourteen-and-a-half months' salary, which consisted of (i) eleven-and-a-half months' salary as termination indemnity and (ii) three months' salary in lieu of notice. As the Appeals Tribunal stated in *Bowen* 2011-UNAT-183, the Applicant's termination indemnity should be taken into account when awarding compensation. This is consistent with the Appeals Tribunal's pronouncement in *Warren* 2010-UNAT-059 that "the very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations". Therefore, as both the termination indemnity and the payment in lieu of notice stemmed from the improper termination of the Applicant's appointment, these sums shall be deducted from the final amount of compensation to be paid as alternative to rescission (see also *Koh* UNDT/2010/040; *Tolstopiatov* UNDT/2011/012; *Cohen* 2011-UNAT-131).

54. 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). The Applicant has submitted that, since separating from the United Nations, he remains unemployed as he has been unable to secure alternative employment. However, the Tribunal finds that, 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.

55. In view of the above, the Tribunal assesses the Applicant's pecuniary loss at two years' net base salary minus the payments already paid to him as a result of his termination. Taking into account the Applicant's prospects of re-employment in the foreseeable future and thus mitigating his losses, the Tribunal assesses his financial loss stemming from the breach of contract at eight months' net base salary.

Moral injury in connection with termination while on paternity leave

56. The Tribunal finds that the termination of the Applicant's continuing appointment while he was on paternity leave was in flagrant breach of the requirement of good faith and fair dealing. There is no doubt that any reasonable person in the Applicant's situation would have been deeply disturbed emotionally by the sudden and retroactive termination of his employment while being on maternity or paternity leave. The Tribunal awards the Applicant USD5,000 under this heading of damages.

Orders

57. The application succeeds.

58. The Respondent shall pay the Applicant eight months' net base salary at the salary scale in effect as of the date of his separation.

59. The Applicant is awarded the sum of USD5,000 as compensation for the moral injury in connection with the termination of his continuing appointment while he was on paternity leave.

60. The sums above shall bear interest at the U.S. Prime Rate with effect from the date this Judgment becomes executable until payment of said award. An additional five per cent shall be applied to the U.S. Prime Rate 60 days from the date this Judgment becomes executable.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 14th day of October 2016

Entered in the Register on this 14th day of October 2016

(Signed)

Hafida Lahiouel, Registrar, New York