Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

KATULU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. By application filed on 30 August 2016, the Applicant, a Legal Officer (P-3) working for the United Nations Department of Economic and Social Affairs ("DESA") at the United Nations Assistance for the Khmer Rouge Trials ("UNAKRT"), contests the decision taken by a Human Resources Officer, DESA, to reject her request for advance home leave.

Facts

2. The Applicant joined UNAKRT in Phnom Penh, Cambodia, on 18 May 2014 as a Legal Officer (P-3) in the Office of the Co-Investigating Judges ("OCIJ"), on a general temporary appointment ("GTA") for an initial period of six months.

3. Her appointment was renewed several times, respectively until 31 December 2014, 31 March 2015, and, finally until 31 December 2015.

4. On 1 September 2015, the Applicant was granted a one-year fixed-term appointment ("FTA"), still as a Legal Officer (P-3) in the OCIJ, as a result of a competitive selection process. The Applicant continued to perform the same functions, without any interruption. Her FTA was subsequently extended until 31 December 2016.

5. By memorandum of 11 March 2016, the Applicant requested advance use of home leave to travel to Switzerland from 8 to 23 April 2016.

6. By email of the same day, a Human Resources Officer, DESA, denied the Applicant's request on the ground that she had only accrued eight home leave points during her FTA, and that "service accrued under [her] temporary appointment [could] not be added to the service under a fixed term appointment to make a staff member eligible to home leave". Furthermore, in support of the assertion of non-accrual of home leave credits/home leave points, the Human Resources Officer, DESA, shared with the Applicant a copy of a written advice

from the Chief of the Policy Support Unit, Office of Human Resources Management ("OHRM"), in respect of another staff member in a similar situation, namely "a staff member moving from a temporary to a fixed term appointment and accrual of service credits (now points) for the purpose of home leave". Pursuant to this advice, the granting of a fixed-term appointment after a temporary appointment necessarily entails a "re-employment" pursuant to ST/AI/2010/4/Rev. 1 (Administration of temporary appointment) and, hence, only the service performed under the fixed-term appointment constitutes qualifying service for the purpose of home leave entitlement under staff rule 5.2. Furthermore, staff members serving on temporary appointments in 24-month home leave cycle duty stations did not accrue home leave service credits.

7. By email of 2 May 2016, the Applicant requested the Human Resources Officer, DESA, to reconsider DESA's position with respect to her home leave points accrual.

8. By email of 7 May 2016, the Human Resources Officer, DESA, reiterated the position.

9. On 9 may 2016, the Applicant requested management evaluation of the decision to deny her request for advance home leave to the Management Evaluation Unit.

10. By letter of 1 June 2016 from the Under-Secretary-General for Management, the Secretary-General upheld the contested decision.

11. Upon denial of her home leave request, the Applicant proceeded to travel to Switzerland from 7 to 26 April 2016 at her own expense.

12. The Applicant filed her application before the Tribunal on 30 August 2016, and the Responded filed his reply on 3 October 2016.

13. By Orders No. 241 (GVA/2016) of 8 December 2016, No. 69 (GVA/2017) of 15 March 2017, No. 76 (GVA/2017) of 29 March 2017 and No. 90 (GVA/2017) of 10 April 2017, the Tribunal ordered the Respondent to clarify the Applicant's employment status as a result of her transition from a

temporary to a fixed-term appointment, and to produce the relevant documentation.

14. The Respondent filed additional documents, as per the Tribunal's orders, on 16 December 2016, 17 March 2017, 4 and 21 April 2017. The Applicant also filed additional documents on 23 March 2017.

