Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Pallavi Sekhri, Officer-in-Charge

OMWANDA

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. For the sake of judicial economy, this is a consolidated judgment on three cases filed by the Applicant which were subject to an order for combined proceedings (Order No. 3 (NY/2017) dated 9 January 2017).

2. On 24 August 2016, the Applicant, a former staff member with the United Nations Department of Safety and Security ("DSS"), filed two applications contesting, *inter alia*, the Administration's decision not to pay him termination indemnity following an award of disability and the termination of his appointment on medical grounds. The two applications were registered as Case No. UNDT/NY/2016/040 and Case No. UNDT/NY/2016/041.

3. On 22 November 2016, the Applicant filed a third application before the Tribunal contesting the decision to change his entry on duty ("EOD") date. The application was registered as Case No. UNDT/NY/2016/066.

4. The Respondent contends that the Administration properly processed the Applicant's termination indemnity calculated at USD773.40. The Applicant, however, was not paid this amount because he had been overpaid salary and other entitlements by the Organization in the amount of USD5,821.44 and the termination indemnity of USD773.40 was applied to this overpayment. In relation to the EOD date, the Respondent contends that the application is not receivable *ratione temporis* and *ratione materiae*. In the alternative, the application has no merit as the Applicant's EOD date was correctly determined.

Factual background

5. The facts in this matter are simple but appear overly complex due to the combined proceedings of three cases filed by the Applicant. This judgment therefore pertains to the three separate cases which have been consolidated, the Tribunal has nevertheless endeavored to consolidate and clarify the lengthy and often repetitive facts and submissions.

6. On 10 October 2005, the Applicant joined the Organization as a Security Officer with the United Nations Office at Nairobi ("UNON") at the G-3 level on a fixed-term appointment. The Applicant was locally recruited for this position.

7. On 7 January 2008, the Applicant was selected for the position of Security Officer in New York at the S-1 level on a fixed-term appointment, with effect from 19 February 2008. He was locally recruited for this position.

8. On 10 January 2008, the Applicant tendered his resignation from UNON, effective 18 February 2008, to take up the appointment in New York in February 2008.

9. On 19 February 2008, the Applicant was appointed as a Security Officer with the United Nations Department of Safety and Security ("UNDSS") in New York on a fixed-term appointment under former staff rule 104.3(a).

10. On 25 November 2015, the United Nations Staff Pension Committee notified the Applicant that it had determined on 18 November 2015 that he was incapacitated from further service, and he was consequently entitled to a disability benefit in the amount of USD56,499.12 annually under art. 33 of the Regulations of the United Nations Joint Staff Pension Fund ("UNJSPF").

11. On 1 December 2015, the Assistant Secretary-General for Human Resources Management ("ASG/OHRM") notified the Applicant that the Secretary-General had decided to authorize the termination of his fixed-term appointment under staff regulation 9.3(a)(iii), and further stating that:

> … Accordingly, you are entitled to an indemnity equal to the indemnity provided for in Annex III(a) to the Staff Regulations reduced by the amount of the disability benefit you will receive from the United Nations Joint Staff Pension Fund for the number of months to which the indemnity rate corresponds. You are also entitled to compensation for one month in lie[u] of notice under Staff Rule 9.7(d) to the extent that the balance of sick leave falls short of the period of notice.
>
> … The payment of your disability benefit will take effect on 5 February 2016, at which time you cease to be entitled to salary and emoluments from the United Nations.

12. On 4 February 2016, the Applicant's appointment was terminated on medical grounds, with termination indemnity and compensation in lieu of notice.

13. In or around March 2016, a salary advance in the amount of USD2,377.21 was issued to the Applicant.

14. In or around May 2016, the Applicant started receiving disability benefits through the UNJSPF system.

15. On 20 May 2016, a Human Resources Officer advised the Applicant by email that no payment of termination indemnity was due to him, as he had been overpaid salary and other entitlements. On the same day, the Applicant responded to the email from the Human Resources Officer and requested that he be provided clarification on how the calculations were done. The Human Resources Officer responded to the Applicant informing him that the total amount of the overpayment had not been calculated yet, and further stated:

> … Please note that the recovery is due to the dependency allowance you received for your daughter while she was not in full-time attendance in school and also due to the reason that you were receiving full-salary for several months when it should have been half-salary payment. Therefore the amount to be recovered is yet to be determined.
>
> … In addition, based on the Pension Fund's calculations, the termination indemnity due to you is $773.24.

16. On 24 June 2016, the Applicant filed a request for management evaluation with regard to the calculation of his termination indemnity and other entitlements.

17. On 1 July 2016, the Administration wrote to the Applicant, informing him that it was determined that he was paid an overpayment. The termination indemnity of USD773.40 due to the Applicant was offset against the overpayment of USD5,821.44 resulting in the reduction of the overpayment to USD5,040.20. The Administration requested that the Applicant repay this sum.

18. On 11 July 2016, the Applicant wrote to the Management Evaluation Unit ("MEU") via email stating:

> … On 20th May 2016, I received an email correspondence from [a Human Resources Officer] that my termination indemnity shall not be paid to me and that I have been overpaid. She further wrote that I will be paid around USD 700. I would like to be kindly informed how the calculations were done and when I shall be paid. My requests from [Office of Human Resources Management, "OHRM"] for more information have remained unanswered to date.
>
> …

19. On 24 August 2016, the MEU wrote to the Applicant informing him that upon the review of his request for management evaluation dated 24 June 2016, the Secretary-General had decided to uphold the contested decision relating to the calculation of his termination indemnity and other entitlements.

20. On 26 September 2016, the Applicant received a termination indemnity spreadsheet which stated his date of EOD as 19 February 2008 and his termination date as 3 February 2016.

21. On 14 October 2016, the Applicant sent an email to the MEU requesting assistance in correcting the dates on the basis of which his termination indemnity was calculated. The Applicant further requested that a hold be placed on the recovery of USD5,040.20 from his disability funds pending the proper calculation of his termination indemnity.

22. On 19 October 2016, the Applicant filed a request for management evaluation of the Administration's calculation of his EOD and termination date in the spreadsheet received on 26 September 2016. The Applicant stated that the correct EOD date was 10 October 2005 and termination date was 4 February 2016.

23. On 25 October 2016, the MEU wrote to the Applicant informing him that upon the review of his request for management evaluation dated 14 August 2016, the MEU had determined that his request was not receivable.

