UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/061
Judgment No.: UNDT/2016/216
Date: 8 December 2016
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

MUWAMBI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Mariam Munang, OSLA

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. On 6 November 2015, the Applicant, a former P-3 level staff member with the United Nations Stabilization Mission in Haiti ("MINUSTAH"), filed an application contesting the decision not to renew his fixed-term contract beyond 30 June 2015. The Applicant was a staff member of the United Nations Mission in the Central African Republic and Chad ("MINURCAT") until April 2011, when, due to the closure of that Mission, he was reassigned to MINUSTAH. He remained with MINUSTAH until 30 June 2015. He was separated because of a policy announced by the Field Personnel Division ("FPD") of the Department of Field Services ("DFS") in June 2014 that staff members on "provisional reassignments" were required to obtain Field Central Review Board ("FCRB") clearance in order to remain in service.

2. The Applicant submits that his non-renewal was not in line with the applicable retrenchment guidelines and was improperly motivated. The Applicant principally submits that the reason given to him—namely, that as a staff member on provisional reassignment and without FCRB clearance, his contract could not be extended beyond 30 June 2015—was erroneous, because he ceased to have such status in or around 2013. He further submits that the arguments that his non-renewal arose from his lack of delegation of authority and insufficient qualifications or due to budgetary constraints are also unfounded. The Applicant seeks, *inter alia*, rescission of the contested decision with retroactive payment of salary, alternatively, compensation of 24 month's net base salary, as well as six months compensation for moral injury ("grave breaches of staff rights and emotional distress"), together with pre-and post-judgment interest.

3. The Respondent filed a reply on 10 December 2015 arguing that the Applicant benefited from the reassignment policy, which allowed for

the temporary placement of staff impacted by downsizing while they sought longer term positions through the regular selection process. The operation of this policy was extended, ultimately, until 30 June 2015, which allowed the Applicant to remain with MINUSTAH. However, when the policy expired on 30 June 2015, the Applicant could no longer remain with MINUSTAH as he continued to be a staff member on a provisional reassignment without FCRB clearance. The Respondent submits that, in essence, the Applicant seeks an exception to the regular selection process requiring FCRB clearance and that there is no justification for this request. Between April 2011 and June 2015, the Applicant had a fair opportunity to obtain FCRB clearance. The Respondent submits that there is no merit to the Applicant's claim that he was targeted by the Administration or otherwise treated unfairly. He was treated equally with all other staff members under the rules, policies and procedures applicable to MINUSTAH. Together with two other staff members on provisional reassignment who did not obtain FCRB clearance, his appointment was not renewed beyond 30 June 2015.

Procedural history

4. This case was assigned to the undersigned Judge on 9 May 2016.

5. By Order No. 170 (NY/2016) dated 14 July 2016, the Tribunal ordered the parties to confer with a view to resolving this matter informally. In the event that no informal resolution was possible, the parties were ordered to file a jointly-signed submission setting out agreed facts and legal issues, proposed dates of hearing, a list of witnesses with brief statements of their evidence, an agreed bundle of documents, and further information with a view to effective case management and preparation for hearing of the matter.

6. On 26 July 2016, the parties filed a jointly-signed submission informing the Tribunal that informal resolution was not possible.

7. On 23 August 2016, the parties filed a jointly-signed submission setting out agreed facts and the pertinent agreed legal issue, namely "[w]hether the non-renewal of the Applicant's appointment on the basis that he had not received [FCRB] clearance was lawful". The submission further stated: "The parties are of the view that as there are no disputes regarding the material facts of the case, an oral hearing is not necessary and that this matter may be decided by the Tribunal on the papers before it".

8. By Order No. 264 (NY/2016), dated 21 November 2016, the Tribunal directed the parties to file a joint submission providing copies of relevant letters of appointment and to clarify the Applicant's employment status after 30 June 2015.

9. On 28 November 2016, the parties duly filed their joint submission in compliance with Order No. 264 (NY/2016).

Factual background

10. In a joint submission dated 23 August 2016, the parties provided a list of agreed facts, which form the basis of the factual background set out below, supplemented, where necessary and relevant, by further factual findings of the Tribunal.

11. Between June 2009 and April 2011, the Applicant served as a Contracts Management Officer at the P-3 level with MINURCAT.