15. The Tribunal held hearings on the merits of the case on 27 March and 2 May 2017.

Parties' submissions

16. The Applicant's principal contentions are:

a. She accrued 15 home leave points during her GTAs pursuant to staff rule 5.2 and ST/AI/2015/2 (Home leave), which make no difference between GTAs and FTAs for home leave entitlements;

b. Her service under both the GTA and FTA contracts on the same position amounts to "qualifying service" for the purpose of home leave entitlements under staff rule 5.12, such that she had accrued 22 home leave points in April 2016 when she requested advance home leave;

c. Contrary to the Respondent's assertion, the expression "qualifying service" for the purpose of home leave entitlements under staff rule 5.2 and ST/AI/2015/2 does not equate to "continuous service" under sec. 1.2 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments) and staff rule 4.17(c). In any event, the Applicant never effectively separated from service; and

d. Accordingly, she requests the Tribunal to:

i. Rectify DESA's position concerning home leave points accrual for staff members who initially worked at UNAKRT under GTAs and were later awarded FTAs, such that her 26 home leave points as of the date of her application should be reflected in UMOJA; and

ii. Recognize *ex post facto* the trip to her home leave country, Switzerland, in April 2016 as home leave or, alternatively, waive the additional six months of service from the date of return for any subsequent home leave.

17. The Respondent's principal contentions are:

a. The Applicant did not accrue home leave points during her GTAs. Staff members on temporary appointments in duty stations that have a 24-month home leave cycle, such as Cambodia, are not eligible for home leave because temporary appointments cannot exceed 729 days of service, which is one day short of 24 months;

b. Even if the Applicant had accrued home leave credit points during her GTAs, those credits did not carry over from her prior GTAs to her FTA, as the Applicant was "re-employed" within the meaning of staff rule 4.17. Pursuant to this rule, the terms of the Applicant's FTA are applicable without regard to any prior service and there is no continuity in service; and

c. Consequently, the application should be dismissed in its entirety.

Consideration

18. The Tribunal has to examine if the Organization erred in denying the Applicant's request for advance home leave on 11 March 2016 on the ground that she had accrued only eight home leave points at that time under her FTA, thereby not taking into account her prior service under GTAs.

19. The gist of the matter is whether staff rule 4.17 applies to the present case, thus preventing the taking into account of any period of service prior to the Applicant's FTA in the calculation of her home leave entitlement. If staff rule 4.17 were not to apply, the Tribunal would then have to examine whether the Applicant accrued home leave credit points while serving under GTAs.

Application of staff rule 4.17

20. The present case calls into question the application and interpretation of staff rules 4.17 and 5.2, as well as ST/AI/2015/2 and ST/AI/2010/4 Rev.1. In this respect, the Tribunal recalls that in the hierarchy of norms within the United Nations internal legal system, the Staff Rules prevail over administrative instructions. Consequently, administrative instructions have to be interpreted in light of and in accordance with the Staff Rules.

21. Staff rule 4.17 (Re-employment) provides in its relevant part that:

> (a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.
>
> (b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.

22. It follows that staff rule 4.17 would prevent the Applicant from claiming any home leave entitlement based on her previous service under GTAs if she had been "re-employed". The Respondent argues that the Applicant was re-employed as the rules required that her transition from a GTA to an FTA be treated as such.

23. Pursuant to staff rule 4.12, "[a] temporary appointment shall not be converted to any other type of appointment". Sec. 1.2 of ST/AI/2010/4/Rev.1 further provides that "[a]ny appointment granted following a temporary appointment will be implemented as re-employment under staff rule 4.17".

24. The Tribunal notes that sec. 1.2 of ST/AI/2010/4/Rev.1 indicates how the Organization shall proceed when granting a fixed-term appointment after a temporary appointment. However, it does not, in and of itself, establish the contractual status of a staff member or otherwise create a legal fiction of re-employment. Hence, the Tribunal must examine whether the Applicant was actually re-employed, as envisaged in sec. 1.2 ST/AI/2010/4/Rev.1.

25. The expression "re-employment" is not defined in the Staff Rules. That having been said, staff rule 4.17 refers to the re-employment of "[a] former staff member", which necessarily implies that a separation from service occurs beforehand. This interpretation is also consistent with the fact that there is no continuity of service in case of re-employment (staff rule 4.17(b)), and the explicit reference to re-employment following a separation from service in staff rule 4.18 on reinstatement. The parties indeed agree that a separation from service is required before a re-employment occurs, but they disagree as to whether the Applicant was actually separated from service.

