



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KODURU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
George Irving

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

Introduction

1. The Applicant filed the current application on 21 September 2015 to challenge the decision taken by the United Nations Interim Force in Lebanon (UNIFIL) not to renew her fixed-term appointment (FTA) beyond 30 June 2015 due to the abolition of her post.

Procedural history

2. The Respondent filed a reply on 28 October 2015.

3. The Tribunal held a case management discussion (CMD) on 9 March 2016.

4. Pursuant to Order No. 094 (NBI/2016), the Applicant filed a motion for production of evidence on 15 March 2016. The Respondent produced the requested evidence on 30 March and sought leave to file additional evidence on 14 April 2016. The Respondent was granted leave by the Tribunal in its Order No. 196 (NBI/2016).

5. The Applicant filed motions to submit additional evidence on 25 March 2016 and 6 October 2016.

6. The Tribunal heard the matter on 13 and 14 February 2017 in Nairobi and took evidence from the Applicant and from Ms. Jeanie Fraser, the then Chief of the UNIFIL Human Resources Management Section (HRMS), and Ms. Linda Farley, Chief of the UNIFIL Finance and Budget Section, on behalf of the Respondent.

7. The parties filed their closing submissions on 13 March 2017.

Background facts

8. The Applicant entered service with UNIFIL on 1 July 2011 as a Budget Officer at the P-4 level. She worked in the Budget Section under the supervision of a Chief Budget Officer who was at the P-5 level.

9. The General Assembly, in its resolution 66/264 (Cross-cutting issues) of 21 June 2012, emphasized the need for the Secretary-General to conduct a comprehensive review of the civilian staffing requirements for all peacekeeping operations to ensure that the civilian staffing was appropriate for implementing each mission's mandate.

10. In his report 67/747, dated 25 February 2013, on UNIFIL's budget for 1 July 2013 to 30 June 2014, the Secretary-General proposed that the post of the Chief Budget Officer (P-5) be abolished and the Finance and Budget Sections be consolidated/merged into the new Budget and Finance Section/Financial Management Section. The Secretary-General indicated that changes in UNIFIL's staffing requirements would be achieved through "the abolishment, conversion, reassignment and redeployment of posts [...]."

11. Consequently, during the 2013/2014 budget year, the Budget and Finance Sections in UNIFIL were merged and the post of Chief Budget Officer (P-5) was abolished on 1 July 2013. The organizational chart for the newly merged Budget and Finance Section included posts for one P-5 and two P-4 officers. One of the two P-4 posts was encumbered by the Applicant.¹

12. In accordance with A/RES/66/264, United Nations Headquarters and UNIFIL conducted a Civilian Staffing Review (CSR) in September 2013 to review: excess capacity, nationalization of functions, outsourcing of operations and cooperation with the United Nations Country Team. At the time of the review, there was a vacant post of Finance and Budget Officer, P-4, in the Budget and Finance Section.

13. Between 9 and 24 October 2013, UNIFIL advertised the position of Finance and Budget Officer, P-4, in the Budget and Finance Section/Financial Management Section (job opening 31064).

14. On 24 January 2014, the Acting Director of the Field Personnel Division, Department of Field Support (FPD/DFS) sent a fax to all peacekeeping missions with guidelines on how to conduct comparative review processes during

¹ Annex II of A/67/747.

downsizing exercises. The Acting Director advised, in relevant part, that comparative review would be necessary where the number of posts by occupational group/functional title and level in the mission's new structure is less than the number of currently serving staff in the same occupational group/functional title in the former structure.

15. The report of the Secretary-General on UNIFIL's budget for 1 July 2014 to 30 June 2015², dated 18 February 2014, made only one recommendation with respect to the Finance and Budget Section/Financial Management Section. The Secretary-General proposed that one post of budget assistant, which was a national general service position, should be abolished. There was no mention of the P-4 positions.