12. Upon the closure of MINURCAT in April 2011, the Applicant was reassigned to MINUSTAH as a P-3 level Contracts Management Officer for an initial period of three months. The Applicant's offer of appointment, which he

accepted on 4 April 2011, stated that he was "provisionally reassigned" to MINUSTAH "as Contracts Management Officer" for an initial period of three months and that his reassignment was "subject to a competitive selection process". It further stated that "[a]ny subsequent extension [of his appointment]" was "subject to competitive selection endorsed by the relevant central review body". The full text of the offer and acceptance, dated 4 April 2011, is reproduced below:

> Dear [Applicant],
>
> I refer to your current letter of appointment [i.e., letter of appointment as a P-3 level Contracts Management Officer with MINURCAT].
>
> I wish to inform you that you are being provisionally reassigned to United Nations Stabilization Mission to Haiti (MINUSTAH) as Contracts Management Officer, subject to a competitive selection process. Your fixed-term appointment will be at your current level and step for an initial period of 3 months. Any subsequent extension is subject to competitive selection endorsed by the relevant central review body. This offer is limited strictly to service with MINUSTAH and is subject to medical clearance.
>
> …
>
> The other items in your current offer of appointment remain unchanged.
>
> Your Sincerely,
>
> [Signed]
>
> Chief of Mission Support
>
> MINUSTAH
>
> ACCEPTANCE
>
> Dear Mr. Secretary-General,
>
> I accept the terms of this offer of appointment on a provisional assignment to the United Nations Stabilization Mission in Haiti (MINUSTAH) as Contracts Management Officer at my current level and step and the conditions as specified herein, subject to any modifications to the Staff Regulations and Rules. I understand that

> this offer is subject to my medical clearance. I also understand that the offer lapses if I do not, in the opinion of the United Nations Medical Service, meet its medical standards. Should my medical clearance and all other aspects of my reassignment be in order, I will be available to report for duty on or about [blank]
>
> [Signed]
>
> [Applicant]
>
> Date: 4 April 2011 [handwritten]

13. On 4 July 2011, the Applicant received a letter of appointment for the position of Contracts Management Officer with MINUSTAH, effective 1 July 2011. The letter of appointment stated that the appointment was for three months and 28 days, until 28 October 2011. The letter of appointment, however, did not contain any references to a provisional reassignment, participation in a competitive selection process, or endorsement by a central review board.

14. The Applicant's appointment was subsequently extended until 30 June 2012, on the same terms as the 1 July 2011 appointment. The new letter of appointment did not contain any references to provisional reassignment or appointment being conditional upon the Applicant's participation in a competitive selection process or endorsement by a review body.

15. In 2012, MINUSTAH underwent a downsizing exercise. The post encumbered by the Applicant was abolished, following which he was informed as follows by interoffice memorandum, dated 18 June 2012 (emphasis added):

> [Y]our profile was considered against suitable vacant positions in the new mission's structure effective 1 July 2012 and you were *recommended to be reassigned* to the Procurement Section as Procurement Officer at your current level, *subject to designation as required.*
>
> …
>
> Your fixed-term appointment in MINUSTAH is therefore expected to be extended through 30 June 2013 subject to mandate and availability of post.

16. On 4 July 2012, the Applicant received another letter of appointment for the position of Contracts Management Officer with MINUSTAH. The letter of appointment stated that the appointment was for one year, from 1 July 2012 to 30 June 2013. This letter of appointment also did not contain any references to provisional reassignments, participation in a competitive selection process, or endorsement by a central review board.

17. By interoffice memorandum, dated 1 August 2012, the Applicant was informed by the Director of Mission Support, MINUSTAH, that he was being re-deployed from Santo Domingo to Port-au-Prince.

18. On 15 April 2013, the Administration acknowledged that designation was not required for the Applicant to assume the full responsibilities of a P-3 Procurement Officer and that it was taking steps to formalize his role in carrying out these responsibilities.

19. On 3 June 2013, FPD informed the Director of Mission Support of MINUSTAH that they supported the decision not to renew the Applicant's contract because he did not have the necessary qualifications for the post, nor had been fulfilling the full functions of a P-3 level Procurement Officer. In addition, it was asserted that he was not approved by the FCRB for the post.

20. On 12 June 2013, the Applicant was informed by interoffice memorandum from the Director of Mission Support of MINUSTAH that his appointment would not be extended beyond 30 June 2013. The memorandum recalled that he had been placed against a vacant P-3 post in the Procurement Section "despite not having FCRB clearance to perform as a procurement officer at the P-3 level". The memorandum further stated "[y]our transfer was made possible under the Head of Mission's delegation of authority to laterally transfer staff members within the Mission". The reason provided for the non-renewal of the Applicant's

appointment was that he did not have the necessary qualifications for the post, he was not FCRB approved, and he lacked delegated procurement authority.