Procedural history

Case Nos. UNDT/NY/2016/040 and UNDT/NY/2016/041

24. On 25 August 2016, the New York Registry emailed the Applicant advising that two very similar applications with a few similar common annexes had been received, and requesting the Applicant to clarify whether he intended to file two separate cases. On the same day, the Applicant replied that:

> [T]he first case with the response from MEU was earlier dismissed by [the Tribunal] because it is premature but it relies on the earlier facts

> for it was dismissed as irreceivable. The second one is a follow up on another request for payment and I have not received any response from MEU. If the dismissal of the earlier case has no consequences then the two cases can be merged.

25. On 26 September 2016, the Respondent, without leave, and in the absence of a consolidation of the two files, filed a "consolidated reply" contending that the Applicant was challenging the same administrative decision in both cases and that the second application should be dismissed as not receivable.

26. On 3 October 2016, the Applicant sent an email to the Registry, not copied to the Respondent, requesting that this matter be fast-tracked as he was unwell.

27. By Order No. 245 (NY/2016), dated 20 October 2016, the parties were ordered to file a joint submission by 9 November 2016 on whether they agreed to attempt informal resolution of the two cases. In the event that the parties were not interested in pursuing informal resolution, the Applicant was ordered to file a submission by 23 November 2016 addressing the contentions raised in the Respondent's consolidated reply.

28. On 9 November 2016, the parties filed a joint submission informing the Tribunal that they did not agree to attempt informal resolution of the two cases.

29. On 22 November 2016, the Applicant filed his response to the Respondent's consolidated reply contending, *inter alia*, that the application was receivable on the merits and that the termination indemnity had still not been paid to him. The Applicant further stated that the amount of termination indemnity has been improperly calculated.

Case No. UNDT/NY/2016/066

30. On 22 November 2016, the Applicant filed a third application before the Tribunal contesting the decision to change his EOD date.

31. On 23 November 2016, the Applicant filed a consolidated motion under all three cases, for leave to join the UNJSPF.

32. On 14 December 2016, the parties, upon the direction of the Tribunal, participated in a Case Management Discussion ("CMD"), the Applicant attending via telephone connection from Nairobi, with Respondent's Counsel present in court in New York. At the CMD:

a. The parties agreed to the consolidation of the three cases;

b. The Applicant confirmed that he did not contest that the Administration overpaid him in the amount of USD5,821;

c. The Applicant confirmed that he was receiving the correct amount of his monthly disability payments;

d. The Applicant was reminded of the possibility for him to seek legal assistance from the Office of Staff Legal Assistance ("OSLA") in Nairobi and the Applicant expressed an interest in doing so; and

e. Upon the Tribunal noting that the Applicant's claims may be suitable for discussion towards amicable resolution, the parties confirmed and expressed an interest in considering informal resolution of outstanding matters.

33. On 22 December 2016, the Respondent filed his reply to the application in Case No. UNDT/NY/2016/066, contending that the Applicant's third application is not receivable because it is time-barred as the Applicant was informed of his EOD date in 2008.

34. By Order No. 3 (NY/2017), dated 9 January 2017, the Tribunal ordered, *inter alia*, that Case Nos. UNDT/NY/2016/040, UNDT/NY/2016/041 and UNDT/NY/2016/066 be consolidated for the purpose of these proceedings. The Tribunal further directed the parties to make all such endeavors for discussion towards informal resolution of the Applicant's claims and file a joint submission stating whether they had reached agreement on the resolution of matters herein. In the event the parties were unable to achieve informal resolution, the Tribunal ordered that the Applicant file a submission addressing the contentions raised in the Respondent's reply to his application in Case No. UNDT/NY/2016/066. With regard to the Applicant's motion to join UNJSPF, the Tribunal ordered the Respondent to state in the joint submission, his contentions, and the legal basis therefor, as to whether the UNJSPF may be joined as a party, and, as to whether the Administration or UNJSPF was the proper entity to provide termination indemnity payments to staff members.

35. In accordance with Order No. 3 (NY/2017), the parties filed a jointly signed submission dated 27 January 2017, stating that they had not reached an agreement on informal resolution of the cases and the Respondent provided further submissions as directed by the Tribunal.

36. On 2 March 2017, the Applicant filed further submissions in response to Order No. 3 (NY/2017) stating, *inter alia*, that he had no legal or financial issues with UNJSPF.

Applicant's submissions

37. The Applicant's principal contentions may be summarized as follows:

Case Nos. UNDT/NY/2016/040 and UNDT/NY/2016/041

a. The termination indemnity due to the Applicant has not been paid to him by the Respondent. The Respondent's refusal to pay the termination indemnity is unlawful. The Applicant is entitled to termination indemnity in accordance with the Staff Regulations and Rules. Due process has not been followed by the Respondent's refusal to pay the termination indemnity due to the Applicant;

b. The termination indemnity was unlawfully miscalculated by the Respondent. The amount of termination indemnity due to the Applicant is USD32,946.35. The Applicant joined the United Nations on 10 October 2005 and left service on 4 February 2016. Based on these dates, the Applicant was to receive termination indemnity equal to 9.5 months gross salary, less staff assessment, corresponding with the Applicant's 125 months of service;

c. In the former United Nations Administrative Tribunal Judgment No. 766, *Inguilizian* (1996), the Tribunal noted that the purpose of termination indemnity is to compensate staff members for their accelerated separation from service. The Applicant's termination of service on medical grounds should be compensated by the payment of the termination indemnity. The UNJSPF does not pay termination indemnity and the claim by the Respondent that such payments would amount to double-payments should be dismissed;

d. The inaction by the Respondent not to respond to enquiries and non-payment of the indemnity after several months of request amounts to unfair treatment, harassment and discrimination;

e. The Applicant continues suffering emotional distress, financial hardship and discrimination based on the illegal actions by the Respondent;

f. As remedy, the Tribunal should order that the Respondent pay the Applicant the termination indemnity due to the Applicant and monetary compensation (consisting of 24 months net-base salary for violation of due process in regard to the non-payment; 24 months net-base salary for the ASG/OHRM's failure to act; 24 months net-base salary for discrimination and harassment; and 24 months net-base salary for emotional distress and false hope);