26. The definition of separation from service is set out in staff rule 9.1, which provides that:

> Any of the following shall constitute separation from service:
>
> (i) Resignation;
> (ii) Abandonment of post;
> (iii) Expiration of appointment;
> (iv) Retirement;
> (v) Termination of appointment;
> (vi) Death.

27. Separation from service triggers a number of consequences, as set out in, *inter alia*, staff rules 9.8 to 9.12, which provide for the possibility of termination indemnity (staff rule 9.8), commutation of accrued annual leave (staff rule 9.9) or restitution of advance annual and sick leave (staff rule 9.10), and return travel (staff rules 9.11(b) and 7.1(a)(v)). Entitlement to salary, allowances and benefits ceases at the date of the separation (staff rule 9.11(a)), and a settlement process is to ensue between the staff member and the Organization.

28. The Tribunal notes that the Applicant's situation does not fall within any of the situations listed in staff rule 9.1 as a separation from service. It is not disputed that the Applicant did not resign from her GTA under staff rule 9.2, and that her GTA had not expired at the time she was granted an FTA, since the GTA had previously been extended until 31 December 2015. The Organization did not

terminate the Applicant's appointment, either, under staff rule 9.6, as evidenced by the fact that she did not receive any notice of termination pursuant to staff rule 9.7. As to the other situations listed in 9.1, they are clearly not applicable to the present case.

29. Most importantly, the Tribunal finds that the factual circumstances surrounding the Applicant's transition from a GTA to an FTA demonstrate that the Organization effectively treated her as being continuously employed, and that it did not proceed with an actual separation from service and dealt with the effects that it entails.

30. Firstly, the Applicant continued to perform her Legal Officer functions for the OCIJ, at the P-3 level, without any interruption. As acknowledged by the Respondent, she had "no break in service".

31. Secondly, the Applicant was never asked or offered to separate, nor was she ever advised that she had in fact been separated. This is corroborated by her testimony, which was not contradicted. As such, she was not able to claim any benefit or entitlement that may have arisen from her separation.

32. Thirdly, there was no settlement process to determine whether anything was due to the Applicant on account of her separation, or whether she had to reimburse anything to the Organization. Rather, the Applicant's benefits and entitlements were treated as if she was continuously employed by the Organization.

33. Indeed, the Applicant's accrued annual leave under her GTA service was carried over to her FTA service, which would not have been the case had she been separated (cf. staff rule 9.9; see also *Carrabregu* 2014-UNAT-485, para. 28). In this respect, the Tribunal notes that there is a dispute between the parties as to the Applicant's actual annual leave balance as of the time of her separation. This dispute falls outside the scope of the present application, and for the purpose of the present proceedings it is sufficient to highlight that the Administration did not reset the clock for the computation of the Applicant's annual leave when she was reappointed under an FTA, as evidenced from her annual leave records.

34. Likewise, the Organization deducted from the Applicant's FTA assignment grant the amount she received upon taking her initial temporary appointment. In other words, such that prior payments made to the Applicant under her previous appointment were taken into consideration in the calculation of her entitlements under her new appointment. This could not have been the case if the Applicant had been separated and re-employed.

35. It is also noted that the Applicant did not receive any benefit or entitlement from her alleged separation from service, such as return travel, although it is not clear whether her situation would have given rise to any of them.

36. For all practical purposes, the Organization treated the Applicant as if she had no break in service and was continuously employed. The Human Resources Officer, DESA, in charge of the Applicant's case testified, indeed, that she ensured that the Applicant had no "break in service". Counsel for the Respondent also acknowledged that the Organization took all the necessary measures to ensure "continuity in service". Both said this was done in order not to prejudice the Applicant, but none of them could identify any actual benefit for the Applicant besides the uninterrupted payment of the Applicant's salary. Given that the Applicant was not consulted on the matter and, in fact, that she never requested that a particular course of action be followed, it cannot be concluded that the way the Administration handled the Applicant's contractual transition was to her benefit. The Applicant may well have preferred to take a break in between her two appointments.