21. On 13 June 2013, the Applicant filed a request for management evaluation and an application for a suspension of action, challenging the decision not to renew his appointment. The application for suspension of action was granted by Order No. 158 (NY/2013), dated 26 June 2013.

22. On 1 August 2013, the Applicant was informed that his contract would not be extended beyond 3 September 2013 as another staff member had been recruited for the position of Procurement Officer (P-3 level). On 27 August 2013, the Applicant filed another request for management evaluation challenging the decision not to renew his contract beyond 3 September 2013 and the recruitment to his post.

23. The Applicant's appointment was renewed on a monthly basis until October 2014, when it was extended through 30 June 2015.

24. From July 2011 to June 2015, the Administration and the Applicant signed a total of twelve letters of appointment covering the following periods:

a. 1 July 2011 to 28 October 2011:

b. 29 October 2011 to 30 June 2012;

c. 1 July 2012 to 30 June 2013;

d. 1 August 2013 to 3 September 2013;

e. 4 September 2013 to 12 October 2013;

f. 13 October to 12 November 2013;

g. 13 November 2013 to 12 December 2013;

h. 13 December 2013 to 12 January 2014;

i. 13 January 2014 to 11 February 2014;

j. 12 February 2014 to 11 March 2014;

k. 12 March 2014 to 11 April 2014; and

l. 12 April 2014 to 30 June 2014.

25. None of these letters of appointment contained references to the Applicant being on a provisional reassignment status or that his appointment was conditional upon his participation in a competitive selection process or endorsement by a review board.

26. On 20 December 2013, a facsimile was sent by the Acting Director, FPD, DFS, to all Chiefs and Directors of Mission Support to inform of the discontinuance of the policy of provisional reassignments. The facsimile further stated:

> … The purpose of this fax is to inform missions about the discontinuation of the practice of provisional lateral reassignments with immediate effect. Subsequent to contract reform and the promulgation of a unified Secretariat policy on staff selection it has become necessary to review the practice of 90-day provisional reassignment subject to competitive selection.
>
> … The practice of a 90-day provisional reassignment was utilised during situations of post abolishment or liquidation, as temporary measure, to facilitate the movement between missions of staff members with appointment limitations pending competitive selection. Over the years, some of these staff members have remained under provisional reassignment status for an extended period of time without the benefit of a competitive selection process. Such a situation is not in line with the recent human resources reform and the staff selection system which allows reassignment between missions for staff members without appointment limitations or selections under the established mechanism, including review and endorsement by the Field Central Review Body (FCRB).
>
> … For these reasons and after careful analysis and deliberation, the practice of provisionally reassigning staff

> members pending competitive selection is hereby immediately discontinued.
>
> … Henceforth, reassignment to a different mission will be possible only in instances where the staff member has no appointment limitations in accordance with section 11.2 of ST/AI/2010/3 or where the selection is based on a process in accordance with the provisions of ST/AI/2010/3, including review and endorsement by the FCRB. Posts established for one year or longer must be filled through the regular selection process. In order to facilitate implementation of the above and subject to continued need of the functions and satisfactory performance, the fixed-term appointments of staff members who were provisionally reassigned to another mission and who remain under such status may be renewed for a further period up to 30 June 2014. Renewal of fixed-term appointments beyond 30 June 2014 of staff members on provisional reassignment status shall only be made on the basis of selection through the regular process under the staff selection system.

27. On 4 June 2014, a facsimile was sent by the Director, FPD, DFS, to all Chiefs and Directors of Mission Support with a subject line reading: "Staff members on provisional reassignment status". The facsimile stated, *inter alia*:

> … Following careful analysis of the generic job opening schedules for 2014 and projected timeline for completion of the process, and in order to provide staff members with additional opportunities for regularisation, as an exceptional measure, the appointments of staff members currently on provisional reassignment status may be considered for renewal for any period up to 30 June 2015, subject to continued need of their services, satisfactory performance and provided the post currently encumbered continues to be vacant. Renewal of appointments beyond 30 June 2015 shall be made on the basis of selection through the regular selection process and this deadline is not subject to further extension.

28. On 13 November 2014, the Applicant received the delegation of procurement authority.

29. On 1 May 2015, the Applicant received a letter informing him that his fixed-term appointment would not be extended beyond 30 June 2015 as his post was being abolished pursuant to the downsizing of MINUSTAH.