16. Mr. K.A. was recruited on 10 April 2014 for the vacant Finance and Budget Officer, P-4 position (job opening 31064).

17. On 2 June 2014, Ms. Farley, who was the Applicant's supervisor, recommended that the Applicant's appointment be renewed for one year, until 30 June 2015, with a comment that the CSR had recommended the nationalization of her post in the next budget cycle.³

18. On 23 June 2014, the Applicant wrote to Ms. Fraser to request clarification on and to protest Ms. Farley's comment regarding the nationalization of her post.⁴ By memorandum dated 24 June 2014, the Officer-in-Charge (OIC), HRMS, advised the Applicant that Ms. Farley's comments were "irrelevant" and could be "disregarded" because the recommendation of the CSR for the 2015/2016 budget cycle was going to be discussed in the upcoming budget deliberations with all sections.⁵

19. The CSR, in its report dated 3 November 2014 noted, *inter alia*, that the UNIFIL Budget and Finance Section was one of the sections that required a

² A/68/757.

³ Application, Annex 6.

⁴ Ibid, Annex 7.

⁵ Ibid, Annex 8.

reduction in staff and recommended the nationalization of one P-4 post during the 2014/2015 budget year.

20. On 8 December 2014, the Field Budget and Finance Division of the Department of Field Support (FBFD/DFS) shared the proposed staffing changes for the 2015/2016 budget period with Ms. Farley and the Applicant. DFS indicated that the CSR report had been used as a guide in determining the functional titles of the 24 posts to be nationalized and the 48 posts to be abolished. The document indicated that one post of P-4 Finance and Budget Officer from the Financial Management Section would be nationalized and converted into a National Professional Officer (NPO) post. The Applicant forwarded the DFS document to Ms. Fraser on 9 December 2014 for a response.

21. Sometime in 2014, UNIFIL established an Ad-Hoc Committee to oversee the retrenchment processes recommended by the CSR and ensure they were conducted in a fair and transparent manner. The Committee was comprised of representatives from the Office of the Head of Mission, Administration, the National Staff Union and the Field Staff Union (FSU).

22. On 12 December 2014, the UNIFIL Head of Mission, Major General Luciano Portoleno, held a town hall meeting with all staff and informed them of the CSR's review and its potential impact on them.

23. In A/69/731 (Budget for the United Nations Interim Force in Lebanon for the period from 1 July 2015 to 30 June 2016), dated 19 January 2015, the Secretary-General proposed, *inter alia*, to the General Assembly that one post of Finance and Budget Officer, P-4, be converted to an NPO post.

24. In April 2015, the UNIFIL Head of Mission sent a message to all UNIFIL personnel explaining the impact the CSR would have on the 2015/2016 budget and the Mission's approach in dealing with the upcoming nationalization of 26 international posts and abolishment of 10 international and 46 national posts.

25. In the same month, UNIFIL initiated a comparative review exercise. The Chairman of the Ad-Hoc Committee signed off on the comparative review evaluation sheet for the Applicant and Mr. K.A. on 15 April 2015. The sheet

stated that the Applicant had the lowest total points and therefore “would be the first candidate for consideration to non-renewal/separation due to a reduction of relevant posts.”

26. On 17 April 2015, the Applicant was elected Vice President of the FSU.

27. By memorandum dated 21 April 2015 but received by the Applicant the next day, 22 April 2015, Ms. Fraser notified the Applicant that she had not been successful in the comparative review process and that thus, her contract would not be renewed beyond 30 June 2015.

28. The Applicant sought management evaluation of the impugned decision on 21 May 2015.

29. On 24 June 2015, the Applicant received an email from the Chief, HRMS regarding her relocation to Brindisi, Italy, on 30 June 2015 to take up her new responsibility as Vice President of the FSU from 1 July 2015 with a one month extension while FPD/DFS identified a post for her. This was not implemented.

30. The Secretary-General’s proposals in A/69/731 were approved in resolution 69/302, which was adopted by the General Assembly on 25 June 2015.

31. By memorandum dated 25 June 2015, the Under-Secretary-General for Management notified the Applicant of the Secretary-General’s decision to endorse the findings and recommendations of the Management Evaluation Unit and to uphold the impugned decision.