37. As sole evidence of the Applicant's alleged separation, the Respondent produced a Personnel Action ("PA") entitled "Special Separation [without] break" ("Separation PA") which, he stated, "implemented the Applicant's separation from service *without a break in service*" (emphasis added), together with another PA entitled "Reappointment [without] break" ("Reappointment PA"), which he qualified as the "Applicant's re-employment PA".

38. At the outset, the Tribunal notes that the Separation PA produced by the Respondent reflects inconsistent data. This PA, effective 1 September 2015, is

said to reflect the Applicant's "Special Separation [without] break". However, it has information related to the Applicant's FTA rather than to the GTA from which the Applicant allegedly separated. For instance, under "Contract Type / Expiration Date", it states: "Fixed Term / 31.08.2016". This inconsistency, together with others detected, caused the Tribunal to inquire about the content and the authenticity of the Separation PA.

39. At the hearing on the merits, a Senior Human Resources Assistant and UMOJA HR Process Expert testified that UMOJA, unlike the Organization's previous Enterprise Resource Planning system (IMIS), does not keep personnel actions on record. Moreover, UMOJA does not keep historical data as a staff member's personal information is updated and, as a result, when one seeks to retrieve information about a specific action executed in the past, UMOJA generates a document mixing information about the past action, e.g. a separation from service, with the staff member's personal information current at the date the document is being generated. This explains why the Separation PA produced by the Respondent indicates that it "displays information effective 01.09.2017 as of 12.12.2016", the former being the date when the Separation PA was generated in UMOJA. Nevertheless, upon accessing UMOJA's activity log, the witness confirmed that a Separation PA had been created in UMOJA on 26 August 2015.

40. The Senior Human Resources Assistant and UMOJA HR Process Expert also explained that UMOJA does not allow to separate a staff member and re-employ him/her on the same day, as it would normally be required to avoid a break in service. To overcome this technical difficulty, Human Resources Officers create a "Special Separation [without] break", which then allows the Organization to keep the staff member's status as "active" and to "re-appoint" him/her immediately.

41. The Human Resources Officer, DESA, also testified that when dealing with the Applicant's "transition" from a GTA to an FTA, she created a "Special Separation [without] break in service" to "favour" the Applicant, and ensure that she did not have a break in service. When asked about the benefits that the

Applicant received, the witness could not identify any, besides the fact that she continued to receive her salary without interruption.

42. The Tribunal finds that the Separation PA and the Reappointment PA are not sufficient, in and of themselves, to establish that the Applicant was separated from the Organization and then re-employed, for the following reasons.

43. The Separation PA is no more than an internal document created for administrative purposes that produced no consequence on the Applicant's situation, as discussed above. The Human Resources Officer, DESA, confirmed that she did not take any additional action to give effect to the alleged separation from service. The Separation PA was not even notified to the Applicant, who solely received the "Reappointment PA", which states that she had been "reappoint[ed] [without] break", and could therefore have reasonably assumed that she had not been separated.

44. Moreover, the reference to a "Special Separation [without] break" suggests that the Applicant's service with the Organization was not interrupted, which is incoherent with the definition of separation set out in the Staff Rules and the consequences thereof, as detailed above.

45. As to the Reassignment PA, the Tribunal notes that the actual document, dated 1 September 2015, does not refer to "re-employment" as asserted by the Respondent but rather states "reappointment without break". Whilst this expression is not specifically defined in the applicable rules, it clearly indicates that the Applicant continued her service with the Organization without any interruption when she moved from one appointment to another. If the Respondent was re-employing the Applicant pursuant to staff rule 4.17, he ought to have said it in the PA. Furthermore, this document, although it also contains some contradictory information, indicates 18 May 2014 as the Applicant's date of entry in official duty at the duty station, which corresponds to the starting date of the Applicant's first GTA.