Case No. UNDT/NY/2016/066

g. The decision to change the Applicant's EOD and termination date from 10 October 2005 and 4 February 2016, respectively to 19 February 2008 and 3 February 2016, was unlawful. The unlawful date change has reduced the termination indemnity due to him and eventual denial of payment of the termination indemnity;

h. The Applicant learned of the change via a letter, dated 26 September 2016, from the Administration which indicated that 19 February 2008 to 3 February 2016 (95 months) constituted his "total qualifying service" for "computation of net qualifying service for termination indemnity";

i. The correct EOD date is 10 October 2005, when the Applicant commenced service at UNON and not 19 February 2008 when he was

reappointed to UNDSS in New York. He was reappointed without a break-in-service and was not paid any benefits upon departure from UNON. The Staff Rules in effect at the time did not indicate he would receive a new EOD date. In support, the Applicant's prior electronic performance appraisal system ("e-PAS") reports and his personnel action form in 2015 reflects his EOD date as 10 October 2005;

j. As remedy, the Tribunal should order 24 months' net base salary for the unlawful change of EOD and termination date and 24 months' net base salary for emotional distress;

38. In the Applicant's consolidated motion under all three cases dated 23 November 2016, the Applicant requested leave to join the UNJSPF stating that:

> … The Applicant's [t]ermination [i]ndemnity has not been paid and the Respondent says no payment can be done to avoid double payment. The UNJSPF also informed the Applicant UNJSPF does not pay [t]ermination [i]ndemnity.
>
> … The Applicant requests the Tribunal to enjoin the UNJSPF in the cases filed by the Applicant before the Tribunal. This will go a long way in solving the matter on who between the Respondent and UNJSPF should pay the termination indemnity due to the Applicant.

39. In the Applicant's further submissions dated 3 February 2017, the Applicant stated as follows (references to the annexes omitted):

> … The Applicant received payment for leave balance upon resignation from UNON. The payments were made 6 months after departure from UNON and contractual status amended by the Respondent […].
>
> … The Applicant does not dispute any action at the moment from UNJSPF since the Applicant receives disability payment from UNJSPF. The Respondent is the one that pays [t]ermination [i]ndemnity, not UNJSPF. How payment of [t]ermination [i]ndemnity

and 1 month salary due to the Applicant becomes a double payment is the problem. The Respondent has neither paid the Applicant's [t]ermination [i]ndemnity nor the 1 month salary […].

… The Applicant has no legal or financial issues with UNJSPF.

… The Applicant's rights have been violated by the Respondent's refusal to pay the Applicant's Termination Indemnity and 1 month salary. This is a violation of the Applicant's rights since no [s]taff [m]ember has filed such a case against the Respondent in the recent times.

… The [t]ermination [i]ndemnity was miscalculated using wrong EOD and [t]ermination [d]ates.

… The practical errors are admitted by the Respondent who responds that the typographical errors had very little impact on the calculations.

… The Applicant has continued suffering huge financial losses by the Respondent's failure to pay the Applicant's [t]ermination [i]ndemnity and 1 month salary. The Applicant's contract was terminated on 04/02/2016 and only started receiving the disability payment from UNJSPF in May 2016. If the Respondent had paid the Applicant's [t]ermination [i]ndemnity and 1 month salary, the 3 month gap would not have impacted heavily on the Applicant […]. The Applicant does not contest any decision by UNJSPF. The over 1 year denial of the payments by the Respondent has been unlawful and a violation of human rights.

[…

Respondent's submissions

40. The Respondent's principal contentions may be summarized as follows:

Case Nos. UNDT/NY/2016/040 and UNDT/NY/2016/041

a. The applications are without merit. The Organization properly processed the Applicant's termination indemnity, calculated as USD773.40. The Applicant, however, was not paid this amount because he had been

overpaid by the Organization in the amount of USD5,821.44. The termination indemnity of USD773.40 was applied to this overpayment, resulting in the reduction of the overpayment to USD5,040.20. The Administration has written to the Applicant and asked him to repay this sum;

b. The second application is not receivable. Case No. UNDT/NY/2016/041 should be dismissed as the Applicant is challenging the same decision as in Case No. UNDT/NY/2016/040. Both cases challenge the decision not to pay the Applicant his termination indemnity. The Applicant may not challenge the same decision in two separate applications. In *Kalashnik* UNDT/2015/087, para. 15 (affirmed by the United Nations Appeals Tribunal in 2016-UNAT-661), the Dispute Tribunal held that:

> … An applicant may not file multiple applications concerning the same administrative decision as this offends against the principle of *lis pendens* which disavows simultaneous parallel proceedings between the same parties, concerning the same subject matter and founded on the same cause of action.

c. The Applicant's termination indemnity was properly calculated. The Applicant was entitled to a termination indemnity of USD773.24. This amount reflects the requirements of Annex III(a) and Annex III(b) of the Staff Regulations and Rules;

d. Annex III(a) provides for the Applicant to receive termination indemnity equal to 6.8333 months gross salary, less staff assessment, corresponding with the Applicant's 95 months of service;

e. Annex III(b) to the Staff Regulations and Rules provides for a reduction of the amount payable under Annex III(a) by an amount equal to the disability benefit that the Applicant will receive from the UNJSPF, for the

number of months to which the termination indemnity rate corresponds. That means that the amount of termination indemnity is reduced by the amount of the Applicant's disability benefit that would be payable over 6.8333 months. This rule ensures that a staff member does not receive a double payment for his accelerated separation from service due to disability;

f. The Applicant has received an overpayment which must be recovered. The Applicant did not receive the termination indemnity as a cash payment because the Organization had overpaid the Applicant's salary and other benefits in the amount of USD5,821.44. The overpayments included salary advances and education grant payments for the Applicant's daughter for the period of November 2014 to February 2016;

g. On 1 July 2016, the Organization notified the Applicant of this overpayment, which was composed of an overpayment of salary in December 2015, an overpayment of dependency allowance from February 2014 to the date of his separation, and the recovery of a salary advance from March 2016;

h. In total, the Organization had overpaid the Applicant USD5,821.44. The Organization offset the termination indemnity payable to the Applicant against the overpayment, resulting in the reduction of the overpayment to USD5,040.20. The Administration has written to the Applicant and asked him to repay this sum;

i. The Applicant has been treated fairly by the Administration. From the approval of the Applicant's disability benefits to the commencement of his receipt of disability benefit, the Administration processed the Applicant's final entitlements within a reasonable time. The Administration was in regular contact with the Applicant. It took measures to ensure that the Applicant did

not suffer hardship. This included the payment of a salary advance, which resulted in an overpayment to the Applicant. The Administration has treated the Applicant fairly. At no time has he been harassed or discriminated against;