32. The Applicant was separated from service with UNIFIL on 30 June 2015. On 14 August 2015, she was advised that she had been selected for a post with the United Nations Mission in Liberia (UNMIL) effective 23 August 2015.

CONSIDERATIONS

33. The principal issue for determination here is whether the administrative decision to not renew the Applicant’s FTA beyond 30 June 2015 due to the nationalization of her P-4 budget officer post was taken in a fair and unbiased manner and whether it was therefore lawful.

34. In determining this issue, the Tribunal will examine whether there is merit in the Applicant's claim that the said non-renewal of her appointment was improperly motivated and that the procedures leading to the nationalization of her post were flawed due to abuse of authority.

35. The Tribunal will also rule on the question of whether the claim that the non-extension of the Applicant's employment contract violated her rights as an elected staff representative is receivable.

Is the Applicant's claim that her rights as an elected staff representative were violated due to the non-extension of her contract receivable?

36. Part of the Applicant's case is that she was elected Vice President of the FSU on 17 April 2015. A few days later, on 22 April 2015, she was notified that her post had been nationalized and that she was unsuccessful in a comparative review and would be separated from service on 30 June 2015. The Applicant's election meant that she was expected to assume duties as Vice President of the FSU in Brindisi as from 1 July 2015.

37. On 24 June 2015, the Applicant received an email from Ms. Fraser, the then UNIFIL Chief, HRMS, about her relocation to Brindisi on 30 June to take up her new responsibility as Vice President of the FSU from 1 July 2015 with a one month extension while a post was identified for her. The Applicant's case is that this administrative decision was never implemented and this failure on the part of UNIFIL Administration amounted to a violation of her rights as an elected staff representative.

38. In his reply, the Respondent submitted that the Applicant's claim that UNIFIL Administration violated her staff representational rights was not receivable for purposes of adjudication by the Tribunal. The Respondent further submitted that since this claim was not submitted in the Applicant's management evaluation request, it was not receivable.

39. The Tribunal has perused the Applicant's request to the Management Evaluation Unit. This head of claim regarding a violation of her representational

rights was not raised in her management evaluation request. The Tribunal accordingly finds that it is not receivable.

Was the nationalization of the Applicant's post ill-motivated? Was there abuse of authority in the implementation of the CSR recommendations as it concerned the Applicant?

40. In *Matadi et al.* 2015-UNAT-592, the United Nations Appeals Tribunal (the Appeals Tribunal) recognized the Organization's power to restructure some or all its departments or units by way of abolition of posts, the creation of new posts and the redeployment of staff. The Appeals Tribunal stated however that "even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with its staff members."

41. In *Ahmed* 2011-UNAT-153, the Appeals Tribunal concurred with the former United Nations Administrative Tribunal where it held that, unless the Administration has "[...] abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member's fixed-term appointment is not unlawful."

42. It is the Applicant's case that there were heightened tensions between her and her supervisor, Ms. Farley, since September 2013 and that her request for the intervention of the Mission Staff Union and Mission leadership led to the Ombudsman's unsuccessful attempt to mediate the strained working relationship between them. She also submitted that Ms. Farley ensured her exit from the Mission by recruiting a new P-4 officer in her section despite an already existing CSR recommendation that one P-4 officer post be nationalized in the 2015/2016 budget cycle.

43. For the Respondent, Counsel submitted that the post formerly encumbered by the Applicant was abolished by the General Assembly and that the impugned decision was therefore lawful. The Respondent also submitted that the Applicant's claim that the contested decision was tainted by ill motives on the part of Ms. Farley was contradicted by Ms. Fraser because Ms. Fraser told the Tribunal that

the decision to conduct a comparative review between the Applicant and the newly recruited P-4 budget and finance officer, Mr. K. A., was made by her.

44. Documents available to the Tribunal⁶ show that in accordance with the General Assembly resolution 66/264 of July 2012 about conducting a comprehensive review of peacekeeping missions, a CSR was carried out between 23 and 27 September 2013 in UNIFIL to ensure that the Mission's staffing composition was appropriate for implementing its current mandate and to meet other objectives, strategies and priorities.