46. The Tribunal notes that in determining whether staff members had a break in service in the context of eligibility to permanent appointments, the Appeals Tribunal took into consideration whether they formally resigned from their previous position, or had a time break in between their various appointments, or moved from one entity to another to take up a completely different post, or benefited from separation entitlements (see, e.g., *Hajdari* 2015-UNAT-570; *Carrabregu* 2014-UNAT-485; *Kulawat* 2014-UNAT-428).

47. None of these indicia are present in this case. Absent any tangible evidence of a separation from service, the fact that the Applicant continued to perform the same functions without any interruption creates a strong presumption that she remained in service. A Separation PA, which produced no concrete effect, is not sufficient to rebut this presumption.

48. In view of the foregoing, the Tribunal finds that the Applicant was not separated from service under staff rule 9.1 and, consequently, staff rule 4.17 did not apply to her case. Any Administration's shortcomings in the processing of the Applicant's transition from a GTA to an FTA cannot deprive her, whose good faith was not called into question, of her rights under the staff rules (see, e.g., *Castelli* 2010-UNAT-037).

Whether the Applicant accrued home leave points under her GTAs

49. The Tribunal, therefore, now has to examine whether the Applicant accrued home leave points under her GTAs, which she could carry over to her FTA.

50. Staff rule 5.2 (Home Leave) provides the following in its relevant parts:

> (a) Internationally recruited staff members, as defined under staff rule 4.5 (a) and not excluded from home leave under staff rule 4.5 (b), who are residing and serving outside their home country and who are otherwise eligible shall be entitled once in every 24 months of qualifying service to visit their home country at United Nations expense for the purpose of spending in that country a reasonable period of annual leave.
>
> (b) A staff member shall be eligible for home leave provided that the following conditions are fulfilled:

> (i) While performing his or her official duties:
>
> a. The staff member continues to reside in a country other than that of which he or she is a national …
>
> …
>
> (ii) The staff member's service is expected by the Secretary-General to continue:
>
> …
>
> b. In the case of the first home leave, at least six months beyond the date on which the staff member will have completed 24 months of qualifying service;
>
> …
>
> (c) Staff members whose eligibility under paragraph (b) is established at the time of their appointment shall begin to accrue service credit towards home leave from that date.

51. Pursuant to staff rule 4.5(a), "[s]taff members other than those regarded under staff rule 4.4 as having been locally recruited shall be considered as having been internationally recruited".

52. In the case at hand, the Applicant was an internationally recruited staff member serving in Phnom Penh, Cambodia, as a Legal Officer, first on a GTA and as of 1 September 2015 on an FTA.

53. The modalities of implementation of staff rule 5.2 are detailed in ST/AI/2015/2 of 12 March 2015, which establishes a points system as follows:

> 3.2 The home leave entitlement shall be administered in accordance with a points system whereby service credit points accumulated towards home leave are used to determine when a staff member's home leave falls due. Home leave service credit points shall accrue on the basis of full calendar months of qualifying service.
>
> 3.3 Staff members who are eligible for home leave as of their date of appointment shall accrue service credit points towards home leave from that date…
>
> 3.4 Staff members shall accrue service credit points towards home leave as follows:

> (a) A staff member assigned to a duty station with a 24-month cycle shall earn one point for each full month of service at that duty station (i.e. 24 points in a 2-year period of service).

54. In turn, sec. 14.5 of ST/AI/2010/4/Rev.1 on temporary appointments addresses home leave entitlement as follows:

> 14.5 A staff member who is internationally recruited pursuant to staff rule 4.5 and whose temporary appointment has been exceptionally extended beyond the initial period of 364 days pursuant to staff rule 4.12 (b) and under the circumstances specified in section 14.1 shall be entitled to home leave in duty stations with a 12-month home leave cycle pursuant to staff rule 5.2 (l), subject to the specific conditions of this entitlement set out in ST/AI/2000/6 and Amend.1, on special entitlements for staff members serving at designated duty stations.