Case No. UNDT/NY/2016/066

j. The Applicant's third application is not receivable. In relation to the EOD date, the Application is not receivable *ratione temporis*. The Applicant's challenge to his EOD date was filed more than three years after the notification of the contested decision. On 10 January 2008, the Applicant resigned from the Organization effective 18 February 2008, in order to take up a new position at a different duty station. He was re-appointed on 19 February 2008 under former staff rule 104.3(a). On 15 July 2008, OHRM advised the Applicant that he had separated from service on 18 February 2008, and had been re-appointed the next day under former staff rule 104.3(a). As a result, he had been paid the balance of his annual leave entitlement, which he had accrued during his previous service. On 31 July 2008, the Applicant replied to this message, confirming his understanding of this decision. Accordingly, his separation from service and re-appointment was confirmed to the Applicant in an email dated 15 July 2008;

k. Accordingly, as at the date of his resignation, or at 31 July 2008 at the latest, the Applicant was aware that his EOD date was 19 February 2008. Pursuant to art. 8.4 of its Statute, the Dispute Tribunal does not have jurisdiction to entertain an application filed more than three years after notification of the contested administrative decision. Article 8.4 of the Dispute Tribunal's Statute operates as an absolute bar to hearing an appeal that is filed more than three years after the applicant's receipt of the contested administrative decision (*Hayek* 2015-UNAT-606). As more than three years

have elapsed since the Applicant was first notified of this contested decision, the application is not receivable;

l. In relation to the termination decision, the Application is not receivable *ratione materiae*. There has been no administrative decision in violation of his rights under his contract of employment. The Applicant is appealing a typographical error. There has been no administrative decision that his termination date was 3 February 2016. The Applicant's appointment was terminated for health reasons, effective 4 February 2016. His disability benefits commenced the next day. The termination indemnity payable to him was calculated using a spreadsheet. This document contains a typographical error. However, this error made no difference to the calculation. The Applicant has not identified how the error has an impact on the terms and conditions of his appointment;

m. Should the Dispute Tribunal find that the application is receivable, it is without merit. The EOD date had been correctly determined. Upon the Applicant's selection for the position of Security Officer at United Nations Headquarters ("UNHQ"), he resigned from the Organization on 10 January 2008. As a locally recruited staff member in both Nairobi and New York, he could not transfer a G-3 position at UNON to an S-1 position at UNHQ;

n. Staff members in the General Service and related categories are locally recruited. The terms and conditions of service of General Service staff are limited to the particular duty station where they are locally recruited. There is no provision in the Staff Regulations and Rules in force at the time to permit a locally recruited staff member to transfer from one duty station to another. A transfer to another country presupposes international recruitment status, which is incompatible with the Applicant's status as a local recruit;

o. Upon the Applicant's resignation and separation from service, he was re-appointed under former staff rule 104.3. He was not reinstated. Former staff rule 104.3(b) provided that if a staff member is reinstated, his letter of appointment shall so stipulate. The Applicant's letter of appointment contains no such provision. Additionally, former staff rule 104.3(b) provided that the terms of a new appointment shall be applicable without regard to any period of former service. Accordingly, his EOD date had been correctly determined to be 19 February 2008;

p. Furthermore, even if the Applicant's EOD date was 10 October 2005, this would not result in any payment to the Applicant. First, the Applicant's current disability benefit is calculated on the basis of his participation in UNJSPF commencing on 10 October 2005, the date he first joined the Organization, and not his EOD date. Accordingly, his EOD has no impact on his disability benefit;

q. Secondly, although a different EOD date would have changed the calculation of the Applicant's termination indemnity, no payment would have been made to the Applicant. The Applicant's EOD date of 19 February 2008 resulted in a calculation that his termination indemnity was USD773.23. If his EOD date was 10 October 2005, his termination indemnity would increase by USD315.90, to USD1089.13. However, this increase would not result in any payment to the Applicant, as he is indebted to the Organization in the amount of USD5040.20.3. Accordingly, any increase in termination indemnity would simply reduce the Applicant's indebtedness and not result in any additional payment to the Applicant;

r. In relation to the termination date of his appointment, the typographical error had no effect. The Applicant's termination date is

4 February 2016, and payment of his disability benefit commenced on 5 February 2016. There is no dispute between the parties on this issue;

s. The reference to an incorrect termination date in the Applicant's termination indemnity calculation had no practical or legal effect. When the termination indemnity was calculated, the calculation was based on the Applicant having completed seven years and eleven months of service. Had the date of 4 February 2016 been used in the calculation, the calculation would still have been based on the Applicant having completed seven years and eleven months of service. The typographical error made no difference to this calculation;

t. In regard to remedies, as the Applicant has not established any irregularity in the calculation of his EOD and termination dates, no compensation should be awarded. Additionally, the Applicant has provided no evidence of any harm. Article 10.5(b) of the Dispute Tribunal's Statute, as amended by the United Nations General Assembly resolution 69/203 (Administration of Justice at the United Nations), adopted on 21 January 2015, provides that compensation for harm may only be awarded where supported by evidence. The Applicant does not provide any evidence to show that he has suffered any financial loss as a result of the contested decision. Accordingly, the Dispute Tribunal has no basis to award the Applicant compensation.

41. In the Respondent's further submissions dated 27 January 2017 relating to the UNJSPF and termination indemnity, the Respondent contended that:

u. Termination indemnity is payable by the Administration. The UNJSPF has no role. As the UNJSPF has no interest in these proceedings, they should not be joined as a party;

v. Staff rule 9.8 and Annex III to the Staff Regulations set out the provisions for calculation and payment of termination indemnity. These provisions do not state that the UNJSPF is responsible for the payment of termination indemnity. Accordingly, it is a matter for the Administration;

w. Pursuant to art. 11 of the Dispute Tribunal's Rules of Procedure, the Dispute Tribunal may only join another party to the proceedings if that party has a legitimate interest in the outcome of the proceedings;

x. The UNJSPF has no interest in the outcome of these proceedings. The Applicant does not appear to challenge any decision taken by the UNJSPF regarding the payment of his disability benefits. His challenge is to the Administration's calculation and payment of his termination indemnity;

y. Even if the Applicant is challenging a decision related to the payment of disability benefits, the Dispute Tribunal has no jurisdiction over the UNJSPF. Pursuant to Article 48 of the UNJSPF's Regulations and Rules, the Appeals Tribunal is the sole Tribunal with jurisdiction in cases alleging non-compliance with the UNJSPF's Regulations and Rules.

Consideration

Scope of the cases—definition of the contested decisions

42. The Tribunal notes that the parties identify four separate and individual decisions that are contested by the Applicant, namely:

a. The Respondent's non-payment of the termination indemnity due to the Applicant, and the alleged miscalculation of the termination indemnity by the Respondent (including the reduction of the amount payable under Annex III(a) to the Staff Regulations and Rules by an amount equal to the disability benefit that the Applicant will receive from the UNJSPF);

b. The decision to change the Applicant's EOD date from 10 October 2005 to 19 February 2008;

c. The decision to change the Applicant's termination date from 4 February 2016 to 3 February 2016;

d. The Applicant's claim of discriminatory treatment.