45. Oral evidence tendered by the three witnesses that testified before the Tribunal established that after the CSR in September 2013, certain recommendations were made. The said CSR recommendations provided for reducing staffing levels through the nationalization and abolition of certain identified posts in the Mission for the next three budget cycles: 2014/2015, 2015/2016 and 2016/2017.

46. The Applicant was at the time a P-4 budget officer at the Mission. The Secretary-General's report 67/747 of 25 February 2013 on UNIFIL's budget for 1 July 2013 – 30 June 2014, proposed that the P-5 post of Chief Budget Officer be abolished and that the Budget and Finance sections be merged in the 2013/2014 budget cycle. This merger of the two sections into one thus took effect on 1 July 2013.

47. Before the merger of the Budget and Finance sections, the Budget section was headed by a P-5 Chief Budget Officer who supervised the Applicant and reported to the Director of Mission Support (DMS). The Finance Section on the other hand was headed by a P-5 Chief Finance Officer who supervised a P-4 Finance Officer and reported to the Chief of Administrative Services.

48. A merger of the two sections meant that one P-5 post in the merged sections was to be abolished. The then Chief Budget Officer decided to take an early termination package since his retirement date was close. That being the case,

⁶ UNIFIL staffing Review 2013 report, produced upon request to the Tribunal on 18 July 2018.

the then Chief Finance Officer, Ms. Farley, who had been recruited in October 2012 assumed headship of the newly merged Budget and Finance Section.

49. This meant that less than a year after joining the Mission, Ms. Farley became the Applicant's supervisor as from 1 July 2013. There are testimonies from both the Applicant and Ms. Farley that their working relationship soon became problematic and unfriendly and that mediation efforts by the Ombudsman did not resolve their problems.

50. It is not rebutted that at the time of the CSR in September 2013, the newly merged Budget and Finance Section had only one P-5 staff member, namely Ms. Farley and one P-4 officer, the Applicant. The P-4 post which previously had the title of Finance Officer was vacant. Ms. Farley then proceeded to initiate a recruitment to fill the said post and it was advertised in Inspira from 9 October to 24 October 2013.

51. In April 2014, Mr. K. A. was recruited to the said P-4 post as Budget and Finance officer.

52. The Tribunal is mindful of the fact that in September 2013 when the CSR process was taking place in UNIFIL, the Mission's staffing table would have been submitted to the CSR team. Evidently, the staffing table that was made available to the CSR team did not indicate that one P-4 post was vacant in the Budget and Finance section but rather showed that there were thirty-three posts in the section made up of one P-5 post, two P-4 posts, one P-3 post and other Field services posts, National officers and General staff posts.⁷

53. In a summary of conclusions and recommendations, the CSR report⁸ stated:

The Review recommends that changes to the staffing composition and size to the extent possible should be implemented through natural processes, such as attrition, retirement and re-assignment as well as agreed terminations and the move of displaced personnel to growing Missions.

⁷ See page 24 of UNIFIL CSR 2013 report

⁸ Ibid p.13

54. While reviewing the nationalization of posts at UNIFIL, the CSR report also recommended that the Mission:⁹ “Review newly vacant posts, in a continuous process, to determine the potential for nationalization.”

55. It is clearly the case that Ms. Farley disregarded the recommendations that were made by the CSR team and went ahead to hire a new P-4 officer.

56. In defending the decision by HRMS to conduct a comparative review between the Applicant and Mr. K.A., Ms. Fraser testified that in line with the CSR recommendations, the Budget and Finance functional titles and rosters had been brought under the same occupational group of Budget and Finance as they were found to be interchangeable.

57. Also in a confidential memorandum of 28 April 2015, Ms. Golub of UNIFIL HRMS explained that the CSR report did not provide specifics on the post or title of the P-4 post to be nationalized. She further explained that since the Secretary-General’s report was based on the DFS’ submission of the UNIFIL budget for 2015/2016, which had used the functional title of Budget and Finance officer, the said Secretary-General’s report stated that one P-4 post of Budget and Finance officer was to be nationalized.