55. The Tribunal notes that there is no definition of “qualifying service” in staff rule 5.2 or in ST/AI/2015/2, which set the eligibility criteria for home leave entitlement. There is no distinction either as to the type of contract under which an internationally recruited staff member, such as the Applicant, performs his or her functions. Rather, the expression “qualifying service” seems to refer to the eligibility conditions for home leave, namely that the service be performed at a duty station outside the staff member’s home country.

56. The Respondent argues that staff members who serve on temporary appointments in duty stations with a 24-month cycle are not entitled to home leave due to the fact that their period of service may not exceed 729 days pursuant to sec. 14.1 of ST/AI/2010/4/Rev.1. He submits that this interpretation is confirmed by sec. 14.5 of ST/AI/2010/4/Rev.1, which explicitly grants home leave entitlement to those staff members whose period of service under temporary appointments exceptionally exceeds 364 days and work in duty stations with a 12-month home leave cycle, but contains no similar provision for staff members serving in duty stations with a 24-month home leave cycle.

57. The Tribunal notes that the situation of the Applicant in the present case was not foreseen in the rules as the Applicant should normally have been separated and then re-employed, such that her service under GTAs would not be taken into account for the calculation of her home leave entitlement under her FTA. However, given that this process did not occur, the Tribunal must examine whether she met the eligibility criteria to accrue home leave credits when working on GTAs, irrespective of the fact that she may not have been able to use them under normal circumstances.

58. It is not surprising that ST/AI/2010/4/Rev.1 does not envisage the issue of home leave credits for staff members working on 24-month home leave cycle duty stations given that they should not work under temporary appointments for more than 729 days, and should then be separated as their temporary contract cannot be converted into any other type of appointment. That having been said, it does not mean that staff members working on duty stations with a 24-month cycle do not actually accrue home leave credits when they meet the eligibility criteria set out in the rules. The fact that sec. 14.5 specifically provides for the possibility of home leave entitlement for staff members with temporary appointments in duty stations with a 12-month home leave cycle confirms that the accrual of home leave points is not dependent upon the nature of the contract. This is further supported by staff rule 5.2 and ST/AI/2015/2, and a distinction must be drawn between the accrual of home leave credits pursuant to the applicable rules and the possibility to actually use them.

59. That most staff members working under temporary appointments in duty stations with a 24-month home leave cycle are unlikely to claim home leave entitlement, cannot be grounds for depriving them of the right under the Staff Rules to accrue home leave points. There may be situations where these points would give rise to a home leave claim. For example, when a staff member with temporary appointments in a 12-month cycle duty station moves to a 24-month cycle duty station. The present case is also another example.

60. In view of the foregoing, the Tribunal finds that the Applicant’s home leave entitlement shall be examined under staff rule 5.2 and ST/AI/2015/2.

61. Given that the Applicant was internationally recruited on 18 May 2014 to work in Cambodia, which is not her home country, she accrued home leave points for each month of service from that date. When she submitted her request for advance home leave on 11 March 2016, the Applicant had, thus, accrued 22 home leave points.

62. Since, in this case, there was no "break in service" nor any "separation from service", there is no legal basis to conclude that the Applicant's home leave points accrued while serving under GTAs could not be carried over into her FTA. As the Applicant had completed more than 12 months of "qualifying service" when she requested advance home leave, she met the eligibility criteria set forth in staff rule 5.2(f), which provides that:

> A staff member may be granted advance home leave, provided that normally not less than 12 months of qualifying service have been completed or that normally not less than 12 months of qualifying service have elapsed since the date of return from his or her last home leave. The granting of advance home leave shall not advance the eligibility for, or the due date of, the next home leave. The granting of advance home leave shall be subject to the conditions for the entitlement being subsequently met. If these conditions are not met, the staff member will be required to reimburse the costs paid by the Organization for the advance travel.