43. This matter is therefore primarily about the Applicant's entitlement to termination indemnity. The Tribunal notes that its determination with regard to the second and third decisions (b and c above) concerning the applicable dates for the calculation of the termination indemnity will inform the correct amount due to the Applicant. Therefore, the Tribunal will address these last two decisions first as a preliminarily matter.

44. The Tribunal considers that the Applicant's 23 November 2016 request for leave to join the UNJSPF is no longer in contention, since the Applicant confirmed in a subsequent submission that he has "no legal or financial issues with UNJSPF" and no cause of action against the UNJSPF. In light of this submission, the Tribunal did not deal with the request previously by separate order, and it is now rejected as moot.

45. The Tribunal also notes that the facts of the case are adequately set out in the lengthy submissions herein before made by both parties and summarized above.

The decision to change the Applicant's EOD date from 10 October 2005 to 19 February 2008 (Case No. UNDT/NY/2016/066)

46. The Applicant contends that the Administration unlawfully changed his EOD date from 10 October 2005 to 19 February 2008. The Applicant states that he joined the United Nations on 10 October 2005 and left service on 4 February 2016. Therefore, his correct EOD date for the calculation of his termination indemnity is 10 October 2005, when he commenced service at UNON, and not 19 February 2008 when he was reappointed to UNDSS in New York. Based on these dates, he contends that his termination indemnity should be calculated at 9.5 months of gross salary to correspond with his 125 months of service.

47. The Respondent argues that the Applicant's challenge to his EOD date is time-barred as the Applicant was informed of his EOD date in 2008. In the alternative, the Respondent contends that the EOD date was correctly determined.

48. The crux of the issue is whether the Applicant can be treated as being in continuous service since he joined the Organization on 10 October 2005 for the purpose of calculating the termination indemnity due to him.

Legal framework

49. Staff regulation 9.3 in force on 4 February 2016 (the date of the Applicant's separation) ST/SGB/2014/1 under Art IX (Separation from Service) states as follows as regarding termination of an appointment for reasons of health:

> **Regulation 9.3**
>
> (a) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

…

(iii) If the staff member is, for reasons of health, incapacitated for further service;

…

(c) If the Secretary-General terminates an appointment, the staff member shall be given such notice and such indemnity payment as may be applicable under the Staff Regulations and Rules. Payments of termination indemnity shall be made by the Secretary-General in accordance with the rates and conditions specified in annex III to the present Regulations;

50. Staff rule 9.8 (ST/SGB/2014/1) in force on 4 February 2016 states as follows regarding the calculation of a staff member's length of service (emphasis added):

Rule 9.8

Termination Indemnity

… (a) Payment of termination indemnity under staff regulation 9.3 and annex III to the Staff Regulations shall be calculated:

[…]

(iii) For staff in the General Service and related categories, on the basis of the staff member's gross salary, including language allowance, if any, less staff assessment, according to the schedule of rates set forth in staff regulation 3.3 (b)(ii) applied to the gross salary alone.

… (b) *Length of service shall be deemed to comprise the total period of a staff member's full-time continuous service on fixed-term or continuing appointments.* Continuity of such service shall not be considered as broken by periods of special leave. However, service credits shall not accrue during periods of special leave with partial pay or without pay of one full month or more.

51. Former staff rule 104.3 (ST/SGB/2004/1) on re-employment in force at the time of the Applicant's re-employment to UNDSS in New York on 19 February 2008 provides as follows (emphasis added):

> … (a) A former staff member who is re-employed shall be given a new appointment or, if re-employed within twelve months of separation from service or a longer period following retirement or disability under the Joint Staff Pension Fund Regulations, he or she may be reinstated in accordance with paragraph (c) below.
>
> … (b) If the former staff member is reinstated, it shall be so stipulated in his or her letter of appointment. If he or she is given a new appointment, its terms shall be fully applicable without regard to any period of former service, except as provided below:
>
> ***(i)*** *Former service may be considered when establishing the level on recruitment* and *the record of mobility* of the staff member; ***and***
>
> *(ii) When a staff member receives a new appointment in the United Nations common system less than twelve months after separation, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the number of months, weeks or days of salary to be paid at the time of the separation after the new appointment, when added to the number of months, weeks or days paid for prior periods of service, does not exceed the total of months, weeks or days that would have been paid had the service been continuous.*

52. The record clearly shows that, following his voluntary resignation, the Applicant was given a new appointment on 19 February 2008 whereby he was re-employed under former staff rule 104.3 and not reinstated.

53. However, the key legal issue is whether the Applicant's previous service with UNON since 10 October 2005 should be taken into consideration in determining the applicable dates of the service for the purpose of calculating the termination

indemnity, and whether the Applicant can be treated as being in continuous service since 10 October 2005 for the purpose of calculating the termination indemnity.

54. Former staff rule 104.3(b)(ii) provides that when a staff member receives an appointment in the United Nations common system less than twelve months after separation, as in the Applicant's case who was reemployed with UNDSS in New York the very next day following his separation by resignation from UNON, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the payment does not exceed what would have been paid had the service been continuous.

55. Having reviewed the legislative history of the provision in former staff rule 104.3 (b)(ii), it is clear that the intention of the drafters was to facilitate movement of staff between various organizations within the United Nations Common System, and to ensure that staff members are treated as being on continuous service as they move through various United Nations organizations.