30. On 8 May 2015, the Applicant received an email stating that because he had not been cleared by the FCRB, he would not be eligible to apply for Expressions of Interest, and therefore his appointment would not be renewed beyond 30 June 2015.

31. On 24 June 2015, the Applicant received another letter, which "supersedes the one … dated 1 May 2015." The Applicant was informed that "the non-extension of [his] contract is not subject to the MINUSTAH retrenchment exercise, however, it is related to the fact that [he is] currently on Provisional Lateral Reassignment from MINURCAT to MINUSTAH and the limitation of [his] reassignment has not been lifted".

32. By letter dated 22 June 2015, followed by communications on 23 and 24 June 2015, the Applicant filed a request for management evaluation of the decision not to extend his contract beyond 30 June 2015. By letter dated 11 August 2015, the Management Evaluation Unit upheld the decision not to renew his appointment.

33. The Applicant was separated effective 30 June 2015.

Agreed legal issue

34. In their joint submission, dated 23 August 2016, the parties set out the following agreed legal issue: "Whether the non-renewal of the Applicant's appointment on the basis that he had not received [FCRB] clearance was lawful". Since, according to the Administration, the FCRB clearance requirement applied only to staff on provisional reassignment, it follows that it is necessary to also

examine whether the Applicant was indeed a staff member on a provisional reassignment status.

Consideration

35. When considering the propriety of a contested administrative decision, the Tribunal will consider, *inter alia*, the lawfulness of any reasons given for the contested decision (*Abdalla* 2011-UNAT-138; *Ahmed* 2011-UNAT-153; *Obdeijn* 2012-UNAT-201). A staff member may challenge the non-renewal of his or her appointment on the grounds the decision was arbitrary, procedurally deficient, or the result of prejudice or some other improper motivation (*Badawi* 2012-UNAT-261; *Ahmed* 2011-UNAT-153, *Asaad* 2010-UNAT-021; *Morsy* 2013-UNAT-298).

36. Staff regulation 4.1 provides:

> **Article IV**
>
> **Appointment and promotion**
>
> **Regulation 4.1**
>
> As stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. Upon appointment, each staff member, including a staff member on secondment from government service, shall receive a letter of appointment in accordance with the provisions of annex II to the present Regulations and signed by the Secretary-General or by an official in the name of the Secretary-General.
>
> …
>
> **Chapter IV**
>
> **Appointment and promotion**
>
> **Rule 4.1**
>
> **Letter of appointment**
>
> The letter of appointment issued to every staff member contains expressly or by reference all the terms and conditions of employment. All contractual entitlements of staff members are

strictly limited to those contained expressly or by reference in their letters of appointment.

…

Annex II

Letters of appointment

(a) The letter of appointment shall state:

(i) That the appointment is subject to the provisions of the Staff Regulations and of the Staff Rules applicable to the category of appointment in question and to changes which may be duly made in such regulations and rules from time to time;

(ii) The nature of the appointment;

(iii) The date at which the staff member is required to enter upon his or her duties;

(iv) The period of appointment, the notice required to terminate it and the period of probation, if any;

(v) The category, level, commencing rate of salary, and, if increments are allowable, the scale of increments, and the maximum attainable;

(vi) Any special conditions which may be applicable;

(vii) That a temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment;

(viii) That a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service;

37. Thus, pursuant to staff rule 4.1, a letter of appointment contains, expressly or by reference, "all the terms and conditions of employment". Annex II to the Staff Regulations provides a list of terms that shall be included in a letter of appointment, including "[a]ny special conditions which may be applicable" (see Annex II to ST/SGB/2013/3). It follows that if a condition was not expressly stipulated or incorporated by reference it does not form part of the terms and conditions of employment of the staff member concerned.

38. The Applicant's initial offer of appointment for MINUSTAH, dated 4 April 2011, stated that he was "being provisionally reassigned", "subject to a competitive selection process", and that "[a]ny subsequent extension [of his appointment]" was "subject to competitive selection endorsed by the relevant central review body". However, these conditions were not included when the Applicant received a new letter of appointment in July 2011. The Tribunal has considered whether the conditions contained in the offer of appointment of 4 April 2011 remained valid on the signing of the new letter of appointment that went into effect on 1 July 2011. That letter of appointment contained no references to any of the special conditions mentioned in the earlier offer. If a certain material provision was not incorporated into the letter of appointment, expressly or by reference, it follows from staff rule 4.1 and Annex II to the Staff Regulations that it did not form part of the contract of employment between the Applicant and the Organization. The signing of the letter of appointment by both parties subsequently to the initial offer demonstrates, in and of itself, the parties' intent to supersede any prior agreed terms.