63. The Tribunal cannot but conclude that the Administration's interpretation of the staff rules at stake is not only mistaken , but also to the detriment of the Applicant's rights. On the one hand, the Administration deprived the Applicant of the separation and re-appointment benefits she could have been entitled to had she been separated from the Organization and later re-employed, and, on the other hand, it deprived her of the benefits associated with continuous employment.

64. The Tribunal recalls that "the Administration has a general duty to act fairly, justly and transparently in its dealing with its staff members" (*Obedijn* 2012-UNAT-201, para. 33). The factual circumstances of the present case demonstrate that the Administration's lack of coherence in the processing of the Applicant's contractual transition, namely its picking and choosing which entitlements to carry-over, is not consistent with said duty vis-à-vis the Applicant.

65. It follows that the decision denying the Applicant's request for advance home leave was unlawful.

Remedies

66. Art. 10.5 of the Tribunal Statute, as amended by resolution 69/203 of the General Assembly adopted on 18 December 2014, delineates the Tribunal's powers regarding the award of remedies providing that:

> As part of its judgement, the Dispute Tribunal may only order one or both of the following:
>
> (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or 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 or specific performance ordered, subject to subparagraph (b) of the present paragraph;
>
> (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation, and shall provide the reasons for that decision.

67. Having found that the contested decision was illegal, the Tribunal rescinds it pursuant to art. 10.5(a) of its Statute.

68. It follows from the foregoing that the Applicant's personnel file must be corrected to accurately reflect her home leave balance points, taking into account the 15 home leave points she earned from 18 May 2014 while working under GTAs.

69. Turning to compensation for harm under art. 10.5(b) of its Statute, the Tribunal finds that it is reasonable to assume that the Applicant's request for advance home leave would have been granted had the Administration correctly legally interpreted her factual contractual situation. Indeed, the Applicant met all the eligibility requirements and, moreover, the Respondent provided no other reason than non-compliance with eligibility requirements to deny her request.

70. It is also established that the Applicant continued to serve with the Organization for long enough after she returned from her trip to Switzerland to meet all the eligibility requirements under staff rule 5.2 and sec. 3 of ST/AI/2015/2, such that there is no issue that her advance home leave may have later generated a request for reimbursement from the Organization under staff rule 5.2(f).

71. As the Applicant travelled to her home country from 7 to 26 April 2016 at her own expense due to the Administration's denial of her request for advance home leave, the Tribunal finds it appropriate to retroactively recognise her trip as home leave. Normally, the Applicant would have had the choice between the Organization arranging her home leave travel or her exercising a lump-sum option pursuant to ST/AI/2013/3 (Official Travel). Given that the Applicant can no longer exercise this choice, and in light of her specific request to be reimbursed the cost of her airline ticket, the Tribunal finds it appropriate to award her compensation for material damages equivalent to the cost said ticket, which amounts to USD1,543.04.

72. As to the Applicant's request for the Tribunal to "rectify the current view of DESA vis-à-vis home leave points accrual" for staff members at UNAKRT who found themselves in a similar situation, the Tribunal stresses that its jurisdiction is limited to examining the decision issued by DESA in respect of the Applicant's case, and that it can make no general pronouncement as to other cases.

Conclusion

73. In view of the foregoing, the Tribunal DECIDES:

a. The Respondent shall correct the Applicant's personnel file to reflect the 15 home leave points she accrued while working on general temporary appointments from 18 May 2014 until 31 August 2015;

b. The Respondent shall pay the Applicant material damages in the amount of USD1,543.04;

c. The aforementioned compensation shall bear interest at the United States prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable; and

d. All other claims are rejected.

(*Signed*)
Judge Teresa Bravo
Dated this 9th day of June 2017

Entered in the Register on this 9th day of June 2017
(*Signed*)
René M. Vargas M., Registrar, Geneva