56. The provision first appeared in the Staff Regulations and Rules in 1993, referring to an agreement reached at the Consultative Committee on Administrative Questions ("CCAQ") in 1963 (COORD/R.430, para. 71) as the basis, as follows (emphasis added):

> …
>
> 6. Rule 104.3, on re-employment. This amendment reflects an agreement reached at the Consultative Committee on Administrative Questions (COORD/R.430, para. 71). Other changes are editorial.
>
> …
>
> **Rule 104.3 Re-employment**
>
> (a) A former staff member who is re-employed shall be given a new appointment or, if re-employed within twelve months of being separated from service or within any longer period following

> retirement or disability under the Joint Staff Pension Fund Regulations, he or she may be reinstated in accordance with paragraph (b) below. If the former staff member is reinstated, it shall be so stipulated in his or her letter of appointment. If he or she is given a new appointment, its terms shall be fully applicable without regard to any period of former service, except that such former service shall be counted for the purpose of determining seniority in grade. *However, where a former staff member of the United Nations common system is granted a new appointment within twelve months of separation, any entitlement, benefit or accrual the staff member may have when separated for a second time should be adjusted in such a way that the total payments for the first and second separation do not exceed the amounts which would have been paid had the service been continuous.*

57. The agreement reached at the Consultative Committee on Administrative Questions in 1963 states as follows (emphasis added):

> …
>
> XIII. OTHER ADMINISTRATIVE MATTERS
>
> Inter-Organization Transfer Agreement
>
> …
>
> 69. CCAQ completed its revision of the 1949 Agreement which governs the conditions of transfer, secondment or loan of staff members between the various organizations of the United Nations Common System, and recommends that ACC should approve the new text which is attached as Appendix G to this Report. To allow time for legislative approval where that is necessary the date of entry into force generally has been set at 1 January 1964, but it is agreed that any two organizations may apply the Agreement from an earlier date if they so wish. The Committee noted with appreciation a statement by the representative of the IMF that his organization, though not part of the Common System, shared the desire to facilitate movement of staff between organizations and, would endeavour to follow the spirit of the Agreement in any case with which it was concerned.

> 70. The Agreement sets forth the position both for organizations and for staff in case of transfer, secondment or loan between organizations. The extent to which the same principles could be applied as appropriate to movement between different programmes within a single organization will be studied.
>
> 71. *The Committee recognized that problems analogous to those dealt with in the Agreement may arise when a staff member is separated from one organization and is subsequently re-employed by the same or another organization. It agreed, therefore, that where the re-employment occurred within twelve months of the separation any entitlement which the staff member may have on account of repatriation grant, or service benefit, or accrued annual leave, on the second separation, should be adjusted in such a way that the total payments on these entitlements on the first and second separations do not exceed the amounts which would have been paid had the service been continuous. This will entail amendments to the Staff Rules of various organizations.* […]
>
> …

58. The intended consequence of the provision in former staff rule 104.3 (b)(ii) is apparent from the face of it. The provision intends to simplify mobility of staff members, and certainly not to disentitle or cause detriment to staff as they move internally within a United Nations organization or through various United Nations organizations. It is clear from the text that the intention was to ensure that any separation entitlements that a staff member may have following re-employment within twelve months of a separation would not exceed the amounts that the staff member would have received had his or her service been continuous. The intention simply being to ensure that staff members do not speculate by several moves to unduly or doubly accrue benefits beyond the maximum entitlements. It follows quite logically that the staff member would be considered to be in continuous service and that his or her final separation entitlements would be adjusted to reflect this.

59. Furthermore, staff rule 9.8(b) of ST/SGB/2014/1 states that length of service for purposes of calculating termination indemnity shall be deemed to comprise the

total period of a staff member's full-time continuous service on fixed-term or continuing appointments. That periods of former service are relevant in termination indemnity cases was submitted (and thus admitted) by the Respondent in the matter of *Couquet* 2015-UNAT-574 at paragraph 35 where the Appeals Tribunal quotes the Secretary General's submission as follows:

> […] Staff rule 4.17 makes it clear that subparagraph (c) is intended to enumerate exclusions to the general rule, set out in the preceding subparagraphs, that a staff member who is reemployed is treated as having a new appointment without regard to any period of former service. Periods of former service will be relevant only in cases enumerated in staff rule 4.17(c) - termination indemnity, repatriation grant or commutation of accrued annual leave […].

60. The Respondent submitted in the present case that the Applicant was in the General Service and related categories and locally recruited, without possibility of transfer to another country as an international recruit. The Consultative Committee on Administrative Questions (*supra* at para 57 of this judgment), at para 71. recognized that problems analogous to those dealt with in the Agreement (on transfer, loan and secondment of staff members), may arise when a staff member is separated from one organization and is subsequently re-employed by the same or another organization and recommended that provision be made in this regard specifically for repatriation grant, service benefit (termination indemnity), and accrued leave. Furthermore, staff rule 9.8 makes no distinction between national and international recruitment status. It has not been disputed that the Applicant was on fixed-term contracts throughout his service with the United Nations. He was re-employed in the United Nations within 12 months of his resignation. In accordance with ST/SGB/2014/1 rule 9.11 (a)(i), the Applicant was expected to, and did perform his duties during the period of notice of his resignation. It is certainly not alleged otherwise. He commenced employment in New York the very next day after his day of separation in Nairobi. There was in reality no separation and no effective break in service. In any event, in terms of staff

rule 9.8, and as admitted by the Respondent and determined in *Couquet,* the Applicant's full period of service has to be taken into account in the computation of his termination indemnity. The Applicant is deemed to have been in continuous service.

61. In this regard, the Tribunal notes that OHRM also acknowledged that the Applicant, having been re-employed within twelve months of his separation from UNON, was deemed to have been in continuous service. This was confirmed in OHRM's email to the Applicant on 15 July 2008 stating that there was an amendment to his "Reappointment Personnel Action" with a special reference to former staff rule 104.3(a) on reemployment within one year and explaining his separation from UNON when the Applicant had been paid 25.5 days leave balance, and pointing out that any future accrual of leave balance on the next separation would be adjusted so that the total payment would not exceed the 60 days entitlement which would have been paid had the service been continuous. Just as a staff member has to give credit for any prior encashment of leave benefit or receipt of termination indemnity on final separation, so should he logically receive the benefit of his total period of service with the Organization in computing his final termination indemnity.

62. The Tribunal notes that it took some time for the Administration to confirm the methodology of the final calculations and on 26 September 2016, the Applicant finally received a termination indemnity spreadsheet which stated his date of EOD as 19 February 2008 and his termination date as 3 February 2016. The Applicant subsequently filed a timely request for management evaluation on 19 October 2016 of the Administration's calculation of his separation payments in the 26 September 2016 spreadsheet. His claim is therefore receivable.

63. The Tribunal finds that since the Applicant's EOD into the United Nations common system is 10 October 2005, the Administration used the incorrect EOD date

for the calculation of the termination indemnity due to the Applicant. Therefore, the contested decision is unlawful and stands to be rescinded. In view of the rescission of the decision, the Tribunal directs the Administration to provide the Applicant with an updated calculation sheet and make any necessary adjustments to the Applicant's separation entitlements and benefits in line with this Judgment and staff rules 9.8 (b) and 104.3 (b)(ii).