58. The said report¹⁰ of the Secretary-General had indeed proposed that one P-4 post of “Finance and Budget Officer” be nationalized in UNIFIL for the budget year starting 1 July 2015 and ending 30 June 2016. The General Assembly adopted this proposal on 25 June 2015.

59. The Applicant additionally testified and provided undisputed documentary evidence that on 2 June 2014, two months after the recruitment of Mr. K. A., UNIFIL HRMS sent a request to Ms. Farley for the extension of the Applicant’s contract. Ms. Farley recommended an extension of contract for the Applicant for the next budget year of 2014/2015. On the request document for the Applicant

⁹ Ibid p.11.

¹⁰ A/69/731 dated 19 Jan. 2015

that Ms. Farley sent back to the Human Resources office, she stated as follows:
“Note the CSR recommendation to nationalize this position in the next budget.”¹¹

60. The Applicant then wrote to Ms. Fraser on 23 June 2014 and complained that the notation made on the request for her extension of contract document by Ms. Farley was aimed at targeting her in the down-sizing exercise at UNIFIL.¹² In reply, the Officer-in-Charge of the Human Resources section stated that the notation was irrelevant and should be ignored by the Applicant.¹³

61. It is also the Applicant’s case that Ms. Farley recruited the new P-4 officer into the merged Budget and Finance section in April 2014 in pursuit of an agenda to bring her employment in the Mission to an end due to disagreements between them and a working relationship that was far from cordial.

62. Under cross-examination, Ms. Farley admitted that she had had disagreements and differences with the Applicant which led to mediation efforts by the Ombudsman. She added that the mediation efforts did not resolve the problems between them.

63. In response to another question in cross-examination, Ms. Farley admitted that when she recruited the new P-4 officer into the newly merged section, she was aware of the CSR recommendation to nationalize one of two P-4 posts in that section. She also admitted that she knew of the CSR recommendation to try to implement the abolition or nationalization of posts through attrition. The question then arises as to why she ignored the recommendation and instead went ahead to make the new recruitment?

64. While being cross-examined, Ms. Farley tried to explain that when she made a note that the Applicant’s post was to be nationalized at the end of the budget year, it was not addressed to the Applicant but that it was her way of asking HRMS for help with how to resolve the problem of getting rid of one of the two P-4 officers in her section.

¹¹ Application, Annex 6.

¹² Ibid, Annex 7.

¹³ Ibid, Annex 8.

65. In its review of the evidence regarding the nationalization of the Applicant's post, the Tribunal finds it curious that Ms. Farley would place a note in the HRMS's request for extension of the Applicant's contract for the 2014/2015 budget year, stating that the Applicant's post was up for nationalization in that budget year if she was not minded to ensure the Applicant's exit.

66. Her explanation that she did so as a way of asking HRMS for help as to how to determine which one of two P-4 posts to nationalize is not credible for two reasons: (a) she had recruited a new P-4 officer only two months before on an FTA for one year; and (b) her notation about nationalizing the Applicant's post was clear and direct. The clarity of her notation is simply borne out by the fact that the said HRMS in its reply to the Applicant's query about it stated that the notation was irrelevant and should be ignored.

67. Ms. Farley told the Tribunal that she did not see the CSR report and recommendations before she initiated a vacancy advertisement in October 2013. Even if Ms. Farley was unaware of the CSR recommendations when she started the recruitment, she knew about it months before she completed that recruitment and could have then stopped the on-going recruitment she initiated. It is noteworthy that rather than implement the CSR recommendation of reduction of posts by attrition, she went ahead to recruit in April 2014 only to inform HRMS two months later that the Applicant's P-4 post was to be nationalized in the next year - 2014/2015.

68. The Tribunal finds that the late P-4 recruitment of Mr. K.A. embarked upon by Ms. Farley in April 2014, when she knew that the nationalization of a P-4 post in her section was imminent, was made in bad faith. The record shows that Ms. Farley did not have a good working relationship with the Applicant after the merger of the Budget and Finance sections.