39. Once the parties in this case agreed on a new contract of employment, the terms stipulated in the new letter of appointment superseded any prior agreement between them (for more on contract formation see *Sprauten* 2011-UNAT-111 and *Badawi* 2012-UNAT-261). Therefore, there is no legal basis for the Organization to assert that the Applicant remained subject to the conditions and limitations of the April 2011 exchange, including the provisional status of his reassignment and the need for further review board clearance.

40. Notably, the conditions on which the Administration seeks to rely were not included in any letters of appointment subsequent to July 2011. It is one of the Applicant's principal submissions that, after he arrived at MINUSTAH, none of the subsequent communications or contractual documents indicated that he remained "provisionally reassigned" or that his appointment was contingent upon

further endorsement by a central review board. This contention has not been disputed by the Respondent and is substantiated by the twelve letters of appointment filed with the Tribunal for the period 2011 to 2015.

41. After the Applicant had been employed on twelve letters of appointment in the four years after April 2011 containing no special conditions or restrictions, the Administration's proposed imposition of such special conditions and restrictions amounts to a unilateral decision to vary the terms of the Applicant's contract of employment. It would be untenable to suggest that the Administration may unilaterally impose certain unstipulated contractual terms limiting the Applicant's rights and interests when such conditions were not included in any of the numerous letters of appointment signed over a four-year period. Nor can it be accepted that policy considerations override express contractual terms.

42. The Tribunal therefore finds that, at the time of the contested decision, and indeed for four years prior to that, the Applicant was not on a "provisional reassignment" with appointment limitations requiring review and endorsement by a review body. Therefore, the reason proffered by the Administration could not have formed a lawful basis for the non-renewal of his contract.

43. As this was the only agreed legal issue placed for determination before it, the Tribunal need not consider the arguments raised by either party regarding the other reasons for the non-renewal of the Applicant's contract. It stands to reason that the non-renewal of the Applicant's contract on the basis that he was only provisionally assigned and had not received FCRB clearance was unlawful.

Relief

44. The Applicant seeks, *inter alia*, rescission of the contested decision with retroactive payment of salary or, alternatively, compensation of 24 months' net

base salary, as well as six months' compensation for moral injury together with pre-and post-judgement interest.

General principles

45. 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).

46. The 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 (*Warren* 2010-UNAT-059; *Iannelli* 2010-UNAT-093). In *Antaki* 2010-UNAT-095, the Appeals Tribunal stated that "compensation may only be awarded if it has been established that the staff member actually suffered damage".

47. 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

48. 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 one year after 30 June 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.

49. 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., *Koh* UNDT/2009/078; *Tolstopiatov* UNDT/2011/012; *Garcia* UNDT/2011/068; *Mmata* 2010-UNAT-092). The Applicant submits and produced documentation to the effect that, following his separation, he has taken steps to secure employment, without success. He has also undertaken educational training in an attempt to improve his career chances. Yet he remains unemployed and is working in a pro bono capacity with various charity groups in Uganda.

50. The Tribunal finds that, given the Applicant's experience, skills, good performance record, relatively young age (48 years) 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. In view of the above, the Tribunal assesses the Applicant's pecuniary loss at one year's net base salary.

Moral injury

51. In his application, the Applicant sought compensation for moral injury in the amount of six months' 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). The Applicant did not seek to adduce any evidence to substantiate his 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 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.

Interest

53. 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. As the Applicant's salary would have been paid to him in monthly installments, the Tribunal finds it appropriate to order pre-judgment interest at the U.S. Prime Rate in effect at the time each salary payment would have been due. The interest shall be compounded on each monthly salary payment he would have received from the date each such salary payment would have been due.

54. The Tribunal will also award pre-judgment interest as requested, compounded monthly as salary would have been paid on a monthly basis.

The Tribunal will also order post-judgment interest as per *Warren* 2010-UNAT-059.

Orders

55. The application succeeds.

56. The Respondent shall pay the Applicant one year's net base salary at the salary scale in effect as of the date of his separation, together with pre-judgment interest at the U.S. Prime Rate in effect at the time each salary payment would have been due. The interest shall be compounded on each monthly salary payment he would have received from the date each such salary payment would have been due. If payment is not made within 60 calendar days of the date this Judgment becomes executable, an additional five per cent shall be applied to the U.S. Prime Rate until the date of payment.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 8th day of December 2016

Entered in the Register on this 8th day of December 2016

(*Signed*)

Hafida Lahiouel, Registrar, New York