The decision to change the Applicant's termination date from 4 February 2016 to 3 February 2016 (Case No. UNDT/NY/2016/066)

64. In relation to the Applicant's challenge to his termination date, the Respondent submits that it is not receivable as there has been no administrative decision in violation of the Applicant's rights under his contract of employment. The Applicant's appointment was terminated for health reasons, effective 4 February 2016, and his disability benefits commenced the next day. There has been no administrative decision that his termination date was 3 February 2016, the termination indemnity payable to him was calculated using a spreadsheet which simply contained a typographical error. However, this error made no difference to the calculation and the Applicant has not identified how the error had an impact on the terms and conditions of his appointment.

65. In response, the Applicant maintains that his termination indemnity was miscalculated using the wrong EOD and termination dates, and that he has continued suffering financial losses due to the Respondent's alleged failure to pay his termination indemnity and one-month salary.

66. Articles 2.1 and 3.1 of the Dispute Tribunal's Statute provide that the Tribunal is competent to hear and pass judgment on an application against an administrative decision "alleged to be in non-compliance with the terms of appointment or the

contract of employment" filed by any current or former staff member of the United Nations.

67. In the present case, the Tribunal notes that the Applicant fails to identify how the typographical error in relation to his termination date had an impact on the terms and conditions of his appointment. On the information available to the Tribunal, it appears that the typographical error in the calculation spreadsheet had no impact in the calculation of the termination indemnity due to the Applicant. Accordingly, as the typographical error in relation to his termination date had no discernable direct legal effect on the Applicant's terms of appointment, the Applicant can be said to have no standing or right under the Statute to contest the typographical error of the termination date in the calculation sheet. However, if any miscalculation has resulted by the computation formula being out by one day, the Respondent should address this matter.

The Respondent's non-payment of the termination indemnity due to the Applicant and the alleged miscalculation of the termination indemnity by the Respondent (Case Nos. UNDT/NY/2016/040 and UNDT/NY/2016/041)

68. Having determined that the incorrect EOD date was applied for the calculation of the termination indemnity due to the Applicant, that all periods of the Applicant's former service are relevant for purposes of computing his termination indemnity and the Administration is to make proper adjustments to the calculations, the remaining issue before the Tribunal is the Administration's application of Annex III of the Staff Regulations and Rules.

69. The relevant parts of Annex III provide as follows:

Termination indemnity

> … Staff members whose appointments are terminated shall be paid an indemnity in accordance with the following provisions:
>
> … (a) Except as provided in paragraphs (b), (c), (d) and (e) below and in regulation 9.3, the termination indemnity shall be paid in accordance with the following schedule: […]
>
> …… (b) A staff member whose appointment is terminated for reasons of health shall receive an indemnity equal to the indemnity provided under paragraph (a) of the present annex reduced by the amount of any disability benefit that the staff member may receive under the Regulations of the United Nations Joint Staff Pension Fund for the number of months to which the indemnity rate corresponds;
>
> […]

70. The Respondent submits that the Applicant's termination indemnity of USD773.24 was properly calculated and reflects the requirements of Annex III(a), and Annex III(b) of the Staff Regulations and Rules which explicitly provide for a reduction of the amount of indemnity payable under Annex III(a) by an amount equal to the disability benefit that a staff member will receive under the Regulations and Rules of the UNJSPF, for the number of months to which the termination indemnity rate corresponds.

71. The Respondent explains that Annex III(a) provides for the Applicant to receive (based on his EOD date of 19 February 2008 and termination date of 4 February 2016) gross termination indemnity equal to USD32,946.35 being gross salary of USD43,621.72 less staff assessment of USD10,6751.37 (being 6.8333 months gross salary, less staff assessment for 6.8333 months, corresponding with the Applicant's 95 months of service). Based thereon, these were the calculations sent to the Applicant by the Administration on 26 September 2016. Annex III(b) to the Staff Regulations and Rules provides for a reduction of the amount payable under Annex III(a) by an amount equal to the disability benefit that an applicant will receive from the UNJSPF, for the number of months to which the termination indemnity rate

corresponds. Therefore, the Respondent contends that the amount of termination indemnity is reduced by the amount of the Applicant's disability benefit that would be payable over 6.8333 months. This rule ensures that a staff member does not receive a double payment for his accelerated separation from service due to disability.

72. The Tribunal notes that the gross termination indemnity (calculated by the Respondent at the time using the EOD of February 2008) of USD32,946.35 was accordingly reduced by Applicant's disability benefit of USD32,173.11, resulting in a calculation of net termination indemnity of USD773.24.

73. The Tribunal notes that the Applicant was not paid the USD773.24 calculated at the time because the Organization offset the termination indemnity against the overpayment of USD5,821.44 for salary advances and education grant payments for the Applicant's daughter for the period of November 2014 to February 2016, when she was in fact not attending school. The Tribunal further notes that the Applicant, (whilst contesting the calculation of the termination indemnity), confirmed at the 14 December 2016 CMD that he does not contest the overpayment of USD5,821, nor does he dispute its recovery.

74. The Applicant argued that the Administration processed the incorrect dates and his EOD was 10 October 2005 and he left service on 4 February 2016. Based on these dates, the Applicant calculates that his termination indemnity should be equal to 9.5 months gross salary, less staff assessment corresponding with the Applicant's 125 months of service. The Tribunal has addressed and agreed with the Applicant's argument in relation to the applicable dates for the calculation of the termination indemnity, and directed a recalculation of the Applicant's appropriate dues.

The reduction of termination indemnity by an amount equal to the Applicant's disability benefit (Case No. UNDT/NY/2016/041)

75. The remaining issue is the legality of the reduction of termination indemnity by an amount equal to the Applicant's disability benefit.

76. The Tribunal notes that Annex III(b) to the Staff Regulations and Rules explicitly provides for a reduction of the amount of indemnity payable under Annex III(a) by an amount equal to the disability benefit that a staff member will receive under the Regulations and Rules of the UNJSPF, for the number of months to which the termination indemnity rate corresponds.

77. In support of his argument that no such reduction should have been made, the Applicant relies on the former United Nations Administrative Tribunal Judgment No. 766, *Inguilizian* (1996) where the former Administrative Tribunal reached the conclusion that the payment of the applicant's end-of-service allowance and her termination indemnity did not constitute a double-payment, and the applicant in that case was entitled to both payments. The former Administrative Tribunal stated:

> … The Tribunal notes that the purpose of the termination indemnity is to compensate staff members for their accelerated separation from service, as a result of termination. The EOSA [("end-of-service allowance")] in contrast, is payable, regardless of the manner in which the staff member separates from service, in recognition of this service. For this reason, the Tribunal finds that the payment of EOSA and termination indemnity does not constitute a double payment and the Applicant is entitled to both payments.

78. The Tribunal finds the Applicant's reliance on the aforesaid case misguided. The judgment in *Inguilizian* did not address the applicability of Annex III to the Staff Regulations and Rules, nor was it contested by the applicant in that case. The issue before the former Administrative Tribunal was whether the applicant was entitled to

be paid in full both a termination indemnity and EOSA, a specific allowance paid as a component of salary in Vienna, based on local conditions, as an end-of-service allowance.

79. The judgment in *Inguilizian* actually counters the Applicant's contentions as the facts of the case indicate that Annex III applied and any amount of disability benefit had to be deducted from the termination indemnity payable to the applicant in that case. Therefore, the Dispute Tribunal finds that the Respondent's application of the provision was lawful.

80. There is one other matter. The Applicant in his later submissions threw in a claim for a month's notice pay which he states was promised to him in the letter from the ASG/OHRM dated 1 December 2015. It is clear from this letter that the Applicant was informed that he was entitled to compensation for one month in lieu of notice under staff rule 9.7(d) "to the extent that the balance of sick leave falls short of the period of notice". It is unclear from the record whether the Applicant was paid such compensation and/or informed of its status. The Tribunal therefore directs the Administration to provide the Applicant with a comprehensive and complete updated calculation sheet reflecting the status of the compensation for one month in lieu of notice under staff rule 9.7(d), including any adjustments or set off for sick leave etc.

The Applicant's claim of discriminatory treatment (Case No. UNDT/NY/2016/040)

81. The Applicant contends that the Respondent's failure to respond to enquiries and non-payment of the indemnity amounts to discrimination. The Tribunal notes that the Applicant states that the payments due to him were made six months after his departure from UNON.

82. The Respondent, on the other hand, contends that the Applicant has been treated fairly by the Administration. From the approval of the Applicant's disability

benefits to the commencement of his receipt of disability benefit, the Administration processed the Applicant's final entitlements within a reasonable time. The Administration was in regular contact with the Applicant. It took measures to ensure that the Applicant did not suffer hardship. This included the payment of a salary advance, which resulted in an overpayment to the Applicant. The Administration has treated the Applicant fairly. At no time has he been harassed or discriminated against.

83. Under the consistent jurisprudence of the Appeals Tribunal, the onus is on the Applicant to prove a claim of discrimination on the preponderance of the evidence (see, for instance, *Parker* 2010-UNAT-012, *Azzouni* 2010-UNAT-081, *Charles* 2013-UNAT-284, *Nwuke* 2015-UNAT-506).

84. The Tribunal finds that the Applicant has placed no evidence whatsoever, illustrating any discriminatory treatment against him. On the contrary, the record indicates that the Respondent took measures to ensure that the Applicant did not suffer hardship following his separation from service by issuing him a salary advance in the amount of USD2,377.21 in or around March 2016.

Compensation

85. The Applicant seeks compensation for the unlawful change of EOD date and compensation as he has suffered financial loss occasioned by delay and violation of human rights.

86. By resolution 69/203, adopted on 18 December 2014 and published on 21 January 2015, the United Nations 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 …". (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".)

87. The Appeals Tribunal has determined that compensation may be awarded for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury *(see Faraj* 2015-UNAT-587). In *Faraj*, the Appeals Tribunal further stated that "compensation must be set by the [Dispute Tribunal] following a principled approach and on a case by case basis" and "[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case".

88. The Tribunal has determined that there was an irregularity in calculating the Applicant's termination indemnity due to the wrongful determination of the Applicant's EOD date. It is clear that this irregularity has burdened the Applicant who filed five cases in one year, including an application for suspension of action in October 2016— see Order No. 243 (NY/2016) under Case No. UNDT/NY/2016/053; and a matter which was summarily dismissed in July 2016—see Judgment No. UNDT/2016/098 under UNDT/NY/2016/029. The harm is evident not only from the point of view of the time value of money, but in the amount of time and effort the Applicant has expended in addressing the procedural error.

89. It is clearly the responsibility of the Administration to promulgate clear rules, regulations and policies, and to ensure that its human resource personnel correctly apply the applicable legal framework. If staff members are deemed to know the applicable legal framework, then surely there is an equal, if not higher, duty of care implied on the Respondent. In this case, the Administration has not only failed to comply with its legal framework but has persisted in arguing this matter in a protracted manner having admitted in *Couquet,* that an applicant's full period of service has to be taken into account in the computation of his termination indemnity,

but arguing to the contrary in the present case. Indeed, in the aforesaid summary Judgment No. UNDT/2016/098, the Tribunal observed that it would be regrettable if the matter ended up in costly prolonged litigation considering all its particular circumstances, the nature of the claim, the sums involved, the exchanges generated between the Applicant and the Administration, and the attendant costs of potential litigation to both parties and the Tribunal, impressing upon the parties to amicably resolve the matter; to no avail.

90. Having taken into account the nature of the irregularity and the length of delay in administrating the proper termination indemnity due to the Applicant, the Tribunal finds that a fair and equitable compensation would be the sum of USD5,000.

91. As the Applicant has provided no evidence to support his claim of emotional distress, the Tribunal does not find that he satisfies the requirements for an award for moral injury.

Conclusion

92. In view of the foregoing, the Tribunal decides that the three applications filed by the Applicant under Case Nos. UNDT/NY/2016/040, UNDT/NY/2016/041 and UNDT/NY/2016/066 succeed in part.

93. The Administration's calculation of the Applicant's termination indemnity is rescinded. The Tribunal directs the Administration to provide the Applicant with a complete updated calculation sheet for the termination indemnity due to him, reflecting his continuous service since 10 October 2005; and inform the status of and provide a breakdown of the compensation for one month in lieu of notice under staff rule 9.7(d). The Respondent shall make any necessary adjustments to the Applicant's separation entitlements and benefits, in line with this Judgment, providing a clear

breakdown and including all salary advances and disability benefits (identifying the month they pertain to and the date of such payments), and other payments which were required to be set off from such entitlements and benefits.

94. The Administration shall provide the Applicant with the updated calculation sheets within 30 days of the publication of this judgment, that is, by or before Thursday, 30 August 2018, and shall notify the Tribunal of the outcome by the same date.

95. The Tribunal awards the Applicant USD5,000 for the procedural error in calculating the Applicant's termination indemnity. This sum is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 30th day of July 2018

Entered in the Register on this 30th day of July 2018

(*Signed*)

Pallavi Sekhri, Registrar, New York, Officer-in-Charge