69. There is no doubt that Ms. Farley made the new recruitment to ensure through means at her disposal as supervisor and hiring manager that the Applicant would be made to leave and her post nationalized under the guise that she was unsuccessful in a comparative review process. The Respondent has made a song and dance as to how the newly recruited Mr. K.A. was a staff member with a

continuing appointment and against whom the Applicant stood no chance in the comparative review process.

70. That may well be true but bad faith against the Applicant motivated his hiring by Ms. Farley.

71. On 22 April 2015, the Applicant had received a memorandum from UNIFIL Human Resources Chief informing her that she had failed the comparative review and her contract would therefore not be renewed due to nationalization. By that date, the Secretary-General had presented the UNIFIL budget for 2015/2016 in which he proposed the nationalization of the P-4 Budget and Finance Officer post to the General Assembly but the General Assembly had not approved the budget or the proposals therein. The General Assembly approved the budget on 25 June 2015.

72. In other words, the nationalization of the said P-4 post was approved for implementation in the 2015/2016 budget year, which did not include June 2015. Thus, the April 2015 comparative review of the Applicant, which led to her separation on 30 June 2015, was premature and unnecessary.

73. In her pleadings, the Applicant claimed that the actions of Ms. Farley amounted to abuse of authority. ST/SGB/2008/5 legislates against abuse of authority and defines it as follows:¹⁴

Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion...

74. In view of the evidence before it, this Tribunal finds that Ms. Farley abused her authority when she initiated and concluded the recruitment of a new P-4 officer in the merged Budget and Finance section in flagrant disregard of the UNIFIL CSR review recommendations in 2013 that changes to the staffing

¹⁴ Section 1.4

composition, to the extent possible, should be implemented through natural processes such as attrition.

75. It was also abuse of authority on her part when she proceeded to nationalize the Applicant's post one year earlier than the GA's approved date for the implementation of the nationalization of a P-4 Budget and Finance post.

76. This Organization recognizes that workplace conflicts and disagreements happen. There are measures in place to genuinely resolve them and to foster a harmonious working environment sensitive to the needs of all staff members. In the latest version of the standards of conduct for the international civil service published in 2013,¹⁵ managers and supervisors are expected to serve as role models and have a special obligation to uphold the highest standards of conduct; they must act impartially, without favoritism and intimidation.

77. The same standards of conduct enjoin also international civil servants to refrain from abuse of authority.¹⁶

CONCLUSION

78. Due to the apparent bad faith on the part of Ms. Farley in initiating and concluding a new recruitment contrary to the CSR recommendation, and her unauthorized nationalization of the Applicant's post one year before the approved date, the decision to separate the Applicant was discriminatory, constituted abuse of authority and was therefore unlawful.

REMEDY

79. Article 10.5 of the UNDT Statute governs the remedies the Tribunal may grant to applicants. Article 10.5(a) allows the Tribunal to rescind unlawful administrative decisions while art. 10.5(b) regulates awards of compensation. The General Assembly, by its resolution 69/203, amended art. 10.5(b) of the UNDT Statute to ensure that compensation is ordered only for harm and that the existence of such harm is proven or supported by adequate evidence.

¹⁵ Paragraph 17

¹⁶ Ibid, paragraph 22.

80. In the present matter, the Applicant sought reinstatement from 1 July 2015 and compensation for loss of earnings and for moral damages.

Reinstatement and loss of earnings

81. In *Cohen* 2011-UNAT-131, the Appeals Tribunal highlighted the right of staff to an effective and equitable remedy once the Dispute Tribunal has concluded that an administrative decision is unlawful. The Appeals Tribunal opined that:

In general, in keeping with the principle of the right to an effective remedy enshrined in article 8 of the Universal Declaration of Human Rights, the rescission of the illegal decision to dismiss a staff member implies, for the Administration, that it must both reinstate the staff member and pay compensation for loss of salaries and entitlements not related to actual service performance after deducting any salaries and entitlements that the staff member received during the period considered.

82. Here, the Tribunal has concluded that the decision to separate the Applicant was discriminatory, constituted abuse of authority and was unlawful.

83. The Applicant's un rebutted evidence was that the impugned administrative decision had the following ramifications for her:

- a. A break in service, which has negatively affected her eligibility for after service health insurance coverage and conversion of her appointment from an FTA to a continuing appointment.
- b. Loss of earnings.

84. Noting the gravity of the ramifications on the Applicant's contractual status with the Organization and her eligibility for after service health insurance, the Tribunal finds that the most effective remedy under the circumstances is for the Applicant to be reinstated in service for the approximately 7-week period she was separated from service. This will ensure her continuity of service when decisions are being made about her eligibility for a continuing appointment and after service health insurance.

85. Additionally, the Applicant should be compensated for the earnings she lost between the date she was wrongfully separated from service and the date she was appointed to UNMIL.

Moral damages

86. The Appeals Tribunal has consistently held that the Dispute Tribunal shall not award compensation for moral damages when there is no evidence whatsoever to sustain such harm or prejudice.¹⁷ Further, the Appeals Tribunal has held that¹⁸:

The mere fact of administrative wrongdoing will not necessarily lead to an award of compensation under Article 10(5)(b) of the UNDT Statute. The party alleging moral injury (or any harm for that matter carries the burden to adduce sufficient evidence proving beyond a balance of probabilities the existence of factors causing harm to the victim's personality rights or dignity, comprised of psychological, emotional, spiritual, reputational and analogous intangible or non-patrimonial incidents of personality.

87. The Applicant gave evidence during the hearing that her separation from UNIFIL caused financial strain for her and her family and emotional stress for her. She explained during the examination-in-chief that because of her separation she had no money and could not pay her mortgage, buy food for her children or pay her children's school fees. Two of her children withdrew from college because she was no longer entitled to education grant and she stopped communicating with her three adopted children because of the cost involved. It was also her evidence that her separation from UNIFIL made her feel worthless. She did not feel good about herself, had difficulty breathing and sleeping and she lost her sense of security. She stated that she had been seeing a doctor who had provided her with medication.

88. The Tribunal notes that the Applicant was out of work for approximately 7 weeks. The Tribunal is not convinced that during this 7-week period, the Applicant's financial situation deteriorated so much that she was unable to buy food for her family or pay her mortgage. Further, even if she had not been

¹⁷ *Al Hallaj* 2018-UNAT-810 quoting *Kallon* 2017-UNAT-742, *Tsoneva* 2017-UNAT-714, *Ademagic et al.* 2016-UNAT-684 and *Oummih* 2015-UNAT-518/Corr.1.

¹⁸ *Kallon* 2017-UNAT-742.

separated, she would not have been entitled to payment of the education grant entitlement during the 7-week period because the 2015 school year had ended. She became eligible for education grant again upon her appointment to UNMIL on 23 August 2015. It is worth noting that the Applicant's son chose not to return to school and her daughter had to wait a year to return to school because she was unable to gain admittance to the state colleges.

89. The Applicant's evidence on the emotional distress she suffered was very general and did not give the Tribunal a clear picture of the harm she allegedly suffered. Further, she did not adduce any documentary or additional evidence to bolster her request for moral damages.

90. The Tribunal finds that the Applicant's testimony was not compelling enough to serve as the evidentiary basis for an award of moral damages under the amended art. 10.5(b) of the UNDT Statute.

JUDGMENT

91. The decision not to renew the Applicant's appointment and separate her from service as of 30 June 2015 is rescinded.

92. The Respondent is ordered to reinstate the Applicant in service from 1 July to 22 August 2015 and pay her net base salary and entitlements for the period 1 July to 22 August 2015.

93. The compensation shall be paid within 60 days of this judgment becoming executable. Interest will accrue on the total sum from the date of recovery to the date of payment. If the total sum is not paid within the 60-day period, an additional five percent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Nkemdilim Izuako

Dated this 31st day of July 2018

Entered in the Register on this 31st day of July 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi